

ANNEXURE V: OPEN ACCESS AGREEMENT

This Agreement is made on the _____ day of _____ 20__ between,
 Distribution Licensee (Nodal Agency) [Name], a company incorporated under
 the Companies Act, 1956 having its registered office at _____ (Address);
 Company A, [Name], a company incorporated under the Companies Act, 1956
 having its registered office at _____ (Address);
 Company B, [Name], a company incorporated under the Companies Act, 1956
 having its registered office at _____ (Address);
 Company C, [Name], a company incorporated under the Companies Act, 1956
 having its registered office at _____ (Address);
 .
 .
 .
 Company Z, [Name], a company incorporated under the Companies Act, 1956
 having its registered office at _____ (Address); and
 Distribution Licensee to whom Generator is connected ("Supplier Distribution
 Licensee") (as applicable) having its registered office at
 _____ (Address)

(hereinafter collectively referred to as [Long/Medium] Term Open Access
 Parties and individually referred to as Company-A, BZ respectively)
 which expression shall unless repugnant to the context or meaning thereof
 include its successors and assigns as party of the second, third, fourth -----
 ---and ----- respectively.

- A) Whereas [Long/Medium] Term Open Access Parties are desirous to avail [Long/Medium]
 Term Open Access in accordance with Maharashtra Electricity Regulatory Commission
 (Distribution Open Access) Regulations, 2016 hereinafter referred to as "Regulations"
 made by Maharashtra Electricity Regulatory Commission hereinafter referred to as
 Commission and Electricity Act 2003 (including their amendments, if any) to the

Distribution System for transfer of power from the respective places of generation or consumption as per the details contained in the Annexure-1.

- B) Each of the Long term Open Access Party has agreed to share and bear the applicable system augmentation expenditure. The details of the system augmentation are provided in Annexure-3 of this Agreement. [Not applicable for Medium-term Open Access]
- C) AND WHEREAS in accordance with MERC Distribution Open Access Regulations and Electricity Act 2003 (including the amendment if any) and in accordance with the term mentioned in Annexure-1, the Nodal Agency has agreed to provide such Open Access required by these [Long/Medium] Term Open Access Parties from the date of availability of evacuation distribution/ transmission system for the transfer of power as mentioned in Annexure-1.
- D) AND WHEREAS [Long/Medium] term Open Access Parties have agreed to share and pay all the distribution/transmission charges, as applicable in accordance with the regulation/tariff order issued by the Commission from time to time for the use of its Distribution/Transmission System of the concerned Distribution Licensees including intra-state transmission system, MSLDC charges, Cross-Subsidy Surcharge, Additional Surcharge and any other charge thereof as determined by the Commission. These charges would be paid to the Nodal Agency from the scheduled date of respective Open Access as indicated at Annexure-1.
- E) AND WHEREAS the Nodal Agency agrees to collect and pay all other Parties relevant charges, as applicable in accordance with the regulation/ tariff order issued by the Commission from time to time.

Now, therefore in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

- 1.0 In accordance with MERC Distribution Open Access Regulations, 2016 and Electricity Act 2003 (including the amendment if any) and in accordance with the term mentioned in Annexure-1, Nodal Agency agrees to provide such Open Access required by these [Long/Medium] Term Open Access Parties from the date and in the manner mentioned in the Annexure-1, Annexure-2, and Annexure-3 of this Agreement.

- 2.0 (a) [Long/Medium] Term Open Access Parties shall share and pay the Wheeling Charges in accordance with the regulation/tariff order issued by the Commission from time to time including charges for intra-state transmission system /MSLDC charges, Cross-Subsidy Surcharge, Additional Surcharge and any other charge thereof as determined by the Commission. These charges would be applicable from the scheduled date of Open Access as indicated at Annexure-1 irrespective of their actual date of usage.
- (b) Long term Open Access Parties shall share and bear all the system augmentation charges as mentioned in Annexure 3 to the Nodal Agency in accordance with MERC Distribution Open Access Regulations [Not applicable for Medium-term Open Access]
- (c) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2(a) above, [Long/Medium]-Term Open Access Party would provide security in the form of irrevocable Bank Guarantee (BG), in favor of Nodal Agency, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of Open Access as indicated at Annexure-1. Initially the security mechanism shall be valid for a minimum period of three years and shall be renewed from time to time till the expiry of the Open Access. [For Medium Term Open Access BG shall be valid till the expiry of the Open Access]
- (d) The estimated average charges would be reviewed every year and accordingly the amount of security would be enhanced/ reduced by [Long/Medium] Term Open Access Parties.
- (e) In case the [Long/Medium] Term Open Access Party defaults in payment of the monthly charges of Nodal Agency then, Nodal Agency shall be entitled to encash/adjust the BG immediately.
- (f) In case of encashment / adjustment of the BG by Nodal Agency against non-payment of monthly charges by [Long/Medium] Term Open Access Party, the same should be immediately replenished/recouped by [Long/Medium] Term Open Access Party before the next billing cycle.

3.0 Nodal Agency agrees to provide [Long/Medium] Term Open Access required by [Long/Medium] Term Open Access Party as per the details mentioned above and in accordance with the Regulations.

However, during the tenure of this Agreement if any of the covenants and conditions recited in this Agreement including agreements at Annexure- 1, 2 and 3 found inconsistent with the provisions of the Electricity Act 2003 and/or applicable notifications/rules/regulations issued either by MERC as per the provisions of the Electricity Act then notwithstanding anything contained in the Agreement referred to above, the said rules and regulations shall prevail.

4.0 The [Long/Medium] Term Open Access Party shall not relinquish or transfer its rights and obligations specified in this Agreement, without prior approval of Nodal Agency and subject to payment of compensation in accordance with the MERC Regulations issued from time to time.

5.0 (a) In case any of the Parties fail to construct the Generating Station /dedicated evacuation system as indicated in Annexure-2 or makes an exit or abandon its project, Nodal Agency shall have the right to collect the investment proposed for system augmentation and/ or damages as the case may be in accordance with the notification/regulation issued by MERC from time to time. The Party shall furnish a Bank Guarantee for an amount which shall be equivalent to the proposed augmentation expenditure to compensate such damages.

(b) This Bank Guarantee would be initially valid for a period of six months after the expected date of Open Access schedule mentioned at Annexure-1 or actual date of Open Access whichever is earlier. The Bank Guarantee would be encashed by Nodal Agency in case of adverse progress of individual generating unit(s) assessed by Nodal Agency. However, the validity should be extended by concerned [Long/Medium] Term Open Access Party(ies) as per the requirement to be indicated by Nodal Agency.

(c) The Nodal Agency shall build Distribution System included at Annexure-3 keeping view of various Open Access schedules, however, till the completion of identified elements the transfer of power will be based on the availability of system on short term basis.

(d) In the event of delay in commissioning of concerned system from its schedule, as indicated at Annexure-3 Nodal Agency shall pay proportionate Wheeling Charges to concerned [Long/Medium] Term Open Access Party(ies) proportionate to its Open Access capacity (which otherwise would have been paid by the concerned [Long/Medium] Term Open Access Party(ies) to Nodal Agency) provided generation / consumption unit is ready and Nodal Agency fails to make alternate arrangement for dispatch of power.

6.0. In order to monitor/ review the progress of generating units along with its direct evacuation lines and also the common distribution/transmission system, Joint co-ordination meeting with the representative of each Parties and Nodal Agency shall be held at regular interval (preferably quarterly) after signing of this Agreement.

7.0 All differences/ disputes between the Parties arising out of or in connection with this Agreement shall be resolved in terms of the Redressal Mechanism provided under MERC Distribution Open Access Regulations.

8.0 The Parties shall ensure due compliance with the terms of this Agreement. However, no Party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire, flood, forces of nature, major accident, act of God, change of law and any other causes beyond the control of the defaulting party. But any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

9.0 This Agreement shall be valid from the date of signing of this Agreement till the validity of Open Access subject to its revision as may be made by the Parties to this Agreement provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such further period as the Parties may mutually agree. In case [Long/Medium] Term Open Access Parties continue to get distribution services from the Nodal Agency even after expiry of this Agreement without further renewal or formal extension thereof, then all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced.

10.0 Any Party intending to terminate this Agreement shall give the other parties not less than thirty days prior written notice of termination of this Agreement:

Provided, that termination shall be subject to settlement of all dues of the Distribution Licensees in accordance with the Act, the Regulations and this Agreement.

11.0 The Distribution Licensees may terminate this Agreement and disconnect the Consumer in the following circumstances, in accordance with the provisions of the Act:-

- the Consumer defaults in the payment of any charge or any other sum due from him as provided under Section 56 of the Act; or
- the Consumer does an act referred to in sub-section (3) of Section 163 of the Act; or
- the disconnection is authorized under any other provision of the Act, the rules and Regulations made there under and/ or any other law for the time being in force; or
- the Consumer fails to replenish the Bank Guarantee before the next billing cycle

12.0 The Supply Distribution Licensee shall give a fifteen days prior written notice of termination of this Agreement to the Supplier where:-

- the Supplier defaults in the payment of any charge or any other sum due from him in accordance with the Act, the Regulations and this Agreement; or
- where the Supplier fails to perform any of his obligations under this agreement which is likely to result in a loss to the Distribution Licensees; or
- where the Supplier becomes insolvent; or

- the Supplier fails to replenish the Bank Guarantee before the next billing cycle; or
- the Consumer defaults in the payment of any charge or any other sum due from him to the Distribution Licensee under this Agreement to whom it is connected.

The Consumer or Supplier shall, within the notice period, remedy or remove the cause or causes stated in the notice failing which the Distribution Licensee may terminate this Agreement from the date stated in the notice. Notwithstanding anything contained in this clause, where termination of Agreement results in disconnection of the Consumer, it shall be only for the reasons authorized by the Act. The reconnection of a disconnected Consumer shall be in accordance with the provisions of the Act and the Regulations.

In witness whereof both the parties have executed this Agreement through their authorized representative.

Name & Signature
Consumer

Name & Signature
Distribution Licensee

Name & Signature
Supplier

Annexure 1

List of Open Access Parties and their Open Access details

No	Party	LTOA/ MTOA applied for (MW)	From (dd/mm/yyyy)	To (dd/mm/yyyy)	From (location)	To (location)

Annexure 2

Augmentation to be implemented by Applicant and its schedule of commissioning

Annexure 3

System Augmentation to be implemented by Nodal Agency/ Other Agencies and its schedule of commissioning

Mumbai,
Date: 30 March, 2016

ASHWANI KUMAR
Secretary,
Maharashtra Electricity Regulatory Commission