

**MPSEZ Utilities Ltd. (MUL)  
Adani Corporate House,  
Shantigram, S.G. Highway,  
Ahmedabad – 382421, Gujarat**

**INVITES**

**EXPRESSION OF INTREST(EoI)**

**FOR**

**SALE OF SURPLUS POWER BY MUL FROM EXISTING  
1070MW WIND-SOLAR HYBRID LT-PPA**

**THROUGH: COMPETITIVE MODE**

**EOI NO : 01/2025**

**Issued Date: 03.06.2025**

## **DISCLAIMER**

The information contained in this document (the "Eol") or subsequently provided to Party(s), whether verbally or in documentary or any other form, by or on behalf of the Utility or any of its employees or advisors, is provided to Party(s) on the terms and conditions set out here and such other terms and conditions subject to which such information is provided.

This Eol Document is not an agreement and is neither an offer nor invitation by the Utility to the prospective parties or any other person. The purpose of this Eol Document is to provide interested parties with information that may be useful to them in the formulation of their application (the "Application") of this Eol Document. This Eol Document includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the WSH-LTPPA. Such assumptions, assessments and statements do not purport to contain all the information that each Party may require. This Eol Document may not be appropriate for all people, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who read or uses this Eol Document. The assumptions, assessments, statements and information contained in this Eol Document may not be complete, accurate, adequate or correct. Each Party should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Eol Document and obtain independent advice from appropriate sources.

Information provided in this Eol Document to the Party(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Party or Party, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Eol Document or otherwise, including the accuracy, adequacy, correctness, completeness or

reliability of the EoI Document and any assessment, assumption, statement or information contained therein or deemed to form part of this EoI Document or arising in any way with pre-qualification of Partys for participation in the EoI Process.

The Utility also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Party upon the statements contained in this EoI Document.

Utility may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this EoI Document.

## 1. Introduction

- 1.1. MPSEZ Utilities Limited (MUL) is a company incorporated under the Company Act, 1956 having its registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad – 382 421. MUL is a 100 % subsidiary company of Adani Energy Solutions Limited (AESL).
- 1.2. The MPSEZ Utilities Limited (the **“Utility”** or **“DISCOM”** or **“MUL”**) is engaged in the distribution of electricity and as part of this endeavor, the Utility has decided to sale of electricity available as surplus from Wind-Solar Hybrid Long Term Power Purchase Agreement (LT-PPA) executed by them on a long-term basis.

## 2. Background & Objective of Eoi

- 2.1. MUL is responsible for ensuring a reliable and cost-effective electricity supply to consumers. As part of its operations, Utility procures energy from various sources, including LT-PPA, short-term market purchases & renewable energy LT-PPA. In order to cater to the demand of power in the Licence area, MUL entered into Wind-Solar Hybrid Long Term Power Purchase Agreement with Renewable Generators. The Details of such LTPPA is as below:

Sr. No.	LT-PPA	Source Type	Quantum (MW)	Date From	Date To
1	1070MW-LT PPA	Wind-Solar Hybrid	1070	11.01.2025	10.01.2050

- 2.2. Utility has envisaged that there would be surplus energy availability during certain time blocks and regarding this surplus energy, The Utility intends to structure sell of surplus energy with a reputable energy trading company or Sale to Open Access Consumers or other Utility for sale of surplus energy.
- 2.3. The primary objective of this Expression of Interest (Eoi) is to:
  - 2.3.1. Identify a suitable energy trading company or Open Access

Consumers or Other Utility that can facilitate the sale of surplus energy.

- 2.3.2. Ensure financial sustainability for DISCOM by implementing a Sale of Surplus energy for optimizing power purchase cost.
- 2.3.3. Ensure compliance with regulatory requirements while selecting a buyer through a transparent yet strategically controlled process.
- 2.4. Streamline operational efficiency by entering into a structured Power Sale Agreement (PSA) with the selected energy trader or Open Access Consumers or other Utility.
- 2.5. Through this EoI, MUL aims to invite applications from experienced Energy traders or Open Access Consumers or other Utility who meet the eligibility criteria and are willing to engage in structured surplus energy transactions.
- 2.6. The Utility shall receive Applications pursuant to this EoI document in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by Utility, and all applications shall be prepared and submitted in accordance with such terms on or before the date specified in this document for submission of Applications.

### **3. Eligibility**

- 3.1. Traders who have a valid trading license issued by CERC are allowed for participation.
- 3.2. All Open-Access consumers are eligible to participate.
- 3.3. State electricity Board & State electricity utilities inside or outside the state of Gujarat are also eligible to participate.

## 4. Scope of Eol

Brief scope of Surplus Power Sale under this Eol is mentioned below:

- 4.1. Seller: MPSEZ Utilities Ltd. (MUL), Adani Corporate House, Shantigram, S.G. Highway, Ahmedabad – 382421, Gujarat.
- 4.2. Broad Scope: To facilitate the structured sale of surplus energy from MUL by ensuring optimized power purchase cost under sale of surplus power mechanism while maintaining necessary regulatory compliance and operational efficiency.
- 4.3. Quntum (MW): Block-wise Day-ahead surplus quantum declared by MUL under WSH LT-PPA.
- 4.4. Contract Period: Validity of PSA with reference to validity of PPA mentioned in Clause 2.1 of this document.
- 4.5. Injection Point: MUL Bus/Periphery.
- 4.6. Billing: Monthly Basis.
- 4.7. Due Date for Payment: 2 days from the bill issue Date.
- 4.8. Late Payment Surcharge: As per the Electricity (Late Payment Surcharge and related matters) Rules, 2022.
- 4.9. Payment Security Mechanism: The Payment security shall be in the form of Stand-by Revolving Letter of Credit for amount of Rs. 75 Crore.

## 5. Submission of Eol

- 5.1. The Eol submitted by the applicant and all correspondence and documents related to the Eol shall be written in the English Language. The applicant shall submit their Eol into 2 (Two) parts (Part-A & Part-B) duly signed by the authorized signatory on each page of Eol Document, in sealed envelope.
- 5.2. **Part-A:** The envelope containing the documents of part A, should indicate

"Part-A" and the EoI specification number should be indicated on the top of the envelope. The envelope should contain the following documents.

- 5.2.1. Covering Letter indicating the list of documents enclosed in the envelope.
  - 5.2.2. Express of Interest – Application Form as per Annexure-1.
  - 5.2.3. Company Profile & Applicant Company Data as per format annexed as Annexure-2.
  - 5.2.4. Latest Financial Statement (Net Worth & Credit Rating).
  - 5.2.5. Deviation from General Terms & Conditions, as per Annexure-3.
  - 5.2.6. Anti-Collusion affidavit as per Annexure-4, to be executed on non-judicial stamp paper.
  - 5.2.7. In the case of applicants being traders then it is required to submit a photocopy of its valid trading license issued by CERC and Latest Transaction Details which submitted to CERC.
- 5.3. **Part-B:** The envelope containing the documents of part B, should indicate "Part-B" and contain the commercial offer consisting of Margin Price for Purchase of Energy as per Annexure-5.

Both the Part A & B shall be put together in one sealed envelope marked "Offer for Sale of Surplus Power by MUL" and shall be sent to:

Head-Commerce & Power Purchase  
MPSEZ Utilities Limited  
12<sup>th</sup> Floor, K.P. Epitome Building,  
Makarba, Ahmedabad – 380 051  
M – +91 9687660309  
E-mail - Anilb.Rabadia@adani.com

## **6. Procedure for Opening**

The following procedure will be adopted for the opening of applications.

- 6.1. Firstly, the Part-A will be opened in the presence of the Applicant's representatives who choose to be present at the prescribed time, date and address. If applicants get qualified in Part-A of the EoI, only then the Part-B shall be opened.
- 6.2.1. Stage 1 – Eligibility Check: Verification of compliance with the eligibility criteria.
- 6.2.2. Stage 2 – Document Scrutiny: Assessment of financial strength, trading experience and regulatory compliance.

## **7. Evaluation Methodology**

- 7.1. The commercial offer shall be evaluated based on rate quoted by the applicant. The ranking shall be prepared on the basis of the rate quoted by the applicant in commercial offer. The applicant who has quoted highest rate shall be H1, the applicant quoting the second highest rate shall be H2 and so on.
- 7.2. In case of a tie, the second round of commercial negotiation shall be conducted by Utility, finalizing terms based on the rate. However, if there is a tie after the second round of negotiation, then the ranking of applicants shall be decided by lottery.
- 7.3. The surplus power available with MUL shall be allotted to the qualified applicant as per the rank.

## **8. Selection & Award**

- 8.1. The Utility reserves the right to select the most suitable party and enter into a Power Sale Agreement based on mutual agreement.



## 9. Rights to Accept/Reject

- 9.1. MUL has the sole discretion to accept or reject any Eol / part of Eol without assigning any reason whatsoever thereof and without any liability.

## 10. Eol Validity Period

- 10.1. The offer shall remain valid for a period of 30 days from the date of opening of Part B and the party shall have no right to withdraw the offer or alter any terms and conditions during the period of validity.

## 11. Eol meeting

- 11.1.1. An interested party can submit their requirement of seeking clarification in Eol on or before mentioned in clause 12.
- 11.1.2. The Utility will arrange queries/clarification meeting at 16:00 hrs of 16.06.2025 through video conferencing (VC), if any eligible party feels to be discussed general terms and condition or require clarification on payment mechanism or requirement of deviation from general terms and condition. The prospective participants should communicate their queries / suggestions regarding the Eol document through e-mail. Further, applicants shall have to provide e-mail IDs authorized by their respective companies to participate in Eol meeting. All the aforesaid information needs to be mailed on [Anilb.Rabadia@adani.com](mailto:Anilb.Rabadia@adani.com). The VC link for the Eol meeting shall be forwarded to the authorized email IDs only.

## 12. Schedule

- 12.1. The Participants are required to submit the Eol application complete in all respects in soft copy and hard copy to the MUL as per the following timelines:

Particular	Date
Date of Eol	03.06.2025
Last Date for receiving Queries / Clarifications	13.06.2025

Eol Meeting	16.06.2025
Utility response on Queries/ Clarification	21.06.2025
Last Date for Eol Submission	30.06.2025
Opening of Application	03.07.2025
Letter of Award	10.07.2025
Validity of Application	90 days from the Application
Signing of PSA	17.07.2025

### **13. Governing Law**

All matters arising out of or in conjunction with the Eol Documents and/or Eol Evaluation process shall be governed by and construed in accordance with the Appropriate Commission and the Commission may refer to the matter for Arbitration as provided under Section 86 of the Electricity Act.

**(EXPRESSION OF INTEREST: APPLICATION FORM)**

(To be submitted on Company's Letter Head)

Ref No.:

Date:

To,  
MPSEZ Utilities Ltd. (MUL)  
Adani Corporate House,  
Shantigram, S.G. Highway,  
Ahmedabad – 382421, Gujarat

Sub: Expression of Interest (Eoi) for procurement of surplus Energy declared by MUL from its existing 1070MW WSH LT-PPA

This is with reference to your EOI document no. \_\_\_\_ dated \_\_\_\_\_ on the subject matter, \_\_\_\_\_ (Name of the Participant), hereby submits the Expression of Interest (EOI) for procurement of surplus energy declared by MUL from its existing 1070MW WSH LT-PPA in accordance with the terms and conditions stipulated in the EOI document.

(Signature)

(Name and Designation of Authorized Person)

(COMPANY SEAL)

**(PARTICIPANT PROFILE)**

(To be submitted on Company's Letter Head)

1. Name of the Participant Company:
2. CIN of the Participant:
3. Date of Registration:
4. Address for Correspondence:
5. Name of the Authorized Person:
6. Designation:
7. E-Mail Address:
8. Contact Details:
9. In-Case of Trader CERC order of Grant of License
10. Additional Attachment:
  - a. Last Published Audited Annual Report
  - b. Document related to Net Worth
  - c. Brief Corporate Profile along with Operational capacities (including financial details and shareholding pattern)
11. Complete details of any suit pending against/filed by interested party in CERC/ GERC/ Courts/ Arbitrator related with trading of energy and detail of penalties imposed in earlier decision:
12. Other information, if any:

**(SCHEDULE OF DEVIATIONS)**  
(To be filled by EoI Applicant)

Sr. No.	Particular Specification	/	Deviations

We hereby certify that the above-mentioned are the only deviations from MUL's aforesaid general terms & conditions. Except for the above deviations in general terms & conditions of EoI No. \_\_\_\_\_ all other terms and conditions are hereby accepted.

(Signature)

(Name and Designation of Authorized Person)

(COMPANY SEAL)

**(FORMAT FOR ANTI-COLLUSION AFFIDAVIT)**  
(To be executed on the non-judicial stamp Paper)

We hereby certify and confirm that in the preparation and submission of this EoI, we have not acted in concert or in collusion with any other party(s) or other persons(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive/formation of cartel.

We further confirm that we have not offered, nor will offer any illegal gratification in cash or kind to any person or agency in connection with instant proposal.

Date this \_\_\_\_ Day of \_\_\_\_ 2025

(Signature)

(Name and Designation of Authorized Person)

(COMPANY SEAL)

**(APPLICANT's-COMMERCIAL OFFER)**  
(To be submitted on Company's Letter Head)

To,  
MPSEZ Utilities Ltd. (MUL)  
Adani Corporate House, Shantigram, S.G. Highway,  
Ahmedabad – 382421, Gujarat

Sub: Submission of commercial offer in matter of Expression of Interest (Eol) for procurement of surplus Energy declared by MUL from its existing 1070MW WSH LT-PPA

This is with reference to your Eol document no. \_\_\_ dated \_\_\_\_\_ on the subject matter, \_\_\_\_\_ (Name of the Participant), hereby submits the commercial offer for rate of Rs. \_\_\_\_\_ / kWh in matter of Expression of Interest (Eol) for procurement of surplus energy declared by MUL from its existing 1070MW WSH LT-PPA in accordance with the terms and conditions stipulated in the EOI document.

We offer to purchase surplus energy from MUL, as detailed below:

Particular	Offer
Quoted Rate	Rs. _____ / kWh
Applicable Charges	Reimbursement by Applicant which is paid by MUL
Billing & Payment	As per PSA to be finalized with MUL

We acknowledge that MUL reserves the right to accept, negotiate, or reject any commercial offer without assigning any reason.

We acknowledge that LOA is subject to approval of Hon'ble Gujarat Electricity Regulatory Commission.

We request you to consider our application for further evaluation.

(Signature)

(Name and Designation of Authorized Person) (COMPANY SEAL)

**(ANY OTHER INFORMATION)**



**(DRAFT – POWER SALE AGREEMENT)**

DATED [ ]

POWER SALE AGREEMENT

BETWEEN

MPSEZ UTILITIES LIMITED  
("MUL")

AND

PROCURER  
("")

Part I  
Preliminary

## POWER SALE AGREEMENT

THIS AGREEMENT is entered into on this \_\_ day of \_\_\_\_ 2025 BETWEEN

MPSEZ Utilities Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S. G Highway, Khodiyar, Ahmedabad – 382 421, Gujarat, India (hereinafter referred to as the **"Seller"** or **"MUL"** or **"Utility"** of **"DISCOM"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part;

AND

Applicant,

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\_\_\_\_\_ (hereinafter referred to as the **"Procurer"** or **"Applicant"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

WHEREAS:

The Seller had resolved to sale surplus-electricity from its Wind Solar Hybrid Long Term PPA (WSH LT-PPA) of 1070 MW and supply thereof in accordance with the terms and conditions to be set forth in a Power Sale Agreement to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

The Seller had accordingly invited proposals by its Expression of Interest 01/2025 for commercial offer of applicant.

The Seller had prescribed the commercial terms and conditions by its EoI 01/2025 and invited application.

After evaluation of the application received, the Seller had accepted the application of selected Applicant and issued its Letter of Award No. \_\_\_\_\_

to the selected Applicant requiring, inter alia, the execution of this Power Sale Agreement within 30 (thirty) days of the date of issue thereof.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Sale Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1  
DEFINITIONS AND INTERPRETATION

**1.1. Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**"Accounting Year"** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**"Act"** means the Electricity Act, 2003;

**"Affected Party"** shall have the meaning as set forth in Clause 8.1;

**"Agreement"** or **"Power Supply Agreement"** or **"Power Sale Agreement"** or **"PSA"** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**"Applicable Laws"** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**"Applicable Permits"** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

**"Arbitration"** means the Arbitration and Conciliation Act, 1996 and shall include modification to or any re-enactment thereof, as in force from time

to time;

**"Associate"** means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**"Bank"** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

**"Bank Rate"** Shall mean Bank Rate as per the Late Payment Surcharge and Related Matters Rules, 2022 dated 03.06.2022;

**"Business Day"** Shall mean with respect to Procurer & seller, a day other than Sunday or statutory holiday, on which banks remain open for business in Ahmedabad;

**"Change in Ownership"** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline below 26% (twenty-six per cent) thereof under this Agreement;

**"Commission"** means the Appropriate Commission, or any successor thereof duly constituted under the Act;

**"Company"** means the company acting as the Supplier under this Agreement;

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Procurer requires any reasonable action by the Procurer that must be approved by the Seller hereunder, the applicable Cure Period shall be extended by the period taken by the Seller to accord their approval;

**"Damages"** shall have the meaning as set forth in Sub-clause (u) of Clause 1.2.1;

**"Dispute"** shall have the meaning as set forth in Clause 7.3 and Article 10;

**"Disputed Amounts"** shall have the meaning as set forth in Clause 6.4;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes as set forth in Clause 7.3, Clause 6.4 and Article 10;

**"Distribution Licensee"** means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

**"Document"** or **"Documentation"** means documentation in printed or written form, or in tapes, discs, drawings, computer programs, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**"Due Date"** means the terms as set forth in Clause 6.2 (b);

**"Event of Default"** as described under Clause 9.2 & 9.3;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning

ascribed to it in Article 8;

**"Grid Code"** means the Indian Electricity Grid Code 2023 or any substitute thereof;

**"Injection Point"** means MUL Bus where electricity sell under this agreement is received by the Procurer;

**"Invoice"** or **"Bill"** shall mean either a Monthly Bill/Supplementary Bill of a Monthly Invoice/Supplementary Invoice raised by MUL;

**"Surplus Energy"** or **"Surplus Power"** means block-wise surplus quantum in MW as declared by MUL on day ahead basis from its WSH LT-PPA;

**"Tariff"** as described under Article 6;

**"WSH LT-PPA"** or **"WSH"** means Wind Solar Hybrid or Wind Solar Hybrid Long Term – Power Purchase Agreement executed between SECI & MUL

## 1.2. Interpretation

1.2.1. In this agreement, unless the context otherwise requires,

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a "person" and words denoting a natural person shall be construed as a reference to any individual, 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 shall include successors and assigns;

- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- f. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g. any reference to **"hour"** shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- h. any reference to day shall mean a reference to a calendar day;
- i. reference to a **"business day"** shall be construed as reference to a day (other than a Sunday) on which banks in the State where the seller is situate are generally open for business;
- j. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- k. any reference to any period commencing **"from"** a specified day or date and **"till"** or **"until"** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- l. the words importing singular shall include plural and vice versa;

- m. references to any gender shall include the other and the neutral gender;
- n. **"kWh"** shall mean kilowatt hour;
- o. **"lakh"** shall mean a hundred thousand (100,000) and "crore" shall mean ten million (10,000,000);
- p. **"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;
- q. references to the **"winding-up", "dissolution", "insolvency",** or **"reorganisation"** 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- r. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (r) shall not operate so as to increase liabilities or obligations of the Seller hereunder or pursuant hereto in any manner whatsoever;
- s. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- t. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement;

reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- u. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the **"Damages"**);
- v. time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- w. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3. Measurements and arithmetic conventions**

- 1.3.1. All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### **1.4. Priority of agreements, clauses**

- 1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- 1.4.1.1. this Agreement; and
- 1.4.1.2. all other agreements and documents forming part hereof or referred to herein,  
i.e. the Agreement at (1.4.1.1) above shall prevail over the agreements and documents at (1.4.1.2) above.
- 1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
  - 1.4.2.1. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
  - 1.4.2.2. between the Clauses of this Agreement and the Annexes, the Annexes shall prevail;
  - 1.4.2.3. between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
  - 1.4.2.4. between any value written in numerals and that in words, the latter shall prevail.

Part II  
The Sale Contract

ARTICLE 2  
SCOPE OF THE AGREEMENT

**2.1 Scope**

2.1.1 MUL and the Procurer have entered into this Agreement to record the terms of the arrangement in relation to Sale of Surplus Power available with Utility from its WSH LT-PPA, in accordance with the terms of this Agreement.

2.1.2 The Procurer is ready to take the power subject to surplus available with MUL on a day-ahead basis from its WSH LT-PPA. The WSH LT-PPA available with MUL is as below.

Sr. No.	Particulars	Source Type	Quantum (MW)	Date From	Date To
1	1070MW-LT PPA	Wind-Solar Hybrid	1070	11.01.2025	10.01.2050

2.1.3 To provide performance and fulfilment of all other obligations of the Seller in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Seller under this Agreement.

**2.2 Services**

2.2.1 MUL shall declare Surplus Power available with them from WSH LT-PPA on a day-ahead basis. It is to clarify that terms & conditions of the LT-PPA executed by them and mentioned in clause 2.1.1 in this Agreement.

2.2.2 The Procurer shall coordinate, and scheduling the surplus energy declared by MUL on a Day-ahead basis for WSH LT-PPA mentioned in clause 2.1.2 of this Agreement, from the MUL periphery.

2.2.3 The Procurer shall apply to their respective State Load Dispatch Centre (referred hereinafter to as the "SLDC") / Regional Load Dispatch Centre (referred hereinafter to as the "RLDC") for grant of No Objection

Certificate (referred hereinafter to as the "NOC") to enable it to Procure the Surplus Capacity of Power through Open Access.

- 2.2.4 The charges & losses include Open Access Charges, respective SLDC/RLDC concurrence charges and Operating charges, Application fees, Application Processing charges, applicable CTU charges & losses, applicable respective STU charges & losses & losses, respective Distribution Wheeling charges & losses if any beyond the injection point as amended from time to time shall be on account of Procurer.
- 2.2.5 The statutory Open Access Charges such as cross subsidy surcharges, additional surcharges, Reactive Energy Charges or any other charges (determined by the respective SERC as amended from time to time) which are directly recoverable by the respective Distribution Company from buyer shall be on account of Procurer if applicable.
- 2.2.6 In case seller pay any charges on behalf of the Procurer, the Procurer shall be responsible for reimbursing same to seller.
- 2.2.7 The Procurer shall be responsible for and be granted all Open Access and associated permissions required to draw power under this Agreement in accordance with the applicable laws including Indian Electricity Grid Code and the CERC/SERC Open Access Regulations for Booking of Open Access Transmission / Distribution Corridor.

### **2.3 Terms & Effectiveness**

- 2.3.1 Unless terminated earlier, term of this Agreement shall be for a period of WSH LT-PPA (as executed by MUL & mentioned in this Agreement) ending years for WSH LT-PPA Sale of Surplus energy to be manage and schedule by the applicant, which may be further extended upon mutual agreements of the Parties.
- 2.3.2 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties hereunder, including the right to receive any damages and any other charges as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, which are to survive after the Term or termination.

ARTICLE 3  
OBLIGATION OF PROCURER

**3.1 Obligations of the Procurer**

3.1.1 Subject to and on the terms and conditions of this Agreement, the Procurer shall, at its own cost and expense, execute & maintain the operation of the Power Procurement from MUL's Sale of Surplus energy and perform all its obligations set out in this Agreement or arising hereunder;

- a. The Procurer shall comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- b. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Procurer shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- c. The Procurer shall procure block-wise full quantum of surplus energy as declared by MUL on a day-ahead basis.
- d. Support, cooperate with and facilitate the Utility in the implementation of this Agreement;
- e. Always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- f. Comply with the provisions of Applicable Laws with regard to the schedule of electricity
- g. Comply with the directions of the Commission issued from time to time under the Act

**3.2 Obligations relating to Change in Ownership**



- 3.2.1 The Procurer shall not undertake or permit any Change in Ownership, except with the prior written approval of the Utility.

### **3.3 Obligations relating to Applicable Charges**

- 3.3.1 The Procurer shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity beyond Injection Point.

- 3.3.2 For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Procurer and all liabilities arising out of any failure of inter-state and intra-state transmission of surplus electricity, be borne by the Procurer.

### **3.4 Obligations relating to Transmission Losses**

- 3.4.1 The Procurer shall be liable for transmission losses in all inter-state & intra-state transmission of electricity beyond Injection Point.

- 3.4.2 For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Procurer and all liabilities arising out of any failure of inter-state and intra-state transmission of electricity, be borne by the Procurer

### **3.5 Obligations relating to SLDC and RLDC Charges**

- 3.5.1 The Procurer shall be liable for payment of all the charges, due and payable under Applicable Laws, to the SLDC and RLDC for and in respect of all procurement from the Utility.

### **3.6 Obligations relating to taxes**

- 3.6.1 The Procurer shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Procurement of Power from MUL's surplus energy, in accordance with the Law of provision.

### **3.7 Obligations relating to reporting requirements**

- 3.7.1 All information provided by the Procurer to the SLDC and RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to MUL simultaneously.

### **3.8 Obligations relating to Open Access**

- 3.8.1 The Procurer shall be responsible for making timely application for Open Access as per the prevailing applicable Regulations. In case of failure of procurer for making Open Access application/non-grant of application then the penalty clause 6.3 of this Agreement will apply.

ARTICLE 4  
OBLIGATION OF SELLER

**4.1 Obligations of the Seller**

4.2.1 Subject to and on the terms and conditions of this Agreement, the MUL shall, perform all its obligations set out in this Agreement or arising hereunder;

- a. The MUL shall comply with all Applicable Laws in the performance of its obligations under this Agreement.
- b. MUL shall provide block-wise Surplus Energy available in WSH LT-PPA on a day-ahead basis.
- c. Support, cooperate with and facilitate the Procurer in the implementation of this Agreement;
- d. In the event that energy from the WSH generator, which is declared surplus for sale, is unavailable in any condition, the MUL shall not be obligated to supply power or pay any financial compensation or energy scheduling. This applies in accordance with the implication of the SLDC and RLDC, with the burden of responsibility lying with the Procurer.

ARTICLE 5  
REPRESENTATIONS AND WARRANTIES

**5.1 Representations and Warranties of the Procurer**

The Procurer represents and warrants to the MUL that:

- a. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c. along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f. the information furnished in the EoI application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or

accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k. the selected applicant is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the MUL to enter into this Agreement with {itself/the Applicant} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- l. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Power Sell Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the MUL in connection therewith;

## **5.2 Representations and Warranties of the MUL**

The MUL represents and warrants to the Procurer that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- c. it has the financial standing and capacity to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the MUL's ability to perform its obligations under this Agreement; and
- f. it has complied with Applicable Laws in all material respects.

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

Part III  
Financial Covenants

## ARTICLE 6 TARIFF

### 6.1 Tariff

The tariff rate Rs. \_\_\_\_\_/kWh shall be paid by the Procurer against the sale of surplus energy declared by MUL at Injection point. It is made clear that all other charges such as Open Access, Transmission, Wheeling Charges, losses & operating Charges and fees of SLDCs & RLDCs or any other charges shall be paid by the Procurer beyond injection point.

### 6.2 Billing and Payment

- a. The bill shall be raised by the MUL towards Procurer for tariff amount payable based on Surplus Energy declared by MUL on day ahead basis from its WSH LT-PPA for the billing month based on final/provisional implemented schedule/SEA.
- b. Bills need to be paid by the procurer within 2 Days. For avoidance of any doubt if MUL raised tariff invoice to the Procurer on the Day DO than Payment by the Procurer against invoice should be paid within DO+2 Days which considered as Due Date.

### 6.3 Penalty

- a. The Procurer shall require to pay the penalty for short fall in off-take of surplus energy declared by MUL at tariff rate as specified in clause 6.1 of this Agreement. It is to clarify that the penalty charges shall be paid by the Procurer over and above the invoice. In case of delay in payment of penalty by Procurer then MUL has rights to levy Delayed Payment Surcharge as per LPS rule 2022 amended from time to time. Further, MUL has the right to recover the penalty amount from the Letter of Credit provided by Procurer.

### 6.4 Delayed payments

- a. In the event of payment of a Monthly Bill by the Applicant beyond the Due Date, a Late Payment Surcharge (LPS) shall be payable by the



Applicant to MUL on the outstanding payment, at the base rate as defined in the 'LPS Rules' and subsequent amendments thereof.

- b. The Late Payment Surcharge shall be claimed by MUL through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment beyond the Due Date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for successive months of default shall be applicable in terms of the 'LPS Rules' and subsequent amendments thereof.
- c. All payments by the Procurer to MUL for against Monthly Bill from it shall be first adjusted towards Late Payment Surcharge, Penalty and thereafter, towards monthly charges, starting from the longest overdue bill. Order of payment and adjustment towards Late Payment Surcharge –All the bills payable by the Applicant to MUL for the Monthly Bill from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Applicant shall be adjusted first against the oldest bill and then to the second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.
- d. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

## **6.5 Disputed Amounts**

- a. The Procurer shall, within 5 (Five) days of receiving an invoice, notify the MUL of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Procurer shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Procurer may, if necessary, meet a representative of the MUL to resolve the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt,

the Procurer shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

- b. The Late Payment Surcharge shall be claimed by MUL through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment beyond the Due Date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for successive months of default shall be applicable in terms of the 'LPS Rules' and subsequent amendments thereof.

## **6.6 Payment Security Mechanism**

- a. The Procurer shall establish and maintain irrevocable and unconditional revolving Letter of Credit in favour of, and for the sole benefit of, the power seller for the amount of Rs. 75 Crore. All the costs incurred by Procurer for opening, maintenance and other costs related to establishment of Letter of Credit shall be borne by the Procurer.
- b. The letter of Credit shall be established in favour of, and issued to the Seller on the date hereof and made operational thirty (30) days prior to the commencement of supply and shall be maintained consistent herewith by the Procurer and all times during the Term of the Agreement.
- c. Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled Bank and be provided that:
  - i. In the event a Tariff Invoice or any other amount due and undisputed amount payable by the Procurer pursuant to the terms of this Agreement is not paid in full by the Procurer as and when due, the Letter of Credit may be called by the Seller for payment of undisputed amount.
  - ii. The amount of the Letter of Credit shall be Rs. 75 Crore.
  - iii. The Procurer shall replenish the Letter of Credit to bring it to

the original amount within 30 days in case of any valid drawdown.

- d. The Letter of Credit shall be renewed and / or replaced by the Procurer not less than 60 days prior to its expiration.
- e. Payment under the Letter of Credit: The drawl under the Letter of Credit in respect of Tariff Invoice shall require;
  - I. A copy of the supporting the payments attribute to the Delivered Energy in respect of such Tariff Invoice.
  - II. A certificate from the Seller stating that the amount payable by the Procurer in respect of such Tariff Invoice has not been paid and disputed by the Procurer till the Due Date of Payment of the Tariff Invoice.

## ARTICLE 7 ACCOUNTS

### **7.1 Audited accounts**

The Procurer shall maintain books of accounts recording all its receipts (including Tariff, revenues from procure of power from MUL) and Applicable Permits. The Procurer shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The MUL shall have the right to inspect the records of the Procurer during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the MUL for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

### **7.2 Set-off**

In the event any amount is due and payable by the Procurer to the MUL, it may set off any sums payable to it by the Procurer and pay the remaining balance. Any exercise by the MUL of its rights under this Clause 7.2 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

### **7.3 Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the MUL by recourse to the Dispute Resolution Procedure.

## ARTICLE 8 FORCE MAJEURE

### **8.1 Force Majeure**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 8.2, 8.3 and 8.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

### **8.2 Non-Political Event**

A Non-Political Event shall mean one or more of the following acts or events:

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. strikes or boycotts (other than those involving the Supplier, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 8.3;
- c. any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any

offsetting compensation being payable to the Applicant by or on behalf of such Contractor;

- d. any judgement or order of any court of competent jurisdiction or statutory authority made against the Applicant in any proceedings for reasons other than (i) failure of the Applicant to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the MUL;
- e. the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- f. any event or circumstances of a nature analogous to any of the foregoing used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political

### **8.3 Indirect Political Event**

An Indirect Political Event shall mean one or more of the following acts or events:

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- c. industry-wide or State-wide strikes or industrial action for a

continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

- d. any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- e. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- f. any Indirect Political Event that causes a Non-Political Event; or
- g. any event or circumstances of nature analogous to any of the foregoing.

#### **8.4 Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier or of the Contractors;
- b. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Applicant or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- c. any event or circumstance of nature analogous to any of the foregoing.

## **8.5 Excused Performance**

Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this shall promptly but no later than 01 (one) week after the commencement of the relevant Force Majeure Event (i) notify the other Party in writing of the existence of the Force Majeure Event ("Force Majeure Notice"), (ii) exercise all reasonable care necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event promptly after the cessation or termination, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that the Applicant shall not be excused from making any payments and paying any unpaid amounts due in respect of the Tariff Invoice in terms of this Agreement prior to the occurrence of the Force Majeure Event.



## ARTICLE 9 TERMINATION

### **9.1 This Agreement may be terminated:**

- a. due to The Applicant Event of Default as described under Clause 9.2 (Applicant Event of Default);
- b. due to MUL Event of Default as described under Clause 9.3 (MUL Event of Default); or
- c. by mutual agreement between the Parties.

If an Event of Default with respect to a defaulting Party has occurred and it has not been cured within applicable Cure Period agreed between the Parties in this Agreement, the other Party (the "Non-Defaulting Party") shall have the right, but not the obligation, to terminate the agreement and collect the termination payment.

### **9.2 Procurer Event of Default**

MUL shall have the right but not the obligation to terminate this Agreement if any of the following events (which have not occurred as a consequence of an MUL Event of Default) occurs:

- a. an Insolvency Event in relation to the Applicant has occurred;
- b. failure of the Procurer to pay any Monthly Invoice within 30 (thirty) days after the Due Date for such payment;
- c. failure to establish, renew or maintain the Payment Security in accordance with this Agreement;
- d. Applicant repudiates or evidence intention to repudiate this Agreement after the Execution Date;
- e. breach by the Applicant of any of its representations and / or warranties as set out in this Agreement; or

- f. any other material breach of the Applicant under this Agreement.

### **9.3 MUL Event of Default**

The Applicant shall have the right to terminate this Agreement if any of the following events (which have not occurred as a consequence of Force Majeure Event or Consumer Event of Default) occurs:

- a. an Insolvency Event in relation to MUL has occurred;
- b. breach by MUL of any of its representations and / or warranties as set out in this Agreement; or
- c. any other material breach of MUL under this Agreement.

### **9.4 Termination Notice:**

- a. If an MUL Event of Default described in Clause 9.3 has occurred or a Procurer Event of Default described in Clause 9.2 has occurred ("Defaulting Party" as applicable), the Procurer or MUL (as the case may be) shall allow the Defaulting Party, unless otherwise specifically provided in this Agreement, to cure the default for a period of 60 (sixty) days ("Cure Period"). For the avoidance of doubt, it is clarified that such Cure Period shall be applicable in relation to only those defaults which can be cured. In the event the Defaulting Party is unable to cure the default within the Cure Period, then the other Party may terminate the Agreement by giving a notice of [30 (thirty)] days to the Defaulting Party ("Termination Notice").
- b. If a MUL Event of Default or a Procurer Event of Default has occurred ("Defaulting Party", as applicable), the Non-Defaulting Party shall allow the Defaulting Party, unless otherwise specifically provided in this Agreement, to cure the Event of Default for a period of 30 (thirty) days after the date of notice of relevant Event of Default has been given by it ("Cure Period"). For the avoidance of doubt, it is clarified that such Cure Period shall be applicable in relation to only those Event of Defaults which can be cured. In the event the Defaulting Party is unable to cure the Event of Default within the Cure Period, then the

Non-Defaulting Party may terminate this Agreement by giving a notice of 07 (seven) days to the Defaulting Party ("Termination Notice").

- c. Notwithstanding anything contained in Clause 9.4 above, if either MUL or the Procurer receives any notice from any Government Authority declaring this Agreement or the transactions contemplated by this Agreement to be illegal or in breach of Applicable Laws, then the Parties shall endeavour to make suitable amendments to this Agreement such that it becomes compliant with the requirements of Applicable Law or, removes the illegality notified by an Government Authority, within a period of 30 (thirty) days from the date of such notice or declaration. If, however, upon proper legal advice jointly obtained by the Parties, they come to the conclusion that the amendments would not sufficiently address or remove the illegality or the breach notified by the relevant Government Authority, then either Party may terminate this Agreement after mutual consultation with a 30 (thirty) days' notice to the other Party. In case of termination pursuant to this section, no Party shall have any further liability or obligation to the other Party except the payment of any unpaid and undisputed invoices.
- d. The right of either Party to terminate this Agreement is in addition to other remedies expressly provided herein, and the terminating Party may exercise any other remedy it may have at law or equity or under the Agreement.

## ARTICLE 10 DISPUTE RESOLUTION

### **10.1 Dispute resolution**

- a. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.
- b. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **10.2 Adjudication by the Commission**

Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by Appropriate Commission and the Commission may refer the matter for Arbitration as provided under Sec 86 of the Electricity Act. For disputes beyond the power conferred upon Appropriate Commission, such disputes shall be subject to the jurisdiction of the High Courts.