

**REQUEST FOR PROPOSAL  
FOR  
PROCUREMENT OF SOLAR POWER FOR LONG TERM,  
UNDER “Case 1-RE” BIDDING PROCEDURE THROUGH  
TARIFF BASED COMPETITIVE BIDDING PROCESS TO  
MEET THE RENEWABLE POWER OBLIGATIONS  
OF  
NEW DELHI MUNICIPAL COUNCIL**



**Issued by:**

**O. P. Mishra,  
Director (Projects)  
Projects Department  
7<sup>th</sup> Floor, Room No-7008,  
New Delhi-110001**

**NEW DELHI MUNICIPAL COUNCIL  
Palika Kendra,  
Sansad Marg, New Delhi -110001**

**29.09.2014**

**NEW DELHI MUNICIPAL COUNCIL,  
Palika Kendra, Sansad Marg,  
Room No 7008, 7<sup>th</sup> Floor,  
New Delhi-110001**

**Request for Proposal (hereinafter referred to as RFP) for long term procurement of power under “Case 1-RE” bidding procedure through tariff based competitive bidding from Solar for meeting the requirements of Renewable Power Obligations of NDMC in the state of Delhi.**

**This RFP is issued to:**

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

**Issued by:**

**Name:** O.P. Mishra  
**Designation:** Director (Projects)  
**Address:** Palika Kendra, Sansad Marg,  
7th Floor, Room No 7008,  
New Delhi-110001  
**Phone:** 011-41501383  
**Email :** director.it@ndmcmail.gov.in

---

## **DISCLAIMER**

1. This Request for Proposal (RFP) document is not an agreement or offer by New Delhi Municipal Council (NDMC) to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information to assist the formulation of their Bid. This RFP is based on material and information available in public domain.
2. This RFP, along with its Formats, is not transferable. The RFP and the information contained therein is to be used only by the person to whom it is issued. Save and except as provided in Clause 2.18 of the RFP, it shall not be copied or distributed by the recipient to third parties. In the event that the recipient does not continue with its involvement in the bidding process in accordance with this RFP, this RFP must be kept confidential.
3. While this RFP has been prepared in good faith, neither the Procurer nor its employees or advisors/consultants make any representation or warranty express or implied as to the accuracy, reliability or completeness of the information contained in this RFP.
4. Neither the Procurer, its employees nor its advisors/consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award for supply of power, the information supplied by or on behalf of Procurer or its employees, any advisors/consultants or otherwise arising in any way from the selection process for the said supply of power.
5. The Procurer is a Distribution Licensee and desirous of procurement of power from Solar Projects for Long Term under "Case 1 RE" Bidding procedure to meet its renewable energy targets under Renewable Purchase Obligation (RPO).
6. The bidding process/outcome is subject to approval of Delhi Electricity Regulatory Commission (DERC). NDMC reserves the right to cancel or modify the process without assigning any reason and without any liability.

## **Contents**

<b>DEFINITIONS</b> .....	5
<b>INTRODUCTION</b> .....	11
<b>INFORMATION AND INSTRUCTIONS FOR BIDDERS</b> .....	16
<b>FORMATS FOR BID SUBMISSION</b> .....	44
<b>FORMATS FOR BIDDER’S INFORMATION AND REFERENCE</b> .....	69

## DEFINITIONS

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Documents. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, the CERC (Terms and Conditions for Tariff determination from Renewable energy Sources) Regulations, 2012, Grid Code, DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 or any other relevant electricity law, rule or regulation prevalent in India, as amended or re-enacted from time to time, in that order.

Any reference to a "Clause", "Section", "Format" and an "Enclosure" shall be construed as a reference to the clause, section, format and enclosures in this RFP.

### The following terms are defined for use in this RFP:

**"Affiliate"** shall mean a company that either directly or indirectly

- i. controls, or
- ii. is controlled by, or
- iii. is under common control with;

A Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **"control"** means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company. As an illustration a chart is annexed hereto as Format 5.10;

**"Appropriate Commission"** shall mean the Delhi Electricity Regulatory Commission (DERC) or the Central Electricity Regulatory Commission, as the case may be;

**"Bid"** shall mean the Non-Financial Bid and the Financial Bid submitted by the Bidder, in response to this RFP in accordance with the terms and conditions hereof;

**"Bidder"** shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company, Bidding Consortium or Consortium, Member of the Bidding Consortium ( including their successors, executors and permitted assigns) and the Lead Member of the Bidding Consortium (jointly and severally), as the context may require;

**"Bidding Company"** shall refer to such single company that has submitted the Bid in accordance with the provisions of this RFP;

**"Bidding Consortium" or "Consortium"** shall refer to a group of companies that has collectively submitted the Bid in accordance with the provisions of this RFP;

**"Bid Bond"** shall mean the unconditional and irrevocable bank guarantee to be submitted along with the Bid by the Bidder under Clause 2.12 of this RFP, as per the prescribed Format 4.6;

**"Bid Deadline"** shall mean the last date and time for submission of Bid in response to this RFP as specified in Clause 2.8 of this RFP;

**“Capacity Utilization Factor” or “CUF”** shall have the same meaning as provided in CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012 as amended from time to time;

**“CERC”** shall mean the Central Electricity Regulatory Commission of India constituted under sub – section (1) of Section-76 of the Electricity Act or its successors;

**“Chartered Accountant”** shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act, 1949;

**“Company”** shall mean a body corporate incorporated in India under the Companies Act, 1956 or Companies Act, 2013.

**“Conflict of Interest”** A Bidder may be considered to be in a Conflict of Interest with one or more Bidders in the same bidding process under this RFP if they have a relationship with each other, directly or indirectly through a common company, that puts them in a position to have access to information about or influence the Bid of another Bidder;

**“Consents, Clearances and Permits”** shall mean all authorizations, licenses, approvals, 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;

**“Contracted Energy”** shall mean the 83 MU +/- 20% Energy per annum at the Interconnection Point.

**“Contract Performance Guarantee (CPG)”** shall have the meaning as per Clause 2.13 of this RFP;

**“Contract Term”** shall mean the period of 25 years starting from COD of the station as a whole as specified in Clause 1.3.1;

**“Contract Year”** Shall mean the period beginning from the Effective Date 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 provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement.

**“CTU”** or “Central Transmission Utility” shall mean the utility notified by the Central Government under Section-38 of the Electricity Act;

**“Delivery Point”** shall mean: the withdrawal point specified in CERC (Sharing of Inter-State Transmission Charges and losses) Regulation, 2010 corresponding to the Procurer’s State for transmission of power requiring ISTS, i.e. the interconnection of Delhi STU with CTU;

or

for the generating stations within the State of the Procurer, the point where power from the generation switchyard bus bars is injected into the Delhi STU network or the distribution network of the Procurer;

**“Effective Date”** shall mean the date of execution of Power Purchase Agreement PPA by both the parties;

**“Electricity Act”** shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;

**“Electricity Laws”** shall mean the Electricity Act and the rules and regulations made thereunder 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;

**“Final Delivery Date”** shall be 31st Mar 2018 or as mutually agreed between the Procurer and the Seller;

**“Financial Bid”** shall mean Envelope II of the Bid, containing the Bidder’s Quoted Tariff as per the Format 4.7 of this RFP;

**“Financial Closure or Project Financing Arrangements”** means arrangements of necessary funds by the Project Developer either by way of commitments of funds by the company from its internal resources and / or tie up of funds through a bank / financial institution by way of sanction of a loan.

**“Grid Code” / “IEGC” or “State Grid Code”** shall mean the Grid Code specified by the CERC under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

**“Injection Point”** in relation to each Financial Bid by a Bidder, shall mean the injection point specified in CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 as specified by the Bidder in Format 4.7 of this RFP (i.e. the interconnection of STU of the State in which the Project is located with the CTU)/[in case the Project is located in Delhi, switchyard of the Project with the Delhi STU or, in case of the Project being connected to the distribution network of a distribution licensee in Delhi (other than the Procurer), the interconnection of such distribution licensee with the Delhi STU];

**“Inter-connection Point”** shall mean the point at 33 kV or above where the power from the solar power project is injected into the CTU/STU transmission system (including the dedicated transmission line connecting the power project with the CTU/STU system)

“**Law**” shall have the same meaning as ascribed thereto in the PPA;

“**Lead Member of the Bidding Consortium**” or “**Lead Member**” shall mean the Member which commits at least 51% equity stake in the Project Company and so designated by other Member(s) of the Bidding Consortium in accordance with the Consortium Agreement specified in Format 4.3 of this RFP;

“**Letter of Intent**” or “**LOI**” shall mean the letter to be issued by the Procurer to the Successful Bidder(s) for supply of power pursuant to Clause 3.5 of the RFP;

“**Levelized Tariff**” shall mean the tariff calculated in accordance with the provisions of Clause 3.4.7 of the RFP;

“**Limited Liability Partnership**” or “**LLP**” shall mean a Company governed by Limited Liability Partnership Act 2008;

“**LLC**” shall mean Limited Liability Company;

“**Member of a Bidding Consortium**” or “**Member**” or “**Consortium Member**” shall mean each company in the Bidding Consortium which has executed the Consortium Agreement as provided in Format 4.3 of this RFP;

“**Minimum Bid Capacity**” shall mean the minimum capacity in MW specified by the Authorized Representative / Procurer in Clause 1.3.1, for which the Bidder is required to submit its Bid. It should be net power that the generator is bidding. It should exclude auxiliary, free energy to state etc.;

“**Net worth**” shall mean the net worth of the Bidding Company or the Member of a Bidding Consortium to be calculated in accordance with Clause 2.1.4.1;

“**Non-Financial Bid**” shall mean envelope I of the Bid containing the documents as specified in Clause 2.4.1.1 of the RFP;

“**Parent Company**” shall mean a company that holds at least twenty six percent (26%) of the paid - up equity capital (directly or indirectly) in the Bidding Company or in the Member of a Bidding Consortium, as the case may be;

“**Plant Load Factor**” or “**PLF**” shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 as amended from time to time;

“**PPA**” shall mean the agreement to be entered into between the Procurer and the Seller pursuant to which the Seller shall supply power to the Procurer as per the terms and conditions specified therein and a draft of which is attached hereto and marked as Enclosure 1 of Format 5.3 of this RFP, including all its schedules, annexures, and all amendments or modifications;

“**Procurer**” shall mean New Delhi Municipal Council with its office at Palika Kendra,



Parliament Street, New Delhi-110001;

**“Project Company”** shall mean the company, incorporated by the Bidder as per Indian laws, in accordance with Clause 2.2.8;

**“Qualification Requirements”** shall mean the qualification requirements as set forth in Clause 2.1 of this RFP;

**“Qualified Solar EPC Contractor”** shall mean an EPC contractor who has provided EPC for solar photovoltaic project of atleast 20 MWp capacity commissioned atleast 6 months from the Bidding date in India.

**“Qualified Bidder(s)”** shall mean the Bidder(s) who, after evaluation of their Non-Financial Bid as per Clauses 3.2 and 3.3, stand qualified for opening and evaluation of their Financial Bid;

**“Quoted Tariff”** shall mean the yearly rates, as applicable, quoted by the Bidder as per the prescribed Format 4.7 and shall be construed to be at the Interconnection Point as mentioned in its Bid;

**“Requisitioned Capacity”** Power at “interconnection point”.

**“RFP”** shall mean this request for proposal dated **29.09.2014** along with all Formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

**“RFP Documents”** shall mean the following documents to be entered into by the parties to the respective agreements in connection with the supply of power:

- a) the RFP;
- b) PPA;
- c) any other agreements designated as such, from time to time by the Procurer;

**“Scheduled Delivery Date”** Scheduled Delivery Date shall be 13 months from the date of signing the PPA;

**“Seller”** shall mean the Successful Bidder/or the Project Company, as the case may be who submit the Contract Performance Guarantee and executes the PPA and the relevant RFP Documents with the Procurer and who shall be responsible for supplying power to the Procurer at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

**“SERC”** shall mean the State Electricity Regulatory Commission of any state in India constituted under Section-82 of the Electricity Act or its successors, and includes a Joint Commission constituted under sub-section (1) of Section 83 of the Electricity Act;

**“Statutory Auditor”** shall mean the auditor of a company appointed under the provisions

of the Companies Act, 1956 or under the provisions of any other applicable governing law;

**“STU” or “State Transmission Utility”** shall mean the board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

**“STU Interface(s)”** shall mean the point(s) at which the CTU network is connected to the intrastate transmission system of the Procurer’s State, and at which the Procurer agree to receive power up to the Requisitioned Capacity.

For generation source in Delhi, the STU Interface shall be the point where power from the bus-bar of the generating station from which power is contracted to be supplied, is injected into the Delhi STU/ Procurer's distribution network at an appropriate voltage level as specified by the Procurer;

**“Successful Bidder(s)”** shall mean the Bidder(s) selected by the Procurer pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

**“Tariff”** shall mean the tariff as bid by the Supplier against Rfp from NDMC.

**“Trading Licensee”** shall mean the Bidder which is an Electricity Trader and submits its Bid on the basis of an exclusive power purchase agreement executed with the entity developing the generation source from where the power is proposed to be supplied by the Bidder;

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

# **SECTION - 1**

## **INTRODUCTION**

## SECTION 1

### **1. INTRODUCTION**

**1.1** The **New Delhi Municipal Council**, hereinafter referred to as the Procurer, acting through Director (Projects), 7th Floor, Palika Kendra, Parliament Street, New Delhi hereby invites interested Bidders to purchase the RFP to participate in the bidding process for the selection of Successful Bidder(s) for long term procurement of Solar power for meeting its Renewable Power Obligations (RPO) as stipulated in the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012. The responsibility of the Successful Bidder(s) shall be to supply power to the Procurer as per the terms and conditions of the RFP Documents (including, without limitation, the PPA).

**1.2** The Procurer proposes to select the Bidder(s) having the prescribed qualifications and whose Quoted Tariff is determined to be acceptable as per the provisions of clause 3.5 to become Seller(s). The Seller(s) shall supply power to the Procurer pursuant to and as per the terms and conditions of the PPA to be signed between the Procurer and the Seller. The Procurer shall pay to the Seller(s), the Quoted Tariff of the Successful Bidder(s) which has been adopted by the Delhi Electricity Regulatory Commission as per the terms and conditions of the PPA.

### **1.3 Power Procurement**

#### **1.3.1 Scope**

Based on the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012, this bidding process is being carried out to meet RPO requirement mandated till FY 2017. The Procurer presently has some own solar generation and part of the balance renewable requirement is proposed to be contracted through this bidding process. Further, all Bidders shall indicate the Solar energy source of power generation from where the Contracted Energy would be delivered. Supply of power is permitted from operational power plants or from power plants proposed to be commissioned on or before the Final Delivery Date, subject to availability of power over the term of the PPA.

Brief scope of power procurement is given as under:

<b>S.No.</b>	<b>Scope</b>	<b>Details</b>
1	Contract Period (in years)	25 Years
2	Requisitioned Energy/Contracted Energy (MU)	Requisitioned/Contracted Energy - 83 MUs per annum. Note: 1. The Procurer intend to procure the energy to meet the RPO requirement through this bid. 2. The Procurer shall accept per annum any quantum of energy offered by the Bidder within 80% and 120% of the contracted Energy per annum.
3	Tender Capacity	45 MW (AC)
4	Minimum Bid Capacity	45 MW (AC) The minimum capacity in MW for bidding is 45 MW (AC). The Bidder can install higher capacity to meet the energy requirements.
5	Scheduled Delivery Date	Scheduled Delivery Date shall be 13 months from the date of signing the PPA.  Part commissioning of the Project shall be accepted by NDMC subject to the condition that the minimum capacity for acceptance of any part commissioning shall be 10 MW. In case when remaining capacity to be commissioned in lower than 20 MW, then Bidder has to commission the remaining capacity together. The PPA will remain in force for a period of 25 years after Commissioning of station as a whole. Bidder shall be allowed to commission the entire capacity within 13 months from signing the PPA (other than when Force Majeure is applicable) without imposition of Liquidated Damages. If complete capacity is not Commissioned within 13 months, the PPA capacity shall stand reduced/amended to the Project capacity commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project Capacity. NDMC shall deduct payments corresponding to Rs. 2 Lakh/MW for the un commissioned capacity through encashment of remaining (including Guarantee)
6	Interconnection Point	Bidder shall submit their Quoted Tariff at the Interconnection Point and specify the same in the Financial Bid as per format 4.7 to this RFP. The PPA shall be signed between the Successful Bidder/ Project Company and the Procurer for the Contracted Energy at the Interconnection Point.
7	Transmission Losses	The transmission losses from the Interconnection Point to the Delivery Point (as

		certified by a relevant authority) shall be borne by the Procurer.
8	Arranging Transmission Access	The Procurer shall be wholly responsible to arrange transmission access from the Delivery Point.
9	Transmission Charges	For transmission of power from the Interconnection Point to the Delivery Point, the Seller shall be responsible to enter into a commercial arrangement with the CTU/STU, as the case may be, to bear the transmission charges as notified by the CERC/SERC, if any, as the case may be, from time to time. Further, the Seller shall then claim such Charges from the Procurer, if any.

### 1.3.2 Evacuation of Power

The responsibility for evacuation of power beyond the Delivery Point will be of the Procurer, who shall ensure the inter-connectivity of STU Interface(s) with its distribution network for evacuation of power.

**1.3.3** Details of the Procurer's last three years of the aggregate technical and commercial losses are enclosed separately as per Format 5.2 of this RFP.

**1.3.4** The Procurer has already sent intimation to the Appropriate Commission about the initiation of the bidding process.

### 1.4 Issue of RFP Documents

All those interested in purchasing the RFP may write to the Procurer with a non-refundable fee of Rs. 5,000/- (Rupees five thousand) only, in the form of a demand draft / banker's cheque / pay order drawn in favor of Secretary, New Delhi Municipal Council, payable at New Delhi, latest by 17.11.2014 (last date of sale of RFP). The RFP shall be issued to a Bidder on any working day from 30.09.2014 to 17.11.2014 (last date of sale of RFP) between 10:30 hours (IST) to 15:30 hours (IST) by the Procurer, on written request and against payment of the above mentioned fee. In case where a Bidder requests the RFP and RFP Documents to be sent by post, the Procurer shall promptly dispatch the RFP and RFP Documents to such Bidder by registered mail/air mail only upon receipt of written request and payment of the above mentioned fee from such Bidder. The Procurer shall under no circumstances, be held responsible for late delivery or loss of documents so mailed. The RFP and RFP Documents can also be downloaded from [www.ndmc.gov.in](http://www.ndmc.gov.in). However, in such case the Bidder can submit the Bid only on submission of a nonrefundable fee of Rs. 5,000/- (Rupees Five Thousand only) as mentioned above separately along with the Bid. Amendments to the RFP and RfP documents, if any, shall be posted at [www.ndmc.gov.in](http://www.ndmc.gov.in).

## **SECTION- 2**

# **INFORMATION AND INSTRUCTIONS FOR BIDDERS**

## 2. INFORMATION AND INSTRUCTIONS FOR BIDDERS

### 2.1 Qualification Requirements

2.1.1 The Bidder should be a Company (Bidding Company) or a Consortium of Companies (Bidding Consortium) with one of the Companies acting as the Lead Member of the Bidding Consortium. Short-listing of Bidder will be based on meeting the Qualification Requirements specified for Net Worth, Technical criteria and connectivity with Grid given below:

#### 2.1.2 Companies Eligible for Participation:

- (i) Companies incorporated in India under the Companies Act, 1956 or Companies Act, 2013;
- (ii) A foreign company can also participate on standalone basis or as a member of consortium at RfS stage. But before signing of PPA, keeping the original shareholding unchanged it has to form an Indian Company registered under the Companies Act, 1956 or Companies Act, 2013;
- (iii) Companies shortlisted in RfS/RfP can also execute the project through a Special Purpose Vehicle (SPV). However the SPV has to be formed before signing of PPA keeping the original shareholding unchanged. In case applications for multiple projects have been made, separate project company can be formed for each project.
- (iv) Limited Liability Partnership (LLPs) / Limited Liability Companies (LLCs) are not eligible for participation.

2.1.3 The Bidder must meet the Qualification Requirements independently as Bidding Company or as a Bidding Consortium with one of the Members acting as the Lead Member of the Bidding Consortium. Bidder will be declared as a Qualified Bidder based on meeting the Qualification Requirements specified below and as demonstrated based on the documentary evidence submitted by the Bidder in the Bid. Further, a Bidding Consortium can participate in the bidding process if any Member of the Consortium has purchased the RFP.

2.1.4 The Bidder must fulfill the following Qualification Requirements specified in Clause 2.1.4.1, 2.1.4.2, 2.1.4.3 & 2.1.4.4

2.1.4.1 **Networth:** Networth should be equal to or greater than the value of Rs. 40 Crore or equivalent USD [*Calculated as per provisions mentioned in Note below*]. The computation of Networth shall be based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

**[Note:** For the Qualification Requirements, if data is provided by the Bidders in foreign currency, equivalent rupees of Networth will be calculated using bills selling exchange rates (card rate) USD / INR of State Bank of India prevailing



*on the date of closing of the accounts for the respective financial year as certified by the Bidders' banker.*

*For currency other than USD, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion.*

*If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account.]*

In case of more than one Financial Bid being submitted by the Bidder from different generation sources (for clarification, it means projects located at different sites), the network must be fulfilled by such Bidder for the sum total of the capacities being offered by it in its Financial Bids. If the Network is lesser, only the bid, till the level that satisfy the Network criterion, would be considered.

Network shall be computed in the following manner by the Bidder:

**Network** = Paid up share capital

Add:	Reserves
Subtract:	Revaluation Reserves
Subtract:	Intangible Assets
Subtract:	Miscellaneous Expenditures to the extent not written off and carry forward losses

The computation of Network shall be based on unconsolidated audited annual accounts of the company. For the purpose of the computation of Network, any one of the last three financial years and upto seven (7) days prior to Bid Deadline shall be considered. The Bidder would thus be required to submit annual audited accounts for the last three financial years 2010-11, 2011-2012 & 2012-13, while indicating the year which should be considered for evaluation along with a certificate from a chartered accountant to demonstrate the fulfilment of the criteria. In case a Bidder seeks qualification on the basis of Network as on seven (7) days prior to Bid Deadline, the Bidder shall submit a certificate from its Statutory Auditor/Chartered Accountant certifying the Network on the date seven days prior to submission of Bid and also submit the un-audited financial statements of the Company duly certified by its Statutory Auditor/Chartered Accountant for the date on which the certificate of Network has been obtained.

#### 2.1.4.2 **Turnover:**

The Bidder should have minimum turnover of INR 200 Crores or equivalent USD based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

Note :

- a) If the Bid is submitted by a Bidding Consortium the Network and Turnover requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The Network and Turnover requirement to be met by each Member of the Bidding Consortium

shall be computed in proportion to the equity commitment made by each of them in the Project Company as per the Consortium Agreement (Format 4.3), forming part of its Non Financial Bid. Any Bidding Consortium, if selected as the Successful Bidder, shall, for the purpose of supply of power and performing the obligations under the PPA, incorporate a Project Company with equity participation by the Members as provided in the Consortium Agreement (Format 4.3) within Twenty Five (25) days of the issue of Letter of Intent.

- b) The Bidder may seek qualification on the basis of Networth and Turnover capability of its Parent Company and / or it's Affiliate(s) for the purpose of meeting the Qualification Requirements. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of Networth and Turnover capability of its Parent Company and / or its Affiliate(s). The Networth and Turnover capability of a particular Parent Company (ies) and / or Affiliates, shall not be used by more than one Bidder. In case the Bidder is bidding from different generation sources (i.e. two or more Solar sources), then the Bidder may rely on the financial capability of same Parent Company (ies) and/ or Affiliates for meeting the cumulative networth requirements. The determination of the relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in form of a certification from a practicing Company Secretary or Statutory Auditor to establish such relationship shall be furnished by the Bidder along with the Bid. If the Bidding Company or a Member of a Bidding Consortium relied on the financial capability of its Parent/Affiliates, such Bidding Company or Member have to submit a Board resolution as per Format 4.5, from its Parent / Affiliate, as the case may be, that the obligation of the Bidding Company or the Member of the Consortium to submit a Contract Performance Guarantee, if selected, shall be deemed to be their obligations as well and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee, the same shall be submitted by such Parent / Affiliate, as the case may be. The relationship of Parent Company or Affiliate with the Bidding Company or Member of a Bidding Consortium shall not change during the term of the PPA without the prior consent of the Procurer.

#### 2.1.4.3 **Credit Rating:**

The Company whose Networth and Turnover capability is being used to meet the Networth and Turnover Requirement, should have credit rating of BBB-/A3 or equivalent or should be dept free company or they have to give undertaking that they obtained within 30 days from the date of LOI.

#### 2.1.4.4 **Technical Criteria**

The Bidder or any Member of the Bidding Consortium must be a qualified Solar EPC Contractor and have experience of development and commissioning of solar photovoltaic power projects of at least 20 MW capacity commissioned atleast 6 months from the bidding date in India as a developer of the project or as an EPC provider.

Further, the Bidder shall deploy commercially established technology wherein there is at least one project successfully operational of the proposed technology, for at least one year, anywhere in the world.

- 2.1.5 Any Bidding Company may choose to incorporate a Project Company for the purpose of supply of power. In such a case, the Bidding Company will have to comply with the

requirement of Clause 2.1.4.1, 2.1.4.2, 2.1.4.3, 2.1.4.4 above.

- 2.1.6 In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

In case the Bidder is a Bidding Consortium, all such Consents, Clearances and Permits shall be obtained in the name of the Lead Member and the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

- 2.1.7 The Bidder shall undertake (as per Format 4.1) not to submit any other bid, on the basis of the same generation source/project from the same location and quantum of power from such generation source/project from the same location as mentioned in its Bid, in any bid process till the time of selection of Successful Bidder and signing of PPA or the termination of the process, whichever is earlier subject to a maximum period of two hundred and ten days (210 days) from the Bid Deadline. If the Bidder is a Trading Licensee, it shall undertake (as per Format 4.1) not to submit any bid, on the basis of power purchase agreement submitted along with its Bid for the same quantum of energy and generation source/project specified therein, in any bid process till the time of selection of Successful Bidder and signing of PPA or the termination of the process, whichever is earlier subject to a maximum of period of two hundred and ten days (210 days) from the Bid Deadline.

Bidders shall furnish Format 4.1, duly certified by the person authorized through board resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be.

- 2.1.8 A Bidder shall submit only one response in the same bidding process from one generation source/project at the same location, individually as Bidding Company or as a Member of a Bidding Consortium (including the Lead Member). It is further clarified that any of the Parent Company / Affiliate / Ultimate Parent Company of the Bidding Company or a Member of a Bidding Consortium shall not separately participate directly or indirectly in the same bidding process from the same generation source/project at the same location. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same bidding process, the Bid of all such Bidder(s) shall be rejected.

- 2.1.9 Notwithstanding anything stated above, the Procurer reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information/documents. The Procurer reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.

- 2.1.10 The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA. Where the Financially Evaluated Entity is not the Bidding Company or a Member of a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to

be an Affiliate of the Financially Evaluated Entity till execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage or cancellation of the LOI, as the case may be.

## **2.2 Submission of Bid by the Bidder**

2.2.1 The information and/or documents shall be submitted by the Bidder as per the formats specified in Section 4 (Formats for RFP) of this document.

2.2.2 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures / pamphlets. Non-adherence to formats and / or submission of incomplete information may be a ground for declaring the Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of the Bidder.

2.2.3 The Bidder shall furnish documentary evidence in support of meeting Qualification Requirements to the satisfaction of the Procurer and shall furnish unconsolidated / consolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditor's report, etc., as the case may be, of Bidding Company or each Member of a Consortium or Financially Evaluated Entity for the last three (3) financial years immediately preceding the Bid Deadline for the purpose of calculation of Networth.

### **2.2.4 Bid submitted by a Bidding Consortium**

2.2.4.1 The Bid shall contain a legally enforceable Consortium Agreement entered amongst the Members in the Bidding Consortium, designating one of the Members to be the Lead Member (as per Format 4.3). There shall be only one Lead Member which shall continue to hold fifty one percent (51%) equity in the Project Company up to a period of one (1) year from COD of the station as a whole as per provisions of Clause 2.7 of this RFP. Each Member of the Bidding Consortium shall duly sign the Consortium Agreement making it liable for raising the required funds for its respective equity investment commitment as specified in the Consortium Agreement. In the absence of a duly executed Consortium Agreement, the Bid will not be considered for evaluation and will be rejected.

Provided however that the Lead Member of the Bidding Consortium shall be liable to the extent of one hundred percent (100%) of the total proposed commitment of equity investment in the Project Company, i.e., for both its own liability as well as the liability of the other Members.

Provided further that the Consortium Agreement shall not be amended without the prior written approval of the Procurer.

2.2.4.2 The Lead Member shall designate one person to represent the Consortium in its dealings with the Procurer. The person designated by the Lead Member shall be authorized through a Board Resolution (as per Clause 2.4.1.1 A) iv) a)) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Consortium, etc. Additionally, the Bid shall also contain a Power of Attorney in original (as per Format 4.2 in favor of the Lead Member issued by the other Members of the Consortium.

2.2.4.3 The Bid shall also contain a Board Resolution as per Format 4.5 from each Member of the Consortium confirming that the RFP & RFP Project Documents have been read, examined and understood and also the Bid has been reviewed and each element of the Bid is agreed to by them.

#### **2.2.4.4 Point of contact in case of Bidding Consortium**

In case of Bid being submitted by a Consortium, the Lead Member of the Consortium shall be the single point of contact for the purposes of the Bid process, before the date of signing of last of the RFP Documents. Settlement of any dispute amongst the Consortium Members shall not be the responsibility of the Procurer and the Procurer shall not bear any liability whatsoever on this account.

#### **2.2.5 Bid submitted by Bidding Company**

2.2.5.1 The Bidding Company should designate one person to represent the Bidding Company in its dealings with the Procurer. The person so designated shall be authorized through a Board resolution (as per Format 4.5) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Bidding Company, etc.

#### **2.2.6 Clarifications**

2.2.6.1 The Procurer will not enter into any correspondence with the Bidders, except to furnish clarifications on the RFP and RFP Documents, if necessary. The Bidders may seek clarifications or suggest amendments to RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Procurer at the address, date and time mentioned in Clause 2.16.1. For any such clarifications or amendments, the Bidder should adhere to the Format 5.4 of the RFP. For the avoidance of any doubt, it is hereby clarified that there shall be no extension in the Bid Deadline on account of clarifications sought in accordance with this Clause 2.2.6.

2.2.6.2 Pre Bid meeting for clarifications on RfP will be held on 18<sup>th</sup> Nov'2014 at 3:00 PM at

Third Floor, Council Room, New Delhi  
Municipal Council,  
Palika Kendra, Sansad Marg, New Delhi -110001

2.2.6.3 The Procurer is not under any obligation to entertain /respond to suggestions made or to incorporate modifications sought for.

2.2.6.4 Bidders may note that all clarifications need to be submitted in writing. No telephonic clarification shall be entertained by the Procurer.

2.2.7 The drafts of the PPA, as per Format 5.3 Enclosure -1, has been attached to this RFP; Upon finalization of the RFP Documents after the amendments as envisaged in Clause 2.3, the Procurer shall initial all the pages of the PPA and the other RFP Documents and upload the same on its website [www.ndmc.gov.in](http://www.ndmc.gov.in) on or before the Bid Deadline.

## **2.2.8 Incorporation of a Project Company**

2.2.8.1 In case of the Successful Bidder being a Bidding Consortium, it shall, within Twenty Five (25) days of the issue of the Letter of Intent, incorporate a Project Company provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid as specified in the Consortium Agreement such Project Company shall be responsible to execute the RFP Documents. The investment in the Project Company shall be as per provisions of the Consortium Agreement and shall be subject to the provisions of Clause 2.7 of this RFP.

Incorporation of more than one Project Company for supply of Power through projects at different locations is not permitted.

2.2.8.2 The Project Company shall execute the RFP Documents and be responsible for supply of power to the Procurer as per the provisions of the PPA.

2.2.9 Within seven (07) days of intimation by the Procurer regarding approval of tariff from the Hon'ble Commission, , the Successful Bidder/ Project Company, as the case may be, shall:

a. Provide a valid Contract Performance Guarantee as per the provisions of Clause 2.13 of this RFP; and thereafter

b. Execute the PPA and other RFP Documents after approval by the Appropriate Commission in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

2.2.10 All stamp duties payable for executing the RFP Documents shall be borne by the Successful Bidder.

2.2.11 If the Successful Bidder(s) / Project Company fails or refuses to comply with any of its obligations under Clauses 2.2.8 and 2.2.9, and provided that the Procurer and / or other parties to the respective RFP Documents are willing to execute the said documents, such failure or refusal on the part of the Successful Bidder/ Project Company shall constitute sufficient grounds for cancellation of the Letter of Intent. In such cases, the Procurer shall be entitled to invoke the Bid Bond of the Successful Bidder(s) / Project Company.

### **2.2.12 Financial Closure or Project Financing Arrangements:**

The Project Developer shall report tie-up of Financing Arrangements for the projects within 210 days from the date of signing Power Purchase Agreement. At this stage, the Project Developer would furnish also within the aforesaid period the documents given here under:

- a. The SUPPLIER shall obtain all Consents, Clearances and Permits required for supply of power to NDMC as per the terms of this Agreement;
- b. The SUPPLIER shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- c. The SUPPLIER shall sign a Transmission Agreement with CTU/STU confirming the

evacuation and connectivity of the CTU/STU system upto the delivery point of SUPPLIER by the Scheduled Commissioning date;

- d. The SUPPLIER shall produce the documentary evidence of the clear title and possession of the acquired/leased land @ 1.5 hectare /MW in the name of SUPPLIER;

**Note:**

- I. Change in the location of land from one state to other is not permitted. Change in location within same state will be permitted till signing of PPA without affecting the quoted tariff.
  - II. The land should be free from all encumbrances.
  - III. The land should neither have been proposed for other purposes & nor should have been mortgaged
- e. Technology Tie-up (in case of Solar Power project): Technology to be used shall be as approved by Appropriate Commission or the Government of India appointed body, agency and institutions as the case may be.
  - f. If the identified generation source is an existing power station, the Bidder shall submit the documentary evidence regarding commissioning of the power station and available surplus capacity (for the Contract Period) equivalent to the capacity offered in its bid in lieu of the requirements specified above in this Clause 2.2.12 (a) to (e).

If the Bidder is a trading licensee, it shall have executed exclusive and binding power purchase agreement(s) for a term of 25 years for Solar Project, for the quantity of energy offered in its Bid and shall provide a copy of the same as part of its Bid. In such a case, the Bidder shall ensure that the entity with whom it has executed the exclusive Power Purchase Agreement (PPA) for supply of power under the bidding process has completed the project preparatory activities as mentioned in Clause 2.2.12 (a) to (e) above. Furthermore, the Bidder shall be responsible for procuring from the entity developing the power station and submitting in its Bid, all the documentary evidence to establish that the project preparatory activities as in Clause 2.1.2.2 (a) to (e) above have been completed. In case of supply being proposed from an existing power station, the Bidder should submit evidence in the form of a declaration sent to RLDC/SLDC, as the case may be, in support of commercial operation of the power station.

## **2.3 Amendment of RFP**

- 2.3.1 The Procurer, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder may modify the RFP, including the timelines specified in Clause 2.8.2, by issuance of addendum / modification / errata and / or a revised document. Such document shall be made available on the company website, [www.ndmc.gov.in](http://www.ndmc.gov.in). All such amendments/modifications shall be issued at least ten (10) days prior to the Bid Deadline.
- 2.3.2 In case Bidders need any further clarifications not involving any amendments in respect of the final RFP and RFP Documents, they should ensure that written request for such clarification is delivered to the Procurer at least twenty (20) days prior to the Bid Deadline, the Procurer may issue clarifications only, at its sole discretion, which is considered reasonable by it. Any such clarification issued shall be made available on the same website, [www.ndmc.gov.in](http://www.ndmc.gov.in) . Clarifications sought after this date shall not be considered in any

manner and shall be deemed not to have been received. There shall be no extension in Bid Deadline on account of clarifications sought as per this clause.

2.3.3 In case of failure to supply the minimum contracted power, the cost of covering the RPO obligation will be paid by the concessionaire.



## 2.4 Bidding Process

### 2.4.1 Bid Formats

2.4.1.1 The Bid in response to this RFP shall be submitted by the Bidders in the manner provided in Clause 2.10. The Bid shall comprise of the following:

**(A) ENVELOPE -I – Non- Financial (Technical and Commercial) Bid comprising of:**

- i. Covering Letter as per prescribed Format 4.1
- ii. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium shall be provided in original as per format attached hereto as Format 4.2

In the event any Member of the Bidding Consortium is a foreign entity, it may submit Board Resolutions in place of Power of Attorney for the purpose of fulfilling the requirements under this Clause. Provided that such Board Resolutions shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board Resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid

- iii. Bank Guarantee (Bid Bond) in the form as per Format 4.6
- iv. Board Resolutions, as per prescribed formats enclosed as Format 4.5 duly certified by the Company Secretary or a Director of the relevant Bidder, as applicable to the Bidder and mentioned here under:
  - a. Board resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favor of the person signing the Bid;
  - b. Board resolution from each of the Consortium Members, except the Lead Member, in favor of the person authorized to execute the Power of Attorney in favor of the Lead Member.
  - c. Board Resolution from the Bidding Company committing one hundred percent (100%) of the equity requirement for the Project Company / Board Resolutions from each of the Consortium Members together in aggregate committing to one hundred percent (100%) of equity requirement for the Project Company (in case of Bidding Consortium); and
  - d. Board Resolutions from Parent and /or Affiliate (whose credentials have been used), of the Bidding Company/any Member of the Bidding Consortium undertaking to invest the entire amount as committed by Bidding Company/Member of the Bidding Consortium, in the event of failure by such Bidding Company/ Member of the Bidding Consortium to make such investment.
- v. In case of a Bidding Consortium, the Consortium Agreement between the Members in the Consortium as per Format 4.3 along with board resolution from each Member of the Consortium for participating in consortium;
- vi. Format for Qualification Requirements as per Format 4.4, as applicable;

- vii. A disclosure statement as per Format 4.8 regarding participation of any related companies in this bidding process.

**(B) ENVELOPE II – Financial (Price) Bid as per Format 4.7**

The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid as per the prescribed Format 4.7, duly signed by an authorized signatory.

- i. The Bidder shall submit their Quoted Tariff at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.7 of this RFP;
- ii. More than one Bid can be submitted by the Bidder for supply of power, from different generating source or project located at different locations. Each Bid should be submitted separately in accordance with this Clause 2.4.1.1
- iii. The Qualification Requirements for the Bidder would be evaluated for the total quantum of power offered by a Bidder from various generation sources;
- iv. The Bidder may quote for any quantum of energy up to the Requisitioned Energy for the entire term of the PPA, subject to the Minimum Bid Capacity conditions;
- v. From each generation source, the Bidder may submit fractions of total capacity offered which it is willing to supply at the same quoted tariff as specified in Format 4.7;
- vi. The Quoted Tariff, as in Format 4.7, shall be an all-inclusive Tariff up to the Interconnection Point and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, levies, duties while quoting such Tariff. It shall also include any applicable transmission costs and transmission losses (if any) from the generation source up to the Interconnection Point. Availability of the inputs necessary for supply of power shall be ensured by the Seller and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the plant location must be reflected in the Quoted Tariff. The
- vii. Bidders should quote yearly tariffs considering escalations as they deem fit. Bidders can exercise the following options while quoting yearly tariffs:
  - a) Bidders may quote tariff for the first year and then mention escalation % for the remaining years.
  - b) Bidders may quote different tariffs (in Rs./kwh) for all the years factoring necessary escalations.
  - c) Bidders may also choose to quote fixed tariffs for in blocks of 5 years with appropriate escalations.

Bidders may note that tariffs need to be quoted in Format 4.7 for a period of 25 years starting from 1<sup>st</sup> year to 25<sup>th</sup> Year.

Appropriate transmission charges from the Interconnection Point to the Delivery Point as per Format 4.7 shall be added for Bid evaluation purpose.

#### 2.4.1.2 Commencement of Supply of Power to Procurer:

The Seller shall at all times be responsible, at its own cost and risk for the commencement of supply power to the Procurer as per the terms of the PPA.

2.4.1.3 Wherever information has been sought in specified formats, the Bidders shall furnish the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

#### 2.5 The Bidder should note that:

- (a) If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of its Bid, the Procurer reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the Effective Date, consequences specified in the PPA shall apply;
- (b) If for any reason the Bid of any Successful Bidder is rejected, the Procurer may:
  - (i) Consider the next lowest Financial Bid from a Bidder other than the Successful Bidder(s) whose Bids are responsive and valid; or
  - (ii) Annul the bid process; or
  - (iii) Take any such measure as may be deemed fit in the sole discretion of the Procurer;
- (c) The Procurer shall accept per annum any quantum of energy offered by the bidder within 80% and 120% of the contracted energy per annum.
- (d) Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the Procurer and shall not be returned to the Bidders;
- (e) Language of the Bid shall be English only;
- (f) Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per Format 4.1;
- (g) The Procurer may, at its sole discretion, ask for additional information/ document and/ or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However, no change in the substance of the Quoted Tariff shall be sought or permitted by the Procurer;
- (h) Non submission and / or submission of incomplete data / information required under the provisions of the RFP shall not be construed as waiver on the part of the Procurer of the obligation of the Bidders to furnish the said data / information unless the waiver is in writing;
- (i) The Procurer reserves the right to verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary;
- (j) The Bidders shall satisfy themselves, on receipt of the RFP, that the RFP is complete in all respects. Intimation of any discrepancy shall be given to the Procurer at the address provided in Clause 2.16 of this RFP immediately. If no intimation is received

from any Bidder within ten (10) days from the date of issue of this RFP or from the date on which it was made available on *www.ndmc.gov.in* it shall be considered that the issued document, complete in all respects, has been received by the Bidder;

- (k) Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources. The Procurer shall not be responsible for losses suffered by the Bidders in relying on any information provided in the RFP;

## **2.6 Bidder to inform itself fully**

- 2.6.1 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, it shall not be relieved from any of its obligations under the RFP Documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever.
- 2.6.2 The technical requirements of integrated grid operation are specified in the Indian Electricity Grid Code (IEGC). The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in India.

In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, Electricity Laws, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act 1999, IEGC, the Environment Protection Act 1986 and Forest (Conservation) Act 1980, the Land Acquisition Act 1984, the regulations framed by Regulatory Commissions and all other related acts, laws, rules and regulations prevalent in India, as amended from time to time. The Procurer shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidder undertakes and agrees that, before submission of its Bid; all such factors as generally stated above, have been fully investigated and considered while submitting the Bid.

- 2.6.3 The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits required for the supply of power to Procurer. The Procurer shall have no liability to obtain any of the Consents, Clearances and Permits required for setting up of the generation facilities and/ or supply of power.

## **2.7 Minimum Equity holding/Equity Lock-In**

- 2.7.1 The aggregate equity shareholding of the Successful Bidder in the issued and paid up equity share capital of the Seller shall not be less than the following:
  - a) The Bidding Company/Lead Member shall continue to hold fifty one percent (51%) equity

in the Project Company up to a period of one (1) years after Commercial Operation Date of the relevant Project as per provisions of the relevant RFP Documents. The Financial Member, if applicable, shall be required to maintain an equity stake of 15% in the Project Company for a period of at least one (1) years from the Commercial Operation Date of the relevant Project as per the provisions of the RFP Documents. Provided that where a single Member claims both the Network for meeting the Financial Criteria as well as relevant technical experience for meeting the technical criteria, then such Member shall be the Lead Member and shall be required to hold and maintain an aggregate equity stake required of the Lead Member as specified.

- 2.7.2 In case of a Bidding Consortium, any Member, other than the Lead Member, shall be allowed to divest its equity as long as the other remaining Members (which shall always include the Lead Member) hold the minimum equity specified in Clause 2.7.1 (a) above. [ In case of a Bidding Company, any investing entity(ies) shall be allowed to divest its equity as long as the other remaining investing entity(ies) hold the minimum aggregate equity specified in Clause 2.7.1 (a) above.]
- 2.7.3 The Successful Bidder may invest in the equity share capital of the Project Company through its Affiliate(s) or Ultimate Parent Company or Parent Company (ies). If the Successful Bidder so invests through any Affiliate(s) or Ultimate Parent Company or Parent Company (ies), the Successful Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained.
- 2.7.4 If equity is held by the Affiliates, Parent Company or Ultimate Parent Company, then such Affiliate, Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Project Company to another Affiliate or to the Parent Company / Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate/ Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate / Parent Company / Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate / Parent Company / Ultimate Parent Company. All transfers of shareholding of the Project Company by any of the entities referred to above which reduces the equity of the Parent Company/ Lead Member of the Bidding Consortium below 51% shall be after prior written permission from the Procurer.
- 2.7.5 The provisions as contained in this clause shall override the terms of the Consortium Agreement submitted as a part of Bid.
- 2.7.6 The provisions contained in Clause 2.7.1 to Clause 2.7.6 shall not be applicable in case of Bidding Company bidding on its own name, meeting all Qualification Requirements on its own and not forming a separate Project Company.

## **2.8 Due Dates**

- 2.8.1 The Bidders should submit the Bids so as to reach the address specified below by 1530 hrs (IST) on 24<sup>th</sup> Dec. 2014:

**Designation:** Director - Projects,  
**Address :** New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,

2.8.2 The following shall be the time schedule for completion of the bidding process

<b>Event</b>	<b>Schedule</b>
Date of issue of RFP	29 <sup>th</sup> Sept. 2014
Date for Receipt of Clarifications	18 <sup>th</sup> Nov-2014
Issuance of Revised RFP	12 <sup>TH</sup> Nov-2014
Pre Bid Meeting	18 <sup>th</sup> Nov-2014
Response to Clarifications	9th Dec'2014
Bid submission and opening of Non-Financial (Technical and Commercial) Bid	24th Dec-2014
Opening of Financial (Price) Bid of Qualified Bidders	2 <sup>nd</sup> Jan-2015
Short listing of Successful Bidder(s) and issue of LOI	10 <sup>th</sup> Jan- 2015
Date of signing the RFP Documents( including PPA)*	30 <sup>th</sup> July-2015

*\*After obtaining approval of PPA from the Appropriate Commission*

## **2.9 Validity of the Bid**

2.9.1 The Bidder shall submit the Bid which shall remain valid up to two hundred and ten (210) days after the Bid Deadline ("Bid Validity"). The Procurer reserves the right to reject any Bid which does not meet the aforementioned validity requirement.

2.9.2 The Procurer may solicit the Bidders' consent for an extension of the period of validity of the Bid NDMC website. In the event any Bidder refuses to extend its Bid Validity as requested by the Procurer, the Procurer shall return the Bid of such Bidder, and the Procurer in such case will not be entitled to invoke the Bid Bond. A Bidder accepting the Procurer request for validity extension shall not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of the Bid Bond as requested by the Procurer and further undertake not to participate in any bid process within seven (7) days of such request, failing which the Bid shall not be considered as valid.

**2.10 Method of Submission**

2.10.1 Bids are to be submitted in a single closed cover envelope (as mentioned in Clause 2.10.2) containing Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) each one duly closed separately. Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) should be transcript in the following way;

Envelope I (Non-Financial Bid)

superscript - "Bid for selection of Seller(s) for procurement of power on long term basis under "Case 1-RE" bidding procedure.

Name of the Bidder -

.....

Due for opening on .....

Envelope I: Non Financial Bid"

Envelope II (Financial Bid)

superscript - "Bid for selection of Seller(s) for procurement of power on long term basis under „Case 1-RE" bidding procedure.

Name of the Bidder

.....

Due for opening on: .....

Envelope II: Financial Bid "

In case the Bidder is offering capacity from more than one generation source/project, the Financial Bid from different generation sources/projects should be sealed in separated envelopes and these envelopes shall be placed in Envelope II.

2.10.2 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) (mentioned in Clause 2.10.1) for the Bid to be submitted by Bidders should be packed in a single closed cover envelope, with the following superscript:

Bid for selection of Seller(s) for procurement of power on long term basis under "Case 1-RE" bidding procedure.

Due for opening on *[Insert date of opening of Non-Financial Bid]*

**Director (Projects)**  
**Address: 7<sup>th</sup> Floor, Room No 7008,**  
**Palika Kendra, Sansad Marg,**  
**New Delhi-110001**  
**Phone: 011-41501383**

**“Name of the Bidder .....**”

***[Insert name of Bidder]***

- 2.10.3 The Bidders have the option of sending their Bid either by registered post; or speed post; or courier; or by hand delivery, so as to reach the Procurer by the Bid Deadline. Bids submitted by telex / telegram / fax / e-mail shall not be considered under any circumstances. The Procurer shall not be responsible for any delay in receipt of the Bid. Any Bid received after the Bid Deadline or not accompanied with the proof of Purchase of Bid Documents/ Draft towards purchase of Bid Document shall not be considered and shall be returned.
- 2.10.4 It may be noted that Non-Financial Bid (Envelope I) shall not contain any information/document relating to Financial Bid. If Non-Financial Bid contains any such information / documents, the Procurer shall not be responsible for premature opening of the Financial Bid.
- 2.10.5 All pages of the Bid, except for the Bid Bond (Format 4.6) and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, (if any), must be signed by the authorized signatory on behalf of the Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the authorized signatory at least on the first and last page of such document.
- 2.10.6 Bidders shall submit the Bid in one (1) original plus 2 (two) copies, copies required for Non-Financial bid only, duly signed by the authorized signatory of the Bidder. The original Bid shall be clearly marked “ORIGINAL”, and all other copies are to be clearly marked “COPY OF BID”. In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.
- 2.10.7 No change or supplemental information to a Bid will be accepted after the Bid Deadline, unless the same is requested for by the Procurer as per Clause 2.5 (g).  
Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline. In cases where the Bid is withdrawn by the Bidder before the Bid Deadline, then such Bid shall be returned unopened.
- 2.10.8 If the outer cover envelope or Envelope I (Non-Financial Bid) or Envelope II (Financial Bid) is not closed and not transcribed as per the specified requirement, the Procurer will assume no responsibility for the Bid's misplacement or premature opening.



## **2.11 Preparation Cost**

The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions and attending Pre-bid meetings, and finalization and execution of the RFP Documents, etc., the Procurer shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid process.

## **2.12 Bid Bond (EMD)**

2.12.1 Each Bidder shall submit the Bid accompanied by Bid Bond, as per Format 4.6 for an amount of Rs. 2 lakh per MW corresponding to the capacity offered, issued by any of the Banks listed in Format 5.6.

The validity of the Bid Bond should be 240 days (210+30 days) after the bid deadline as per the Format 4.6

2.12.2 The Bid Bond, may be invoked by the Procurer or its authorized representative, without any notice, demure, or any other legal process and the LOI withdrawn upon occurrence of any of the following:

[Insert in case the Successful Bidder is a Bidding Company choosing to incorporate a Project Company and in case of a Bidding Consortium: "Failure to incorporate the Project Company as a legal entity within Five (5) days of issue of Letter of Intent"]; or Failure to execute the RFP Documents subject to the provisions of Clause

2.2.11; or

Failure to furnish the Contract Performance Guarantee; or

Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 2.5.

2.12.3 The Bid Bonds of all Bidders, whose Bids are declared non-responsive, shall be returned and released by the Procurer within Five (5) days after the date on which the Financial Bids are opened.

2.12.4 The Bid Bonds of all unsuccessful Bidders shall be returned and released by the Procurer within a period of Five (5) days of the occurrence of the earlier of the following:

a) submission of the Contract Performance Guarantee as per Clause 2.13 of the RFP and the execution of the RFP Documents (as applicable) by the Successful Bidder(s); or

b) Expiry of the Bid Validity/extended validity of Bid of unsuccessful Bidders; or

2.12.5 The Bid Bonds of all Bidders shall be returned and released by the procurer within a period of Fifteen (15) days of the occurrence of the termination/cancellation of Bid process by the Procurer.

2.12.6 The Bid Bond of the Successful Bidder(s) shall be returned upon signing of the RFP Documents and submission of the Contract Performance Guarantee.

### **2.13 Contract Performance Guarantee (CPG)**

2.13.1 Within seven (07) days of intimation by the Procurer regarding approval of tariff from the Hon'ble Commission, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide to the Procurer the Performance Guarantee in the format provided in the Format 5.5, for an amount of Rs ---- [not less than that derived on the basis of Rs. 5 Lakh per MW of the Contracted Capacity], (and rounded off to the nearest one lakh with the principle that amounts below Rs. 50,000/- shall be rounded down and amounts of Rs. 50,000/-and above shall be rounded up). The Performance Guarantee shall be initially valid for a period of three (3) months after the Scheduled Delivery Date and thereafter shall be dealt with in accordance with the provisions of the PPA. The Performance Guarantee shall be issued by the banks listed in Format 5.6.

In case the Successful Bidder is unable to obtain the Contract Performance Guarantee for the total amount from any one bank specified in Format 5.6, the Successful Bidder may obtain the same from not more than three (3) banks specified in Format 5.6. The Bidder also has the option of providing 50% of the Contract Performance Guarantee as a Corporate Performance Guarantee as per the format enclosed at 5.5 (B).

2.13.2 Non submission of the CPG by the Successful Bidder(s) as per the provisions of this Clause 2.13 may lead to the invocation of the Bid Bond and thereafter, the provisions of Clause 2.5 (b) shall be applicable.

### **2.14 Opening of Bids**

2.14.1 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) shall be opened as per the following time schedule and at the venue where the Bids are required to be submitted, as specified in Clause 2.8, in the presence of one representative from each of such Bidders who wish to be present:

Opening of Envelope I (Non-Financial Bid): 16.00 Hrs on 24th Dec, 2014,

Opening of Envelope II (Financial Bid) : 16.00 Hrs on 2nd Jan, 2015,

or such other dates as may be intimated by the Procurer to the Bidders through NDMC web site.

In the event of any of the above dates falling on a day which is not a working day or which is a public holiday, the Bid shall be opened on the next working day at the same venue and time.

2.14.2 The following information from each Bid shall be read out to all the Bidders at the time of opening of Envelope I (Non-Financial Bid) and Envelope II (Financial Bid):

1. Name of the Bidder including Members of the Bidding Consortium, if applicable,
2. Details of the Bid Bond (applicable only for Envelope I).
3. Quantum of power offered and its source (applicable only for Envelope II).
4. Details of Interconnection Point.

5. Quoted Tariff (applicable only for Envelope II).

## **2.14 Right to withdraw the RFP and to reject any Bid**

2.15.1 This RFP may be withdrawn or cancelled by the Procurer at any time without assigning any reasons thereof without incurring any liability on any account. The Procurer further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

## **2.16 Enquiries**

2.16.1 Written clarifications on the RFP and RFP Documents as per Clause 2.2.6 may be sought from:

*Mr. O.P. Mishra,*  
*Designation: Director- Projects,*  
Telephone:011-23340298  
E-mail: director.it@ndmcmil.gov.in

**2.17** The Procurer reserves the right to interpret the Bid submitted by the Bidder in accordance with the provisions of this RFP and make its own judgment regarding the interpretation of the same. In this regard the Procurer shall have no liability towards any Bidder and no Bidder shall have any recourse to the Procurer with respect to the selection process. The Procurer shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The Procurer's decision in this regard shall be final and binding on the Bidders.

## **2.18 Confidentiality**

2.18.1 The parties undertake to hold in confidence this RFP and RFP Documents 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;
- c) disclosures required under applicable Law, without the prior written consent of the other parties of the concerned agreements.

Provided that the Successful Bidder(s) agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the RFP and RFP Documents to any person, to the extent stipulated under the applicable Law.

## **SECTION - 3**

### **EVALUATION CRITERIA**

### **3.1 Bid Evaluation**

The evaluation process comprises the following four steps:

- Step I – Responsiveness check
- Step II – Bid Evaluation of Non-Financial Bid
- Step III - Evaluation of Financial Bid
- Step IV – Successful Bidder(s) selection

#### **3.2 STEP- I : Responsiveness check**

The Bid submitted by the Bidder shall be scrutinized to establish “Responsiveness”. Each Bidder’s Bid shall be checked for compliance with the submission requirements set forth in this RFP.

Any of the following conditions shall cause the Bid to be “Non-responsive”:

- i) Bids that are incomplete ( i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution, applicable board resolutions, format for disclosure, valid Bid Bond, Consortium Agreement);
- ii) Bid not received by the due date and time;
- iii) Bid having Conflict of Interest;
- iii) Bidder submitting or participating in more than one Bid either as a Bidding Company or as a Member of Bidding Consortium;
- iv) Bidder delaying in submission of additional information or clarifications sought by Procurer as applicable;
- v) Bidder makes any misrepresentation as specified in Clause 2.5(a).

#### **3.3 STEP -II : Evaluation of Non-Financial Bid**

3.3.1 Step II (Evaluation of Non-Financial Bid - Envelope I) will be carried out considering the information furnished by Bidders as prescribed under Section 4 (Formats for Bid Submission). This step would involve evaluation of the Bid of the Bidding Company/ Bidding Consortium as per the provisions specified in Section 2 of this RFP.

#### **3.4 STEP -III : Evaluation of Financial Bid**

Financial Bids (Envelope II) of the Qualified Bidders shall be opened in presence of the representatives of such Qualified Bidders, who wish to be present, as per the time lines indicated in this RFP, or such other date as may be intimated by Procurer to the Bidders. The evaluation of Financial Bid shall be carried out based on the information furnished in Envelope II (Financial Bid).

- 3.4.1 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.4.1.1 (B) of this RFP. Any Bid not meeting any of the requirements as per Clause 2.4.1.1 (B) of this RFP may cause the Bid to be considered “Non-responsive” at the sole decision of the Procurer. Financial Bid not in conformity with the requirement of Sl. No. (iv) and (vi) of Clause 2.4.1.1 (B) of this RFP shall be rejected.
- 3.4.2 The Bidders shall quote the Tariff as specified in Format 4.7. Based on the Quoted Tariff provided by the Bidders, the Levelized Tariff shall be calculated for the term of the PPA.
- 3.4.3 For the purpose of comparison of Financial Bids, the following escalations and discount rate shall be considered:

Head	Value
1. Discount Rate for computation of Levelized Tariff	This shall be the rate notified by CERC on 7 <sup>th</sup> Oct 2013
2. Annual escalation rate applicable to normative Transmission Charges	This shall be the rate notified by CERC on 7 <sup>th</sup> Oct 2013

**The factor at Sl. No. 2 shall be applied from the Bid Deadline (as applicable).**

- 3.4.4 Applicable transmission charges shall be added to such Quoted Tariff as described below.

### 3.4.5 Transmission Charges

The transmission charges shall be as per the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010. The Interconnection Point specified by the Bidder in its Financial Bid shall be used to add the applicable transmission charges.

a) Applicable transmission charges as specified in Format 5.8 from such Interconnection Point up to the Delivery Point [including Discom charges (if applicable), State Charges, CTU Charges]] with appropriate escalation shall be added to the escalated Quoted Tariff.

b) In case of Interconnection Point being a Delivery Point, no transmission charges shall be added.

[Note: In case of transmission charge matrix being given on Rs./MW/day basis, appropriate conversion of transmission charges on per kWh based on CUF/PLF as quoted by the Bidder, as the case may be, shall be carried out before adding up the same for evaluation purpose].

### **3.4.6 Transmission Loss**

The Quoted Tariffs (Rs. kWh) of each of the Bidder for each year of the term of the PPA, calculated as per provisions of Clause 3.4.3 and after adding applicable escalated transmission charges, shall then be adjusted for the applicable transmission losses in the following manner:

Adjusted Quoted Tariff (in Rs./kWh) = Quoted Tariff (in Rs. kWh as calculated in Clause 3.4.3 and after adding applicable escalated transmission charges)\* Aggregate Adjustment Factor (AAF):

Where,

Aggregate Adjustment Factor(AAF) = (AF(Injection Point)\* (AF(Delivery Point)\* (AF (STU losses as specified by the Bidder in format 4.7) and

Adjustment Factor (AF)=1/((1-applicable transmission loss (in %))/100)

The applicable transmission loss (in %) shall comprise of

- a) The transmission loss (in %) for the intrastate transmission link connecting the Interconnection Point to the Injection Point, if applicable and specified by the Bidder in Format 4.7; and
- b) The applicable normative transmission loss (in %) at the Injection Point and the Delivery Point as provided in CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010

### **3.4.7 Computing Levelized Tariff**

The adjusted Quoted Tariffs (Rs./kWh) as calculated in Clause 3.4.6 above for each Bidder for the term of PPA, shall then be discounted upto the Scheduled Delivery Date by applying the discount factor of [ based on the Discount Rate as mentioned in Clause 3.4.3 above] and such aggregate discounted value for the term of the PPA shall be divided by the sum of such discount factors so as to calculate the Levelized Tariff of each Bidder.

The Levelized Tariff shall be calculated by assuming uniformly for all Bidders that power shall get delivered on the Scheduled Delivery Date.

**3.4.8** For the ease of submission and clarity of Bidders, the methodology of computation of Levelized Tariff is presented in the Format 5.7 of this RFP.

### **3.5 STEP -IV: Successful Bidder(s) Selection**

3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.

- 3.5.2 The Levelized Tariff calculated as per Clause 3.4.7 for all Financial Bids of Qualified Bidder shall be ranked the lowest to the highest Financial Bids.
- 3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.
- 3.5.4 Void
- 3.5.5 At any step during the selection of Successful Bidder(s) in accordance with Clauses 3.5.2 to 3.5.3, the Procurer reserves the right to increase / decrease the Requisitioned Energy by up to twenty percent (20%) of the quantum indicated in Clause 1.3.1 to achieve the balance Requisitioned Energy and select the Successful Bidder with the lowest Levelized Tariff amongst the remaining Bids. Any increase / decrease in the Requisitioned Energy exceeding twenty percent (20%) of the energy in Clause 1.3.1, can be made only with the approval of the Appropriate Commission.
- 3.5.6 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.
- 3.5.7 There shall be no negotiation on the Quoted Tariff between the Procurer and the Bidder(s) during the process of evaluation.
- 3.5.8 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, "Accepted Unconditionally", under the signature of the authorized signatory of the Successful Bidder and return such copy to the Procurer within seven (7) days of issue of LOI.
- 3.5.9 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Procurer reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 (b) shall apply.
- 3.5.10 The Procurer, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices.





## **SECTION - 4**

# **FORMATS FOR BID SUBMISSION**

## **SECTION-4**

### **4. FORMATS FOR BID SUBMISSION**

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section 2 and other Bid submission requirements specified in the RFP.

- i. Format of Covering Letter (Format 4.1)
- ii. Formats for Power of Attorney (Format 4.2)
- iii. Format for the Consortium Agreement (Format 4.3), if applicable
- iv. Format for Qualification Requirement (Format 4.4)
- v. Format for Board Resolutions (Format 4.5)
- vi. Format for Bid Bond (Format 4.6)
- vii. Format for Financial Bid (Format 4.7)
- viii. Format for Disclosure (Format 4.8)

A Bidder may use additional sheets to submit the information for its detailed response.

***[The Procurer is authorized to modify any of these formats before the Bid Deadline to facilitate seeking relevant project specific details for assessing Qualification Requirements specified in the RFP or for any other reasons. Such modification shall not be construed as a change in Standard Bid Documents]***

#### 4.1 Format of Covering Letter

(The covering letter should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

Date: -----

From :----- (Insert name and address of Bidding Company/ Lead Member of the Bidding Consortium)

\_\_\_\_\_  
Tel :  
Fax :  
E-mail address#

To

*Director - Project  
Address: New Delhi  
Municipal Council, Palika  
Kendra, Room  
No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New  
Delhi -110001*

.....

Sub: **Bid for supply of power on Long term basis through tariff based competitive bidding process under Case 1-RE bidding procedure in response to RFP dated ..... [Insert date in dd/mm/yyyy].**

Dear Sir,

We, the undersigned ..... [insert name of the 'Bidder'] having read, examined and understood in detail the RFP and RFP Documents for supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer hereby submit our Bid comprising of Financial Bid and Non-Financial Bid. We confirm that neither we nor any of our Parent Company/ Affiliate/ Ultimate Parent Company has submitted Bid from the same generating source/project other than this Bid directly or indirectly in response to the aforesaid RFP.

1. We give our unconditional acceptance to the RFP, dated ..... [Insert date in dd/mm/yyyy] and RFP Documents attached thereto, issued by the Procurer, as amended. In token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.
2. **Bid Bond**

We have enclosed a Bid Bond of Rs. .... (Insert Amount), in the form of bank guarantee no.....(Insert number of the bank guarantee) dated

..... [Insert date of bank guarantee] as per Format 4.6 from .....  
(Insert name of bank providing Bid Bond) and valid up to.....in terms of  
Clause 2.12 of this RFP. The offered quantum of power by us is ..... MW  
(Insert total capacity offered) corresponding to \_\_\_\_\_MUs.

(Details of Bid bond to be given separately in case the Bidder is offering  
capacity from more than one generation source)

3. We have submitted our Financial Bid strictly as per Format 4.7 of this RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

**4. Acceptance**

We hereby unconditionally and irrevocably agree and accept that the decision made by the Procurer in respect of any matter regarding or arising out of the RFP shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to supply of power.

**5. Familiarity with Relevant Indian Laws & Regulations**

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of RFP have been fully examined and considered while submitting the Bid.

**6. Contact Person**

Details of the contact person are furnished as under:

Name : .....  
Designation : .....  
Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
E-mail address :.....

7. We are enclosing herewith the Non-Financial Bid (Envelope I) and Financial Bid (Envelope II) containing duly signed formats, each one duly closed separately, in one (1) original + t w o (2) copies (applicable for Non-Financial Bid) (duly attested) as desired by you in the RFP for your consideration.
8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Procurer.

9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.

*(Insert in case the Bidder is not a Trading Licensee)* “We undertake that we shall not submit any bid, on the basis of the same generation source/project and quantum of power from such generation source/project as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier, subject to a maximum of period of two hundred and ten (210) days from the Bid Deadline.”

*(Insert in case the Bidder is a Trading Licensee)* “We undertake that we shall not submit any bid, on the basis of power purchase agreement submitted along with our Bid for the same quantum of power and generation source/project specified here in, for any other bid process till the selection of the Successful Bidder(s) and issue of LOI, or till the termination of the process, whichever is earlier, subject to a maximum of period of two hundred and ten (210) days from the Bid Deadline.

10. (Insert the in case of incorporation or Project Company by the Bidding Company /Bidding Consortium) We undertake that if we are selected as the Successful Bidder we shall transfer all Consents, Clearances and Permits in the name of Project Company within the period specified in the RFP Documents, if such Consent, Clearances and Permits have been obtained in the name of our company other than the Project Company prior to the submission of our Bid.

11. We confirm that our Bid meets the following conditions:
- a. The Scheduled Delivery Date is not later than the date specified in the RFP, subject to the provisions of the PPA.
  - b. The quantum of power offered in our Bid is equal to or greater than the Minimum Bid Capacity and is for the following offered capacity.

Generation Source & Technology	Energy	Offered Energy in MUs, CUF and corresponding capacity in MW		
		2016-18		
		CUF/ PLF (%)	Capacity	Technology
1	..... MUs		.....MW	
2	..... MUs		.....MW	
Total of all Generation Sources	..... MUs		.....MW	

12. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP including:
  - a) Financial Bid(s) is/are in the prescribed Format 4.7, and is submitted duly signed by the authorized signatory
  - b) Financial Bid(s) is/are unconditional
13. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of two hundred and ten (210) days from the Bid Deadline.
14. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1, of this RFP.
15. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree that the same would be treated as a Seller's event of default under PPA, and the consequent provisions of PPA shall apply.

Dated the \_\_\_\_\_ day of, 20...

Thanking you,  
We remain,

Yours faithfully,

**(Signature, Name and Designation of Person Authorized by the board as per Clause 2.4.1.1 (A) iv (a))**

**4.2 Format for Power of Attorney to be provided by each of the other members of the Consortium in favor of the Lead Member**

**POWER OF ATTORNEY**

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

KNOW ALL MEN BY THESE PRESENTS THAT  
M/s.....having its registered office at  
....., .....,.....and M/s .....

having its registered office at ..... , (Insert names and registered offices of all Members of the Consortium) the Members of Consortium have formed a Bidding Consortium named ..... (insert name of the Consortium) (hereinafter called the "Consortium") vide Consortium Agreement dated..... and having agreed to appoint M/s.....as the Lead Member of the said Consortium do hereby constitute, nominate and appoint M/s.....a company incorporated under the laws of .....and having its Registered /Head Office at .....as our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the Bid and if required, submission of Bid against RFP (in the event selected as the qualified Bidder). We also authorize the said Lead Member to undertake the following acts

- i) To submit Bid on behalf of Consortium Members.
- ii) To do any other act or submit any information and document related to the above Bid.

It is expressly understood that in the event of the Consortium being selected as Successful Bidder, this Power of Attorney shall remain valid, binding and irrevocable until the Bidding Consortium achieves execution of PPA.

We as the Member of the Consortium agree and undertake to ratify and confirm all whatsoever the said Attorney/Lead Member has done on behalf of the Consortium Members pursuant to this Power of Attorney and the same shall bind us and deemed to have been done by us.

IN WITNESS WHEREOF M/s ....., as the Member of the Consortium have executed these presents on this..... day of ....., 20.....under the Common Seal of our company.



For and on behalf of  
Consortium Member  
M/s.....  
-----

(Signature, Name and Designation of Person  
Authorized by the board as per Clause 2.4.1.1 (A) iv (b))

(Name  
Designation  
Place  
Date: )

Accepted

-----  
(Signature, Name, Designation and Address of the person  
authorised by the board of the Lead Member as per Clause 2.4.1.1 (A) iv (a))

Attested

-----  
(Signature of the executant)

-----  
(Signature & stamp of Notary of the place of execution)

Place:-----

Date : -----.

### 4.3 Format for the Consortium Agreement

(To be on non-judicial stamp paper or appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country)

FORM OF CONSORTIUM AGREEMENT BETWEEN M/S  
.....M/S, M/S.....AND  
M/S.....FOR (.....) AS PER CLAUSE  
2.2.4

THIS Consortium Agreement (hereinafter referred to as “Agreement”) executed on this..... day of .....Two Thousand..... between M/s.....a company incorporated under the laws of ..... and having its Registered Office at .....(hereinafter called the “Party 1”), which expression shall include its successors, executors and permitted assigns) and M/s.....a company incorporated under the laws of .....and having its Registered Office at .....(hereinafter called the “party 2”), which expression shall include its successors, executors and permitted assigns) and M/s..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the “Party n”, which expression shall include its successors, executors and permitted assigns) (The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members) for the purpose of submitting the Bid in response to the RFP and in the event of selection as Successful Bidder to comply with the requirements as specified in the RFP and ensure execution of the RFP Documents as may be required to be entered into with the New Delhi Municipal Council.

Party 1, Party 2, and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

**WHEREAS** New Delhi Municipal Council “Procurer” desired to procure power on long term basis through tariff based competitive bidding process.

**WHEREAS** the Procurer has invited Bids, vide RFP dated.....(insert date) issued to .....(insert the name of purchaser of RFP).

**AND WHEREAS** Clause 2.2.4 of the RFP stipulates that the Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment for the formation of a Project Company and undertake to submit the Contract Performance

Guarantee as required as per the provisions of the RFP, as specified herein.

**NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:**

In consideration of the above premises and agreement all the parties in this Consortium do hereby mutually agree as follows:

1. In consideration of the selection of the Consortium as the Successful Bidder by the Procurer, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... (Insert name of the Lead Member), shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of ..... (the names of all the other Members of the Consortium to be filled in here).
2. The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members.
3. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective equity obligations. Each Consortium Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
4. (Insert as applicable) The Consortium shall be responsible to incorporate a Project Company as a legal entity as per the provisions of the RFP, within Five (5) days of issue of LOI provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid.

OR

The Consortium has incorporated a Project Company by the name .....(Insert name of the Project Company) to undertake the responsibilities and obligations for supply of power as per the provisions of the RFP Documents.

The percentage of equity holding of each Member of the Consortium in the Project Company shall be/is as follows:

Name	Percentage of equity holding in the Project Company
Party 1	....
....	....
Party n	....
Total	100%

**(Note: The percentage equity holding for any Consortium Member in the Project Company cannot be Zero in the above table.)**

[If the Bidder is offering capacity from different generating sources, the above table has to be filled in separately for each generation source or

project]. In case of any breach of any of the equity investment commitment as specified under clause 4 above by any of the Consortium Members for the formation of the Project Company, the Lead Member shall be liable to meet the equity obligation.

5. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
6. It is further specifically agreed that the financial liability for equity contribution of Lead Member shall, not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of their scope of work or financial commitments.
7. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at New Delhi alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
8. It is hereby agreed that the Lead Member shall furnish the Bid Bond, as stipulated in the RFP, on behalf of the Consortium.
9. It is hereby agreed that in case of selection of Bidding Consortium as the Successful Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Contract Performance Guarantee on behalf of the Seller in favor of the Procurer, as stipulated in the RFP and PPA. The Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members.
10. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, for the Successful Bidder, shall remain valid over the term of the PPA, unless expressly agreed to the contrary by the Procurer.
11. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid.
12. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated as annexed hereto as Annexure-I forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to the supply of power envisaged in the RFP Documents.
13. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.

15. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of the Procurer.

This Consortium Agreement

(a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,

(b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;

(c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of Procurer:

**IN WITNESS WHEREOF**, the Parties to the Consortium Agreement have, through their authorized representatives, executed these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the  
Board of Director's resolution  
dated .....

.....  
(Signature) (Signature of authorized  
representative)  
Name: .....  
Designation:.....  
Place: .....

For and on behalf of  
Consortium Member (party 1)  
M/s.....

.....

Name:.....  
Designation: .....  
Date:.....

Witness2:

1.  
..... (Signature)

Name ..... Designation.....

2.  
..... (Signature)

Name ..... Designation.....

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the  
Board of Director's  
resolution dated .....

.....  
(Signature) (Signature of authorized

For and on behalf of  
Consortium Member(Party n)  
M/s.....

.....

representative)  
Name: .....  
Designation:.....  
Place: .....

Name:.....  
Designation: .....  
Date:.....

Witness2:

1.  
..... (Signature)

Name ..... Designation.....

2.  
..... (Signature)

Name ..... Designation.....

**4.4. FORMAT FOR QUALIFICATION REQUIREMENT-**

**A. Financial**

[on the letter head]

To,

**Director - Project  
Address: New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New Delhi -110001**

Dear Sir,

**Sub: Bid for procurement of Solar power on long term basis through tariff based competitive bidding process in response to the RFP dated .... [Procurer to insert date].**

We submit our Bid /Bids for the total capacity of -----MW (corresponding to -----MU of energy at CUF/PLF of ----- (insert total offered capacity in MW; for Bids from single/multiple generation source, mention sum total of offered capacity across all offers) for which we submit details of our Qualification Requirements.

Generation Source & Technology	Offered Energy in MUs, CUF and corresponding capacity in MW			
	2016-18			
	Energy	CUF/ PLF (%)	Capacity	Technology
1	..... MUs		.....MW	

**[Note: Applicable in case of Bidding Company]**

a) We certify that the Bidding Company/Member in a Bidding Consortium has a minimum Net worth of Rs. ....crore (Rupees ----- crore) or equivalent US\$ based on unconsolidated audited annual accounts of any of the last three (3) financial years----- (indicate last three financial years) (strike out financial years not applicable) . This



Net worth has been calculated in accordance with instructions provided in clause 2.1.4.1 of the RfP.

b) We certify that the Bidding Company/Member in a Bidding Consortium has a minimum Turnover of Rs. ....crore (Rupees ----- crore) or equivalent US\$ based on unconsolidated audited annual accounts of any of the last three (3) financial years

c) We certify that the Company whose Network and Turnover capability is being used to meet the Network and Turnover Requirement, has a credit rating of \_\_\_\_\_.

For the above calculations, we have considered the Net worth, Turnover, Credit Rating of the Bidding Company or its Parent/Affiliates for the financial year ----- as per following details

Name of the Company	Relationship with Bidding Company*	Networth (Rs. Crore)#	Turn Over#	Credit Rating
1				
2				
3				
4				

\* The column for "Relationship with Bidding Company" is to be filled only in case the financial capability of Parent/Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship as on seven (7) days prior to the Bid Deadline, duly certified by a practicing Company Secretary/Statutory Auditor is required to be attached with the format.

# In case a Bidder offers capacity from more than one generation source, the Networth and Turnover shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder.

**[Note: Applicable in case of Bidding Consortium]**

(To be filled by each Member in a Bidding Consortium separately)

- i. Name of Member:
- ii. Total Networth requirement: Rs crores
- iii. Total Turn over Requirement: Rs Crores
- iv. Percentage of equity commitment by the Member\_%
- v. Networth requirement for the Member\*\*: Rs. crores.  
 Generation Source: -----  
 Networth Requirement to be met by Member in Proportion to the Equity Commitment: Rs. ----- Crore (Equity Commitment (%) X Rs. [ ] Crore)  
 Turnover Requirement to be met by Member in Proportion to the

Equity Commitment: Rs. ----- Crore (Equity Commitment (%) X Rs. [ ] Crore)

For the above calculations, we have considered Networth & Turnover by Member in Bidding Consortium and/ or Parent/ Affiliate for financial year as per following details:

<b>Name of the Company</b>	<b>Relationship with Bidding Company</b>	<b>Networth (Rs. Crore)#</b>	<b>Turnover (Rs. Crore)#</b>
Company 1			
.....			
.....			

- \* The column for "Relationship with Bidding Company" is to be filled only in case the financial capability of Parent/Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship as on seven (7) days prior to the Bid Deadline, duly certified by a practicing Company Secretary /Chartered Accountant is required to be attached with the format.
- \*\* Networth and Turnover requirement to be met by a Member shall be in proportion to the equity commitment of the Member for the Project Company.

[If a Bidder is offering capacity from different generating sources or projects, the above table has to be filled in separately for each such generation source or project.]

**Yours faithfully**

**(Signature & Name of the Person the Board)**

**(Signature and Stamp of Authorized by Chartered Accountant)**

**Date:**

**Note:**

Along with the above format, in a separate sheet, provide details of computation of Net worth & Turnover duly certified by Chartered Accountant & Rating Certificate from the rating agency.

**B. FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1)**

(This format should be on the Letter Head of the Bidding Company/  
Lead Member of the Bidding Consortium)

To,

***Director - Project  
Address: New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New Delhi -110001***

Dear Sir,

**Sub: Bid for procurement of power on long term basis through tariff based  
competitive bidding process in response to the RFP dated ....**

We hereby submit following details/documents in support of meeting the  
Qualification Requirements prescribed in Clause 2.1.

- 1 Commissioning Certificate for 20MW of grid connected projects in  
the project state commissioned 6 months prior to bid date
- 2 Technology (For Solar PV) : The detail of the technology used/to be  
used is enclosed.
- 3 In case of existing power station: Documentary evidence regarding  
commissioning of the power station and available surplus capacity  
equivalent to the capacity offered in our Bid.

**Yours faithfully**

**(Signature & Name of the person**

**Authorised By the board)**

**Date:**

#### 4.5 Format for Board Resolution

**(Format for the Board resolution to be passed)**

1. **RESOLVED THAT** Mr/Ms....., be and is hereby authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Bid for "Procurement of [--] MUs on long term, from Solar Energy Source by the Procurer" in the country of India, including signing and submission of all documents and providing information / Bid to New Delhi Municipal Council, representing us in all matters before New Delhi Municipal Council, and generally dealing with New Delhi Municipal Council in all matters in connection with our bid for the said Project. (To be provided by the Bidding Company/Lead Member of the Consortium/Project Developer in case bidding company is a Trading Licensee)
  
2. **FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 or Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded to invest total equity in the Project. (To be provided by the Bidding Company/ Lead Member of the Consortium/Project Developer in case bidding company is a Trading Licensee)

**[Note: In the event the Bidder is a Bidding Consortium, in place of the above resolution at Sl. No. 2, the following resolutions are to be provided]**

**FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded to invest (----%) equity [*Insert the % equity commitment as specified in Consortium Agreement*] in the Project **(To be provided by the each Member of the Bidding Consortium including Lead Member such that total equity is 100% )**

**FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to participate in consortium with M/s -----[*Insert the name of other Members in the Consortium*] and Mr/Ms....., be and is hereby authorized to execute the the Consortium Agreement. Further, the RFP and RFP Project Documents have been read, examined and understood and also the Bid has been reviewed and each element of the Bid is agreed to. **(To be provided by the each Member of the Bidding Consortium including Lead Member)**

**FURTHER RESOLVED THAT** Mr/Ms....., be and is hereby authorized to execute the Power of Attorney in favour of the Lead Member. (To be provided by the each Member of the Bidding Consortium except the Lead Member)

And

**FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated ..... executed by the Consortium as per the provisions of the RFP. (To be passed by the Lead Member of the Bidding Consortium)

**3. FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to M/s. .... ( Insert name of Bidding Company/Consortium Member (s) to use our financial capability for meeting the Qualification Requirements for “Procurement of Power from 45 MW plant on long term from Solar Energy Source by the Procurer” and confirm that all the equity investment obligations of M/s ... (Insert Name of Bidding Company/Consortium Member (s) shall be deemed to be our equity investment obligations and in the event of any default the same shall be met by us. We have noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP and confirm that in the event of failure by M/s..... (Insert Name of Bidding Company/Consortium Member (s) to submit the Contract Performance Guarantee, we shall submit the Contract Performance Guarantee **(To be passed by the Parent/Affiliate (s) whose financial credentials have been used.**

Certified true copy

-----

(Signature, Name and stamp of Company Secretary/Director)

Notes:

1. This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary/Director.
2. Memorandum and Articles of Association of the Bidder and its Parent/Affiliate(s) whose credentials have been used should be submitted.
3. The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.

4. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

#### 4.6 Format for Bid Bond

##### FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR BID BOND

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country.)

In consideration of the ..... (Insert name of the Bidder) submitting the Bid *inter alia* for supply of power on *long* term basis through tariff based competitive bidding process for meeting the requirements of Procurer in response to the RFP dated .....[*Insert date of RFP*] issued by New Delhi Municipal Council, (hereinafter referred to as Procurer/ Authorized Representative) and such Procurer agreeing to consider the Bid of ..... [*Insert the name of the Bidder*] as per the terms of the RFP, the .....(Insert name and address of the bank issuing the Bid Bond, and address of the head office) (here in after referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer/Authorized Representative or its authorized representative at New Delhi [forthwith on demand in writing from the Procurer or any representative authorized by it in this behalf an amount not exceeding Rupees ..... (Rs.....) only [*Insert amount not less than as calculated as per Clause 2.12 of RFP*], on behalf of M/s. ....[*Insert name of the Bidder*].

This guarantee shall be valid and binding on the Guarantor Bank up to and including ..... (Insert date of validity of Bid Bond in accordance with Clause 2.12 of this RFP) and shall not be terminable by notice or any change in the constitution of the Guarantor Bank 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 concerned parties.

Our liability under this Guarantee is restricted to Rupees ..... (Rs.....) only. Our Guarantee shall remain in force until .....

[*Insert Date of validity of Bid Bond in accordance with Clause 2.12 of this RFP*] Procurer or its authorized representative shall be entitled to invoke this Guarantee until ..... [*Insert Date, which is 30 days after the date in the preceding sentence*].

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer or its authorized representative, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer or its authorized representative.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall

not require New Delhi Municipal Council or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at New Delhi 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, liquidation, winding up, dissolution 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, the Procurer or its authorized representative shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder to enforce any security held by "Procurer" as applicable or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank hereby agrees and acknowledges that New Delhi Municipal Council shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs ..... (Rs..... only) and it shall remain in force until ..... [Date to be inserted on the basis of Clause 2.12 of RFP], with an additional claim period of Five (5) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if Procurer" as applicable or its authorized representative serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of .....,20..... at .....

Signature

Designation with Bank Stamp

Attorney as per power of attorney No. ....

For:

..... [Insert Name of the Bank]

**Banker's Stamp and Full Address:**

Dated this ..... day of ..... 20.....

Note: The Stamp Paper should be in the name of the Executing Bank.



#### 4.7 Format for Financial Bid (Format-A)

Description	Details
Energy offered (MUs) in figures	
Energy offered (MUs) in words	
Total Capacity offered (MW) in figures	
Total Capacity offered (MW) in words	
CUF/PLF	
Date by which bidders can commit to supply*	
Name of the Interconnection Point	
Name of the Injection Point	
Whether the STU system be used to transmit power between the Interconnection Point and the Injection Point?: (Insert "Yes" or "No")	
Specify STU Transmission Charges	
% Transmission loss in STU system** ..... (To be inserted by the Bidder only if STU system is involved at Bidder's end)	
Whether the DISCOM/SEB system be used to transmit power between the Interconnection Point and the Injection Point?: (Insert "Yes" or "No")	
Specify DISCOM/SEB Transmission Charges.....(To be inserted by the Bidder only if DISCOM/SEB system is involved at Bidder's end)	
% Transmission loss in DISCOM/SEB system ..... (To be inserted by the Bidder only if DISCOM/SEB system is involved at Bidder's end)	

\* Not later than Final Delivery Date

\*\* The Bidders shall submit relevant document issued by State/ Central Regulatory Commissions in favor of the charges and losses mentioned

above  
for scrutiny of the Procurers.  
**Format B**

<b>Contract Year</b>	<b>Quoted Tariff</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

#### **4.8 Format for Disclosure**

**(On the Letter Head of Bidding Company / Each Member in a Bidding Consortium) Disclosure**

**To:**

***Director - Project  
Address: New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New Delhi -110001***

**Sub:** Bidders" Disclosure for Bid for supply of power to Procurer in response to the RFP dated ... [Insert date]

We hereby declare that our Parent, Affiliate or Ultimate Parent with which we have direct or indirect relationship are not separately participating in this Bid.

We further declare that the above statement is true and correct. We are aware that if at any stage it is found to be incorrect, our Bid will be rejected and if LoI has been issued, the same will be cancelled and the available bank guarantees will be encashed.

***(Signature & Name of the person  
Authorised By the board)***

## **SECTION - 5**

# **FORMATS FOR BIDDER'S INFORMATION AND REFERENCE**

## **SECTION 5**

### **5. FORMATS FOR BIDDER'S INFORMATION AND REFERENCE**

The following formats and enclosures are provided for Bidder's information and reference and also to provide assistance in preparation of its Bid.

- i. Intentionally Left Blank (Format 5.1)
- ii. Procurer information (Format 5.2)
- iii. RFP Documents (Format 5.3)
- iv. Format for clarifications/ amendments on the RFP/RFP Documents (Format 5.4)
- v. Format for Contract Performance Guarantee (Format 5.5)
- vi. List of Banks (Format 5.6)
- vii. Illustration for Bid evaluation and computation of Levelized Tariff (Format 5.7)
- viii. Transmission charges matrix (Format 5.8)
- ix. Transmission loss matrix (Format 5.9)
- x. Illustration of Affiliates (Format 5.10)

## 5.1 INTENTIONALLY LEFT BLANK

## 5.2 Procurer Information

- 1) Aggregate Technical and Commercial Losses for last three years as available

Year	Aggregate Technical and Commercial Losses
2012-13	10.64%
2011-12	11.49%
2010-11	13.75%

### **5.3 Formats for RFP Documents**

---

ENCLOSURE 1:- Power Purchase Agreement (PPA)





**5.4 Format for Clarifications/ Amendments on the RFP/RFP Documents**

<b>Sl. No.</b>	<b>Name of the Document</b>	<b>Clause No. and Existing provision</b>	<b>Clarification required</b>	<b>Suggested text for the amendment</b>	<b>Rationale for the Clarification or Amendment</b>

**This format shall be used for submission of request for clarifications/amendments on the draft RFP Documents as per the provisions of Clause 2.2.6.1 of this RFP.**

.....  
***(Signature & Name of the person Authorised By the board)***

## 5.5 Format for Contract Performance Guarantee

### Format A (Bank Guarantee)

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country.)**

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and New Delhi Municipal Council (herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at

***New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New Delhi -110001***

forthwith on demand in writing from the Procurer or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... only [Insert the amount of the bank guarantee computed on the basis of Five (5) lakhs/MW with respect to the Contracted Capacity of the Procurer as per the terms of PPA on behalf of M/s. .... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG] and shall in no event not be terminable by notice or any change in the constitution of the Guarantor Bank or the term of the PPA 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. .... (Rs..... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Clause 2.13 of the RFP]. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by,..... [Insert name of the Successful Bidder] and/or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the

Procurer in respect of

any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at New Delhi 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, liquidation, winding up, dissolution 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 the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. .... crores (Rs. .... crores only) and it shall remain in force until .....[Date to be inserted on the basis of Article .....of PPA], with an additional claim period of Five (5) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by

..... [Insert name of the Successful Bidder/Seller].

We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this

..... day of ..... at .....

**Signature**

Name:

Designation with Bank Stamp

Attorney as per power of attorney No. ....

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this ..... day of ..... 20.....

**Notes:**i. The Stamp Paper should be in the name of the Executing Bank.

## **Format B (Corporate Guarantee) (optional)**

### **Corporate Guarantee**

This Corporate Guarantee has been executed at Delhi on this \_\_\_\_\_ day of \_\_\_\_\_ 2014 By \_\_\_\_\_ (**Insert the name of the guarantor on behalf of the Successful Bidder**) a company incorporated under Companies Act, 1956 or Companies Act, 2013 having its Registered Office at \_\_\_\_\_ acting through \_\_\_\_\_ (hereinafter referred to as Guarantor which expression shall unless repugnant to the context in which the same shall be used mean and include its successors in interest and permitted assigns)

#### **In favour of:**

**New Delhi Municipal Council, having Office at Palika Kendra, Parliament Street, New Delhi - 110001** acting through (hereinafter referred to as Beneficiary which expression shall unless repugnant to the context in which the same shall be used mean and include its successors in interest and permitted assigns )

That both Guarantor and Beneficiary have been hereinafter referred to as **Party** when taken individually and as **Parties** when taken in conjunction with each other.

#### **Recitals:**

Whereas NDMC had on \_\_\_\_\_ floated a tender inviting bids for procurement of Solar Power for Long Term to meet its RPO obligations. And whereas \_\_\_\_\_ has submitted its bid in response to the above stated tender vide \_\_\_\_\_ and whereas the bid of \_\_\_\_\_ has been selected by NDMC as the successful bidder.

And whereas as per the terms of the said tender vide clause \_\_\_\_\_ the successful bidder is required to submit a corporate guarantee in favour of NDMC for safeguarding interest of NDMC.

And whereas it has been expressly agreed by the Parties that this guarantee is being executed and furnished by the Guarantor in favour of beneficiary in addition to bank guarantee furnished by \_\_\_\_\_ to cover 50% of Contract Performance Guarantee.

#### **In the mutually agreed representations, promises and Commitments thereof this Guarantee witnesseth as follows:**

1. That this Guarantee shall be valid initially for 03 months after the COD of station as a whole with an additional claim period of thirty (30 days) thereafter.
2. However, the same shall run commensurate with the term/tenure of this agreement and shall be subject to any extension thereof, as may be mutually agreed between parties.
3. That any amount up to and not exceeding Rupees.....only [Insert the 50% of the amount of the guarantee computed on the basis of Five (5) lakhs/MW with respect to the Contracted Capacity of the procurer as per Clause 2.13.1 and 2.13.2] so claimed by the Beneficiary as per this agreement, shall be payable on mere demand and need not be supported by any actual determination thereof. That the decision as to whether there has been an instance warranting the invocation of this guarantee shall be at the sole discretion of Beneficiary and it shall not be open to the Guarantor or \_\_\_\_\_ to question the same or insist on exhaustion of the other remedy (ies) /security (ies) first which may be available to Beneficiary against the Guarantor.

4. This guarantee has been issued unconditionally and unequivocally. Further this Guarantee shall be irrevocable till the time the agreement between \_\_\_\_\_ and NDMC is in force.
5. This guarantee shall cover and provide for the claims raised if any by Beneficiary during the period until expiry of the agreement between NDMC and \_\_\_\_\_ and further till \_\_\_\_\_ months therefrom.
6. In the event any claim being sought by beneficiary as per this agreement, the beneficiary shall raise a written demand for the amount claimed upon the Guarantor, to be payable unconditionally within 10 days of receipt of such demand. Guarantor shall, upon receipt of such demand notice from beneficiary for the claim as specified in the aforesaid Clause 5, undertakes to discharge the same without any demur, protest that this Guarantee shall not be affected by the change in constitution /Management of the Guarantor or the Beneficiary.
7. The beneficiary shall be under no obligation to proceed against \_\_\_\_\_ first before proceeding against the Guarantor and /or invoke this guarantee.
8. That this Guarantee shall subsist and remain valid for the term as specified above, notwithstanding the same has been invoked on one or more occasion(s) by the Beneficiary at any time during the term of this Guarantee.
9. The guarantor shall keep recouping this guarantee till the expiry of the agreed term on each such occasion as and when required.
10. That any variation to the terms of this Guarantee shall not be effective unless mutually agreed reduced to writing and duly signed by both the Parties.
11. That it has been assured by the Guarantor and the Executant herein that it has legal sanction and competency to execute this Guarantee and that the same is not in abrogation of any law or management decision governing the Guarantor.
12. This guarantee will constitute a separate and independent obligation on the part of Guarantor and shall continue in full force and effect so long as the Guarantor's liability under the guarantee to Beneficiary continues.

Executed by	Accepted by
For -----[Insert the name of <b>Successful Bidder with address</b> ]	For New Delhi Municipal Council
Signatures	Signatures
Name	Name
Designation	Designation
Guarantor	Beneficiary

In the presence of:

Witness	Witness
Signatures	Signatures
Name	Name
Address	Address

## **5.6 List of Banks**

### **Scheduled Commercial Banks**

#### **SBI and Associates**

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

#### **Nationalised Banks**

9. Allahabad Bank
10. Andhra Bank
11. Bank of India
12. Bank of Maharashtra
13. Bank of Baroda
14. Canara Bank
15. Central Bank of India
16. Corporation Bank
17. Dena Bank
18. Indian Bank
19. Indian Overseas Bank
20. Oriental Bank of Commerce
21. Punjab National Bank
22. Punjab and Sind Bank
23. Syndicate Bank
24. Union Bank of India
25. United Bank of India
26. UCO Bank
27. Vijaya Bank



## **2. Foreign Banks**

- 1 BNP Paribas
- 2 Citi Bank N.A.
- 3 Deutsche Bank A.G.
- 4 The Hongkong and Shanghai Banking Corporation Ltd.
- 5 Standard Chartered Bank
- 6 ABN Amro Bank N.V.
- 7 UFJ Bank Ltd.
- 8 Sumitomo Mitsui Banking Corporation
- 9 Societe Generale
- 10 Barclays Bank
- 11 Bank of Novascotia

## **3. Scheduled Private Banks**

- 12 ING Vysya Bank Ltd.
- 13 ICICI Bank Ltd.
- 14 HDFC Bank Ltd.
- 15 IDBI Bank Ltd
- 16 Axis Bank
  
- 17 Kotak Mahindra Bank
- 18 IndusInd Bank
- 19 YES BANK

**[The above list is indicative and the Procurer is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]**

**5.7. Illustration for Bid Evaluation and Computation of Levelized Tariff**

Please refer Excel Sheet for Bid Evaluation

## **5.8 Transmission Charges Matrix**

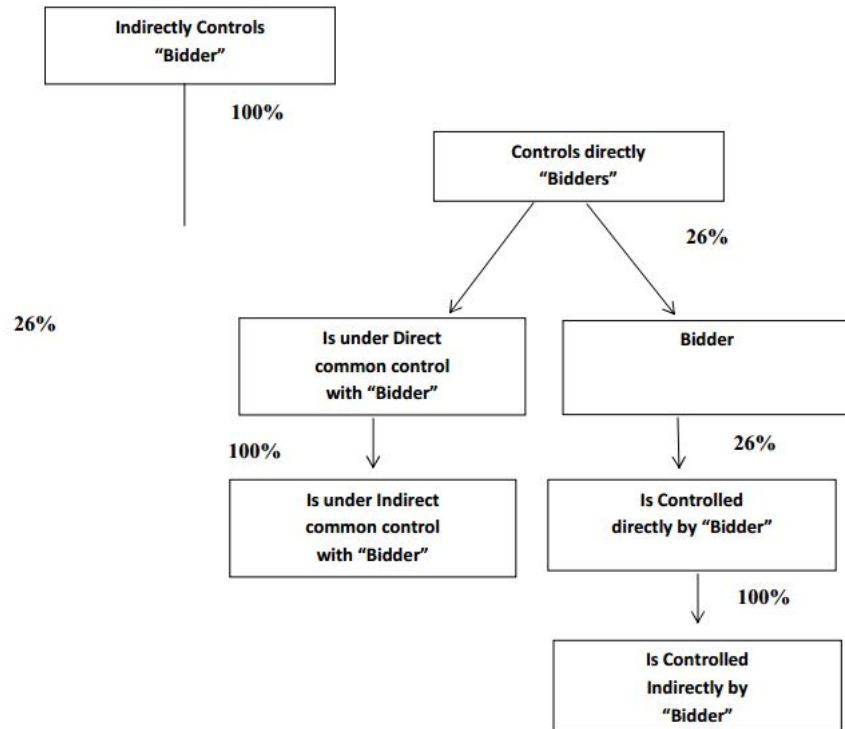
[As notified by CERC]

## 5.9 Transmission Loss Matrix

[As notified by CERC]

RFP for long term power procurement under Solar RE Source under 'Case 1 -RE

5.10 Format for illustration of Affiliates



**DRAFT**

**STANDARD**

**POWER PURCHASE AGREEMENT**

**FOR**

**PROCUREMENT OF 45 MW SOLAR POWER**  
**from Solar P V Power Project**

**ON LONG TERM BASIS**

**Between**

**New Delhi Municipal Council (NDMC)**

**And**

----- **(Insert name of Supplier)**

## Contents

ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	90
ARTICLE 2 : TERM OF AGREEMENT .....	100
ARTICLE 3 : CONDITIONS SUBSEQUENT.....	101
ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT.....	103
ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION	106
ARTICLE 6: DISPATCH.....	107
ARTICLE 7: METERING.....	108
ARTICLE 8: INSURANCES .....	109
ARTICLE 9: APPLICABLE TARIFF .....	110
ARTICLE 10: BILLING AND PAYMENT .....	111
ARTICLE 11: POWER EVACUATION .....	116
ARTICLE 12: FORCE MAJEURE.....	117
ARTICLE 13: CHANGE IN LAW .....	121
ARTICLE 14: EVENTS OF DEFAULT AND TERMINATION.....	122
ARTICLE 15: LIABILITY AND INDEMNIFICATION .....	125
ARTICLE 16: ASSIGNMENTS AND CHARGES .....	128
ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION .....	129
ARTICLE 18: MISCELLANEOUS PROVISIONS.....	131

This Power Purchase Agreement is made on the ..... [Insert date] day of ..... [Insert month] of ..... [Insert year] at ..... [Insert place]

Between

**[Insert name of the Supplier]**, a company incorporated under the Companies Act 1956 or Companies Act,2013 having its registered office at **[Insert address of the registered office of the Supplier]** (hereinafter referred to as "SUPPLIER", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part;

And

New Delhi Municipal Council, (hereinafter referred to as "NDMC", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns), a corporation established by the Central Government of India under The New Delhi Municipal Council Act 1994 as a Party of the second part.

The SUPPLIER and NDMC are individually referred to as 'Party' and collectively referred to as 'Parties'.



Whereas:

- A. Pursuant to the issuance of LOI by NDMC to the SUPPLIER, the SUPPLIER has agreed to set up the Solar Power Project based on Photo Voltaic technology of 45 MW capacity in the state of **[Insert name of State]**.
- C. The SUPPLIER has agreed to sign this Power Purchase Agreement with NDMC to sell Solar Power to NDMC as per the terms and conditions of this Agreement. NDMC has agreed to purchase such Solar Power from SUPPLIER to meet its RPO obligations.
- D. The SUPPLIER has submitted the Performance Bank Guarantee and Corporate Guarantee to NDMC as per the format provided in Schedule 1 of this Agreement.
- E. NDMC agrees to procure power from the SUPPLIER up to the Contracted Capacity (as defined herein) at the Tariff mentioned in this Power Purchase Agreement as per the terms of this Agreement.
- F. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SUPPLIER to NDMC.

**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:**

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 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 Appropriate 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 Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the Delhi Electricity Regulatory Commission (DERC) or the Central Electricity Regulatory Commission, as the case may be;
"Bill Dispute Notice" a	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SUPPLIER and NDMC, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
"Capacity Utilisation Factor" or "CUF" (Sources)	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012 as amended from time to time;
"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;
"Central Empowered Committee"	Shall mean the committee formed as per the provisions of the National Solar Mission for selection of solar power Suppliers;
"Change in Law"	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Commercial Operation Date" the Date from	Shall mean the actual commissioning date of respective Unit(s) of Power Project where upon the SUPPLIER starts injecting power from

	the Project to the Delivery Point;
“Competent Court of judicial Law”	shall mean any court or tribunal or any similar judicial or quasi-body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
““Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, 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 SUPPLIER Preliminary Default Notice or NDMC Preliminary Default Notice as provided in Article 14 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	Shall mean the period beginning from the Effective Date 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 this Agreement
"Contracted Capacity"	45 MW
“Contracted Energy”	shall mean the 83 MU +/- 20% Energy per annum by the Supplier to NDMC at the Interconnection Point.
“Day”	Shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Delivery Point”	Shall mean the withdrawal point specified in CERC (Sharing of Inter-State Transmission Charges and losses) Regulation, 2010 corresponding to the Procurer’s State for transmission of power requiring ISTS, i.e. the interconnection of Delhi STU with CTU; or

	for the generating stations within the State of the Procurer, the point where power from the generation switchyard bus bars is injected into the Delhi STU network or the distribution network of the Procurer;
“Discoms”	Shall mean the distribution utility or the distribution utilities who have signed the PSA (s) with NDMC for purchase of Bundled Power;
“Dispute”	shall mean any dispute or difference of any kind between NDMC and the SUPPLIER, 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 Agreement as provided in Article 17 of this Agreement;
"Due Date"	shall have the same meaning ascribed thereto in Article 10 of this Agreement;
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations 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 regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Event of Default”	shall mean the events as defined in Article 14 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Commercial Operation Date of last Unit of the Project subject to that the supply of power shall be for a period of 25 years from the Commercial Operation Date of respective Unit (s);
“Financing Agreements”	shall mean the agreements pursuant to which the SUPPLIER has sought financing for the Power Project including the loan agreements, security documents, 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 NDMC;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Guidelines”	shall mean “JNNSM Guidelines for selection of New Grid Connected Solar Projects under Second Batch of Phase 1 of JNNSM”

<p>"Grid Code" / "IEGC" or "State Grid Code"</p>	<p>shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State 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;</p>
<p>"Incremental Receivables"</p>	<p>shall have the same meaning as provided in Article 10.3.9 of this PPA.</p>
<p>"Indian Governmental Instrumentality"</p>	<p>shall mean the Government of India, Governments of state(s) of [Insert the name(s) of the state(s) in India, where the Power Project, NDMC and SUPPLIER are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;</p>
<p>"Injection Point"</p>	<p>in relation to each Financial Bid by a Bidder, shall mean the injection point specified in CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 as specified by the Bidder in Format 4.7 of this RFP (i.e. the interconnection of STU of the State in which the Project is located with the CTU)/[in case the Project is located in Delhi, switchyard of the Project with the Delhi STU or, in case of the Project being connected to the distribution network of a distribution licensee in Delhi (other than the Procurer), the interconnection of such distribution licensee with the Delhi STU];</p>
<p>"Installed Capacity"</p>	<p>Shall mean the name plate capacity of all the Units of the Power Project or the capacity of the Power Project (reckoned at the generator terminals), approved by the Appropriate Commission from time to time;</p>
<p>"Insurances"</p>	<p>shall mean the insurance cover to be obtained and maintained by the SUPPLIER in accordance with Article 8 of this Agreement;</p>
<p>"Interconnection Facilities"</p>	<p>shall mean the facilities on SUPPLIER's side of the Interconnection Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and</p>

associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;

- “Interconnection Point” Shall mean the point at 33 kV or above where the power from the solar power project is injected into the CTU/STU transmission system (including the dedicated transmission line connecting the power project with the CTU/STU system).
- “Invoice” or “Bill” shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
- “LatePayment Surcharge” shall have the meaning ascribed thereto in Article 10.2.3 of this Agreement
- "Law" shall mean in relation to this Agreement, all laws including Electricity Laws in force in 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 “L/C” shall have the meaning ascribed thereto in Article 10.3 of this Agreement;
- “Metering point” Metering shall be done at the inter-connection point where the power is injected into the CTU/STU system;
- "Month" shall mean a period of thirty (30) days from (and excluding) date the of the event, where applicable, else a calendar month;
- "Operating Period"; shall mean the period commencing from the Commercial Operation Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
- “Open Access Charges” shall mean the charges levied by the STU/ SLDC of the State wherein the Solar Power Project is located for the grant of Open

	Access & for scheduling;
"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 Article 10.3 of this Agreement;
"Performance Bank Guarantee and Corporate Guarantee"	shall mean the irrevocable unconditional bank guarantee, submitted by the SUPPLIER to NDMC from a bank mentioned in Schedule 1 of this Agreement in the form attached hereto as Schedule1;
"Power Project"	shall mean the solar power generation facility of Installed Capacity of 45 MW, located at [Insert name of location] in [Insert name of District & State];. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipments, 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 as per this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 14 of this Agreement;
"Project Financing Arrangements/Financial internal Closure"	Shall mean arrangement of necessary funds by the SUPPLIER either by way of commitment of funds by the company from resources and/or tie up of funds through a bank/financial institution  by way of sanction of a loan.
"Prudent Utility Practices"	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: <ul style="list-style-type: none"> <li>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</li> <li>b) the requirements of Indian Law; and</li> <li>c) the physical conditions at the site of the Power Project;</li> </ul>
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 10.2.4 of this Agreement;

"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPO"	Renewable Power Obligations
"Rupees", "Rs."	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date"	shall mean [Insert Date that is thirteen (13) months from the Effective Date ];
"SLDC"	shall mean the centre 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 Solar Power Project is located;
"Solar Photovoltaic" or "Solar PV"	Shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SUPPLIER to provide Solar Power to NDMC as per the terms and conditions of this Agreement;
"Solar Power"	Shall mean power generated from the Solar Photovoltaic Power Project;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective 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 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 14 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Unit" capacity	Shall mean 10 MW Solar PV Capacity except when remaining To be commissioned is lower than 20 MW, the Unit shall be the



remaining capacity to be commissioned.

## 1.2 ***Interpretation***

Save where the contrary is indicated, any reference in this Agreement to:

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 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 new 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 re-enactments 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;

## ARTICLE 2 : TERM OF AGREEMENT

### 2.1 **Effective Date**

2.1.1 This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

### 2.2 **Term of Agreement**

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

### 2.3 **Early Termination**

2.3.1 This Agreement shall terminate before the Expiry Date if either NDMC or SUPPLIER terminates the Agreement, pursuant to Article 14 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 penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 12 (Force Majeure), Article 14 (Events of Default and Termination), Article 15 (Liability and Indemnification), Article 17 (Governing Law and Dispute Resolution), Article 18 (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 SUPPLIER***

The SUPPLIER agrees and undertakes to duly perform and complete all of the following activities at the SUPPLIER's own cost and risk within 210 days from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by NDMC:

- a) The SUPPLIER shall report tie-up of Financing Arrangement for the Project/s.
- b) The SUPPLIER shall obtain all Consents, Clearances and Permits required for supply of power to NDMC as per the terms of this Agreement;
- c) The SUPPLIER shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- d) The SUPPLIER shall sign a Transmission Agreement with CTU/STU confirming the evacuation and connectivity of the CTU/STU system upto the delivery point of SUPPLIER by the Scheduled Commissioning date;
- e) The SUPPLIER shall produce the documentary evidence of the clear title and possession of the acquired/leased land @ 1.5 hectare /MW in the name of SUPPLIER;
- f) The SUPPLIER shall submit to NDMC the relevant documents as stated above, complying with the Conditions Subsequent, within 210 days period from the Effective Date.

### 3.2 ***Consequences of non-fulfillment of conditions subsequent***

- 3.2.1 In case of a failure to submit the documents as above. NDMC shall have the right to terminate this Agreement by giving a Termination Notice to the SUPPLIER in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the 7<sup>th</sup> day of the Notice.
- 3.2.2 NDMC shall be entitled to encash all the Bank Guarantees submitted by the SUPPLIER.
- 3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.4 In case of inability of the SUPPLIER to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.
- 3.2.5 Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to

an equal extension in the Scheduled Commissioning Date.

**3.3 Performance Bank Guarantee and Corporate Guarantee**

- 3.3.1 The Performance Bank Guarantee and Corporate Guarantee to be furnished 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 Schedule1.
- 3.3.2 The failure on the part of the SUPPLIER to furnish and maintain the Performance Bank Guarantee and Corporate Guarantee including the Earnest Money Deposit at the time of RFS and Bid Bond at the time of RFP shall be a material breach of the term of this Agreement on the part of the SUPPLIER.
- 3.3.3 If the SUPPLIER fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.5, NDMC shall have the right to encash the Performance Bank Guarantee and Corporate Guarantee without prejudice to the other rights of NDMC under this Agreement.

**3.4 Return of Performance Bank Guarantee and Corporate Guarantee**

- 3.4.1 Subject to Article 3.3, NDMC shall return / release the Performance Bank Guarantee and Corporate Guarantee three (3) months after the Commercial Operation Date.
- 3.4.2 The return / release of the Performance Bank Guarantee and Corporate Guarantee shall be without prejudice to other rights of NDMC under this Agreement.

## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 4.1 ***SUPPLIER's Obligations***

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

- a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
- b) 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.
- c) the commencement of supply of power up to the Contracted Capacity to NDMC no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement; and
- d) connecting the Power Project switchyard with the Interconnection Facilities; and
- e) Open Access connectivity from Interconnection Facilities up to Delivery Point.
- f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 16;
- g) maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date; and
- h) fulfilling all obligations undertaken by the SUPPLIER under this Agreement.

### 4.2 ***Information regarding Interconnection Facilities***

4.2.1 The SUPPLIER shall be required to obtain all information 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 SUPPLIER's side of the Delivery Point to enable delivery of electricity at the Delivery Point.

### 4.3 ***Purchase and sale of Contracted Capacity***

4.3.1 Subject to the terms and conditions of this Agreement, the SUPPLIER undertakes to sell to NDMC and NDMC undertakes to pay Tariff for all the energy supplied at the Metering Point corresponding to the Contracted Capacity.

### 4.4 ***Right to Contracted Capacity & Energy***

4.4.1 NDMC, shall accept per annum any quantum of energy offered by the Bidder subject within 80% and 120% of the contracted energy per annum. If for any Contract Year, it is found that the SUPPLIER has not been able to generate minimum energy of **83MUs-20%**, on account of reasons solely attributable to the SUPPLIER, the non-

compliance by SUPPLIER shall make SUPPLIER liable to pay the compensation. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be computed at the rate at which NDMC will procure the RPO Certificates to make up for the loss in generation less the rate payable to the SUPPLIER.

4.4.2 Notwithstanding Article 4.4.1, the SUPPLIER is free to sell any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date. SUPPLIER shall not be entitled to claim any benefit provided in this Agreement in any manner whatsoever on such sale of infirm power or power in excess of the contracted capacity as the case may be.

#### 4.5 ***Extensions of Time***

4.5.1 In the event that the SUPPLIER is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any NDMC Event of Default; or
- b) Force Majeure Events affecting NDMC, or
- c) Force Majeure Events affecting the SUPPLIER,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a reasonable period but not less than 'day for day' basis, to permit the SUPPLIER or NDMC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SUPPLIER or NDMC, or till such time such Event of Default is rectified by NDMC.

4.5.2 In case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than five (5) months.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 14.5.

4.5.4 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 by, any Party may raise the Dispute to be resolved in accordance with Article 17.

4.5.5 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

#### 4.6 ***Liquidated Damages for delay in commencement of supply of power to NDMC***

4.6.1 Bidders shall be allowed to commission the entire capacity within 13 months from signing of the PPA (other than when Force Majeure is applicable) without imposition of



Liquidated Damages. If complete capacity is not commissioned within 13 months, the PPA capacity shall stand reduced / amended to the Project capacity commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project Capacity. NDMC shall deduct payments corresponding to Rs. 2 lakhs/MW for the uncommissioned capacity through encashment of remaining Performance Bank Guarantee and Corporate Guarantee (including Additional Performance Bank Guarantee and Corporate Guarantee)

#### **4.7 Acceptance/Performance Test**

4.7.1 Prior to synchronization of the Power Project, the SUPPLIER 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 to carry out testing and certification for the solar power projects.

#### **4.8 Third Party Verification**

4.8.1 The SUPPLIER 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 NDMC and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SUPPLIER 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 SUPPLIER 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 SUPPLIER or require the works to be stopped or to comply with the instructions of such third party.

4.8.3 The third party may carry out checks for testing the CUF of the Power Project. During a Contract Year, if the CUF of the Power Project is found to be below [Insert CUF value required for generation of 83 MU – 20% during a contract year] during a Contract Year on account of reasons solely attributable to SUPPLIER, the SUPPLIER shall be liable for non-fulfillment of its obligation.

## ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

### 5.1 ***Synchronization, Commissioning and Commercial Operation***

- 5.1.1 The SUPPLIER shall give the concerned RLDC/SLDC and NDMC 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 respective units of Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SUPPLIER 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 shall be installed by the SUPPLIER at its generation facility of the Power Project at its own cost. The SUPPLIER shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SUPPLIER 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.
- 5.1.5 The SUPPLIER shall commission the Project within thirteen (13) Months of the date of signing of PPA.

## ARTICLE 6: DISPATCH

### 6.1 *Dispatch*

- 6.1.1 The Power Project shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time.

## ARTICLE 7: METERING

### 7.1 **Meters**

7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SUPPLIER and NDMC shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.

7.1.2 The SUPPLIER shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at and upto Interconnection Point

### 7.2 **Reporting of Metered Data and Parameters**

7.2.1 The grid connected solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including DNI), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the plant.

7.2.2 Online arrangement would have to be made by the solar power Supplier for submission of above data regularly for the entire period of this Power Purchase Agreement to the concerned Ministry.

7.2.3 Reports on above parameters on monthly basis shall be submitted by the solar power Supplier to MNRE/MOP through NDMC for entire period of PPA.

## ARTICLE 8: INSURANCES

### 8.1 ***Insurance***

8.1.1 The SUPPLIER 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, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

### 8.2 ***Application of Insurance Proceeds***

8.2.1 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 first applied to reinstatement, replacement or renewal of such loss or damage.

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, NDMC shall have no claim on such proceeds of such Insurance.

### 8.3 ***Effect on liability of NDMC***

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 SUPPLIER can claim compensation, under any Insurance shall not be charged to or payable by NDMC.

## ARTICLE 9: APPLICABLE TARIFF

- 9.1 The SUPPLIER shall be entitled to receive the Tariff of Rs. [Insert aggregate tariff] with effect from the Commercial Operation Date.

## ARTICLE 10: BILLING AND PAYMENT

### 10.1 ***Delivery and Content of Monthly Bills/Supplementary Bills***

10.1.1 The SUPPLIER shall issue to NDMC a signed Monthly Bill/Supplementary Bill for the immediately preceding Month between the 5<sup>th</sup> day upto the 15<sup>th</sup> day of the next Month. In case the Monthly Bill/Supplementary Bill for the immediately preceding Month is issued after the 15<sup>th</sup> day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed of Article 10.2.1 below.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy metered and the applicable tariff.

### 10.2 ***Payment of Monthly Bills***

10.2.1 NDMC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the (fifth) 5<sup>th</sup> day of the immediately succeeding Month (the Due Date) in which the Monthly Bill/ Supplementary Bill is issued by the SUPPLIER to the NDMC to such account of the SUPPLIER, as shall have been previously notified by the SUPPLIER in accordance with Article iii) below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15<sup>th</sup> day of the next month, the Due Date for payment would be (fifth) 5<sup>th</sup> day of the next month to the succeeding Month.

10.2.2 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) amounts claimed by NDMC, if any, from the SUPPLIER, through an invoice to be payable by the SUPPLIER, and not disputed by the SUPPLIER within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NDMC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.
- iii) The SUPPLIER shall open a bank account at [New Delhi] (the "SUPPLIER's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by NDMC to the SUPPLIER, and notify NDMC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NDMC shall also designate a bank account at [Insert name of place] ("NDMC's Designated Account") for payments to be made by the SUPPLIER to NDMC, if any, and notify the SUPPLIER of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NDMC and the SUPPLIER shall instruct their respective bankers to make all payments under this Agreement to the SUPPLIER' Designated Account or NDMC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### 10.2.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by NDMC within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the SUPPLIER at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by NDMC under the PSA. The Late Payment Surcharge shall be claimed by the SUPPLIER through the Supplementary Bill.

### 10.2.4 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the SUPPLIER to NDMC in the following manner.

- a) A Rebate of 2% shall be payable to the NDMC for the payments made on the 5th Business Day of the Month.
- b) Any payments made beyond the 5th Business Day of the month upto the Due Date shall be allowed a rebate of 1%.
- c) Provided that, any payment made by NDMC on date of presentation of Bill, a Rebate of 2% shall be payable, if bill is raised beyond 5th but by the 15th Business Day of the Month.
- d) For the above purpose, the date of presentation of bill shall be same day in case it is delivered on or before 12:00 noon, else it would be the next Business Day.
- e) No Rebate shall be payable on the Bills raised on account of Transmission Charges and Change in Law relating to taxes, duties and cess.

### 10.3 Payment Security Mechanism

#### Letter of Credit (LC):

10.3.1 NDMC shall provide to the SUPPLIER, in respect of payment of its Monthly Bills and/or Supplementary Bills, a three monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the SUPPLIER in accordance with this Article.

10.3.2 Not later than one (1) Month before the start of supply, NDMC through a scheduled bank at [Identified Place] open a Letter of Credit in favour of the SUPPLIER, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average three months billing;
- ii) for each subsequent Contract Year, equal to the average of the three months billing of the previous Contract Year.

10.3.3 Provided that the SUPPLIER shall not draw upon such Letter of Credit prior to the Due



Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

- 10.3.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.3.2 due to any reason whatsoever, NDMC shall restore such shortfall within seven (7) days.
- 10.3.5 NDMC shall cause the scheduled bank issuing the Letter of Credit to intimate the SUPPLIER, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.3.6 NDMC shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 10.3.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by NDMC.
- 10.3.8 If NDMC fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 10.3.6, the SUPPLIER may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NDMC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.2.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to SUPPLIER and;
  - ii) a certificate from the SUPPLIER 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;

### **10.3.9 Collateral Arrangement**

As a further support for the NDMC's obligations, not later than (1) month before the start of supply, the SUPPLIER and NDMC shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of SUPPLIER, through which the Incremental Receivables of the NDMC shall be routed and used as per the terms of the Default Escrow Agreement. The SUPPLIER and NDMC shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the NDMC shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 10.3.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". Incremental Receivables is the money received by NDMC on account of sale of Bundled Power under the NDMC-Discom PSA.

- 10.3.10 The Default Escrow would come into operation if,  
The Letter of Credit is not recouped by the NDMC to its required value by the 7<sup>th</sup> day of its operation;
- a. SUPPLIER is unable to draw on the Letter of Credit on the Due Date, if the NDMC fails to pay by the Due Date.

- b. Non-restoration of Escrow Arrangement by the 7<sup>th</sup> day of the Due Date.

#### **10.4 Disputed Bill**

10.4.1 If the NDMC does not dispute a Monthly Bill or a Supplementary Bill raised by the SUPPLIER by the Due Date, such Bill shall be taken as conclusive.

10.4.2 If the NDMC disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

10.4.3 If the SUPPLIER agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.4.2, the SUPPLIER shall revise such Bill and present along with the next Monthly 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.

10.4.4 If the SUPPLIER does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.4.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the NDMC 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 counter-claim.

10.4.5 Upon receipt of the Bill Disagreement Notice by the NDMC under Article 10.4.4, authorized representative(s) or a director of the board of directors/ member of board of the NDMC and SUPPLIER shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.4.4, the matter shall be referred to Dispute resolution in accordance with Article 17.

10.4.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, NDMC shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

#### **10.5 Quarterly and Annual Reconciliation**

10.5.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and

annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

10.5.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the SUPPLIER and NDMC shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SUPPLIER shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 17.

#### **10.6 *Payment of Supplementary Bill***

10.6.1 SUPPLIER may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 13, or

and such Supplementary Bill shall be paid by the other Party.

10.6.2 NDMC shall remit all amounts due under a Supplementary Bill raised by the SUPPLIER to the SUPPLIER's Designated Account by the Due Date. For such payments by NDMC, Rebate as applicable to Monthly Bills pursuant to Article 10.2.4 shall equally apply.

10.6.3 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 Bill in Article 10.2.3.

## ARTICLE 11: POWER EVACUATION

### **11.1 *Arranging Transmission Access***

11.1.1 The Procurer shall be wholly responsible to arrange transmission access from the Delivery Point.

### **11.2 *Transmission Charges***

11.2.1 For transmission of power from the Interconnection Point to the Delivery Point, the Seller shall be responsible to enter into a commercial arrangement with the CTU/STU, as the case may be, to bear the transmission charges as notified by the CERC/SERC, if any, as the case may be, from time to time. Further, the Seller shall then claim the reimbursement of such Transmission Charges from the Procurer, if any. The claims pertaining to Transmission Charges shall be reimbursed by NDMC without deduction of rebates mentioned against clause 10.2.4

## ARTICLE 12: FORCE MAJEURE

### 12.1 *Definitions*

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

### 12.2 *Affected Party*

12.2.1 An affected Party means NDMC or the SUPPLIER whose performance has been affected by an event of Force Majeure.

### 12.3 *Force Majeure*

12.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this 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:

- 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;
- b) 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; or
- c) radio active contamination or ionising 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 Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under NDMC-Discom PSA, thereby affecting delivery of power from SUPPLIER to Discom.

### 12.4 *Force Majeure Exclusions*

12.4.1 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.

## **12.5 Notification of Force Majeure Event**

12.5.1 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 seven (7) 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.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. 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 monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

12.5.2 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 this Agreement, as soon as practicable after becoming aware of each of these cessations.

## **12.6 Duty to Perform and Duty to Mitigate**

12.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 12.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement.

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

**12.7 Available Relief for a Force Majeure Event**

12.7.1 Subject to this Article 12:

- (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;
- (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 Article 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 the 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.



## ARTICLE 13: CHANGE IN LAW

### 13.1 *Definitions*

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the SUPPLIER or any income to the SUPPLIER:

the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;

a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;

a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SUPPLIER;

any change in tax or introduction of any tax made applicable for supply of power by the SUPPLIER as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SUPPLIER, or (ii) any change on account of regulatory measures by the Appropriate Commission.

### 13.2 *Relief for Change in Law*

13.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

13.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

## ARTICLE 14: EVENTS OF DEFAULT AND TERMINATION

### 14.1 **SUPPLIER Event of Default**

14.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by NDMC or Discoms of its obligations under this Agreement, shall constitute a SUPPLIER Event of Default:

(i) the failure to commence supply of power to NDMC up to the Contracted Capacity, by the end of the period specified in Article 4, or

if

a) the SUPPLIER assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or

b) the SUPPLIER 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 SUPPLIER 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 SUPPLIER, or (c) the SUPPLIER 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 SUPPLIER will not be a SUPPLIER 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 SUPPLIER and expressly assumes all obligations of the SUPPLIER under this Agreement and is in a position to perform them; or

(iii) the SUPPLIER repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NDMC in this regard; or

(iv) except where due to any NDMC's failure to comply with its material obligations, the SUPPLIER is in breach of any of its material obligations pursuant to this Agreement,

and such material breach is not rectified by the SUPPLIER within thirty (30) days of receipt of first notice in this regard given by NDMC.

- (v) change in controlling share holding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SUPPLIER.

#### **14.2 NDMC Event of Default**

14.2.1 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 SUPPLIER of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting NDMC:

- (i) NDMC fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.4, for a period of ninety (90) days after the Due Date and the SUPPLIER is unable to recover the amount outstanding to the SUPPLIER through the Letter of Credit/ Default Escrow Account,
- (ii) NDMC repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SUPPLIER in this regard; or
- (iii) except where due to any SUPPLIER's failure to comply with its obligations, NDMC is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NDMC within thirty (30) days of receipt of notice in this regard from the SUPPLIER to NDMC; or
- (iv) if
  - a. NDMC 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 NDMC, or
  - c. NDMC 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 NDMC Event of Default, where such dissolution or liquidation of NDMC or NDMC 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 creditworthiness similar to NDMC and expressly assumes all obligations of NDMC and is in a position to perform them; or;
- (v) occurrence of any other event which is specified in this Agreement to be a material breach or default of NDMC.

#### **14.3 Procedure for cases of SUPPLIER Event of Default**

14.3.1 Upon the occurrence and continuation of any SUPPLIER Event of Default under Article 14.1, NDMC shall have the right to deliver to the SUPPLIER, with a copy to the representative of the lenders to the SUPPLIER with whom the SUPPLIER has

executed the Financing Agreements, a notice stating its intention to terminate this Agreement (NDMC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

14.3.2 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 SUPPLIER Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NDMC may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SUPPLIER.

14.3.3 Subject to the terms of this Agreement, upon occurrence of a SUPPLIER Event of Default under this Agreement, the lenders may exercise their rights, if any, under Financing Agreements, to seek substitution of the SUPPLIER by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SUPPLIER and performing the obligations of the SUPPLIER.

Provided that any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by NDMC.

14.3.4 The lenders may seek to exercise right of substitution under Article 14.3.3 by an amendment or novation of the PPA in favour of the selectee. The SUPPLIER shall cooperate with the Lenders 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.

#### **14.4 Procedure for cases of NDMC Event of Default**

14.4.1 Upon the occurrence and continuation of any NDMC Event of Default specified in Article 14.2 the SUPPLIER shall have the right to deliver to NDMC, a SUPPLIER Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

14.4.2 Following the issue of a SUPPLIER 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.

14.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

14.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or NDMC Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SUPPLIER shall be free to sell the Contracted Capacity to any third party of the SUPPLIER's choice. Provided further that at the end of three (3) months period from the period mentioned in this Article 14.4.4, this Agreement may be terminated by the SUPPLIER.

#### **14.5 Termination due to Force Majeure**

14.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

## ARTICLE 15: LIABILITY AND INDEMNIFICATION

### 15.1 *Indemnity*

15.1.1 The SUPPLIER shall indemnify, defend and hold NDMC harmless against:

- a) any and all third party claims against NDMC 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 SUPPLIER 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 NDMC from third party claims arising by reason of a breach by the SUPPLIER of any of its obligations under this Agreement, (provided that this Article 15 shall not apply to such breaches by the SUPPLIER, for which specific remedies have been provided for under this Agreement)

15.1.2 NDMC shall cause the Discoms to indemnify, defend and hold the SUPPLIER harmless against:

- a) any and all third party claims against the SUPPLIER, 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 Discoms 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 SUPPLIER from third party claims arising by reason of a breach by Discoms of any of its obligations. NDMC shall incorporate appropriate covenants in the PSA for the above obligations of Discoms. In so far as indemnity to SUPPLIER is concerned, Discoms shall be the indemnifying party and not NDMC.

### 15.2 **Procedure for claiming Indemnity**

#### 15.2.1 *Third party claims*

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1(a) or 15.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 15.1.1(a) or 15.1.2(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 Article 17.3.2; 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 favour of the Indemnified Party.

- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 15.1.1(a) or 15.1.2(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 defence 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 defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### **15.3 Indemnifiable Losses**

- 15.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 15.1.1(b) or 15.1.2(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 15, such event shall constitute a payment default under Article 14.

### **15.4 Limitation on Liability**

- 15.4.1 Except as expressly provided in this Agreement, neither the SUPPLIER nor Discoms 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, whether of Discoms, the SUPPLIER or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 15.4.2 NDMC shall have no recourse against any officer, director or shareholder of the SUPPLIER or any Affiliate of the SUPPLIER or any of its officers, directors or shareholders for such claims excluded under this Article. The SUPPLIER shall have no recourse against any officer, director or shareholder of NDMC or Discoms, or any affiliate of NDMC or any of its officers, directors or shareholders for such claims excluded under this Article.

**15.5 *Duty to Mitigate***

15.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 15.

## ARTICLE 16: ASSIGNMENTS AND CHARGES

### 16.1 *Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing.

Provided that, NDMC shall permit assignment of any of SUPPLIERs rights and obligations under this Agreement in favour of the lenders to the SUPPLIER, if required under the Financing Agreements.

Provided that, such consent shall not be withheld by the SUPPLIER if NDMC seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

### 16.2 *Permitted Charges*

16.2.1 SUPPLIER shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 16.1.



## ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION

### 17.1 *Governing Law*

17.1.1 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 Delhi.

### 17.2 *Amicable Settlement and Dispute Resolution*

#### 17.2.1 *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) 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) counter-claim and defences, if any, regarding the Dispute; and
  - (b) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 17.2.1(i) if the other Party does not furnish any counter claim or defence under Article 17.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet 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 Article 17.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 17.3.

### 17.3 *Dispute Resolution*

#### 17.3.1 *Dispute Resolution by the Appropriate Commission*

- iv. Where any Dispute (a) 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, such Dispute shall be submitted to adjudication by the Central Commission.
- v. NDMC shall be entitled to co-opt the Discoms as a supporting party in such proceedings before the Central Commission.

### **17.3.2 Dispute Resolution through Arbitration**

If the Dispute arises out of or in connection with any claims not covered in Article 17.3.1(i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under provided not settled amicably as per Article 17.2.1:

- i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996
- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- iii) 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.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
  
- vi) NDMC shall be entitled to co-opt Discoms as a supporting party in such arbitration proceedings.

### **17.4 Parties to Perform Obligations**

- 17.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 17.3 and save as the Central Commission or the Arbitration Tribunal 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 18: MISCELLANEOUS PROVISIONS

### **18.1 Amendment**

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

### **18.2 Third Party Beneficiaries**

18.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and 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.

### **18.3 Waiver**

18.3.1 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:

18.3.2 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.

### **18.4 Confidentiality**

18.4.1 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.

### **18.5 Severability**

18.5.1 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.

### **18.6 Notices**

18.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

18.6.2 If to the SUPPLIER, 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 :  
Fax. No. :  
Telephone No. :

18.6.3 If to NDMC, 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:

(i) Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

18.6.4 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.

18.6.5 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.

### **18.7 Language**

18.7.1 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.

18.7.2 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.

### **18.8 Restriction of Shareholders / Owners' Liability**

18.8.1 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.

**18.9 Taxes and Duties**

18.9.1 The SUPPLIER shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SUPPLIER, contractors or their employees that are required to be paid by the SUPPLIER as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

18.9.2 NDMC shall be indemnified and held harmless by the SUPPLIER against any claims that may be made against NDMC in relation to the matters set out in Article 18.9.1.

18.9.3 NDMC shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SUPPLIER by NDMC on behalf of SUPPLIER.

**18.10 Independent Entity**

18.10.1 The SUPPLIER shall be an independent entity performing its obligations pursuant to the Agreement.

18.10.2 Subject to the provisions of the Agreement, the SUPPLIER shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the SUPPLIER or contractors engaged by the SUPPLIER in connection with the performance of the Agreement shall be under the complete control of the SUPPLIER and shall not be deemed to be employees, representatives, contractors of NDMC and nothing contained in the Agreement or in any agreement or contract awarded by the SUPPLIER shall be construed to create any contractual relationship between any such employees, representatives or contractors and NDMC.

**18.11 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.

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 [NDMC]	For and on behalf of [SUPPLIER]
Name, Designation and Address _____	Name, Designation and Address _____
Signature with seal	Signature with seal
Witness: 1.	Witness: 1.

2.	2.
----	----

SCHEDULE 1: FORMAT FOR CONTRACT PERFORMANCE GUARANTEE AND CORPORATE GUARANTEE

**Format A (Bank Guarantee)**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country.)**

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and New Delhi Municipal Council (herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at

***New Delhi Municipal Council,  
Palika Kendra, Room No 7008, 7<sup>th</sup> Floor,  
Parliament Street, New Delhi -110001***

forthwith on demand in writing from the Procurer or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... only [Insert the amount of the bank guarantee computed on the basis of Five (5) lakhs/MW with respect to the Contracted Capacity of the Procurer as per the terms of PPA on behalf of M/s.

..... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG] and shall in no event not be terminable by notice or any change in the constitution of the Guarantor Bank or the term of the PPA 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. .... (Rs. .... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Clause 2.13 of the RFP]. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the

above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, .....[Insert name of the Successful Bidder] and/or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder. This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at New Delhi 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, liquidation, winding up, dissolution 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 the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. ....crores (Rs. .... crores only) and it shall remain in force until .....[Date to be inserted on the basis of Article .....of PPA], with an additional claim period of Five (5) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Signature**

Name:

Designation with Bank Stamp

Attorney as per power of attorney No. ....

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this ..... day of ..... 20.....

**Notes** - i. The Stamp Paper should be in the name of the Executing Bank.



### **Corporate Guarantee**

This Corporate Guarantee has been executed at Delhi on this \_\_\_\_\_ day of \_\_\_\_\_ 2014 By \_\_\_\_\_ **[Insert the name of the guarantor on behalf of the Successful Bidder]** a company incorporated under the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ acting through \_\_\_\_\_

(hereinafter referred to as Guarantor which expression shall unless repugnant to the context in which the same shall be used mean and include its successors in interest and permitted assigns)

### **In favour of:**

**New Delhi Municipal Council**, having Office at **Palika Kendra, Parliament Street, New Delhi -110001** acting through (hereinafter referred to as Beneficiary which expression shall unless repugnant to the context in which the same shall be used mean and include its successors in interest and permitted assigns )

That both Guarantor and Beneficiary have been hereinafter referred to as **Party** when taken individually and as **Parties** when taken in conjunction with each other.

### **Recitals:**

Whereas NDMC had on \_\_\_\_\_ floated a tender inviting bids for procurement of Renewable Power for Long Term to meet its RPO obligation

And whereas \_\_\_\_\_ has submitted its bid in response to the above stated tender vide \_\_\_\_\_ And whereas the bid of \_\_\_\_\_ has been selected by NDMC as the successful bidder

And whereas as per the terms of the said tender vide clause \_\_\_\_\_ the successful bidder is required to submit a corporate guarantee in favor of NDMC for safeguarding interest of NDMC.

And whereas it has been expressly agreed by the Parties that this guarantee is being executed and furnished by the Guarantor in favour of beneficiary in addition to bank guarantee furnished by to cover 50% of Contract Performance Guarantee.

### **In the mutually agreed representations, promises and Commitments thereof this Guarantee witnesseth as follows:**

6. That this Guarantee shall be valid initially for 03 months after the COD of station as a whole with an additional claim period of thirty (30 days) thereafter.
7. However, the same shall run commensurate with the term/tenure of this agreement and shall be subject to any extension thereof, as may be mutually agreed between parties.
8. That any amount up to and not exceeding Rupees.....only [Insert the 50% of the amount of the guarantee computed on the basis of Five (5) lakhs/MW with respect to the Contracted Capacity of the procurer as per Clause 2.13.1 and 2.13.2] so claimed by the Beneficiary as per this agreement, shall be payable on mere demand and need not be supported by any actual determination thereof. That the decision as to whether there has been an instance warranting the invocation of this guarantee shall be at the sole discretion of Beneficiary and it shall not be open to the Guarantor or \_\_\_\_\_ to question the same or insist on exhaustion of the other remedy(ies) / security(ies) first which may be available to Beneficiary against the Guarantor.
9. This guarantee has been issued unconditionally and unequivocally. Further this Guarantee shall be irrevocable till the time the agreement between \_\_\_\_\_ and

NDMC is in force.

10. This guarantee shall cover and provide for the claims raised if any by Beneficiary during the period until expiry of the agreement between NDMC and \_\_\_\_\_ and further till \_\_\_\_\_ months there from.
8. In the event any claim being sought by beneficiary as per this agreement, the beneficiary shall raise a written demand for the amount claimed upon the Guarantor, to be payable unconditionally within 10 days of receipt of such demand. Guarantor shall, upon receipt of such demand notice from beneficiary for the claim as specified in the aforesaid Clause 5, undertakes to discharge the same without any demur, protest That this Guarantee shall not be affected by the change in constitution /Management of the Guarantor or the Beneficiary.
9. The beneficiary shall be under no obligation to proceed against \_\_\_\_\_ first before proceeding against the Guarantor and /or invoke this guarantee.
13. That this Guarantee shall subsist and remain valid for the term as specified above, notwithstanding the same has been invoked on one or more occasion(s) by the Beneficiary at any time during the term of this Guarantee.
14. The guarantor shall keep recouping this guarantee till the expiry of the agreed term on each such occasion as and when required.
15. That any variation to the terms of this Guarantee shall not be effective unless mutually agreed reduced to writing and duly signed by both the Parties.
16. That it has been assured by the Guarantor and the Executant herein that it has legal sanction and competency to execute this Guarantee and that the same is not in abrogation of any law or management decision governing the Guarantor.
17. This guarantee will constitute a separate and independent obligation on the part of Guarantor and shall continue in full force and effect so long as the Guarantor's liability under the guarantee to Beneficiary continues.

Executed by	Accepted by
For -----[Insert the name of <b>Successful Bidder with address</b> ]	For New Delhi Municipal Council
Signatures	Signatures
Name	Name
Designation	Designation
Guarantor	Beneficiary

In the presence of:

Witness	Witness
Signatures	Signatures
Name	Name
Address	Address

SCHEDULE 2: LIST OF BANKS FOR ISSUANCE OF PERFORMANCE BANK GUARANTEE  
AND CORPORATE GUARANTEE

**Scheduled Commercial Banks**

**SBI and Associates**

9. State Bank of India
10. State Bank of Bikaner and Jaipur
11. State Bank of Hyderabad
12. State Bank of Indore
13. State Bank of Mysore
14. State Bank of Patiala
15. State Bank of Saurashtra
16. State Bank of Travancore

**Nationalised Banks**

28. Allahabad Bank
29. Andhra Bank
30. Bank of India
31. Bank of Maharashtra
32. Bank of Baroda
33. Canara Bank
34. Central Bank of India
35. Corporation Bank
36. Dena Bank
37. Indian Bank
38. Indian Overseas Bank
39. Oriental Bank of Commerce
41. Punjab National Bank
42. Punjab and Sind Bank
43. Syndicate Bank
44. Union Bank of India
45. United Bank of India
46. UCO Bank
47. Vijaya Bank

## **2. Foreign Banks**

- 12 BNP Paribas
- 13 Citi Bank N.A.
- 14 Deutsche Bank A.G.
- 15 The Hongkong and Shanghai Banking Corporation Ltd.
- 16 Standard Chartered Bank
- 17 ABN Amro Bank N.V.
- 18 UFJ Bank Ltd.
- 19 Sumitomo Mitsui Banking Corporation
- 20 SocieteGenerale
- 21 Barclays Bank
- 22 Bank of Novascotia

## **4. Scheduled Private Banks**

- 12 ING Vysya Bank Ltd.
- 13 ICICI Bank Ltd.
- 14 HDFC Bank Ltd.
- 15 IDBI Bank Ltd
- 16 Axis Bank
- 17 Kotak Mahindra Bank
- 18 IndusInd Bank
- 19 YES BANK

**[The above list is indicative and the Procurer is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents**

