THE TATA POWER COMPANY LIMITED

DRAFT PPA

FOR PROCUREMENT OF 225 MW WIND SOLAR HYBRID POWER ON LONG TERM BASIS THROUGH COMPETITIVE BIDDING PROCESS (FOLLOWED BY E-REVERSE AUCTION) FROM GRID CONNECTED INTER-STATE AND INTRA-STATE PROJECTS



Contents

ARTICLE 1	: DEFINITIONS	5
ARTICLE 2	: TERM OF AGREEMENT	.14
ARTICLE 3	: CONDITIONS SUBSEQUENT	. 15
ARTICLE 4	: CONSTRUCTION & DEVELOPMENT OF THE PROJECT	. 18
ARTICLE 5	: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION \ldots	. 24
ARTICLE 6	: DISPATCH AND SCHEDULING	. 26
ARTICLE 7	: METERING	.27
ARTICLE 8	: INSURANCES	.31
ARTICLE 9	: APPLICABLE TARIFF	.32
ARTICLE 10	: BILLING AND PAYMENT	.33
	: FORCE MAJEURE	
ARTICLE 12	: CHANGE IN LAW IN INDIA	.42
ARTICLE 13	: EVENTS OF DEFAULT AND TERMINATION	.44
ARTICLE 14	: LIABILITY AND INDEMNIFICATION	.49
ARTICLE 15	: ASSIGNMENT	. 52
ARTICLE 16	: GOVERNING LAW AND DISPUTE RESOLUTION	. 53
ARTICLE 17	: MISCELLANEOUS PROVISIONS	. 55



This Power Purchase Agreement is made on the [Insert date] day of [Insert Month] of [Insert Year] at Mumbai.

Between

[Insert Name of the HPD], a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [Insert Registered Office Address] (hereinafter referred to as "Hybrid Power Developer or HPD", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the First Part;

And

The Tata Power Company Limited, a company formed under the provisions of the Indian Companies Act (VII of 1913); having its registered office at "Bombay House" 24, Homi Mody Street, Mumbai 400 001 (hereinafter referred to as "Tata Power", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the Second Part.

Whereas:

The Tata Power Company Ltd has a license to operate and maintain a distribution system and supply electric energy to the consumers of Mumbai area as enumerated in Maharashtra Electricity Regulatory Commission (MERC) Specific conditions of Distribution License applicable to The Tata Power Company Limited Regulations, 2008. Tata Power carries out the distribution business in Mumbai through its division, Tata Power-Distribution hereinafter referred to as "Tata Power-D" or "Power Procurer".

In order to meet the future power requirement and fulfil the Renewable Purchase Obligation (RPO) of its Distribution business, Tata Power - D vide its RfS No...... dated........ had floated tender to procure wind solar hybrid power up to the capacity of 225 MW with additional greenshoe quantum of 225MW, through Competitive Bidding Process.

The Hybrid Power Developer (HPD) has been pursuant to Letter of Award (LOA) dated......for development of Hybrid Power Project of xxx MW capacity and sale of entire of electrical energy, so produced, for commercial purposes from such power plant to Tata Power - D.

Tata Power - D agrees to procure power from the HPD and the HPD has agreed to sell power to Tata Power - D up to the Contracted Capacity @Rs/kWh at Tariff offered by HPD as per the terms of this Agreement.

AND,	WHEREAS	the	HPD	has	furnished	Performance	Bank	Guarantee
no			dated	۱	amount	ing to Rs	. as per	the RfS No.
	dated						•	
•	VHEREAS the Taluka			-	•	Project of xx M\	N capac	ity at Village
••••••	raiaka		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	••••••				

The Hybrid Power Developer has taken responsibility to set up requisite power injection system at Delivery Point.

AND, WHEREAS, the Parties hereby agree to execute this Power Purchase Agreement setting out the Terms & Conditions for sale of power by HPD to TATA POWER - D.



NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, TATA POWER - D AND THE HPD, EACH TOGETHER WITH THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS, A PARTY AND COLLECTIVELY THE PARTIES, HEREBY AGREE AS FOLLOWS:



ARTICLE 1: DEFINITIONS

1.1 **DEFINITIONS**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued framed by the State and Central Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	:	shall mean the Electricity Act, 2003 and include any
		modifications, amendments and substitution from time to time;
"Agreement" or "Power	:	shall mean this Power Purchase Agreement including its
Purchase Agreement" or PPA"		recitals and Schedules, amended or modified from time
_		to time in accordance with the terms hereof;
"Appropriate Commission"	:	Shall mean the Central Electricity Regulatory Commission
		referred to in sub-section (1) of section 76 or the State
		Electricity Regulatory Commission referred to in section
		82 or the Joint Electricity Regulatory Commission referred
		to in Section 83 of the Electricity Act 2003, as the case
		may be;
"Bill Dispute Notice"	:	shall mean the notice issued by a Party raising a Dispute
		regarding a Monthly Energy Bill or a Supplementary Bill
		issued by the other Party;
"Business Day"		shall mean with respect to HPD and Tata Power - D, a day
	:	other than Sunday or a statutory holiday, on which the
		banks remain open for business in the state of
//C		Maharashtra/Mumbai;
"Capacity Utilization Factor" or		shall have the same meaning as provided in CERC (Terms
"CUF"		& Conditions for tariff determination from renewable
	:	energy sources) Regulations, 2017 as amended from time
		to time; For illustration, CUF shall be calculated based on the
		annual energy injected and metered at the Delivery
		Point. In any Contract Year, if 'X' MWh of energy has
		been metered out at the Delivery Point for 'Y' MW
		Project capacity, CUF= (X MWh/(Y MW*8766)) X100%.
		It may be noted that in the above illustration, the capacity
		'Y' MW shall refer to the Contracted Capacity in terms of
		the PPA;
"CERC"		shall mean the Central Electricity Regulatory Commission
	:	of India, constituted under sub-section (1) of Section 76 of
		the Electricity Act, 2003, or its successors;
"CTU"		shall mean the Government Company notified by the
	:	Central Government under Sub-Section (1) of Section 38
		of the Electricity Act, 2003.
"Change in Law in India"	:	shall have the meaning ascribed thereto in ARTICLE 12 of
		this Agreement;
"Commissioning"	:	The Project will be considered as commissioned if all
		equipment as per rated Project Capacity has been



		installed and energy has flown into grid, in line with the
		Commissioning procedures defined in the PPA.
"Commercial Operation Date		shall mean the date on which the full contracted capacity
(COD)"		of the Project is commissioned (certified by
	:	CTU/STU/DISCOM) and available for commercial
		operation and such date as specified in a written notice
		given at least 30 days in advance by the HPD to Tata Power – D;
		Provided that in case of the reduced Contracted Capacity
		due to delay in commissioning, the COD shall be the date
		of commissioning of the last part in line with part
		commissioning terms of the RfS.
"Competent Court of Law"		shall mean any court or tribunal or any similar judicial or
competent court of Eaw	:	quasi- judicial body in India that has jurisdiction to
		adjudicate upon issues relating to this Agreement;
"Consents, Clearances &		shall mean all authorizations, licenses, approvals,
Permits"		registrations, permits, waivers, privileges,
	:	acknowledgements, agreements, or concessions
		required to be obtained from or provided by any
		concerned authority for the purpose of setting up of the
		generation facilities and / or supply of power;
"Consultation Period"		shall mean the period of sixty (60) days or such other
		longer period as the Parties may agree, commencing
	:	from the date of issuance of a HPD Preliminary Default
		Notice or Tata Power - D Preliminary Default Notice
		as provided in Clause 13.3.2 and Clause 13.4.2 of this
		Agreement, for consultation between the Parties to
		mitigate the consequence of the relevant event having
//2		regard to all the circumstances;
"Contract Year"		shall mean the period beginning from the Effective Date
		of the PPA and ending on the immediately succeeding
	:	March 31 and thereafter each period of 12 months
		beginning on April 1 and ending on March 31 provided that:
		(i) in the financial year in which the Scheduled
		Commissioning Date would occur, the Contract Year
		shall end on the date immediately before the
		Scheduled Commissioning Date and a new Contract
		Year shall commence once again from the
		Scheduled Commissioning Date and end on the
		immediately succeeding March 31, and thereafter
		each period of twelve (12) months commencing on
		April 1 and ending on March 31, and
		(ii) provided further that the last Contract Year of this
		Agreement shall end on the last day of the Term of
		the PPA.;
"Contracted Capacity"	:	shall mean MW (AC) contracted with Tata Power
		- D for supply by the HPD to Tata Power - D at the Delivery
		Point from the Hybrid Power Project;



"Designated Substation"	:	shall mean the interconnecting substation located at the
		respective locations for interconnection of the Project
		with the grid;
Delivery/Interconnection Point		Delivery/Interconnection point shall be the point at
		which energy is delivered at Maharashtra STU periphery
"Dispute"	:	shall mean any dispute or difference of any kind between
		Tata Power - D and the HPD, in connection with or arising
		out of this Agreement including but not limited to any
		issue on the interpretation and scope of the terms of this
"Due Date"		Agreement as provided in ARTICLE 16 of this Agreement; shall mean the Thirtieth (30th) day after a Monthly
Due Date	•	Energy Bill or a Supplementary Bill is received by Tata
		Power - D, if such day is not a Business day, the
		immediately succeeding Business Day, by which date
		such Monthly Energy Bill or a Supplementary Bill is
		payable by Tata Power - D ;
"Effective Date"	:	shall have the meaning ascribed thereto in Clause 2.1 of
		this Agreement;
"Electricity Laws"	:	shall mean the Electricity Act, 2003 and the rules and
		regulation made there under from time to time along with
		amendments thereto and replacements thereof and any
		other Law pertaining to electricity including regulations
		framed by the Appropriate Commission;
"Energy Accounts"	:	Shall mean the REA/SEA, MSLDC/WRLDC final
		implemented schedule/MSLDC issued bills, as certified by Maharashtra SLDC/RLDC (as per their prescribed
		methodology), including the revisions and amendments
		thereof, as may be applicable following the end of each
		month for the energy supplied. Tata Power - D reserves
		the right to choose from any of the above;
"Event of Default"	:	shall mean the events as defined in ARTICLE 13 of this
		Agreement;
"Expiry Date"	:	shall mean the date occurring twenty-five (25) years from
		the Commercial Operation Date (COD); unless extended
		by the parties as per this agreement;
"Financial Closure"	:	shall mean compliance with the requirements under
	•	Clause 3.1 of this Agreement;
"Financing Agreements"	:	shall mean the Agreements pursuant to which the HPD
		has got financing for the power Project including the loan
		Agreements, notes, indentures, security Agreements,
		letters of credit and other documents, as may be
		amended, modified, or replaced from time to time, but
		without in anyway increasing the liabilities of Tata Power
Financing Parties	-	- D; Shall mean the parties financing the project, pursuant to
Financing Parties	•	Shall mean the parties financing the project, pursuant to the financing documents/agreements.
	<u> </u>	the mancing accuments/ agreements.



"Force Majeure" or "Force		shall have the meaning ascribed thereto in ARTICLE 11 of
Majeure Event"	•	this Agreement;
"Grid Code" / "IEGC" or "State	:	shall mean the Grid Code specified by the CERC under
Grid Code"		Clause (h)of Sub-section (1) of Section 79 of the
		Electricity Act, as amended from time to time, and/or
		the Grid Code as specified by the concerned State
		Commission, referred under Clause (h) of Sub-section
		(1) of Section 86 of the Electricity Act 2003, as
		applicable;
"Indian Governmental		shall mean the Government of India, Governments of
Instrumentality"		state(s)[Insert the name(s) of the state(s), in India,
modalitement		where the Power Project and Tata Power – D, HPD are
		located] and any ministry, department, board, authority,
		agency, corporation, commission under the direct or
		indirect control of Government of India or the above
		state Government or both, any political sub-division of
		any of them; including any court or Appropriate
		Commission(s) or tribunal or inspectorate or authorities
		·
		or legislative bodies or judicial or quasi-judicial body in
"In a	<u> </u>	India;
"Insurances"	:	shall mean the insurance cover to be obtained and
		maintained by the HPD in accordance with Clause 8.1 of
"		this Agreement;
"Interconnection Facilities"	:	shall mean all the facilities installed by the HPD to enable
		Tata Power - D to receive the Delivered Energy from the
		Project at the Delivery Point, including transformers, and
		associated equipment, relay and switching equipment,
		protective devices and safety equipment and transmissior
		lines from the project to nearest sub-station.
"Invoice" or "Bill"	:	shall mean either a Monthly Energy Bill / Supplementary
		Bill or a Monthly Energy Invoice/ Supplementary Invoice
		raised by any of the Parties;
"Joint Control"		shall mean a situation where a Company has multiple
	ľ	promoters (but none of the shareholders has more than
		50% of voting rights and paid up share capital);
"Late Payment	-	shall have the meaning ascribed thereto in Clause 10.4 of
Surcharge"	•	this Agreement;
"Law"	-	shall mean in relation to this Agreement, all Laws
	•	including Electricity Laws in force in India including
		Electricity Laws of India and any statute, ordinance,
		regulation, notification or code, rule, or any
		interpretation of any of them by an Indian Governmental
		Instrumentality and having force of law and shall further
		include without limitation all applicable rules,
		· · · · · · · · · · · · · · · · · · ·
		regulations, orders, notifications by an Indian
		Governmental Instrumentality pursuant to or under any
		of them and shall include without limitation all rules,



		regulations, decisions and orders of the Appropriate Commissions;
"Letter of Credit" or "LC"	:	shall have the meaning ascribed thereto in Clause 10.6 of this Agreement;
"MERC"	:	shall mean Maharashtra Electricity Regulatory Commission;
"Metering Point"	:	Shall mean the point(s) at which energy metering and settlement shall be done at the Delivery Point.
"MNRE"	:	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	:	shall mean a period of thirty (30) days from (and excluding) the date of the event, where specified, else a calendar month;
"Open Access Charges"	:	shall mean the charges levied by the CTU/ RLDC / STU/ SLDC for the grant of Open Access as defined in Electricity Act 2003 and amended time to time;
"Party" and "Parties"	:	shall have the meaning ascribed thereto in the recital to this Agreement
"Payment Security Mechanism"	:	shall have the meaning ascribed thereto in Clause 10.6 of this Agreement;
"Performance Bank Guarantee"	:	shall mean the irrevocable unconditional bank guarantee, submitted by the HPD to Tata Power - D from a bank mentioned in RfS
"Preliminary Default Notice"	:	shall have the meaning ascribed thereto in ARTICLE 13 of this Agreement;
"Project/ Wind Solar Hybrid Power Project/ Power Project"	:	shall mean the Hybrid Power Project, comprising Solar PV and Wind Power generation facilities, where the rated power capacity of solar power project shall not be more than 33% of the total contracted capacity, having a single point or separate points of injection into the grid at the Delivery Point/Interconnection Point/Metering Point at CTU/STU substation or in case of sharing of transmission lines, by separate injection at CTU/STU substation and having control systems and metering. The Project shall include all units/ modules and auxiliaries and associated facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to Tata Power – D;
"Project Capacity"	:	shall mean the maximum AC capacity (in MW) at the Delivery Point that can be scheduled on which the PPA shall be signed;



"Project Financing	:	shall mean arrangement of necessary funds by the HPD		
Arrangements"		either by way of commitment of funds by the Company		
		from its internal resources and/or tie up of funds through		
		a bank / financial institution by way of a legally binding		
		agreement for commitment of such finances;		
"Prudent Utility Practices"	:	i. shall mean the practices, methods and standards		
		that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, Commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: ii. operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project. iii. the requirements of Indian Law; and the physical		
"RBI"		conditions at the site of the Power Project; shall mean the Reserve Bank of India;		
"RLDC"		shall mean the concerned Regional Load Dispatch		
KLDC	•	Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;		
"Rebate"	:	shall have the same meaning as ascribed thereto in		
		Clause 10.5 of this Agreement;		
"Scheduled Commercial	:	shall mean the date that is 24 (Twenty-Four) months from		
Operation Date" or "SCOD"		the Effective Date of this Agreement;		
"SERC"	:	shall mean the Electricity Regulatory Commission of any		
		State in India constituted under Section-82 of the		
		Electricity Act, 2003 or its successors, and includes a		
		Joint Commission constituted under Sub-section (1) of		
		Section 83 of the Electricity Act 2003;		
"Solar PV Project"	:	shall mean the Solar Photo Voltaic Power Project that		
		uses sunlight for direct conversion into electricity through		
		Photo Voltaic Technology;		
"SLDC"	:	shall mean the center established under Sub-section (1)		
		of Section 31 of the Electricity Act 2003, relevant for the		
		State(s) where the Delivery Point is located;		
"SLDC Charges"	:	shall mean the charges levied by the SLDC of the state		
		wherein the Wind Solar Hybrid Power Project is located;		
"State Transmission Utility" or	:	shall mean the Government company notified by the		
"STU"		State Government under Sub-section (1) of Section 39 of		
		the Act.		
"Tariff"	:	shall have the same meaning as provided for in ARTICLE		
		9 of this Agreement;		
"Tariff Payment"	:	shall mean the payments to be made under Monthly		
		Energy Bills as referred to in ARTICLE 10 and the relevant		
		Supplementary Bills;		
"Termination Notice"	:	shall mean the notice given by either Parties for		
		termination of this Agreement in accordance with		
		ARTICLE 13 of this Agreement;		
L				



"Term of Agreement"	:	shall have the meaning ascribed thereto in ARTICLE 2 of
		this Agreement;
"Unit Commercial Operation		shall mean the date of issuance of commissioning
Date (UCOD)"		certificate for the respective part(s) of the Power Project
		subsequent to the demonstration of the compliance of
		commissioning as per this Agreement and witnessed by
		the Committee duly constituted and also start of injection
		and scheduling power from the Power Project to the
		Delivery Point and availability / installation of all
		necessary arrangements / equipment, as per the
		applicable regulations;
"Week"	:	shall mean a calendar week commencing from 00:00
		hours of Monday, and ending at 24:00 hours of the
		following Sunday;
"Wind Power"	:	Shall mean power generated from the Wind Power
		Projects;
"Wind Power Project"	:	shall mean the project that uses wind for conversion into
		electricity and that is being set up by the HPD to provide
		Wind Power to Tata Power-D as per the terms and
		conditions of this Agreement;
"Wind Solar Hybrid Power	:	means the wind solar hybrid power project where the
Project"		rated power capacity of solar power project shall not be
		more than 33% of the total contracted capacity.



1.2 INTERPRETATIONS

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement.
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or reenactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard time;



- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
 - 1. Power Purchase Agreement
 - 2. RfS Documents



ARTICLE 2: TERM OF AGREEMENT

2.1 EFFECTIVE DATE

2.1.1 This Agreement shall come into effect from (Enter the date of signing of this agreement) and such date shall be referred to as the Effective Date.

2.2 TERM OF AGREEMENT

- 2.2.1 Subject to Clause 2.1, 2.3 and 2.4, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date on agreed terms and conditions between the Hybrid Power Developer (HPD) and Tata Power D.
- 2.2.2 The HPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by Tata Power D, Tata Power D shall not be obligated to procure power beyond the Expiry Date.

2.3 EARLY TERMINATION

This Agreement shall terminate before the Expiry Date if either Tata Power - D or HPD terminates the Agreement, pursuant to ARTICLE 13 of this Agreement.

2.4 SURVIVAL

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under ARTICLE 11 (Force Majeure), ARTICLE 13 (Events of Default and Termination), ARTICLE 14 (Liability and Indemnification), ARTICLE 16 (Governing Law and Dispute Resolution), ARTICLE 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 SATISFACTION OF CONDITIONS SUBSEQUENT BY THE HPD

- 3.1.1 The HPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the HPD's own cost and risk within twelve (12) months from the Effective Date, i.e. by [insert the date which is twelve months from Effective Date] unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by Tata Power D:
 - a. The HPD, at its sole cost and expense, shall obtain all Consents, Clearances and Permits required for supply of power to Tata Power D as per the terms of this Agreement. Tata Power D shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Wind Solar Hybrid Power Project. The HPD shall, on his own, obtain permissions/sanctions from Government authorities, if any required for establishing the Project. Any steps that may be taken by Tata Power D in regard to grant of such consents and permits or any other approval to be taken by the HPD shall only be a voluntary endeavor with no intention of being bound by any legal or binding obligation. HPD shall submit all such applicable consents, clearances and permits to Tata Power-D.
 - b. The HPD shall construct, operate and maintain the Project during the term of PPA at his cost and risk including the required Interconnection Facilities in close coordination with CTU/STU/Tata Power -D.
 - c. HPD shall submit details of all planned/proposed solar panels, inverters and wind turbine generators, along with necessary purchase order/agreements for the project at least 14 days prior to the scheduled financial closure date. The HPD shall also indicate the rated capacity of any storage facility, if proposed at the Project site.
 - d. HPD shall submit power evacuation/ Connectivity Agreement/LTA with CTU/STU/DISCOM.
 - e. The HPD shall make Project Financing Arrangements for its Projects(s) and shall provide necessary certificates/documents to Tata Power D in this regard.
 - f. At the time of FC, the HPD shall furnish necessary documents/undertaking to establish that the required land for project development is in 100% clear possession/identified, for the entire duration of the PPA.
 - g. The HPD shall submit plans to fulfil the technical requirements according to the MNRE guidelines for selection of projects/equipments and produce the documentary evidence of the same.
 - h. The HPD shall submit to Tata Power D the relevant documents as stated above, complying with the Conditions Subsequent, within twelve (12) months from the Effective Date.



3.2 CONSEQUENCES OF NON-FULFILMENT OF CONDITIONS SUBSEQUENT

3.2.1 In case of a failure to fulfil the conditions subsequent and/or submit the documents as above, Tata Power - D shall encash the Performance Bank Guarantee submitted by the HPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a prior notice to the HPD in writing of at least seven (7) days unless the delay is not owing to any action or inaction on the part of the HPD or due to Force Majeure Event.

The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.

An extension for the attainment of the financial closure can however be considered by Tata Power - D, on the request of the HPD.

- 3.2.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.3 In case of the inability of the HPD to fulfil any one or more of the conditions specified in Clause 3.1 due to any Force Majeure event the time period for fulfilment of the Conditions Subsequent and Financial Closure as mentioned in Clause 3.1, shall be extended for the period of such Force Majeure event.
- 3.2.4 Provided that due to the provisions of this Clause 3.2.3 any increase in the time period for completion of conditions subsequent mentioned under Clause 3.1, shall also lead to an equal extension in the SCOD.
- 3.3 PERFORMANCE BANK GUARANTEE
- 3.3.1 The Performance Bank Guarantee, having validity of 9 months after the Scheduled Commissioning Date of the Project, of Rs. 10 Lakh/MW to be furnished by HPD under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in the RfS Document.
- 3.3.2 The failure on the part of the HPD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the HPD.
- 3.3.3 If the HPD fails to commence supply of power from the SCOD specified in this Agreement or any further extension thereof in terms of this Agreement, subject to conditions mentioned in Clause 4.5, Tata Power D shall encash the Performance Bank Guarantee, without prejudice to the other rights of Tata Power D under this Agreement.



3.4 RETURN OF PERFORMANCE BANK GUARANTEE

- 3.4.1 Subject to Clause 3.3, Tata Power D shall return / release the Performance Bank Guarantee immediately after the successful Commissioning of the Project after taking into account adjustment any liquidated damages / penalties due to delays in Commissioning as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of Tata Power D under this Agreement.



ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 HPD'S OBLIGATIONS

4.1.1 The HPD undertakes to be responsible, at HPD's own cost and risk, for:

- a. Making arrangements for land and associated infrastructure for development of the Project and for evacuation arrangement till the delivery point by the SCOD and all clearances related thereto.
- b. By SCOD, the HPD shall furnish the necessary documents to establish 100% possession in the name of the HPD of the required land/ Lease Agreement, for the entire duration of the PPA.
- c. Obtaining at solely at its cost and responsibility, all Consents, Clearances and Permits other than those obtained under Clause 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
- d. Designing, constructing, erecting, Commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices; and
- e. The commencement of supply of power up to the Contracted Capacity to Tata Power - D no later than the Scheduled Commercial Operation Date and continuance of the supply of power throughout the Term of the Agreement; and
- f. Connecting the Power Project switchyard with the Interconnection Facilities at the Metering Point/ Delivery Point/ Designated substation; and
- g. Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under ARTICLE 15;
- h. Maintaining its controlling shareholding (controlling shareholding shall mean more than 50% of the voting rights and paid-up share capital) prevalent on the Effective Date of PPA in the Company/Consortium developing the project up to a period of one (1) year after the Commercial Operation Date. However, transfer of controlling shareholding within the same Group Companies of HPD will be allowed with the permission of Tata Power D after the COD, subject to the condition that the management control remains within the same Group Companies; and
- i. Obtaining Long Term Access (LTA) and executing Transmission Service Agreement with CTU/STU as the case may be, for evacuation of the Contracted Capacity upto delivery point and maintaining it throughout the term of the Agreement.
- j. The HPD shall be responsible for directly coordinating and dealing with Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power generated by HPD and due compliance with deviation and settlement mechanism and the applicable Grid Code/State/Central Regulations, acknowledging that the HPD and Tata Power - D are the grid connected entities under this Agreement; and
- k. Fulfilling all obligations undertaken by the HPD under this Agreement.
- I. To apply for startup/auxiliary power required for the plant from relevant utility & make payment for start-up/auxiliary power, reactive power as per applicable Regulations is the sole responsibility of the HPD.
- m. The HPD shall sell all available capacity from identified Hybrid Power Project to the extent of contracted capacity on first priority basis to Tata Power D and not to sell to any third party.
- n. Arranging open access (Long Term/Medium Term/Short Term), payment of all charges pertaining to open access (ST/MT/LT), scheduling charges and any other charges, losses up to the Delivery Point shall be borne by HPD.



o. After agreement signing, HPD shall submit 'Progress Report' on monthly basis, by 5th of next month.

4.2 INFORMATION REGARDING INTERCONNECTION FACILITIES

- 4.2.1 The HPD shall be required to obtain all information from the STU/CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the HPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection/delivery point where the metering is done for energy accounting shall be the responsibility of the HPD at his own cost. The maintenance of Transmission system up to the designated point shall be the responsibility of the HPD.
- 4.2.2 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the HPD to the extent the delay is attributable to the HPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection/Delivery Point, shall lie with the HPD. The transmission of power up to the point of interconnection/delivery where the metering is done for energy accounting shall be the responsibility of the HPD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable regulations, terms and conditions shall be the responsibility of the HPD.
- 4.2.4 All costs and charges including but not limited to the open access charges and losses up to the Delivery Point associated with this arrangement shall be borne by the HPD.
- 4.2.5 In case of Pooling substation, losses in the transmission line shall be apportioned among the HPDs who share such a Pooling arrangement and duly signed by all HPDs, based on their monthly generation.
- 4.2.6 The arrangement of connectivity shall be made by the HPD through a dedicated transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Delivery Point will be borne by the HPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the HPD, provisions of Clause 4.10 shall be applicable.

4.3 PURCHASE AND SALE OF CONTRACTED CAPACITY

- 4.3.1 Subject to the terms and conditions of this Agreement, the HPD undertakes to sell Hybrid Power to Tata Power D and Tata Power D undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.
- 4.3.2 It will be entirely the HPD's responsibility to make payments to CTU/STU for the consumption of reactive energy. The HPD shall comply with the Orders issued by CERC/SERC from time to time.



4.4 RIGHT TO CONTRACTED CAPACITY & ENERGY

- 4.4.1 The HPD will declare the CUF of the Project and will be allowed to revise the same once within three years after COD of the full project capacity. The declared annual CUF shall in no case be less than 30% (Thirty percent) for the entire duration of PPA. The declared CUF by HPD is...... Subsequent to commissioning/part-commissioning of the Project, Tata Power D , in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the HPD beyond......Million kWh (MU) [Insert value of energy generated corresponding to 120% of the declared CUF for the Project].
- 4.4.2 If for any Contract Year except for first year of operation, it is found that the HPD has not been able to generate minimum energy of Million kWh (MU) of the energy generated from the Project [Insert value of energy generated corresponding to 90% of the declared CUF for the Project], on account of reasons solely attributable to the HPD, the non-compliance by HPD shall make the HPD liable to pay the compensation at the 50% of the PPA tariff for the shortfall in energy terms. In case of part commissioning of the Project, the above limits shall be considered on pro-rata basis till the commissioning of full Contracted Capacity of the Project. The lower limit will, however, be relaxable by Tata Power D to the extent of grid non availability for evacuation which is beyond the control of the HPD (subject to certification from SLDC/RLDC). This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The compensation shall not be applicable in events of Force Majeure identified under the PPA affecting supply of power by HPD.
- 4.4.3 Any excess generation over and above as per Clause 4.4.1, may be purchased by Tata Power D at the tariff in term of as per ARTICLE 9, provided the Tata Power-D consents to purchase such power. While the HPD would be free to install the DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than Tata Power D (unless refused by Tata Power D). Further, any addition to the installed capacity (including but not limited to solar panels and/or wind turbines) subsequent to commissioning of the full capacity/part capacity of the Project (as applicable), shall not be eligible for any future claims made by the HPD, seeking compensation on account of any changes in the applicable provisions covered under Change in Law in India as defined in this Agreement.

The HPD shall be required to intimate Tata Power - D about the proposed excess quantum of energy likely to be generated from the Project within any Contract Year, at least 60 days prior to the proposed date of commencement of excess generation. Tata Power - D shall be required to intimate its approval/refusal to the HPD, for buying such excess generation not later than 30 days of receiving the above offer from the HPD. In the event the offer of the HPD is not accepted by Tata Power - D within the said period of 30 days, such right shall cease to exist and the HPD shall, at its sole discretion, may sell such excess power to any third party.



- 4.4.4 However, in case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the HPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency/authority.
- 4.4.5 Any energy produced and flowing into the grid before SCOD shall not be at the cost of Tata Power D. Tata Power D may however agree to buy such power as per Clause 9.3

4.5 EXTENSIONS OF TIME

- 4.5.1 In the event that the HPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:
 - a) any Tata Power D Event of Default; or
 - b) Force Majeure Events affecting Tata Power D or
 - c) Force Majeure Events affecting the HPD

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Clause 4.5.5, for a reasonable period but not less than 'day for day' basis, to permit the HPD or Tata Power - D through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the HPD or Tata Power - D, or till such time such Event of Default is rectified by Tata Power – D.

- 4.5.2 In case of extension due to reasons specified in Clause (b) and (c) above, and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement as per the provisions of Clause 11.10. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.
- 4.5.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with ARTICLE 16.
- 4.5.4 As a result of such extension on account of Clause 4.5.1, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.5.5 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Clause 4.5.1 shall be an event of default on part of the HPD and shall be subject to the consequences specified in the Clause 4.6.



4.6 LIQUIDATED DAMAGES AMOUNTING TO PENALTY FOR DELAY IN COMMISSIONING

- 4.6.1 If the HPD is unable to commission the Project by the Scheduled Commercial Operation Date other than for the reasons specified in Clause 4.5.1, the HPD shall pay to Tata Power
 D , damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commercial Operation Date as per the following:
 - i. Delay up to 6 (six) months The total PBG amount on per day basis and proportionate to the balance capacity not commissioned.
 - ii. Delay of more than 6 (six) months HPD event of default shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity commissioned up to SCD + 6 month. The PPA for the balance capacity not commissioned shall be terminated.
- 4.6.2 For avoidance of doubt, it is clarified that provisions of 4.6.1 shall be applicable even in cases, where no capacity (0 MW) is commissioned.

4.7 ACCEPTANCE/PERFORMANCE TEST

4.7.1 Prior to synchronization of the Power Project, the HPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government/state government to carry out testing and certification for the Hybrid Power Projects.

4.8 THIRD PARTY VERIFICATION

- 4.8.1 The HPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to Tata Power D and a third Party nominated by Tata Power D for inspection and verification of the works being carried out by the HPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the HPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from HPD or require the works to be stopped or to comply with the instructions of such third party.

4.9 BREACH OF OBLIGATIONS

4.9.1 The Parties herein agree that during the subsistence of this Agreement, subject to Tata Power - D being in compliance of its obligations & undertakings under this Agreement, the HPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.



4.10 GENERATION COMPENSATION FOR OFF-TAKE CONSTRAINTS

Offtake constraints due to Backdown:

The Hybrid Power Developer and Tata Power - D shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of "must-run" to wind and solar power projects. Therefore, wind solar hybrid power plant, duly commissioned, should never be directed to back down by a DISCOM/ Load Dispatch Centre (LDC) except grid security like network congestion or safety of any equipment or personnel or an emergency in CTU / STU evacuation system for safe operation of its Grid or any other such conditions as directed by RLDC/SLDC, where it should be duly recorded, the justification of which can be verified by any third party agency, and be notified in writing. No back-down / curtailment to be ordered without giving formal / written instruction for the same. The details of backdown/curtailment, including justifications for such curtailment, specifying data to back such curtailment, to be made public by the concerned Load Dispatch Centre. In the event of any backing down, the HPD shall be eligible for a Generation Compensation, in the manner detailed below and there shall be no other claim, directly or indirectly against Tata Power - D:

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown	Minimum Generation Compensation = 100% of [(Average
during a monthly	Generation per hour during the month) (No of backdown
billing cycle.	hours during the month) × PPA tariff]
	Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month

- 4.10.1 The HPD shall not be eligible for any compensation in case the backdown is on account of grid security like network congestion or safety of any equipment or personnel or an emergency in CTU / STU evacuation system for safe operation of its Grid or any other such conditions as directed by RLDC/SLDC. The Generation Compensation as calculated above, will be limited to the extent of shortfall in annual generation corresponding to the declared CUF and the same shall be settled on annual basis. The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA)/SEA/JMR.
- 4.10.2 It is hereby clarified that for the purpose of Clause 4.10, "generation" shall mean scheduled energy based on Energy Accounts and JMR.



ARTICLE 5 : SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

- 5.1 SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION
- 5.1.1 The HPD shall give the concerned RLDC/SLDC, Tata Power D at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice of the date on which it intends to synchronize the Power Project to the grid.
- 5.1.2 Subject to Clause 5.1.1, the Power Project may be synchronized by the HPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the HPD at its generation facility of the Power Project at its own cost. The HPD shall synchronize its system with the Grid only after the approval of CTU/STU and RLDC/SLDC or DISCOM.
- 5.1.4 The HPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to Tata Power D. In addition, the HPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The HPD shall commission the Project as per procedure detailed in RfS within 24 (Twenty-Four) Months from the Effective Date. There can be part Commissioning of the project. Declaration of COD / UCOD shall only be done subject to the demonstration of the compliances as per RfS and subsequent upon the successful visit by the CTU/STU/DISCOM.
 - There can be part Commissioning of the Project. Part commissioning of the project shall mean that all equipment corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid. For intra-state projects, the minimum capacity for acceptance of first part commissioning shall be at least 25MW and in case of the inter-state project, minimum capacity for acceptance of first part-commissioning shall be at least 50 MW, without prejudice to the imposition of penalty, in terms of the PPA on the part which is not commissioned. The projects can further be commissioned in parts of at least 25 MW batch size, with last part could be the balance capacity.
- 5.1.6 The part commissioning should not be construed by just installing one source of generation, the HPD shall install both Solar and Wind capacities in proposed ratio on prorata basis. In case of part-commissioning of the Project, land corresponding to the part capacity being commissioned, shall be required to be demonstrated.



5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by HPD to Tata Power - D, liquidated damages for delay etc., the Scheduled Commercial Operation Date as defined in this Agreement shall be the relevant date.



ARTICLE 6: DISPATCH AND SCHEDULING

6.1 DISPATCH AND SCHEDULING

- 6.1.1 The HPD shall be required to schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority/ agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the HPD. The HPD shall make all arrangements for scheduling of wind and solar power from the respective components of the Project, if required by the Tata Power D/SLDC/RLDC. Scheduling shall be done as per the CERC/SERC/Applicable regulations and RLDC/SLDC procedures, as applicable.
- 6.1.2 The HPD shall be responsible for coordinating and dealing with the State Load Dispatch Centre's, Regional Power Committees, Tata Power-D and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of hybrid Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the HPD and Tata Power-D are the Grid connected entities.
- 6.1.3 The HPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations.
- 6.1.4 Hybrid Power Developer shall be responsible for arrangement of start-up power/auxiliary consumption and reactive power, with no cost to Tata Power D.
- 6.1.5 HPD must ensure dismantling and recycling of plant as per the prevalent environment norms at the end of PPA term.



ARTICLE 7: METERING

7.1 METERS

- 7.1.1 The metering point will be as given below:
 - a. The energy settlement and delivery point shall be Maharashtra STU periphery.
- 7.1.2 For the purpose of energy accounting, the ABT compliant meter with Automated Meter Reading (AMR) feature shall be installed by the HPD at the Delivery Point. Further, For the purpose of energy accounting the Generator shall have to install Availability Based Tariff meter /Special Energy Meter at the metering point as well as on each source i. e. Wind and Solar at CTU/STU substation end. HPD shall comply to all applicable regulations in this regard.
- 7.1.3 All metering requirements shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendment thereto or any other regulation, as applicable. CTU/STU/Tata Power D shall stipulate specifications in this regard.
- 7.1.4 The HPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at HPD's side of Metering Point/ Delivery Point/ Interconnection Point. The HPD shall be responsible for regular downloading and transmission of metered data to the concerned agencies. In addition to ensuring compliance of the applicable codes, the HPD shall install Main & Check meters at Delivery Point. Installation of the Stand-by meter shall be as per the applicable regulations.
- 7.1.5 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery Point and the combined power can be fed at Delivery Point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters are also to be set up at pooling substation to segregate multiple Projects in addition to the meters at Delivery Point.
- 7.1.6 The ABT metering equipment consisting of Main and Check Meters with separate CT and PT shall be identical in make, technical standards and of 0.2s accuracy class and calibration and comply with the requirements of Electricity Rules.
- 7.1.7 The meters installed at the Metering Point shall have four quadrant, three phase, four wires and provision for online/automatic reading and time slots as required by purchaser and SLDC.
- 7.1.8 The HPD shall also establish backup metering system/check meter as per applicable laws. In the event of the Main Metering System is not in service for the reason of maintenance, repairs or testing, then the Backup Metering System/Check Meter shall be used during the period for which the Main Metering System is not in service and the provisions above shall apply to the reading of the Backup Metering System.
- 7.1.9 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters (two meters, each with separate CT, PT) are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in Clause 7.1.4.



7.1.10 The HPD shall also maintain records of generation of electrical energy from wind and solar component of the Wind Solar Hybrid Project separately. The same shall be made available by the HPD to Tata Power - D as and when required by Tata Power - D.

7.2 TESTING OF THE METERING EQUIPMENT

- 7.2.1 The Main and Check Meters shall be tested for accuracy, with a portable standard meter, by the National accredited Labs and sealed by HPD at its own cost. HPD/STU/CTU shall carry out the calibration, periodical testing, sealing and maintenance of meters in the presence of the authorized representative(s) of the Tata Power D and the representative of the HPD shall sign on the results thereof.
- 7.2.2 All the Main and Check Meters shall be calibrated at least once in a period of one year. HPD will provide a copy of the test reports to Tata Power D.
- 7.2.3 If during testing, both the Main and Check Meter are found within the permissible limit of error i.e. 0.2%, the energy computation will be as per the Main Meter. If during test, any of the Main Meters is found to be within the permissible limits of error but the corresponding Check Meter is beyond the permissible limit; the energy computation will be as per the Main Meter. The Check Meter shall be calibrated immediately.
- 7.2.4 If during the tests, any of the Main Meters is found to be beyond permissible limits of error, but the corresponding Check Meters is found to be within the permissible limits of error, then the energy computation for the month up to date and time of such test check shall be in accordance with Check Meter. The Main Meter shall be calibrated immediately and the energy for the period thereafter shall be as per the calibrated Main Meter.
- 7.2.5 Whenever difference between the readings of the Main Meter and the Check Meter for any month is more than 0.2%, the following steps shall be taken:
 - a. Checking of CT and PT connections
 - b. Testing of accuracy of meter at site with reference standard meter of accuracy class higher than the meter under the test.

If difference exists even after such checking or testing, then defective meter shall be replaced with a correct meter.

- 7.2.6 In case of consumption failures like burning of meter and erratic display of metered parameters and when error found in testing of meter is beyond the permissible limit or error provided in relevant standard, the meter shall be immediately replaced with a correct meter.
- 7.2.7 If during any of the monthly meter readings, the variation between the Main Meter and the Check Meter is more than 0.5%, all the meters shall be re-tested and calibrated immediately by HPD with no cost to Tata Power D. During this period energy recorded with SCADA shall be used for billing & payment purposes.
- 7.2.8 For all times the reading of the Main meter only will be considered except in rarest conditions such as maintenance, repairs, testing or discrepancy in meter reading with compare to check meters then the Check meter reading may be considered.



7.3 SEALING AND MAINTENANCE OF METERS

- 7.3.1 The Main Metering System and the Backup Metering System shall be sealed in the presence of representatives of HPD, STU/CTU and Tata Power D.
- 7.3.2 When the Main Metering System and / or Backup Metering System/Check Metering System and / or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated or replaced by the HPD and / or CTU/STU/Tata Power D at HPD's cost, as soon as possible.
- 7.3.3 Any seal(s) shall be broken only by CTU/STU/Tata Power D 's representative in the presence of HPD representative whenever the Main Metering System or the Backup Metering System is to be inspected, tested, adjusted, repaired or replaced.
- 7.3.4 All the Main and Check Meters shall be calibrated at least once in a period of one year.
- 7.3.5 In case, both the Main Meter and Check Meter are found to be beyond permissible limit of error, both the meters shall be calibrated immediately and the correction applicable to main meter shall be applied to the energy registered by the Main Meter at the correct energy for the purpose of energy accounting /billing for the actual period during which inaccurate measurements were made, if such period can be determined or, if not readily determinable, shall be the shorter of:
 - a. The period since immediately preceding test of the relevant Main meter, or
 - b. One hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

7.4 RECORDS

- 7.4.1 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement and the operation of the Power Plant. Among such other records and data, the HPD shall maintain an accurate and up-to-date operating log at the Power Plant with records of:
 - a. Fifteen (15) minutes logs (or any other interval frequency as per applicable regulation) of real and reactive power generation, frequency, transformer tap position, bus voltage(s), Main Meter and Back up Meter Readings and any other data mutually agreed;
 - b. any unusual conditions found during operation / inspections;
 - c. chart and printout of event loggers, if any, for system disturbances/outages;
 - d. All the records will be preserved for a period of 36 months
- 7.4.2 The HPD shall maintain records of generation of electrical energy from wind and solar component of the Hybrid Project separately. The same shall be made available by the HPD to Tata Power D as and when required by Tata Power D.
- 7.4.3 The grid connected solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.



- 7.4.4 Arrangement shall be made by the HPD at its own cost for the real-time visibility of generation data and submission of required data for the entire period of this PPA on monthly/periodic basic, to the SLDC/RLDC and Tata Power D.
- 7.4.5 Reports on above parameters on monthly/periodic basis (or as required by regulation / guidelines) shall be submitted by the HPD to RLDC/SLDC and MNRE and inform the same to Tata Power D for entire period of PPA.



ARTICLE 8: INSURANCES

8.1 INSURANCE

8.1.1 The HPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and coinsured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements and under applicable laws.

8.2 APPLICATION OF INSURANCE PROCEEDS

- 8.2.1 In case the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any Project shall be first applied to reinstatement, replacement or renewal of such loss or damage. In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be applied as per such Financing Agreements.
- 8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, Tata Power D shall have claim on such proceeds of such Insurance.

8.3 EFFECT ON LIABILITY OF TATA POWER - D

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the HPD can claim compensation, under any Insurance shall not be charged to or payable by Tata Power - D . It is for the HPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.



ARTICLE 9: APPLICABLE TARIFF

- 9.1 The HPD shall be entitled to receive the Tariff of Rs. [Insert applicable Tariff]/ kWh (at delivery point) fixed for the entire term of this Agreement, with effect from the COD. In cases of early part-Commissioning (if applicable), till SCOD, subject to the consent for such purchase by Tata Power D, Tata Power D may purchase the same at the PPA Tariff. However, in case the entire Project Capacity is commissioned prior to SCOD, Tata Power D may purchase energy supplied till SCOD at [Insert applicable Tariff]/kWh, subject to consent of Tata Power D for procurement of such power.
- 9.2 Provided further that if the Commissioning of the Unit(s) is delayed beyond 6 months from the Scheduled Commercial Operation Date, HPD event of default shall have considered to have occurred and the contracted capacity shall stand reduced to the project capacity commissioned up to SCOD + 6 month. The PPA for the balance capacity not commissioned shall be terminated.
- 9.3 Any excess generation over and above the quantum specified under Clause 4.4.3 and up to Million kWh (MU) [insert MUs corresponding to 120% of declared CUF], may be purchased by Tata Power D at 75% of PPA Tariff as per Clause 9.1, provided Tata Power D grant consent for purchase of such generation. Any energy produced and flowing into the grid before SCOD shall not be at the cost of Tata Power D. Tata Power D may however agree to purchase such power provided Tata Power D consents to purchase such energy. However, the HPD will not be entitled to sell energy generated prior to SCOD or excess energy during any Contract Year to any other entity without offering such quantum to Tata Power D (unless refused by Tata Power D) and only if Tata Power D desires to purchase such energy Tata Power D shall have the right to purchase such quantum of excess energy.



ARTICLE 10 : BILLING AND PAYMENT

10.1 GENERAL

- 10.1.1 The Billing will be on monthly basis. From the commencement of supply of power, Tata Power D shall pay to the HPD the monthly Tariff payments subject to the adjustments as per provisions of this Agreement including ARTICLE 6, in accordance with ARTICLE 9. All Tariff payments by Tata Power D shall be in Indian Rupees.
- 10.1.2 The HPD shall be required to make all arrangements and payments for import of energy (if any-start up power, reactive power, auxiliary power) as per applicable regulations.
- 10.2 DELIVERY AND CONTENT OF MONTHLY ENERGY BILLS/SUPPLEMENTARY BILLS
- 10.2.1 The HPD shall issue provisional bill to Tata Power D hard/soft copy of a signed Monthly Energy Bill/Supplementary Bill for the immediately preceding Month/relevant period for the energy supplied/scheduled to Tata Power-D at the Delivery Point on the basis of REA/SEA/ Joint Meter reading /GCN/Meter data/MSLDC final implemented schedule/DSM bill, as certified by Maharashtra SLDC/RLDC/applicable authority, as per the applicable regulation. The monthly energy bill shall be supported with all relevant documents.
- 10.2.2 As per applicable regulation(s) of the Appropriate Commission(s)/respective SERC(s), all charges pertaining to obtaining open access and scheduling of power, if any, shall be borne by the HPD.
- 10.2.3 The monthly energy bill showing all the billing parameters, rates and any other data reasonably pertinent to the calculation of monthly payments along with applicable supporting documents (as per Clause 10.2.1) shall be mailed/couriered by HPD to Tata Power D.
- 10.2.4 The Monthly Energy Bill of the HPD shall clearly indicate amount due, both with and without prompt payment rebate, respective Due Dates like late payment date, bank details of HPD, PPA reference, start and expiry date of PPA and all other details as required. The Monthly Energy Bill amount shall be the product of the energy as per the Energy Account and the Applicable Tariff.
- 10.2.5 Payment will be due on the Thirtieth (30th) day following the receipt of the billing invoice and duly accepted by Tata Power D.

10.3 PAYMENT OF MONTHLY ENERGY BILLS

- 10.3.1 Tata Power D will pay the amount payable under the Monthly Energy Bill/Supplementary Bill by the Due Date to such account of the HPD, as shall have been previously notified by the HPD.
- 10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:
 - i) deductions required by the Law; and
 - ii) amount claimed by Tata Power D, if any (any deduction/penalty) from the HPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.



10.3.3 The HPD shall open a bank account (the "HPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by Tata Power - D to the HPD, and notify Tata Power - D of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Energy Bill. Tata Power - D shall also designate a bank account at Mumbai ("Tata Power - D "s Designated Account") for payments to be made by the HPD to Tata Power - D, if any, and notify the HPD of the details of such account ninety (90) Days before the Scheduled Commercial Operation Date. Tata Power - D and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD's Designated Account or Tata Power - D's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.4 LATE PAYMENT SURCHARGE

10.4.1 In the event of delay in payment of a Monthly Energy Bill by Tata Power - D beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the HPD at the rate of 1.25% per month on the outstanding amount calculated on a day-to-day basis subject to such late payment being duly received by HPD. The Late Payment Surcharge shall be claimed by the HPD through the Supplementary Bill.



10.5 REBATE

- 10.5.1 For payment of any Bill on or before Due Date, the following Rebate shall be paid by the HPD to Tata Power D in the following manner.
 - i. A Rebate of 1.5% shall be payable to the Tata Power D for the payments made within a period of 10 (ten) days of the presentation of hard/soft copy of Bill.
 - ii. Any payments made after ten (10) days of the date of presentation of Monthly Energy Bill through hard/soft copy up to the Due Date shall be allowed a rebate of 1% till the Due Date of Payment.
 - iii. For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical/soft copy of the Bill at Tata Power D.
 - iv. No Rebate shall be payable on the Bills raised on account of Change in Law in India relating to taxes, duties, cess etc. and on Supplementary Bill.

10.6 PAYMENT SECURITY MECHANISM

Letter of Credit

- 10.6.1 Tata Power D shall provide to the HPD, in respect of payment of its Monthly Energy Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the HPD in accordance with this Article.
- 10.6.2 Subject to Clause 10.4.1, not later than one (1) Month before the start of supply, Tata Power D through a scheduled bank open a Letter of Credit in favor of the HPD, to be made operative from a date prior to the Due Date of its first Monthly Energy 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 the estimated average monthly energy billing;
 - ii. for each subsequent Contract Year, equal to the average of the monthly energy billing of the previous Contract Year
- 10.6.3 Provided that the HPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Energy Bill and/or Supplementary Bill and shall not make more than one drawl in a Month.
- 10.6.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Clause 10.6.2 due to any reason whatsoever, Tata Power D shall restore such shortfall within thirty (30) days.
- 10.6.5 Tata Power D shall cause the scheduled bank issuing the Letter of Credit to intimate the HPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.6.6 Tata Power D shall ensure that the Letter of Credit shall be renewed not later than its expiry. All the cost incurred by Tata Power-D relating to opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by the HPD.



- 10.6.7 If Tata Power D fails to pay undisputed Monthly Energy Bill or Supplementary Bill or a part thereof within and including the date as on 30 days beyond the Due Date, then, subject to Clause 10.6.5, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Tata Power D , an amount equal to such Monthly Energy Bill or Supplementary Bill or part thereof, in accordance with Clause 10.6.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
 - i. a copy of the Monthly Energy Bill or Supplementary Bill which has remained unpaid to HPD and;
 - ii. a certificate from the HPD 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;
- 10.6.8 The HPD shall not draw LC on Disputed Bill or disputed amount.

10.7 DISPUTED BILL

- 10.7.1 If the Tata Power D does not dispute a Monthly Energy Bill, or a Supplementary Bill raised by the HPD within thirty (30) days of receiving such Bill shall be taken as conclusive.
- 10.7.2 If Tata Power-D disputes the amount payable under a Monthly Energy Bill or a Supplementary Bill, as the case may be, it shall pay undisputed amount of the invoice amount and it shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
 - a. the details of the disputed amount;
 - b. its estimate of what the correct amount should be;
 - c. and all written material in support of its claim.
- 10.7.3 If the HPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Clause 10.7.2, the HPD shall revise such Bill and present along with the next Monthly Energy Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 10.7.4 If the HPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Clause 10.7.2 it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Tata Power D providing:
 - i. reasons for its disagreement;
 - ii. its estimate of what the correct amount should be; and
 - iii. all written material in support of its counterclaim
- 10.7.5 Upon receipt of the Bill Disagreement Notice by the Tata Power D under Clause 10.7.4, authorized representative(s) or a director of the board of directors/ member of board of the Tata Power D and HPD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.



- 10.7.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Clause 10.7.4, the matter shall be referred to Dispute resolution in accordance with ARTICLE 16.
- 10.7.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Tata Power D shall, without prejudice to its right to Dispute, be under an obligation to make payment of undisputed amount of the Monthly Energy Bill.

10.8 QUARTERLY AND ANNUAL RECONCILIATION

- 10.8.1 The Parties acknowledge that all payments made against Monthly Energy Bills and Supplementary Bills shall be subject to quarterly/yearly reconciliation within 30 days of the end of the quarter/year at the beginning of the following quarter/year of each Contract Year by taking into accounts the Energy Accounts, credit notes, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. Final settlement shall be done on the basis of final energy credit received by Tata Power-D from MSLDC and such settlement shall be binding to both the parties.
- 10.8.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter/year, as the case may be, has been finally verified and adjusted, the HPD and Tata Power D shall jointly sign/confirm such reconciliation statement. Within fifteen (15) days of signing/confirming the reconciliation statement, the HPD shall make appropriate adjustments in the next Monthly Energy Bill. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of ARTICLE 16.

10.9 PAYMENT OF SUPPLEMENTARY BILL

- 10.9.1 HPD may raise a ("Supplementary Bill") for payment on account of:
 - i. Adjustments required by the Energy Accounts (if applicable); or
 - ii. Change in Law in India as provided in ARTICLE 12, or
 - iii. Payment under Clause 4.10

And such Supplementary Bill shall be paid by the other Party

- 10.9.2 Tata Power D shall remit all amounts due under a Supplementary Bill raised by the HPD to the HPD's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Clause 4.10, Rebate as applicable to Monthly Energy Bills pursuant to Clause 10.5 shall equally apply, except in the case of payment of Late Payment Surcharges, Change in Law in India relating to taxes, duties, cess etc.
- 10.9.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Energy Bill in Clause 10.4

10.10 Renewable Purchase Obligation (RPO):

The power supplied by power producer under this Agreement & purchased by Tata Power-D shall be considered as Renewable power to meet the RPO obligation of Tata Power-D.



ARTICLE 11 : FORCE MAJEURE

11.1 DEFINITION OF FORCE MAJEURE

'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

An Affected Party means Tata Power - D or the HPD whose performance has been affected by an event of Force Majeure.

Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

11.2 CATEGORIZATION OF FORCE MAJEURE EVENTS

11.2.1 Natural Force Majeure Event

- a. Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado, epidemic or other natural calamities if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;
- c. the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- d. any event or circumstances of a nature analogous to any of the events as specified under Clause 11.2.1 (a), 11.2.1 (b) and 11.2.1 (c).

11.2.2 Non-Natural Force Majeure Event

- a. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- b. nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labor unrest limited to the Affected Party or its contractors;



- c. nationalization or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the HPD, as a result of which the HPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the HPD or the HPD related parties;
- d. action of a Government Authority having Material Adverse Effect including but not limited to Change in Law in India, only if consequences thereof cannot be dealt with under and in accordance with the provisions of ARTICLE 12 of this Agreement; any unlawful or unauthorized or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the HPD or any of the clearance, Licence, authorization to be obtained by the contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the HPD's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, Licence, authorization, as the case may be.

11.3 FORCE MAJEURE EXCLUSIONS

- 11.3.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
 - a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
 - b. Delay in the performance of any contractor, sub-contractor or their agents
 - c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
 - d. Strikes at the facilities of the Affected Party
 - e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
 - f. Non-performance caused by, or connected with, the Affected Party's
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement

11.4 NOTIFICATION OF FORCE MAJEURE EVENT

11.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.



- 11.4.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- 11.4.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations.

11.5 PERFORMANCE EXCUSED

- 11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the HPD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.
- 11.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

11.6 NO LIABILITY FOR OTHER LOSSES

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

11.7 RESUMPTION OF PERFORMANCE

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

11.8 DUTY TO PERFORM AND DUTY TO MITIGATE

To the extent not prevented by a Force Majeure Event pursuant to Clause 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in



line with provisions of Clause 11.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.9 AVAILABLE RELIEF FOR A FORCE MAJEURE EVENT

Subject to this ARTICLE 11:

- a. no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event; However, adjustment in tariff shall not be allowed on account of Force Majeure event
- b. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Clause 4.5;
- c. For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to occurrence of a Force Majeure Event in respect of such Party.
- d. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

11.10 TERMINATION DUE TO FORCE MAJEURE EVENTS

11.10.1 Termination due to Natural Force Majeure Event

- a. If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Clause 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b. Without prejudice to the provisions of Clause 11.10.1.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c. On termination of the PPA pursuant to Clause 11.10.1(b):
 - i. no Termination Compensation shall be payable to the HPD.
 - ii. the HPD shall be eligible for undisputed payments under outstanding Monthly Energy Bill(s), before the occurrence of Force Majeure Event

11.10.2 Termination due to Non-Natural Force Majeure Event

- a. Upon occurrence of a Non-Natural Force Majeure Event, the HPD shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b. On termination of the PPA pursuant to Clause 11.10.2(a):
 - i. Tata Power D shall pay to the HPD, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the PPA, and takeover the Project assets.
 - ii. the HPD shall be eligible for undisputed payments under outstanding Monthly Energy Bill(s), before the occurrence of Force Majeure Event.



ARTICLE 12 : CHANGE IN LAW IN INDIA

12.1 DEFINITION

In this Article, the following terms shall have the following meanings:

- 12.1.1 Change in Law in India shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission resulting into any additional recurring/ non-recurring expenditure by the HPD or any income to the HPD, including:
 - (i) the enactment of any new law in India; or
 - (ii) an amendment, modification or repeal of an existing law in India; or
 - (iii) the requirement to obtain a new consent, permit or license in India; or
 - (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Hybrid Power Developer in India; or
 - (v) any statutory change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the power project and supply of power from the Project by the HPD which have a direct effect on the Project in India, resulting in change in project cost.

However, Change in Law in India shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD or any change on account of regulatory measures by the Appropriate Commission.

Also, all transmission charges and losses up to Delivery Point as applicable shall be to the account of the HPD. No change in charges / losses of CTU/STU shall be covered under the Change in Law in India.

In the event a Change in Law in India results in any adverse financial loss/ gain to the Hybrid Power Developer then, in order to ensure that the Hybrid Power Developer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law in India, the Hybrid Power Developer/Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

It the event of any decrease in the recurring/ nonrecurring expenditure by the HPD or any income to the HPD on account of any of the events as indicated above, HPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law in India. In the event of the HPD failing to comply with the above requirement, in case of any gain to the HPD, Tata Power - D shall withhold the monthly energy tariff payments on immediate basis, until compliance of the above requirement by the HPD.

12.2 RELIEF FOR CHANGE IN LAW IN INDIA

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law in India.



- 12.2.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. the cost incurred by the HPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date/extended Scheduled Commissioning Date, whichever is earlier), the HPD /Tata Power D shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such "Change in Law" is recognized by the Appropriate Commission.
- 12.2.3 The decision of the Appropriate Commission to acknowledge a Change in Law in India and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

12.3 NOTIFICATION OF CHANGE IN LAW

- 12.3.1 If the HPD is affected by a Change in Law in India in accordance with Clause 12.1 and wishes to claim Change in Law in India under this Article, it shall give notice to Tata Power
 D of such Change in Law in India within 7 days after becoming aware of the same or should reasonably have known of the Change in Law in India.
- 12.3.2 Notwithstanding Clause 12.3.1, the HPD shall be obliged to serve a notice to Tata Power D if it is beneficially affected by a Change in Law in India. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform Tata Power D contained herein shall be material. Provided that in case Tata Power D has not provided such notice, the HPD shall have the right to issue such notice to Tata Power D.
- 12.3.3 Any notice served pursuant to this Clause 12.3.2 shall provide, amongst other thing, precise details of:
 - i. The Change in Law in India: and
 - ii. The effect on Tata Power D (supported by documentary evidences including statutory auditor certificate to this effect so as to establish one to one correlation and its impact on the project cost) of the matters referred to in Clause 12.2



ARTICLE 13 : EVENTS OF DEFAULT AND TERMINATION

13.1 HPD EVENT OF DEFAULT

- 13.1.1 The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Tata Power D of its obligations under this Agreement, shall constitute a HPD Event of Default:
 - i. Unable to commission plant within stipulated time period, the failure to commence supply of power to Tata Power - D up to the Contracted Capacity, by the end of the period specified in ARTICLE 4, or failure to continue supply of Contracted Capacity to Tata Power - D after Commercial Operation Date for new projects or from signing of PPA for existing projects throughout the term of this Agreement, or if
 - a. Failure or refusal by HPD to perform any of its material obligations under this Agreement, O&M Default on part of HPD, change in control or shareholding of its promoters in breach of the PPA provisions;
 - b. HPD fails to make any payment required to be made to Tata Power D under this agreement within three (3) months after the due date of a valid invoice raised;
 - c. the HPD assigns, mortgages or charges or purports to assign, mortgage orcharge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
 - d. the HPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
 - ii. if (a) the HPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the HPD, or (c) the HPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the HPD will not be a HPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the HPD and expressly assumes all obligations of the HPD under this Agreement and is in a position to perform them; or
 - iii. the HPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Tata Power D in this regard; or
 - iv. except where due to any Tata Power D failure to comply with its material obligation, the HPD is in breach of any of its material breach and the material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by Tata Power D



- v. change in controlling shareholding before the specified time frame as mentioned in Clause 4.1 of this Agreement; or
- vi. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the HPD
- vii. except where due to any Tata Power D 's failure to comply with its material obligations, the HPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by Tata Power D

13.2 TATA POWER - D EVENT OF DEFAULT

- 13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the HPD of its material obligations under this Agreement, shall constitute the Event of Default on the part of defaulting Tata Power D:
 - a. Tata Power D fails to pay (with respect to undisputed Monthly Energy Bill or a Supplementary Bill), subject to Clause 10.7, for a period of ninety (90) days after the Due Date and the HPD is unable to recover the amount outstanding to the HPD through the Letter of Credit;
 - b. Tata Power D repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the HPD in this regard; or
 - c. except where due to any HPD's failure to comply with its obligations, Tata Power D is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Tata Power D within sixty (60) days of receipt of notice in this regard from the HPD to Tata Power D; or if
 - Tata Power D becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
 - any winding up or bankruptcy or insolvency order is passed against Tata Power D , or Tata Power D goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a Tata Power D Event of Default, where such dissolution or liquidation of Tata Power D is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has credit worthiness similar to Tata Power D and expressly assumes all obligations of Tata Power D and is in a position to perform them; or;
 - d. Occurrence of any other event which is specified in this Agreement to be a material breach or default of Tata Power D



13.3 PROCEDURE FOR CASES OF HPD EVENT OF DEFAULT

- 13.3.1 Upon the occurrence and continuation of any HPD Event of Default under Clause 13.1, Tata Power D shall have the right to {but not an obligation} deliver to the HPD, with a copy to the representative of the lenders to the HPD with whom the HPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (Tata Power D Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 13.3.2 Following the issue of a Tata Power D Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the HPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Tata Power D shall have the right (but not an obligation) to terminate this Agreement by giving a written Termination Notice of thirty (30) days to the HPD.
- 13.3.5 Subject to the terms of this Agreement, upon occurrence of a HPD Event of Default under this Agreement, the HPD shall be liable to pay to Tata Power – D, liquidated damages, as provided in Clause 4.6 of the PPA for failure to commission within stipulated time and Clause 4.4.1 for failure to supply power in terms of the PPA. For other cases, the HPD shall be liable pay to Tata Power – D, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. Tata Power – D shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with Tata Power - D , may exercise their rights, if any, under Financing Agreements, to seek substitution of the HPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the HPD and performing the obligations of the HPD. However, in the event the lenders are unable to substitute the defaulting HPD within the stipulated period, Tata Power - D may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that any substitution under this Agreement can only be made with the prior consent of Tata Power-D including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by Tata Power - D and accepts the terms and conditions of this Agreement.



- 13.3.6 The lenders, in concurrence with Tata Power D , may seek to exercise right of substitution under Clause 13.3.5 by an amendment or novation of the PPA in favor of the selectee. The HPD shall cooperate with the Tata Power D to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 10 Lakh per Project + 18% GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the HPD to Tata Power D.
- 13.3.7 In the event the lenders are unable to substitute the defaulting HPD within the stipulated period, Tata Power D may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.
- 13.4 PROCEDURE FOR CASES OF TATA POWER D EVENT OF DEFAULT
- 13.4.1 Upon the occurrence and continuation of any Tata Power D Event of Default specified in Clause 13.2 the HPD shall have the right to deliver to Tata Power D a HPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 13.4.2 Following the issue of a HPD Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 After a period of two hundred and ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Tata Power D Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Tata Power D and the HPD shall, subject to the prior consent of the HPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the HPD, or if no offer of novation is made by Tata Power D within the stipulated period, then the HPD may terminate the PPA and at its discretion require Tata Power D to either
 - a. takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and fifty per cent) of the adjusted equity or,
 - b. pay to the HPD, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its Contracted Capacity, with the Project assets being retained by the HPD.

Provided further that at the end of three (3) months period from the period mentioned in this Clause 13.4.4, this Agreement may be terminated by the HPD. In the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the Tata Power - D .



13.5 TERMINATION DUE TO FORCE MAJEURE

13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Clause 4.5.2, either Party shall have the right to cause termination of the Agreement with prior notice. In such an event, this Agreement shall terminate on the date mentioned in such Termination Notice.



ARTICLE 14 : LIABILITY AND INDEMNIFICATION

14.1 INDEMNITY

- 14.1.1 The HPD shall indemnify, defend and hold Tata Power D, its officers, directors, agents, employees and affiliates harmless against:
 - a. any and all third-party claims against Tata Power D for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the HPD of any of its obligations under this Agreement; and
 - b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Tata Power D from third party claims arising by reason of a breach by the HPD of any of its obligations under this Agreement (provided that this ARTICLE 14 shall not apply to such breaches by the HPD, for which specific remedies have been provided for under this Agreement).
- 14.1.2 Tata Power D shall indemnify, defend and hold the HPD harmless against:
 - a. any and all third-party claims against the HPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Tata Power D of any of their obligations under this Agreement; and
 - b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the HPD from third party claims arising by reason of a breach by Tata Power D of any of its obligations.

14.2 PROCEDURE FOR CLAIMING INDEMNITY

14.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Clause 14.1.1 (a) or 14.2.1 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Clause 14.1.1(A) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
 - i. the Parties choose to refer the dispute before the Arbitrator in accordance with Clause 16.3.2; and
 - ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,



the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favor of the Indemnified Party

b. The Indemnified Party may contest the claim by seeking adjudication of the Arbitrator for which it is entitled to be Indemnified under Clause 14.1.1 (a) or 14.1.2 (a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. An Indemnifying Party may, at its own expense, assume control of the defense of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

14.3 INDEMNIFIABLE LOSSES

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Clause 14.1.1 (b) or 14.1.2 (b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this ARTICLE 14, such event shall constitute a payment default under ARTICLE 13.

14.4 LIMITATION ON LIABILITY

- 14.4.1 Except as expressly provided in this Agreement, neither the HPD nor Tata Power D nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 14.4.2 Tata Power D shall have no recourse against any officer, director or shareholder of the HPD or any Affiliate of the HPD or any of its officers, directors or shareholders for such claim excluded under this Article. The HPD shall have no recourse against any officer, director or shareholder of Tata Power D, or any affiliate of Tata Power D or any of its officers, directors or shareholders for such claims excluded under this Article.



14.5 TATA POWER - D LIABILITY

14.5.1 Tata Power - D shall discharge the Tariff payment obligation in terms of the provision of this Agreement.

14.6 DUTY TO MITIGATE

14.6.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this ARTICLE 14.



ARTICLE 15 : ASSIGNMENT

15.1 ASSIGNMENTS

- 15.1.1 Neither Party shall assign this Agreement nor shall any portion hereof without the prior written consent of the other Party, provided further that any assignee expressly assume the assignor's obligations thereafter arising under this Agreement pursuant to documentation satisfactory to such other Party. However, such assignment shall be permissible only for entire contracted capacity.
- 15.1.2 Provided however, no approval is required from Tata Power D for the assignment by the HPD of its rights herein to the Financing Parties and their successors and assigns in connection with any financing or refinancing related to the construction, operation and maintenance of the Hybrid Power Project.
- 15.1.3 In furtherance of the foregoing, Tata Power D acknowledges that the Financing Agreements may provide that upon an event of default by the HPD under the Financing Agreements, the Financing Parties may cause the HPD to assign to a third party the interests, rights and obligations of the HPD thereafter arising under this Agreement. Tata Power D further acknowledges that the Financing Parties, may, in addition to the exercise of their rights as set forth in this Article, cause the HPD to sell or lease the Hybrid Power Project and cause any new lessee or purchaser of the Hybrid Power Project to assume all of the interests, rights and obligations of the HPD thereafter arising under this Agreement.

In the event of any inconsistency between the text of the Articles of this Agreement and the appendices, attachments or exhibits hereto or in the event of any inconsistency between the provisions and particulars of one appendix, attachment or exhibit and those of any other appendix, attachment or exhibit, Tata Power-D and the HPD shall consult to resolve the inconsistency.



ARTICLE 16 : GOVERNING LAW AND DISPUTE RESOLUTION

16.1 GOVERNING LAW

- 16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India.

 Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Mumbai.
- 16.1.2 All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.

16.2 AMICABLE SETTLEMENT AND DISPUTE RESOLUTION

16.2.1 Amicable Settlement

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - a. description of the Dispute;
 - b. the grounds for such Dispute; and
 - c. all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article (i), furnish:
 - a. counterclaim and defenses, if any, regarding the Dispute; and
 - b. all written material in support of its defenses and counterclaim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Clause 16.2.1 (i) if the other Party does not furnish any counter claim or defense under Clause 16.2 (ii) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall endeavor and make all efforts to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Clause 16.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Clause 16.3.

16.3 DISPUTE RESOLUTION

16.3.1 Dispute Resolution by the Appropriate Commission

- i. Where any Dispute (s) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (b) relates to any matter agreed to be referred to the Appropriate Commission, or (c) any dispute arising out of bill/s as per Clause 10.7.6 and Quarterly and annual reconciliation as per Clause 10.8 above, such Dispute shall be submitted to adjudication by the MERC.
- ii. Tata Power D shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the MERC.

16.3.2 Dispute Resolution through Arbitration

i. If the Dispute arises out of or in connection with any claims not covered in Clause 16.3.1



- (i), such Dispute shall be resolved by arbitration under the provisions of the Indian Arbitration and Conciliation Act, 1996 and amendments there to.
- ii. The place of arbitration shall be Mumbai. The language of the arbitration shall be English.
- iii. The arbitration tribunal shall consist of three arbitrators. Each party shall appoint an arbitrator and the arbitrators so appointed shall appoint the President Arbitrator.
- iv. The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- v. The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

16.4 PARTIES TO PERFORM OBLIGATIONS

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Clause 16.3 and save as the MERC or the Arbitration Tribunal to which the dispute may be referred by the MERC, may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 AMENDMENT

17.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.

17.2 THIRD PARTY BENEFICIARIES

17.2.1 This Agreement is solely for the benefit of the Parties and their respective successors, permitted assigns, and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

17.3 WAIVER

- 17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:
- 17.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

17.4 CONFIDENTIALITY

- 17.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
 - a. to their professional advisors;
 - b. to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
 - c. Disclosures required under Law without the prior written consent of the other Party.

17.5 SEVERABILITY

17.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

17.6 NOTICES

- 17.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.
- 17.6.2 If to the HPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address:

Attention:



Email	•
LIIIaii	٠.

Fax No.:

Telephone No.:

17.6.3 If to Tata Power - D , all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address:

Attention:

Email:

Fax No.:

Telephone No.:

- 17.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 17.6.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

17.7 LANGUAGE

- 17.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 17.7.2 If any of the Agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such Agreements, correspondence, communications or documents shall prevail in matters of interpretation.

17.8 RESTRICTION OF SHAREHOLDERS/OWNERS' LIABILITY

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.



17.9 TAXES AND DUTIES

- 17.9.1 The HPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the HPD, contractors or their employees that are required to be paid by the HPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 17.9.2 Tata Power D shall be indemnified and held harmless by the HPD against any claims that may be made against Tata Power D in relation to the matters set out in Article 17.9.1.
- 17.9.3 Tata Power D shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the HPD by Tata Power D on behalf of HPD.

17.10 INDEPENDENT ENTITY

- 17.10.1 The HPD shall be an independent entity performing its obligations pursuant to the Agreement.
- 17.10.2 Subject to the provisions of the Agreement, the HPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the HPD or contractors engaged by the HPD in connection with the performance of the Agreement shall be under the complete control of the HPD and shall not be deemed to be employees, representatives, contractors of Tata Power D and nothing contained in the Agreement or in any Agreement or Contract awarded by the HPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and Tata Power D.
- 17.10.3 HPD shall ensure dismantling and recycling of plant as per the prevalent environment norms at the end of PPA term.

17.11 COMPLIANCE WITH LAW

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

17.12 BREACH OF OBLIGATION

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

17.13 ORDER OF PRIORITY IN APPLICATION

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- i. applicable Law, rules and regulations framed thereunder;
- ii. the Grid Code; and



iii. the terms and conditions of this Agreement;

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of (Tata Power - D)
Name, Designation and Address
(Signature with Seal)
Witness
1.
2.
For and on behalf of (HPD)
Name, Designation and Address
(Signature with Seal)
Witness
1.
2.



SCHEDULE 1: FORMAT FOR THE PERFORMANCE BANK GUARANTEE

(to be submitted separately for each Project)

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the [Insert name of the Bidder] (hereinafter referred to as selected Hybrid Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of MW, at[Insert name of the place] under.......[Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated......issued by The Tata Power Company Limited (hereinafter referred to as Tata Power -D) and Tata Power - D considering such response to the RfS of [insert the name of the selected Hybrid Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executers, administrators, successors and assignees) and selecting the Hybrid Power Project of the Hybrid Power Developer and issuing Letter of Intent No to (Insert Name of selected Hybrid Power Developer) as per terms of RfS and the same having been accepted by the selected HPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Hybrid Power Developer or a Project Company, M/s {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the RfS, the ___[insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to Tata Power - D at [Insert Name of the Place from the address of the Tata Power - D] without demure forthwith on demand in writing from Tata Power - D or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees [Total Value] only, on behalf of M/s ____[Insert name of the selected Hybrid Power Developer / Project Company]

This guarantee shall be valid and binding on this Bank up to and including.....and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs.____only.

Our Guarantee shall remain in force until... Tata Power - D shall be entitled to invoke this Guarantee till

The Guarantor Bank hereby agrees and acknowledges that Tata Power - D shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by Tata Power - D, made in any format, raised at the above-mentioned address of the Guarantor Bank, in order to make the said payment to Tata Power - D.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by-------[Insert name of the selected Hybrid Power Developer / Project Company as applicable] and/or any other person. The Guarantor Bank shall not require Tata Power - D to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against Tata Power - D in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Mumbai shall have exclusive jurisdiction.



The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly Tata Power - D shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Hybrid Power Developer/ Project Company, to make any claim against or any demand on the selected Hybrid Power Developer / Project Company or to give any notice to the selected Hybrid Power Developer / Project Company or to enforce any security held by Tata Power - D or to exercise, levy or enforce any distress, diligence or other process against the selected Hybrid Power Developer / Project Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to Tata Power - D and may be assigned, in whole or in part, (whether absolutely or by way of security) by Tata Power - D to any entity to whom Tata Power - D is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted

___(Rs._only) and it shall remain in force until (Provide for two additional months

after the period of guaranteefor invoking the process of encashment) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if Tata Power - D serves upon us a written claim or demand.
Signature
Name
Power of Attorney No
For
[Insert the name of the Bank]
Email ID of the Bank:
Banker's Stamp and Full Address.
Dated thisday of, 20
Witness:
1
Signature
Name and Address
2

Signature



Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.

2. The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks enclosed.