

**F. No. 15/1/2017-Trans**  
**भारत सरकार / Government of India**  
**विद्युत मंत्रालय / Ministry of Power**  
**(पारेषण प्रभाग / Transmission Division)**

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**श्रम शक्ति भवन, रफी मार्ग, नई दिल्ली -110001**  
**Shram Shakti Bhawan, Rafi Marg, New Delhi-110001**

**दिनांक: 06अगस्त, 2021**

To

1. The Chairperson, Central Electricity Authority, Sewa Bhavan, R. K. Puram, New Delhi.
2. The Secretary, Central Electricity Regulatory Commission (CERC), Chanderlok Building, Janpath, New Delhi.
3. CEO, PFCCL, New Delhi.
4. CEO, RECPDCL, New Delhi.
5. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs.
6. Secretaries of all State Electricity Regulatory Commissions(SERCs)/JERCs
7. Chairman/CMDs of all PSUs under administrative control of Ministry of Power.
8. CMDs/MDs, Transcos of all States/UTs.

**Subject:-Revised Guidelines and Standard Bidding Documents (SBDs) for procurement of Inter-State Transmission Services (ISTS) through Tariff Based Competitive Bidding (TBCB) process – reg.**

Madam/Sir,

I am directed to say that Ministry of Power had notified “Tariff Based Competitive Bidding (TBCB) Guidelines for Transmission Service” and “Guidelines for Encouraging Competition in Development of Transmission Projects” in April 2006. Subsequently the Standard Bidding Documents comprising Request for Qualification (RfQ), Request for Proposal (RfP) and Transmission Service Agreement (TSA) for procurement of Inter-State Transmission System (ISTS) through Tariff Based Competitive Bidding (TBCB) process were issued under the provisions of Section 61, 62 and 63 of the Electricity Act, 2003 in the year 2008.

2. These documents were revised from time to time. Based on requests received from stakeholders, an exercise for comprehensive review of above documents was undertaken.

3. Based on stakeholders consultation, Ministry of Power has revised the bidding documents for procurement of transmission service i.e. **Standard Bidding Document** (comprising of **Request for Proposal** for selection of Transmission Service Provider through TBCB process to establish ISTS project and **Transmission Service Agreement** for development and operation of ISTS system for transmission of electricity through TBCB route) and enclosed herewith. The Guidelines (comprising of Guidelines for Tariff Based Competitive-bidding for Transmission Service and Guidelines for Encouraging Competition in Development of Transmission Projects), in this regard, are being issued separately.

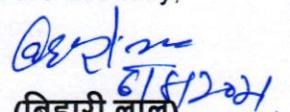
4. The soft copy of the Standard Bidding Documents is available at the website of Ministry of Power i.e. [www.powermin.gov.in](http://www.powermin.gov.in).

5. It may also be noted that in view of financial crunch like situation faced by Transmission Developers due to COVID-19, Ministry of Power had provided relaxation to the ISTS projects in terms of Bid Bond and Contract Performance Guarantee (CPG) vide letters dated 03.12.2020 and 25.03.2021 respectively (copies enclosed) and provisions contained in these letters will have overriding effect till 31.12.2021.

6. This issues with the approval of the Competent Authority.

Yours faithfully,

Encl: As above.

  
(बिहुरी लाल)

अवर सचिव, भारत सरकार,  
टेलीफैक्स: 2332 5242

ई-मेल: [transdesk-mop@nic.in](mailto:transdesk-mop@nic.in)

Copy for information to:

1. PS to Hon'ble Minister for Power and New and Renewable Energy.
2. PS to Hon'ble Minister of State for Power.
3. Sr. PPS to Secretary (Power).
4. Sr.PPS/PPS/PS to all Additional Secretaries and AS&FA, MoP.
5. Sr.PPS/PPS/PS to al Joint Secretaries/Economic Advisor, Ministry of Power.
6. All Directors/DSs of Ministry of Power.
7. In-charge, NIC Cell, Ministry of Power with the request to upload the above documents on M/o Power's website under "Current Notices".

**STANDARD SINGLE STAGE REQUEST FOR  
PROPOSAL DOCUMENT**

**FOR**

**SELECTION OF BIDDER AS TRANSMISSION  
SERVICE PROVIDER THROUGH TARIFF BASED  
COMPETITIVE BIDDING PROCESS**

**TO**

**ESTABLISH INTER-STATE TRANSMISSION SYSTEM**

**FOR**

..... [Insert NAME OF PROJECT]

**ISSUED BY**

..... (Name of Bid Process Co-ordinator)  
Registered Office:.....

.....2021

(Insert Name and Address of the BPC)

Request for Proposal Document for selection of Bidder as Transmission Service Provider through tariff based competitive bidding process to establish Inter-State Transmission System for ..... (Insert Name of Project) is issued by ..... [Insert name of BPC].

This RFP document is issued to -

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

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**Chief Executive Officer**

.....  
**(Name and address of the BPC)**

Email: .....

Place: .....

Date: .....

Signature: .....

*G  
6/6/2021*

## REQUEST FOR PROPOSAL NOTIFICATION

**(Insert Name and Address of the BPC)**

1. The Government of India, Ministry of Power, vide its notification no. ..... dated ..... has notified ..... [Insert name of Bid Process Coordinator] to be the Bid Process Coordinator (BPC) for the purpose of selection of Bidder as Transmission Service Provider (TSP) to establish Inter-State transmission system for " ..... " (Insert name of Project) through tariff based competitive bidding process.
2. ..... (Insert name of BPC) (hereinafter referred to as BPC) hereby invites all prospective Bidders for issue of Request for Proposal (RFP) for selection of Bidder as Transmission Service Provider (TSP) on the basis of international competitive bidding in accordance with the "Tariff Based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" issued by Government of India, Ministry of Power under section – 63 of The Electricity Act, 2003 and as amended from time to time. The responsibility of the TSP would be to establish the following Inter-State Transmission System - ..... (Insert Name of the Project) (hereinafter referred to as 'Project') on build, own, operate & transfer basis and to provide transmission service:

S. No	Transmission System for ..... [Insert Name of Project] [Table to be filled in by BPC with details as applicable]	
	Name of Transmission Element	Scheduled COD in months from Effective Date
1.	Transmission Lines	
2.	Sub-stations	
3.	Switching-stations	
4.	HVDC links including terminal stations	
5.	HVDC transmission line	

3. The TSP shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with the provisions of the Transmission Service Agreement and applicable Rules/ Regulations, Orders and Guidelines issued by the Central Government.
4. **Transmission License:** The TSP shall obtain the Transmission License from the Commission.
5. **Bidding Process:** The Transmission Service Provider shall be selected through tariff based competitive bidding process for the Project based on meeting stipulated Qualification Requirements prescribed in Clause 2.1 of Section 2 of RFP and the lowest Quoted Transmission Charges discovered from Final Offers quoted during the e-reverse bidding. The selection of the TSP shall be subject to it obtaining Transmission License from the Commission, which, after expiry, may be further extended by such period as deemed appropriate by the Commission under powers vested with it to amend the conditions of the Transmission License.

The entire bidding process shall be conducted on electronic platform created by ..... [Insert name of the Service Provider].

The Bid shall be a single stage two envelope bid comprising the Technical Bid and the Financial Bid. The Bidders shall submit the Bid online through the electronic bidding platform. In addition to the online submission, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI. There shall be no physical submission of the Financial Bid.

The Technical Bid shall be opened first and the Financial Bid of only the bidder who have qualified in the Technical Bid shall be opened. The Financial Bid will comprise of two rounds. In the first round the Initial Offer of the responsive bids would be opened and Quoted Transmission Charges of Initial Offer shall be ranked on the basis of ascending order. The Bidders, in the first fifty per cent of the ranking (with any fraction rounded off to higher integer) or four Bidders, whichever is higher, shall qualify for participating in the electronic reverse auction stage and submit their Final Offer.

6. The objective of the bidding process is to select a Successful Bidder pursuant to this RFP, who shall acquire one hundred percent (100%) of the equity shares of \_\_\_\_\_ [Insert name of SPV] along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement, at the Acquisition Price to be intimated by the BPC, twenty (20) days prior to the Bid Deadline.

The \_\_\_\_\_ [Insert name of SPV], of which one hundred percent (100%) equity shares will be acquired by the Selected Bidder, shall be responsible as the TSP, for ensuring that it undertakes ownership, financing, development, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project, and to provide Transmission Service as per the terms of the RFP Project Documents.

The TSP shall ensure transfer of all project assets along with substation land, right of way and clearances to CTU or its successors or an agency as decided by the Central Government after 35 years from COD of project at zero cost and free from any encumbrance and liability. The transfer shall be completed within 90 days after 35 years from COD of project failing which CTU shall be entitled to take over the project assets *Suo moto*.

7. **Commencement of Transmission Service:** The Bidder shall have to commence Transmission Service in accordance with the provisions of the Transmission Service Agreement.
8. **Transmission Charges:** The Transmission Charges shall be payable by the Designated ISTS Customers in Indian Rupees through the CTU as per Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time. Bidders shall quote the Transmission Charges as per the pre-specified structure, as mentioned in the RFP.
9. **Issue of RFP document:** The detailed terms and conditions for qualification and selection of the Transmission Service Provider for the Project and for submission of Bid are indicated in the RFP document. All those interested in purchasing the RFP document may respond in writing to ..... [Insert designation and contact numbers of concerned official of BPC] at the address given in para 12 below with a non-refundable fee of Rs. \_\_\_\_/- (Rupees \_\_\_\_ Only) or US\$ \_\_\_\_ (US Dollars \_\_\_\_\_ Only), to be paid via electronic transfer to the following Bank Account:

[Insert Bank Account Details of BPC]

latest by ..... [Insert last date of sale of RFP document]. Immediately after issuance of RFP document, the Bidder shall submit the Pre-Award Integrity Pact in the format as prescribed in Annexure B, which shall be applicable for and during the bidding process, duly signed on each page by any whole-time Director / Authorized Signatory, duly witnessed by two persons, and shall be submitted by the Bidder in two (2) originals in a separate envelope, duly superscripted with Pre-Award Integrity Pact. The Bidder shall submit the Pre-Award Integrity Pact on non-judicial stamp paper of Rs. 100/- each duly purchased from the National Capital Territory of Delhi. In case the Bidder is in a consortium, the Pre-Award Integrity Pact shall be signed and submitted by each member of the Consortium separately.

The RFP document shall be issued to the Bidders on any working day from dd/mm/yy to dd/mm/yy [Insert start and end date of sale of RFP document] between 1030 hours (IST) to 1600 hours (IST). The BPC, on written request and against payment of the above mentioned fee by any Bidder shall promptly dispatch the RFP document to such Bidder by registered mail/ air mail. BPC shall, under no circumstances, be held responsible for late delivery or loss of documents so mailed.

10. **Receipt and opening of Bid:** The Bid must be uploaded online through the electronic bidding platform on or before ..... hours (IST) on dd/mm/yy [Insert last date of submission of Bid]. Technical Bid will be opened by the Bid Opening Committee on the same day at ..... hours (IST) in the office of Central Electricity Authority, in the online presence of Bidders' representatives who wish to attend. If the Bid Deadline is a public holiday at the place of submission of Bid, it shall be opened on the next working day at the same time and venue. In addition to the online submission, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI. Bidders meeting the Qualification Requirements, subject to evaluation as specified in Clause 3.2 to 3.4 shall be declared as "Qualified Bidders" and eligible for opening of Initial Offer.
11. The RFP document is not transferable. BPC reserves the right to reject all Bid and/or annul the process of tariff based competitive bidding for selection of Bidder as TSP to execute the Project without assigning any reason. BPC shall not bear any liability, whatsoever, in this regard.

#### **12. Nodal person for enquiries and clarifications**

All correspondence and clarification in respect of RFP document shall be addressed to:

.....  
 .....  
 .....  
 Tel: .....  
 Fax: .....  
 Email: .....

**DISCLAIMER**

1. This Request for Proposal (RFP) document is not an agreement or offer by the BPC to the prospective Bidders or to any other party. The purpose of this RFP document is to provide interested parties with information to assist the formulation of their Bid. The RFP document is based on material and information available in public domain.
2. This RFP, along with its Annexures, is not transferable and the information contained therein are to be used only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisors). In the event that the recipient does not continue with its involvement in the Project in accordance with this RFP, this RFP must be kept confidential.
3. While this RFP has been prepared in good faith, neither the BPC nor its employees or advisors/consultants make any representation or warranty expressed or implied as to the accuracy, reliability or completeness of the information contained in this RFP. The Bidders shall satisfy themselves, on receipt of the RFP document, that the RFP document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any Bidder within ten (10) days from the date of issue of this RFP document on or before the date & time mentioned in this RFP, it shall be considered that the issued document, complete in all respects, has been received by the Bidders.

This bidding process is in accordance with the Bidding Guidelines issued by Ministry of Power, Government of India under Section 63 of the Electricity Act, 2003. Revisions or amendments in these Bidding Guidelines may cause the BPC to modify, amend or supplement this RFP document, including the RFP Project Documents to be in conformance with the Bidding Guidelines.

4. This RFP document includes statements, which reflect various assumptions arrived at by BPC in order to give a reflection of current status in the RFP. These assumptions should not be entirely relied upon by Bidders in making their own assessments. This RFP document does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. It is not possible for BPC to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP document. Certain Bidders may have a better knowledge of the Project than the others. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP document and obtain independent advice from appropriate sources.
5. Neither BPC nor their employees or consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP document.
6. Neither BPC, its employees nor its 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 document, any matter deemed to form part of this RFP document, the award of the Project, the information supplied by or on behalf of BPC or its employees, any consultants or otherwise arising in any way from the qualification process for the said Project.
7. By participating in the bidding process, each of the Bidder shall have acknowledged and accepted that it has not been induced to enter into such agreement by any representation or

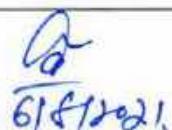
warranty, expressed or implied, or relied upon any such representation or warranty by or on behalf of BPC or any person working in the bidding process.

8. BPC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement this RFP document. Such updatons, amendments or supplements, if any, will however be circulated to the Bidders not later than 15 days prior to the last date for submission of Bid.
9. Each Bidder unconditionally agrees, understands and accepts that the BPC reserves the rights to accept or reject any or all Bids without giving any reason. Neither the BPC nor its advisers shall entertain any claim of any nature, whatsoever, including without limitations, any claim seeking expenses in relation to the preparation of Bids.
10. This RFP may be withdrawn or cancelled by the BPC at any time without assigning any reasons thereof. BPC further reserves the right, at its complete discretion to reject any or all of the Bids without assigning any reasons whatsoever.

*G*  
*6/18/2021.*

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## DEFINITIONS

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Project Documents, or the Bidding Guidelines, in that order. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, Grid Code or any other relevant electricity law, rule or regulation prevalent in India, as amended or re-enacted from time to time, in that order.

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

**"Acquisition Price"** shall have the same meaning as defined in the Share Purchase Agreement;

**"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 entity of at least twenty six percent (26%) of the voting rights of the entity. As an illustration a chart is annexed hereto as Annexure – 12;

**"Bid"** shall mean Technical Bid and Financial Bid (Initial Offer and Final Offer) submitted by the Bidder, in response to this RFP, in accordance with the terms and conditions thereof;

**"Bidder"** shall mean either a single company (including its permitted successors and legal assigns) or a Consortium of companies (including its permitted successors and legal assigns) submitting a Bid in response to this RFP. Any reference to the Bidder includes Bidding Company, Bidding Consortium/ Consortium, Member in a Bidding Consortium and Lead Member of the Bidding Consortium jointly and severally, as the context may require;

**"Bidding Company"** shall refer to such single company (including its permitted successors and legal assigns) that has submitted a Bid for the Project;

**"Bidding Consortium/ Consortium"** shall refer to a group of companies (including their permitted successors and legal assigns) that has collectively submitted a Bid for the Project;

**"Bidding Guidelines"** shall mean the "Tariff Based Competitive-Bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" issued by Government of India, Ministry of Power under Section – 63 of Electricity Act as amended from time to time;

**"Bid Bond"** shall mean the unconditional and irrevocable bank guarantee for Rupees ..... (Rs.....) only [Bid Bond would be computed @ 2% of the required aggregate capital cost of projects/ aggregate payments received for the projects as calculated under Clause 2.1.2 of RFP Document], to be submitted along with the Technical Bid by the Bidder under Clause 2.11 of this RFP, as per the format prescribed in Annexure 14;

**"Bid Deadline"** shall mean the last date and time for submission of online Bid in response to this RFP, specified in Clause 2.7.1;

**"Bid Process Coordinator or BPC"** shall mean a person or its authorized representative as

notified by the Government of India, responsible for carrying out the process for selection of Bidder who will acquire Transmission Service Provider;

**"Bid Security Declaration"** shall mean the declaration to be submitted along with the Technical Bid by the Bidder in lieu of the Bid Bond, as per the format prescribed in Annexure 14A [only applicable for projects for which RFP has been issued before 31.12.2021];

**"CEA"** shall mean the Central Electricity Authority constituted under Section - 70 of the Electricity Act;

**"Commission" or "CERC"** shall mean the Central Electricity Regulatory Commission of India constituted under Section-76 of The Electricity Act, 2003 and any successors and assigns;

**"Conflict of Interest"** A Bidder shall be considered to be in a Conflict of Interest with one or more Bidders in the same bidding process if they have a relationship with each other, directly or through a common company, that puts them in a position to have access to information about or influence the Bid of another Bidder.

Provided that if two or more bidders in the bidding process have formed a Joint Venture Company or Consortium to execute another project, the Bidders will not be considered to have Conflict of Interest;

**"Commercial Operation Date (COD)"** shall mean the date as per Article 6.2 of the Transmission Service Agreement;

**"Consents, Clearances, 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 development, execution and performance of Project including without any limitation on the construction, ownership, operation and maintenance of the transmission lines and/or sub-stations;

**"Contract Performance Guarantee"** shall have the meaning as per Clause 2.12 of this RFP;

**"Contract Year"** shall mean the period beginning on the Scheduled COD, 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) the last Contract Year shall end on the last day of the term of the Transmission Service Agreement;

**"Infrastructure sector"** shall mean such sectors notified by Department of Economic Affairs in its Gazette Notification no. 13/1/2017-INF dated 14<sup>th</sup> November, 2017 and as amended from time to time;

**"CTU/Central Transmission Utility"** shall have same meaning as defined in the Electricity Act, 2003;

**"Designated ISTS Customers"** or **"DICs"** shall have the meaning as ascribed in Regulation 2(l) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulation 2020 and as amended or modified from time to time;

**"Effective Date"** shall have the meaning as ascribed thereto in the Transmission Service Agreement;

**"Element"** shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) or each bay of the Sub-station or switching station or HVDC terminal or inverter station of the Project, including ICTs, Reactors, SVC, FSC, etc. forming part of the ISTS which will be owned, operated and maintained by the concerned ISTS Licensee, and which may have a separate scheduled COD as per Schedule 2 of the Transmission Service Agreement and may have a separate percentage for recovery of Transmission Charges on achieving COD as per Schedule 5 of the Transmission Service Agreement;

**"National Committee on Transmission"** shall mean the committee constituted by the Ministry of Power, Government of India in terms of the "Guidelines for Encouraging Competition in Development of Transmission Projects", as notified from time to time;

**"Final Offer"** shall mean the Quoted Transmission Charges, required to be submitted as part of the Financial Bid on the electronic bidding platform during the e-reverse bidding stage. In case, no Final Offer is received during the e-reverse bidding stage then the lowest "Initial Offer" shall be deemed to be the Final Offer;

**"Financial Bid"** shall mean the Initial Offer and Final Offer, containing the Bidder's Quoted Transmission Charges, as per the format at Annexure – 21 of this RFP;

**"Financially Evaluated Entity"** shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth in Clause 2.1.3 hereof;

**"Government"** shall mean the Central Government;

**"Grid Code" / "IEGC" or "State Grid Code"** shall mean the Grid Code specified by the Central Commission 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;

**"Transmission Service Agreement" or "TSA"** shall mean the agreement entered into between Nodal Agency and the TSP, pursuant to which the TSP shall build, own, operate and transfer the Project and make available the assets of the Project on a commercial basis;

**"Initial Offer"** shall mean the Quoted Transmission Charges, required to be submitted as part of the Financial Bid on the electronic bidding platform along with the Technical Bid;

**"Inter State Generating Station" or "ISGS"** shall mean a Central / other generating station in which two or more states have shares and whose scheduling is to be coordinated by the Regional Load Despatch Centre;

**"Inter-State Transmission System"** shall have same meaning as defined in the Electricity Act, 2003;

**"Lead Member of the Bidding Consortium" or "Lead Member"** shall mean a company who commits at least twenty six percent (26%) equity stake in the Project, meets the technical requirement as per Clause 2.1.2 and so designated by other Member(s) in Bidding Consortium;

**"Letter of Intent" or "LoI"** shall mean the letter to be issued by the BPC to the Bidder, who

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5/8/2021.

has been identified as the selected bidder, for award of the Project to such Bidder;

**"Member in a Bidding Consortium/Member"** shall mean each company in the Bidding Consortium;

**"MOP"** shall mean the Ministry of Power, Government of India;

**"MOEF"** shall mean the Ministry of the Environment and Forests, Government of India;

**"Nodal Agency"** shall mean CTU, which shall execute and implement the Transmission Service Agreement (TSA);

Provided that while taking major decisions, CTU shall consult CEA on technical matters and any other matter it feels necessary.

**"Technical Bid"** shall mean the bid submitted online through the electronic bidding platform, containing the documents as listed out in Clause 2.5.2 of this RFP;

**"Parent Company"** shall mean an entity 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 in a Bidding Consortium, as the case may be;

**"Qualification Requirements"** shall mean the qualification requirements as set forth in Section-2, Clause 2.1 of this RFP;

**"Quoted Transmission Charges"** shall mean the quoted single annual Transmission Charges submitted online through the electronic bidding platform by the Bidder as part of its Financial Bid as per the format in Annexure – 21 of this RFP;

**"RFP"** shall mean Request for Proposal document along with all schedules, formats, annexure and RFP Project Documents attached hereto, issued by BPC for tariff based competitive bidding process for selection of bidder who will acquire the TSP through e-reverse bidding to execute the Project, and shall include any modifications, amendments or alterations or clarifications thereto;

**"RFP Project Documents"** shall mean the following documents to be entered into in respect of the Project, by the parties to the respective agreements:

- a. Transmission Service Agreement (TSA),
- b. Share Purchase Agreement,
- c. Agreement(s) required, if any, under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time and
- d. Any other agreement, as may be required;

**"Scheduled COD"** shall have the meaning as ascribed hereto in Clause 2.6 of this RFP;

**"Statutory Auditor"** shall mean the auditor appointed under the provisions of the Companies Act, 1956 / Companies Act, 2013 (as the case may be) or under the provisions of any other applicable governing law;

**"Share Purchase Agreement"** shall mean the agreement amongst \_\_\_\_\_ [Insert Name of BPC], \_\_\_\_\_ [Insert Name of SPV] and the Successful Bidder for the purchase of one hundred (100%) per cent of the shareholding of the \_\_\_\_\_ [Insert Name of SPV] for the Acquisition Price, by the Successful Bidder on the terms and conditions as contained therein;

**"Successful Bidder"** or **"Selected Bidder"** shall mean the Bidder selected pursuant to this RFP to acquire one hundred percent (100%) equity shares of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities, which will be responsible as the TSP to establish the Project on build, own, operate and transfer basis as per the terms of the Transmission Service Agreement and other RFP Project Documents;

**"Survey Report"** shall mean the report containing initial information regarding the Project and other details provided as per the provisions of Clause 1.6.2.1.1 of this RFP;

**"Technically Evaluated Entity"** shall mean the company which has been evaluated for the satisfaction of the technical requirement set forth in Clause 2.1.2 hereof;

**"Transmission Charges"** shall mean the Final Offer quoted by Selected Bidder and adopted by the Commission, and as computed in terms of the provisions of Schedule 4 of the TSA, payable to the ISTS Licensee by the Designated ISTS Customers, and collected / disbursed by the CTU, as per Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time;

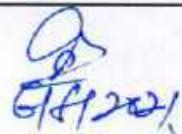
**"Transmission License"** shall mean the license granted by the Commission in terms of the relevant regulations for grant of such license issued under the Electricity Act, 2003;

**"Transmission Service Provider"** or **"TSP"** shall mean \_\_\_\_\_ [Insert name of project specific SPV] which has executed the Transmission Service Agreement and which shall be acquired by the Selected Bidder;

**"Ultimate Parent Company"** shall mean an entity which owns at least twenty six percent (26%) equity in the Bidding Company or Member of a Consortium, (as the case may be) and in the Technically Evaluated Entity and/or Financially Evaluated Entity (as the case may be) and such Bidding Company or Member of a Consortium, (as the case may be) and the Technically Evaluated Entity and/or Financially Evaluated Entity (as the case may be) shall be under the direct control or indirectly under the common control of such entity.

## **SECTION – 1**

### **INTRODUCTION**



A handwritten signature in blue ink, appearing to read "G. H. 201".

## SECTION 1

### 1. INTRODUCTION

- 1.1 The Government of India, Ministry of Power, , vide its notification no. .... dated ..... has notified ..... [Insert name of BPC] to be the Bid Process Coordinator (BPC) for the purpose of selection of Bidder as Transmission Service Provider (TSP) to establish Inter-State transmission system for “ ..... [Insert name of Project]” through tariff based competitive bidding process.

The BPC hereby invites Bids from all prospective Bidders in accordance with this Request for Proposal (RFP) to select prospective Transmission Service Provider (TSP) in accordance with the “Tariff Based Competitive-Bidding Guidelines for Transmission Service” and “Guidelines for Encouraging Competition in Development of Transmission Projects” issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act. The BPC shall select the Bidder having the prescribed technical and financial capability to become TSP and be responsible for establishing the Project in the state(s) of ..... [Insert name of States]. The TSP will make the Project available against payment of Transmission Charges, as adopted by the Commission, payable to the TSP, as per Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time.

- 1.2 The TSP will be required to establish the following Inter State Transmission System for ..... [Insert name of the Project] (hereinafter referred to as ‘Project’) on build, own, operate and transfer basis, and to provide transmission service.

S. No.	Inter State Transmission System for ..... [Insert name of Project] [Table to be filled in by BPC with details as applicable]	
	Name of Transmission Element	Scheduled COD in Months from Effective Date
1.	Transmission Lines	
2.	Sub-stations	
3.	Switching-stations	
4.	HVDC links including terminal stations	
5.	HVDC transmission line	

#### 1.3 Project Description

[BPC to insert background about requirement of Project and brief write-up about Project].

#### 1.4 Transmission Grid Map

Transmission Grid Map indicating the location of the Project is enclosed as Annexure 18 of this RFP for information and reference of the Bidders.

- 1.5 The objective of the bidding process is to select a Successful Bidder pursuant to this RFP, who shall acquire one hundred percent (100%) of the equity shares of ..... [Insert name of SPV] along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement, at the Acquisition Price to be intimated by the BPC, twenty (20) days prior to the Bid Deadline.

The \_\_\_\_\_ [Insert name of SPV], of which one hundred percent (100%) equity shares will be acquired by the Selected Bidder, shall be responsible as the TSP, for ensuring that it undertakes ownership, financing, development, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project, and to provide Transmission Service as per the terms of the RFP Project Documents.

The TSP shall ensure transfer of all project assets along with substation land, right of way and clearances to CTU or its successors or an agency as decided by the Central Government after 35 years from COD of project at zero cost and free from any encumbrance and liability. The transfer shall be completed within 90 days after 35 years from COD of project failing which CTU shall be entitled to take over the project assets Suo moto.

## 1.6 Brief Scope of Work

### 1.6.1 Scope of Transmission Service Provider

The TSP's scope of work for the Project shall comprise, but not necessarily be limited to the following:

- 1.6.1.1 Establishment, operation and maintenance of the Project on build, own, operate and transfer basis and completion of all the activities for the Project, including survey, detailed project report formulation, arranging finance, project management, necessary Consents, Clearances and Permits (way leave, environment & forest, civil aviation, railway/ road/river/canal/power crossing/PTCC, etc.), land compensation, design, engineering, equipment, material, construction, erection, testing & commissioning. Further, the actual location of substations, switching stations or HVDC terminal or inverter stations in the scope of TSP shall not be beyond 1 Km radius of the location proposed by the BPC in the survey report.
- 1.6.1.2 The TSP shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Transmission Service Agreement and applicable Rules/ Regulations, Orders and Guidelines issued by the Central Government.
- 1.6.1.3 The TSP shall ensure timely completion of entire scope of Project in all respects and its operation and maintenance, as shall be specified in the RFP documents.
- 1.6.1.4 The TSP shall seek Transmission License from the Commission, as per the provisions of the Electricity Act and regulations made thereunder.
- 1.6.1.5 The TSP shall seek approval under Section 164 of Electricity Act, from CEA after acquisition of \_\_\_\_\_ [Insert name of SPV]. The approval shall be granted by CEA generally within 30 days but in no case later than 45 days from the date of receipt of application (complete in all aspects).

### 1.6.2 Scope of Bid Process Coordinator (BPC)

BPC's scope of work is briefly outlined hereunder:

1.6.2.1 The BPC has initiated development of the Project and shall be responsible for the tasks in this regard as specified hereunder:

1. Provide to the Bidders a Survey Report for the Project at least forty five (45) days prior to the Bid Deadline. The Survey Report shall include the suggested route with approximate route length, type of terrain likely to be encountered and its likely implication in terms of Right of Way (ROW), statutory clearances, location of substations or converter stations and land area to be acquired for the substation or converter station.
2. To obtain approval for laying of overhead transmission lines under Section 68 of Electricity Act, from the Government at least twenty (20) days prior to Bid Deadline.
3. To initiate acquisition of land for location specific substations, switching stations or HVDC terminal or inverter stations, if required.
4. To initiate process of seeking forest clearance, if required
5. The BPC shall intimate to the Bidders, the Acquisition Price payable by the Selected Bidder to the ..... [Insert Name of BPC] for the acquisition of one hundred percent (100%) of the equity shareholding of ..... [Insert Name of SPV], along with all its related assets and liabilities at least twenty (20) days prior to the Bid Deadline.
6. The BPC shall ensure issuance of all finalized RFP Project Documents, at least fifteen (15) days prior to the Bid Deadline.

Provided that for any delay in meeting the above obligations of the BPC within the specified time period above, the Bid Deadline as per Clause 2.7.1 shall be extended on a day for day basis.

1.6.2.2 The details and documents as may be obtained by the BPC/ project specific SPV in relation to the Project shall be handed over to the TSP on an as-is-where-is basis, so that it may take further actions to obtain Consents, Clearances and Permits.

- 1.7 All costs (including direct and indirect) incurred by the BPC/ project specific SPV in connection with the activities concerning the Project shall be recovered from the TSP, which shall be included in the Acquisition Price.
- 1.8 The Project is required to be completed progressively in accordance with the schedule prescribed in this RFP.
- 1.9 A company under the Companies Act, 1956/Companies Act, 2013 (as the case may be) ..... [BPC to insert as applicable] by the name ..... [Insert name of company] has been incorporated to initiate the activities for execution of the Project. The said company shall be acquired by the successful Bidder as per terms and conditions as may be prescribed in RFP.
- 1.10 The Ministry of Power and the appropriate state government(s) shall provide their support to the TSP, on best endeavor basis, in enabling the TSP to develop the Project.
- 1.11 All Bidders are required to submit their Bid in accordance with the instructions set forth

in this RFP.

- 1.12 Once the Successful Bidder is selected, the details and documents as may be obtained by the BPC/ project specific SPV in relation to the Project, shall be handed over to the Successful Bidder on as is where basis, so that it may take further actions to obtain all necessary Consents, Clearances and Permits and the TSP shall not be entitled for any extensions in the Scheduled COD of the Project except as provided for in the TSA.
- 1.13 The assets of the Project shall be made available on a commercial basis as per the terms and conditions of the Transmission Service Agreement and Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time.

*G  
6/9/2021.*

## SECTION - 2

### INFORMATION AND INSTRUCTIONS FOR BIDDERS

..... [Insert name of the BPC]

20

  
6/18/2021.

**SECTION – 2****2. INFORMATION AND INSTRUCTIONS FOR BIDDERS****2.1 Qualification Requirements**

2.1.1 The Bidder should be a company duly incorporated under the relevant laws (Bidding Company) or a Consortium of companies (Bidding Consortium) with one of the companies acting as the Lead Member of the Bidding Consortium. The Bidder shall be selected on meeting the Qualification Requirements specified in Section 2 of this RFP, as demonstrated by the Bidder's Technical Bid and the lowest Quoted Transmission Charges discovered from Final Offers quoted during the e-reverse bidding. A Bidding Consortium can participate in the bidding process for the Project if any Member of the Consortium has purchased the RFP document for such Project. Bidder who agree and undertake to procure the products associated with the Transmission System as per provisions of Public Procurement (Preference to Make in India) orders issued by Ministry of Power vide orders No. 11/5/2018 - Coord. dated 28.07.2020 for transmission sector, as amended from time to time read with Department for Promotion of Industry and Internal Trade (DPIIT) orders in this regard, shall be eligible hereunder. Further, it is clarified that Procuring Entity as defined in orders shall deemed to have included Selected Bidder and/ or TSP.

Besides, Department of Expenditure, Ministry of Finance vide Order (Public Procurement No 1) bearing File No. 6/18/2019-PPD dated 23.07.2020, Order (Public Procurement No 2) bearing File No. 6/18/2019-PPD dated 23.07.2020 and Order (Public Procurement No. 3) bearing File No. 6/18/2019-PPD, dated 24.07.2020, as amended from time to time, have issued directions regarding public procurement from a bidder of a country, which shares land border with India are also applicable.

**2.1.2 Technical requirement to be met by the Bidding Company or Lead Member of Bidding Consortium**

The Bidder must fulfill any one of the following technical requirements:

- (i) Experience of development of projects in the Infrastructure Sector in the last five (5) years with aggregate capital expenditure of not less than Rs. \_\_\_\_\_ Crore or equivalent USD (calculated as per provisions in Clause 3.4.1). However, the capital expenditure of each project shall not be less than Rs. \_\_\_\_\_ Crore or equivalent USD (calculated as per provisions in Clause 3.4.1).

For this purpose, capital expenditure incurred on projects that have been commissioned/completed at least seven (7) days prior to Bid Deadline shall be considered. The capital expenditure discussed above shall be as capitalized and reflected in the audited books of accounts of the Technically Evaluated Entity. In case a clearly identifiable part of a project has been put into commercial operation, the capital expenditure on such part of the project shall be considered. The Technically Evaluated Entity must have either executed such projects itself or must have held directly or indirectly at least twenty six percent (26%) of the shareholding in the company that has executed the project(s) from the date of financial closure of the project(s) till the time of commissioning/completion of such project(s).

OR

- (ii) Experience in construction of project in infrastructure sector: The Technically Evaluated Entity should have received aggregate payments not less than Rs. .... Crore or equivalent USD (calculated as per provisions in Clause 3.4.1) from its client(s) for construction works fully completed during the last 5(five) financial years. However, the payment received from each project shall not be less than Rs. .... Crore or equivalent USD (calculated as per provisions in Clause 3.4.1).

For this purpose, payments received on projects that have been commissioned/completed at least seven (7) days prior to Bid Deadline shall be considered. Further only the payments (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the technical capacity. For the avoidance of doubt, construction works shall not include cost of land, supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, in cases where different individual contracts are signed between same entities for the same project, the cumulative payments received under such individual contracts shall be considered for meeting the qualification requirement.

The Technically Evaluated Entity may be the Bidding Company or the Lead Member of a Consortium or an Affiliate or Parent of such Bidding Company or the Lead Member, as the case may be.

[Required aggregate capital cost of projects/ aggregate payments received for projects to be calculated as per below table:

Voltage Level	For transmission line (irrespective of conductor per phase)	For transformation capacity
Below 220 kV	0.5 Crore/ Km	0.25 Crore/ MVA
220 kV	0.8 Crore/ Km	0.15 Crore/ MVA
400 kV	2.0 Crore/ Km	0.12 Crore/ MVA
765 kV & Above	4.0 Crore/ Km	0.1 Crore/ MVA

In case a project involves more than one voltage level, the requirement shall be total requirement of all voltage levels involved. However, the minimum required aggregate capital cost of projects/ aggregate payments received for projects shall be Rs. 500 Crore.]

[Individual project experience to be calculated @ 20% of the above calculated aggregate capital cost of projects/ aggregate payments received for the projects. However, the minimum individual project experience shall be Rs. 100 Crore.]

Bidders shall furnish documentary evidence duly certified by authorized signatory of the Bidder who has been issued Power of Attorney in support of their technical capability as defined in Clause 2.1.2 of this RFP.

### 2.1.3 Financial requirement to be met by the Bidding Company/Bidding Consortium

#### 2.1.3.1 The Bidder must fulfill following financial requirements:

**A. Networth:**

Networth should be not less than Rs. \_\_\_\_\_ Crore or equivalent USD (calculated as per provisions in Clause 3.4.1) computed as the Networth based on unconsolidated audited annual accounts (refer to Note below) of any of the last three (3) financial years as provided in Clause 2.2.3, immediately preceding the Bid Deadline. Also, the Networth of any of the last three (3) financial years should not be negative.

[To be specified at @ 40% of the required aggregate capital cost of projects/ aggregate payments received for the projects as calculated under Clause 2.1.2 of RFP Document. However, the minimum requirement of Networth shall be Rs.250 crore.]

Note: Audited consolidated annual accounts of the Bidder may be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Technical Bid. Bidders shall furnish prescribed Annexure 7 (A) duly certified by authorized signatory of the Bidder who has been issued Power of Attorney and the Statutory Auditor and separate computation sheet for Networth duly certified by Statutory Auditor in support of their financial capability as defined in Clause 2.1.3 of this RFP.

**2.1.3.2** The Networth shall be computed in the following manner by the Bidder:

**A. Networth**

=	Equity share capital
Add:	Reserves
Subtract:	Revaluation Reserves
Subtract:	Intangible Assets
Subtract:	Miscellaneous expenditures to the extent not written off and carry forward losses

**2.1.3.3** If the Technical Bid is submitted by a Bidding Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The financial 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 for investment in the Project.

**2.1.4** The Bidder may seek qualification on the basis of technical and financial capability of its Parent and/ or its Affiliate(s) for the purpose of meeting the Qualification Requirements. However, in the case of the Bidder being a Consortium, the Lead Member has to meet the technical requirement on its own or by seeking the technical capability of its Parent and/or its Affiliate(s). Authorization for use of such technical or financial capability shall have to be provided from its Parent and/or Affiliate(s) as per Annexure 9. The technical and financial capability of a particular company/ particular project, including its Parents and/or Affiliates, shall not be used directly or indirectly by more than one Bidder/ Member of a Bidding Consortium/ Bidding Company. However, development and construction experience of a particular project may be used by more than one company.

The determination of the relationship of Parent or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be on the date at the most seven (7) days prior to the last date of submission of the Bid. Documentary evidence to establish such relationship shall be furnished by the Bidder along with the Technical Bid.

If the Technically Evaluated Entity and/or Financially Evaluated Entity is an entity other than the Bidding Company or a Member in a Bidding Consortium, the Bidding Company or Member relying on such Technically Evaluated Entity and/or Financially Evaluated Entity will have to submit a legally binding undertaking supported by a board resolution from the Technically Evaluated Entity and/or Financially Evaluated Entity or its Ultimate Parent Company, that all the equity investment obligations of the Bidding Company or the Member of the Consortium shall be deemed to be equity investment obligations of the Technically Evaluated Entity and/or Financially Evaluated Entity or its Ultimate Parent Company, and in the event of any default the same shall be met by such evaluated entity or by or the Ultimate Parent Company. The Bidding Company or the Consortium Member shall have to provide information and documents relating to its relationship with such Technically Evaluated Entity and/or Financially Evaluated Entity including details about the equity shareholding between them as per Annexure 7(C).

- 2.1.5 A Bidder shall submit only one Bid in the same bidding process, either 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/ Affiliate/Ultimate Parent of the Bidder/ Member in a Bidding Consortium shall not separately participate directly or indirectly in the same bidding process. Further, if any Bidder is having a Conflict of Interest with other Bidders participating in the same bidding process, the Bids of all such Bidders shall be rejected.
- 2.1.6 Notwithstanding anything stated above, BPC reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and request for any additional information and documents. BPC reserves the right at its sole discretion to contact the Bidder's bank and project references and verify the Bidder's information and documents for the purpose of bid evaluation.
- 2.1.7 The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till execution of the Transmission Service Agreement. Where the Technically Evaluated Entity and/or the Financially Evaluated Entity is not the Bidding Company or a Member in a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Technically Evaluated Entity and/or Financially Evaluated Entity till the execution of the Transmission Service Agreement. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.
- 2.1.8 The Selected Bidder will be required to continue to maintain compliance with the Qualification Requirements till the COD of the Project. Where the Technically Evaluated Entity and/or the Financially Evaluated Entity is not the Bidding Company or a Member in a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Technically Evaluated Entity and/or Financially Evaluated Entity till the COD of the Project. Failure to comply with the aforesaid provisions shall be dealt as per provisions of Transmission Service Agreement.

2.1.9 On the Bid Deadline, for the Bidder to be eligible to participate in the bidding process:

- the Bidder & any of its Affiliate including any Consortium Member & any of its Affiliate, their directors or key personnel should not have been barred or included in the blacklist by any government agency or authority in India, the government of the jurisdiction of the Bidder or Members where they are incorporated or the jurisdiction of their principal place of business, any international financial institution such as the World Bank Group, Asian Development Bank, African Development Bank, Inter-American Development Bank, Asian Infrastructure Investment Bank etc or the United Nations or any of its agencies; or
- the Bidder & any of its Affiliate including any Consortium Member & any of its Affiliate or their directors should not have been convicted of any offence in India or abroad.

In case any investigation is pending against the Bidder, including any Consortium Member or Affiliate, or CEO or any of the directors/ manager/key managerial personnel of the Bidder /Consortium /Member or their Affiliates, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed while submitting the Bid.

The Bidders shall confirm the above though a notarized affidavit as per Annexure 22.

## 2.2 Submission of Bid by the Bidder

- The information and documents in Technical Bid will be submitted by the Bidder as per the formats specified in Section – 4 (Formats for RFP) of this document
- 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 Technical Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of Bidder.
- The Technical Bid shall contain unconsolidated/consolidated audited annual accounts (consisting of unabridged Balance Sheet, Profit and Loss Account, profit appropriation account, Auditors Report, etc.), as the case may be, of Bidding Company or each Member in Consortium including Lead Member or the Financially Evaluated Entity for the last three (3) financial years immediately preceding the last date for submission of Bid for the purpose of calculation of Networth.

In case the annual accounts for the financial year immediately preceding the Bid Deadline is not audited, the Bidder shall give declaration in this regard duly certified by its statutory auditor. In such a case, the Bidder shall provide the audited annual accounts for the three (3) financial years preceding the financial year as above for which the annual accounts have not been audited.

### 2.2.4 Bid submitted by a Bidding Consortium:

- The Technical 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 Annexure 6). There shall be only one Lead Member which shall continue to hold twenty six percent (26%) equity in the TSP and cannot be changed upto one (1) year from the Commercial Operation Date (COD) of the Project. Each Member in 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 absence of Consortium Agreement, the Technical Bid will not be considered for evaluation and will be rejected.

Provided that the Lead Member of the Bidding Consortium will be required to be liable to the extent of 100% of the total proposed commitment of equity investment of the Bidding Consortium i.e. for both its own equity contribution as well as the equity contribution of other Members.

Provided further that the Consortium Agreement shall not be amended without the explicit approval of the BPC.

The Lead Member of the Consortium will be the single point of contact for the purposes of the bid process before the date of signing of Share Purchase Agreement. Settlement of any dispute amongst the Consortium Members shall not be the responsibility of the BPC and/or the CTU and the BPC and/or the CTU shall not bear any liability whatsoever on this account.

- 2.2.4.2 The Lead Member should designate at the most two persons to represent the Consortium in its dealings with the BPC. The person(s) designated by the Lead Member should be authorized through a Power of Attorney (as per Annexure 3) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Technical Bid on behalf of the Consortium, etc. The Bidding Consortium shall provide board resolutions from their respective Boards for committing their respective portion of equity requirement for the Project. Additionally, the Lead member shall provide a Board resolution committing to make good any shortfall in the equity for the project, in case of any member not meeting its equity commitment.
- 2.2.4.3 The Technical Bid should also contain signed Letter of Consent (as per Annexure 2) from each Member in Consortium confirming that the entire Technical and Financial Bids has been reviewed and each element of the Technical and Financial Bids is agreed to by them including investment commitment for the Project.

In addition, the Technical Bid should also contain Board Resolution from each Member of the Consortium other than the Lead Member in favour of their respective authorized representatives for executing the POA, Consortium Agreement and signing of the requisite formats.

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

- 2.2.5.1 The Bidding Company should designate at the most two persons to represent the Bidding Company in its dealings with BPC. The person(s) should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Technical and Financial Bids etc. The Bidding Company should submit, along with Technical Bid, a Power of Attorney (as per Annexure 3), authorizing the signatory of the Technical and Financial Bids. The Bidding Company shall submit the board resolution committing 100% of equity requirement for the Project, in the

Technical Bid.

### **2.3 Clarifications & Pre-Bid Meeting**

- 2.3.1 The Bidders may seek clarifications or suggest amendments to the RFP by sending an email to the BPC at the email id indicated in Clause 2.14 within the date and time mentioned in Clause 2.7.2. For any such clarifications or amendments, the Bidders should adhere to the format as per Annexure – 19.
- 2.3.2 Only those Bidders or their authorized representatives, who have purchased the RFP documents are invited to attend the pre-bid meeting(s), which will take place on date as specified in Clause 2.7.2, or any such other date as notified by the BPC. The time and address of this would be intimated later.
- 2.3.3 The purpose of the pre-bid meeting will be to clarify any issues regarding the RFP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.3.1.
- 2.3.4 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 2.3.5 The BPC is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.
- 2.3.6 In case Bidders need any further clarifications not involving any amendments in respect of final RFP, they should ensure that request for such clarification is submitted through e-mail to the BPC at least ten (10) days prior to the Bid Deadline as mentioned in Clause 2.7.1. The BPC may issue clarifications only, as per its sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RFP has been issued. 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 2.3.6.

### **2.4 Amendment of RFP**

- 2.4.1. At any time before the timeline mentioned in Clause 2.7.1, the BPC may, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder modify or amend the RFP, including the timelines specified in Clause 2.7.2 by issuance of addendum/modification/errata and/or revised document. Such document shall be notified in writing through a letter or fax or e-mail to all the entities to whom the RFP has been issued and shall be binding on them. In order to ensure that Bidders have reasonable time to take the modification into account in preparing their Bid, or for any other reasons, BPC may at its discretion, extend the due date for submission of Bid. Late receipt of any addendum/modification/errata and/or revised document will not relieve the Bidder from being bound by that modification.
- 2.4.2. All modifications shall become part of the terms and conditions of this RFP. No interpretation, revision or communication regarding this RFP is valid, unless made in writing.
- 2.4.3. The amendment to the RFP shall be notified to all the Bidders through the electronic bidding platform and shall be binding on them.

A handwritten signature in blue ink, appearing to read "G. S. Jaiswal", is placed over a blue rectangular box at the bottom right of the page.

## 2.5 The Bidding Process

The entire bidding process shall be conducted on electronic bidding platform created by ..... [Insert name of Service Provider]. The Bid shall comprise of the Technical Bid and the Financial Bid. The Bidders shall submit the Technical Bid & Financial Bid through the electronic bidding platform. In addition to the online submission, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI. There shall be no physical submission of the Financial Bid.

Evaluation of Technical Bid will be carried out considering the information and documents furnished by the Bidders as required under this RFP. This step would involve responsiveness check, technical and financial evaluation of the details/documents furnished by the Bidding Company / Bidding Consortium in support of meeting the Qualification Requirements. Bidders meeting the Qualification Requirements, subject to evaluation as specified in Clause 3.2 to 3.4 shall be declared as "Qualified Bidders" and eligible for opening of Initial Offer. The BPC shall also upload the list of all Qualified Bidders and Non-Qualified Bidders on the bidding portal along with the reasons for non-qualification. Also, the Financial Bids of Qualified Bidders shall be opened after at least 24 hours from the date of declaration of the Technically Qualified Bidders.

The Financial Bid will comprise of two rounds. In the first round the Initial Offer (submitted online along with the Technical Bids) of the responsive bids would be opened and Quoted Transmission Charges of Initial Offer shall be ranked on the basis of ascending order for determination of the Qualified Bidders as provided in Section-III of RFP. The Qualified Bidders, in the first fifty per cent of the ranking (with any fraction rounded off to higher integer) or four Qualified Bidders, whichever is higher, shall qualify for participating in the electronic reverse auction stage and submit their Final Offer.

Provided however, in case only one Bidder remains after the evaluation of Technical Bid as per Clause 3.2, 3.3 and Clause 3.4, the Initial Offer of such Bidder shall not be opened and the matter shall be referred to the Government.

Provided that in the event the number of qualified Technical Bids is between two and four, then each of the qualified Bidder shall be considered as "Qualified Bidders".

Provided that in the event of identical Quoted Transmission Charges discovered from the Initial Offer having been submitted by one or more Bidders, all such Bidders shall be assigned the same rank for the purposes of determination of Qualified Bidders. In such cases, all the Qualified Bidders who share the same rank till 50% of the rank (with any fraction rounded off to higher integer) determined above, shall qualify to participate in the electronic e-reverse auction stage. In case 50% of the ranks (with any fraction rounded off to higher integer) is having less than 4 (four) Bidders and the rank of the fourth (4<sup>th</sup>) Bidder is shared by more than one (1) Bidder, then all such Bidders who share the rank of the fourth (4<sup>th</sup>) Bidder shall qualify to participate in the electronic reverse auction.

The applicable ceiling for electronic reverse bidding shall be the lowest Quoted Transmission Charges discovered from the Initial Offer received from the Qualified

Bidders. The Qualified Bidders shall be permitted to place their Final Offer on the electronic bidding platform, which is lower than zero point two five (0.25) % of the prevailing lowest Quoted Transmission Charges.

The initial period for conducting the e-reverse bidding should be 2 hours which will be extended by 30 minutes from the last received bid time, if the bid is received during the last 30 minutes of the scheduled or extended bid time. Subsequently, it will be extended again by 30 minutes from the latest received bid time.

The technical details with respect to access to such electronic platform are provided in Annexure-A (Technical Details with respect to electronic reverse auction).

In case of any technical clarification regarding access to the electronic reverse auction platform or conduct of the auction process, the Bidders may contact ..... [Insert name of Service Provider directly at the address provided in Annexure-A.]

#### **2.5.1 Bid Formats**

The Bids in response to this RFP will be submitted online through the electronic bidding platform by the Bidders in the manner provided in Clause 2.9. The Bids shall comprise of the following:

#### **2.5.2 Technical Bid comprising of:**

1. Covering Letter (as per prescribed format enclosed as **Annexure 1**);
2. Letter of Consent from Consortium Members in **Annexure 2**;
3. Power of attorney issued by the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the Bid, in the format attached hereto as **Annexure 3**.

Additionally, in case of a Bidding Consortium, the power of attorney in favour of the Lead Member issued by the other Members of the Consortium shall be provided in as per format attached hereto as **Annexure 4**. Further, the Lead Member shall furnish Board resolution(s) from each Member of the Consortium other than the Lead Member in favour of their respective authorized representatives for executing the POA and signing of the requisite formats.

Provided that in the event the Bidding Company or the Lead Member of the Consortium or any Member of the Bidding Consortium, as the case may be, is a foreign entity, it may issue Board resolutions in place of power of attorney for the purpose of fulfilling these requirements.

4. Bidder's composition and ownership structure in **Annexure 5**
5. Format for Authorization submitted in Non-Judicial stamp paper duly notarized as per **Annexure 5** from the Bidding Company / each Member of the Consortium authorizing the BPC to seek reference from their respective bankers & others.

6. In case of Bidding Consortium, the Consortium Agreement shall be provided in as per format attached hereto as **Annexure 6**
7. Format of Qualification Requirement (**Annexures 7A, 7B, 7C and 7D**)
8. Bidders Undertakings and details of equity investment in Project (as per prescribed formats 1 and 2 of **Annexure 8**);
9. Authorization from Parent / Affiliate of Bidding Company / Member of Bidding Consortium whose technical / financial capability has been used by the Bidding Company / Member of Bidding Consortium (**Annexure 9**).
10. Undertaking from the Technically / Financially Evaluated Entity(ies) **OR** Undertaking from the Ultimate Parent Company, for total equity investment commitment, in the prescribed format in **Annexure – 10**, to meet any shortfall in the equity investment by the Selected Bidder in the \_\_\_\_\_ [Name of SPV].

**Note:** The effective Equity holding of the Selected Bidder in the \_\_\_\_\_ [Name of SPV], as specified in Clause 2.5.8.1 shall be computed as per the provisions of Clause 2.5.8.3 of this RFP.

Provided further, in case the Bidding Company or Member of a Consortium, (as the case may be) holds at least twenty six percent (26%) equity in such Technically/ Financially Evaluated Entities, whose credentials have been considered for the purpose of meeting the Qualification Requirements as per the RFP, no such Undertaking shall be required from the Technically / Financially Evaluated Entities.

11. Board resolutions, as per prescribed formats enclosed as Annexure – 11, duly certified by the Company Secretary or any Whole-time Director / Manager (supported by a specific Board Resolution), as applicable to the Bidder and mentioned hereunder,
  - (a) Board resolution from the Bidding Company (and any investing Affiliate / Parent Company / Ultimate Parent Company) committing one hundred percent (100%) in aggregate of the equity requirement for the Project - Format-1 of **Annexure 11**;
  - (b) Board resolutions from each of the Consortium Member of the Bidding Consortium (and any investing Affiliate / Parent Company / Ultimate Parent Company) together committing to one hundred percent (100%) in aggregate of equity requirement for the Project, in case Bidder is a Bidding Consortium - Format-1 of **Annexure 11**;
  - (c) In either of the cases as in (a) or (b) above as applicable, Board resolutions as per Format 2 of **Annexure 11** for total equity investment commitment from the Technically / Financially Evaluated Entity(ies) whose technical / financial credentials had been considered for the purpose of meeting Qualification Requirements as per the RFP

**OR**

Board resolutions as per Format 2 of **Annexure 11** from the Parent Company or the Ultimate Parent Company for total equity investment commitment.

Provided that such Board resolutions, as specified in (a) or (b) or (c) above, in case of a foreign entity, shall be supported by an unqualified opinion issued by an independent legal counsel practicing in the relevant country, 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.

For clarity sake, illustrations identifying which Board Resolution shall be applicable in typical cases are provided in **Annexure 11A**.

12. Format for Illustration of Affiliates at the most seven (7) days prior to Bid Deadline, duly certified by Company Secretary and supported by documentary evidence (**Annexure 12**).

Certified copy of the Register of Members / Demat Account Statement, Share Certificate, Annual Return filed with ROC etc. submitted as documentary evidence along with **Annexure 12**.

13. Disclosure as per **Annexure 13** regarding participation of any related companies in this bidding process.
14. Bid Bond, as per the prescribed format at **Annexure 14** or Bid Security Declaration as per prescribed format at **Annexure-14A** (as applicable);
15. Checklist for Technical Bid submission requirements as per **Annexure 16**.
16. Last three (3) financial years' unconsolidated / consolidated audited annual accounts / statements, as the case may be, of the Financially Evaluated Entity / Technical Evaluated Entity
17. Unconsolidated audited annual accounts of both the TEE and the Bidding Company/Lead member, as applicable, for the financial years in which financial closure was achieved and the financial year in which the said project was completed / commissioned.
18. Copy of the Memorandum and Articles of Association and certificate of incorporation or other organizational document (as applicable), including their amendments, certified by the Company Secretary of Bidding Company or each Member in case of a Consortium including Lead Member.
19. For each project listed in Annexure 7(D), certified true copy of the certificates of final acceptance and / or certificates of good operating performance duly issued by owners or clients for the project, duly signed by duly signed by authorized signatory.

In addition to the online submission of above formats through the electronic platform, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI. In case, there is a discrepancy between the online submission and physical documents, the bid would be rightly rejected and the bidder shall be

construed to have engaged in the fraudulent practice as defined in Clause 2.19.3 with consequences as mentioned in Clause 2.19.2.

### **2.5.3 Financial Bid (as per prescribed format at Annexure-21)**

Financial Bid shall comprise of: (i) the Initial Offer; and (ii) the Final Offer. The Initial Offer is required to be submitted along with the Technical Bid. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Offer of the responsive bids would be opened and Quoted Transmission Charges of Initial Offer shall be ranked on the basis of ascending order for determination of the Qualified Bidders as provided in Section-III of RFP.

In accordance with clause 2.5 of this RFP, the qualified Bidders shall be eligible to participate in the electronic reverse auction and submit their Final Offer.

The applicable ceiling for electronic reverse bidding shall be the lowest Quoted Transmission Charges discovered from the Initial Offer received from the Qualified Bidders. The Qualified Bidders shall be permitted to place their Final Offer on the electronic bidding platform, which is lower than zero point two five (0.25) % of the prevailing lowest Quoted Transmission Charges.

The initial period for conducting the e-reverse bidding should be 2 hours which will be extended by 30 minutes from the last received bid time, if the bid is received during the last 30 minutes of the scheduled or extended bid time. Subsequently, it will be extended again by 30 minutes from the latest received bid time.

The Bidders shall inter-alia take into account the following while preparing and submitting the Initial Offer and Final Offer of Financial Bid :-

- a. The Bidders shall quote single annual Quoted Transmission Charges for a period of 35 years commencing from the Scheduled COD of the Project.
- b. The Quoted Transmission Charges as per the format at Annexure-21 shall be inclusive of all charges and no exclusions shall be allowed. The Bidders shall take into account all costs including capital and operating, statutory taxes, duties, levies. Availability of the inputs necessary for operation and maintenance of the Project should be ensured by the TSP at the Project site and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the Project site must be included in the Quoted Transmission Charges.
- c. Annexure 21 duly digitally signed by authorized signatory.

### **2.5.4 Wherever information has been sought in specified formats, the Bidders shall fill in 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.**

### **2.5.5 Transmission Charges**

- 2.5.5.1. The Transmission Charges shall be specified in the Transmission Service Agreement and shall be payable to the TSP in Indian Rupees only. The Bidders shall quote single Transmission Charges as per the format at Annexure – 21.

2.5.5.2. The Transmission Charges of the Selected Bidder shall be inserted in Schedule 5 of the Transmission Service Agreement.

**2.5.6 Bidders may note that:**

- a) All the information and documents in Bid shall be submitted in English language only.
- b) Bidders shall mention the name, designation, telephone number, fax number, email address of the authorized signatory and complete address of the Bidder in the covering letter.
- c) All pages of the Bid submitted shall be initialed and stamped by the authorized signatory on behalf of the Bidder.
- d) A Bidder shall submit only one Bid in the same bidding process, either individually as Bidding Company or as a Member of a Bidding Consortium.
- e) The technical and financial capability of a particular company / particular project (Parent and/ or Affiliate) shall not be used directly or indirectly by more than one Bidder/ Member of a Bidding Consortium including Lead Member / Bidding Company.
- f) This Request for Proposal (RFP) document is not transferable. The RFP document and the information contained therein is for the use only by the Bidder to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisors). In the event that the recipient does not continue with its involvement in the Project, this RFP document must be kept confidential.
- g) Though adequate care has been taken while preparing this RFP document, the Bidder shall satisfy himself that the document is complete in all respects. Intimation of any discrepancy shall be given to the BPC immediately. If no intimation is received from any Bidder within ten (10) days from the date of issue of RFP document, it shall be considered that the RFP document is complete in all respects and has been received by the Bidder.
- h) Bids submitted by the Bidder and opened on scheduled date and time as stipulated in this RFP shall become the property of the BPC and BPC shall have no obligation to return the same to the Bidder.
- i) 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, the BPC 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 Transmission Service Agreement shall apply.
- j) If for any reason the Bid of the Bidder with the lowest Quoted Transmission Charges is not selected or Letter of Intent issued to such Selected Bidder is cancelled or such Bidder withdraws its Bids, the BPC may :-

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- i. Invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the Bidder with the lowest Quoted Transmission Charges (the “second round of bidding”) with following cases:
    - If in the second round of bidding, only one Bidder matches the Bid of the Bidder with lowest Quoted Transmission Charges, it shall be the Selected Bidder.
    - If two or more Bidders match the Bid of the Bidder with the lowest Quoted Transmission Charges in the second round of bidding, then the Bidder whose Quoted Transmission Charges was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the Bid of the Bidder with lowest Quoted Transmission Charges in the second round of bidding, the said third lowest Bidder shall be the Successful Bidder.
    - In the event that no Bidder offers to match the Bid of the Bidder with the lowest Quoted Transmission Charges in the second round of bidding, the BPC may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Bidder which quoted the lowest Quoted Transmission Charges in the first round of bidding. In case the Bidders are invited for the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Quoted Transmission Charges of the second lowest Bidder in the first round of bidding; or;
  - ii. Annul the bid process; or
  - iii. Take any such measure as may be deemed fit in the sole discretion of the BPC<sup>1</sup>
- k)** The BPC 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 Transmission Charges shall be sought or permitted by the BPC.
- l)** Non submission and/or submission of incomplete data/ information required under the provisions of RFP shall not be construed as waiver on the part of BPC of the obligation of the Bidder to furnish the said data / information unless the waiver is in writing.
- m)** Bidders shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits.
- n)** All Bidders are required to ensure compliance with the standards and codes mentioned in Clause 1.6.1.2.

<sup>1</sup> BPC shall record reasons for the same.

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- o) BPC reserves the right to reject all Bids and/or annul the process of tariff based competitive bidding for selection of Bidder as TSP to execute the Project without assigning any reason. BPC shall not bear any liability, whatsoever, in this regard.
- p) Foreign companies submitting the Bid are required to follow the applicable law in their country for execution of POA, Consortium Agreement and affixation of Common Seal (wherever required) and in such cases, their Bid should be supported by an unqualified opinion issued by an independent legal counsel practicing in the relevant country, stating that execution of such POA, Consortium Agreement and the authorizations granted therein are true and valid. Foreign companies executing POA outside India shall necessarily pay the adequate stamp charges in India as per the provisions of Stamp Act.

#### **2.5.7 Bidders to inform themselves fully**

- 2.5.7.1. The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. Once the Bidders have submitted their Bids, the Bidders shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition and the adequacy of transport facilities to the site), the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the adequacy and conditions of roads, bridges, railway sidings, ports, etc. for unloading and/or transporting heavy pieces of material and has based its design, equipment size 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 transmission of power. Accordingly, each Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of one hundred percent (100%) of the equity shares of the \_\_\_\_\_ [Insert Name of SPV], the TSP shall not be relieved from any of its obligations under the RFP Project Documents nor shall the TSP be entitled to any extension in Scheduled COD mentioned in this RFP or financial compensation for any reason whatsoever.
- 2.5.7.2. In their own interest, the Bidders are requested to familiarize themselves with all relevant laws of India, including without limitation, the Electricity Act 2003, the Income Tax Act 1961, the Companies Act, 1956 / Companies Act, 2013 (as the case may be), Environment Protection Act 1986 and Forest (Conservation) Act, 1980, the Customs Act, the Foreign Exchange Management Act, Land Acquisition Act, 1894, the Indian Telegraph Act 1885, Labour & Employment Laws of India, [Insurance Act] the regulations/standards framed by the Commissions and CEA, all other related acts, laws, rules and regulations prevalent in India, as amended from time to time.

In addition to the above, the Bidders are required to familiarize themselves with all relevant technical codes and standards, including but not limited to the Grid Code / State Grid Code, Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, Central Electricity Regulatory Commission Grant of Connectivity, Long-term Access and Medium - Term Open Access in Inter-State Transmission and related matters) Regulations, 2009, Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electric Lines) Regulation, 2010, Central Electricity Authority (Technical Standards for Communication System in Power System Operation) Regulations, 2020, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and

Losses) Regulations, 2020 and other relevant Rules/ Regulations/ Guidelines issued by the Central Government, the CERC and the CEA and amendments thereof.

The BPC shall not entertain any request for clarifications from the Bidders regarding the above laws / acts / rules / regulations / standards. Non-awareness of the same shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidders undertake and agree that, before submission of their Bid, all such factors as generally brought out above, have been fully investigated and considered while submitting their Bids.

- 2.5.7.3. The Survey Report has been prepared in good faith, and on best endeavor basis. Neither BPC & Nodal Agency nor their employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the Bidders by any act or omission on their part.
- 2.5.7.4. Bidders shall make best efforts and carry out its own due diligence upon survey report provided by BPC and shall consider all possible techno-commercial factors before submission of Bid. Bidders may also visit the route of the Transmission Lines associated with the Project and the surrounding areas and obtain / verify all information which they deem fit and necessary for the preparation of their Bid. Bidders may also carry out required surveys and field investigation for submission of their Bid. Bidders may also opt for any other route and is not bound to follow the route suggested in survey report provided by BPC.
- 2.5.7.5. Failure to investigate, examine and to inspect site or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project.
- 2.5.7.6. The Selected Bidder shall obtain all necessary Consents, Clearances and Permits as required. The Bidders shall familiarize itself with the procedures and time frame required to obtain such Consents, Clearances and Permits.
- 2.5.7.7. 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 instructions/codes, etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in the country. Information regarding grid parameters such as voltage and frequency is available on the websites of Regional / State Load Despatch Centres.

#### **2.5.8 Minimum Equity holding/Equity Lock-in**

- 2.5.8.1. (a) The aggregate equity share holding of the Selected Bidder, in the issued and paid up equity share capital of \_\_\_\_\_ [Insert Name of SPV] shall not be less than Fifty one percent (51%) up to a period of (1) one year after COD of the Project;
- (b) In case the Selected Bidder is a Bidding Consortium, then any Member (other than the Lead Member) of such Bidding Consortium 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 (a) above.

(c) If equity is held by the Affiliates, Parent Company or Ultimate Parent Company, then subject to the second proviso of this Clause 2.5.8.1 (c), such Affiliate, Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in [Insert name of SPV] 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.

Provided that in case the Lead Member or Bidding Company is holding equity through Affiliate/s, Ultimate Parent Company or Parent Company, such restriction shall apply to such entities.

Provided further, that the aggregate equity share holding of the Bidding Consortium or a Bidding Company in the issued and paid up equity share capital of [Insert name of SPV] shall not be less than fifty one percent (51%) up to a period of one (1) year after COD of the Project and the lead Member of the Consortium shall have the equity share holding not less than twenty six percent (26%). In case the Selected Bidder is a Bidding Consortium, then any Member (other than the Lead Member) of such Bidding Consortium 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 (a) above.

(d) All transfer(s) of shareholding of \_\_\_\_\_ [Insert name of SPV] by any of the entities referred to above, shall be after prior written intimation to the Nodal Agency.

2.5.8.2. The Selected Bidder may invest in the equity share capital of \_\_\_\_\_ [Insert name of SPV] through its Affiliate(s) or Ultimate Parent Company or Parent Company. Details of such investment will have to be specified in the Technical Bid as per Format 2 of Annexure 8 of the RFP. If the Selected Bidder so invests through any Affiliate(s) or Ultimate Parent Company or Parent Company, the Selected Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified in Clause 2.5.8.1 and as computed as per the provisions of Clause 2.5.8.3 are still maintained.

2.5.8.3. For computation of effective Equity holding, the Equity holding of the Selected Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate (s) or Ultimate Parent Company in \_\_\_\_\_ [Insert name of SPV] shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Selected Bidder A directly holds thirty percent (30%) of the equity in \_\_\_\_\_ [Insert name of SPV] then holding of Selected Bidder A in \_\_\_\_\_ [Insert name of SPV] shall be thirty percent (30%);

If Selected Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in \_\_\_\_\_ [Insert name of SPV], then for the purposes of ascertaining the minimum equity/equity lock-in requirements specified

above, the effective holding of Bidder A in \_\_\_\_\_ [Insert name of SPV] shall be fifteen percent (15%), (i.e., 30%\* 50%);

- 2.5.8.4. The provisions as contained in this Clause 2.5.8 and Article 19.1 of the Transmission Service Agreement shall override the terms of the Consortium Agreement submitted by the Bidder as part of the RFP.

## 2.6 Project Schedule

- 2.6.1. All Elements of the Project are required to be commissioned progressively as per the schedule given in the following table;

S. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Element(s) which are pre- required for declaring the commercial operation (COD) of the respective Element  [BPC to insert precedence of commissioning of Element(s)] in project specific RFP and RFP Project Documents]
1.				
2.				
3.				
4.				
5.				

The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.

Scheduled COD for overall Project: ..... [Insert Months envisaged for achieving Scheduled COD of the Project] months from Effective Date.

Note: List of Element(s) along with the critical Element(s) to be provided by CEA

## 2.7 Due dates



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- 2.7.1. The Bidders should submit the Bids online through the electronic bidding platform before the Bid Deadline i.e. on or before..... [Insert date and time of Bid Deadline]. In addition to the online submission, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI.

- 2.7.2. Important timelines are mentioned below:

Date	Event
[Issue of RFP Date]	Issuance of RFP
[Issue of RFP Date + 20 Days]	Submission of written clarifications/amendments, if any, on the RFP / RFP Project Documents by Bidders so as to reach BPC by 1700 hours. Such written clarifications/amendments shall be in the format provided in Annexure-20.
[Insert Date(s) of pre-bid]	Pre-Bid meeting(s)
[Issue of RFP Date + 38 Days]	Issue of written clarifications and revised RFP documents
[Issue of RFP Date + 48 Days]	Issue of final RFP Project Documents
[Issue of RFP Date + 63 Days]	Submission of Bid (Online submission of Bid through electronic bidding portal)
[Issue of RFP Date + 63 Days]	Opening of Technical Bid
[Issue of RFP Date + 71 Days]	Shortlisting and announcement of Qualified Bidders on bidding portal
[Issue of RFP Date + 72 Days]	Opening of Financial Bid - Initial Offer
[Issue of RFP Date + 73 Days]	Electronic reverse auction (Financial Bid – Final Offer) for the Qualified Bidders.
3 days post close of e-reverse bidding process	Submission of original hard copies of Annexure 3, Annexure 4, Annexure 6, as applicable and Annexure 14 by the bidder with lowest Final Offer
8 days post close of e-reverse bidding process	Selection of Successful Bidder and issue of LOI
10 days post issuance of LoI	Signing of RFP Project Documents and transfer of .....[Insert Name of SPV]

- 2.7.3. To enable BPC to meet the schedule, all Bidders are expected to respond expeditiously during the bidding process. If any milestone/activity falls on a day which is not a working day or which is a public holiday then the milestone/activity shall be achieved/completed on the next working day.

## 2.8 Validity of the Bid

- 2.8.1. The Bid shall remain valid for a period of one hundred and eighty (180) days from the Bid Deadline. The BPC reserves the right to reject any Bid which does not meet aforementioned validity requirement.
- 2.8.2. The BPC may solicit the Bidders' consent for an extension of the period of validity of

the Bid. The request and the response, thereafter, shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by the BPC, the BPC shall not be entitled to invoke the Bid Bond. A Bidder accepting the BPC's 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 BPC within seven (7) days of such request, failing which the Bid shall not be considered as valid.

## **2.9 Method of Submission**

- 2.9.1. Both the Technical and Financial Bids duly filled in, all formats and supporting shall be scanned and uploaded online through electronic bidding platform in the manner specified in Annexure A
- 2.9.2. It may be noted that Technical Bid shall not contain any information/document relating to Financial Bid. If Technical Bid contains any such information/documents, the BPC shall not be responsible for premature opening of the Financial Bid.

All pages of the Bid, except for the Bid Bond (Annexure 14) 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 in this regard shall be signed by the authorized signatory at least on the first and last page of such document.

- 2.9.3. No change or supplemental information to a Bid already submitted will be accepted after the Bid Deadline, unless the same is requested for by the BPC as per Clause 2.5.6 (k).

Provided that a Bidder shall always have the right to withdraw / modify its Bid before the Bid Deadline. No Technical Bid or Initial Offer shall be modified, substituted or withdrawn by the Bidder on or after the Bid Deadline.

## **2.10 Preparation cost**

- 2.10.1. The Bidders 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 Project Documents (other than the TSA), etc. BPC shall not be responsible in any way for such costs, regardless of the conduct or outcome of the process of tariff based competitive bidding for selection of Bidder as TSP as per Bidding Guidelines.
- 2.10.2. The cost of this RFP is Rupees ..... (Rs. ....) or U.S. Dollar ..... Only (US\$ ..... /-) [Insert RFP Document fee] plus GST as per applicable rate, which shall be non-refundable. This amount shall be paid via electronic transfer to the following Bank Account:

[Insert Bank Account Details of BPC]

Immediately after issuance of RFP document, the Bidder shall submit the Pre-Award Integrity Pact in the format as prescribed in Annexure B, which shall be applicable for and during the bidding process, duly signed on each page by any whole-time Director / Authorized Signatory, duly witnessed by two persons, and shall be submitted by the Bidder

in two (2) originals in a separate envelope, duly superscripted with Pre-Award Integrity Pact. The Bidder shall submit the Pre-Award Integrity Pact on non-judicial stamp paper of Rs. 100/- each duly purchased from the National Capital Territory of Delhi. In case the Bidder is in a consortium, the Pre-Award Integrity Pact shall be signed and submitted by each member of the Consortium separately.

## 2.11 Bid Bond

2.11.1. Each Bidder shall submit the Bid accompanied by Bid Bond issued by any of the Banks listed in Annexure-17. The Bid Bond shall be valid for a period of thirty (30) days beyond the validity of the Bid.

2.11.2. Subject to the provisions of Clause 2.15.5, the Bid Bond may be invoked by the BPC or its authorized representative, without any notice, demur, or any other legal process upon occurrence of any of the following:

- Bidder withdraws during the period of Bid Validity as specified in this RFP or as extended by mutual consent of the respective Bidder(s) and the BPC
- Failure to execute the Share Purchase Agreement as per the provisions of Clause 2.15.2; or
- Failure to furnish the Contract Performance Guarantee as per Clause 2.12; or
- Failure to acquire one hundred percent (100%) equity shares of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities, in accordance with the provisions of Clause 2.15.2; or
- Failure to comply with the provisions of Clause 2.15.5 and Clause 2.15.6, leading to annulment of the award of the Project.
- Bidders submitting any wrong information or making any misrepresentation in their Bid as mentioned in Clause 2.5.6.

Intimation of the reasons of the invocation of the Bid Bond shall be given to the Selected Bidder by the BPC within three (3) working days after such invocation.

2.11.3. The Bid Bond of the Selected Bidder shall be returned on submission of the Contract Performance Guarantee as per Clause 2.12 and the relevant provisions of the Transmission Service Agreement.

2.11.4. The Bid Bond of all the Bidders, whose Bids are declared non-responsive, shall be returned within a period of thirty (30) days after the date on which the Financial Bids are opened.

2.11.5. The Bid Bond of all unsuccessful Bidders shall be returned and released by the BPC on the same day on which the \_\_\_\_\_ [Insert name of SPV] is transferred to the Selected Bidder. The Bid Bond of the Successful Bidder shall be returned on submission of Contract Performance Guarantee as per Clause 2.12 of this RFP and the provisions of the Transmission Service Agreement.

## 2.12 Contract Performance Guarantee

- 2.12.1. Within ten (10) days from the date of issue of the Letter of Intent, the Selected Bidder, on behalf of the TSP, will provide to the Nodal Agency the Contract Performance Guarantee for an amount of Rs. \_\_\_\_\_ Crore (Rupees \_\_\_\_\_ Only) [Contract Performance Guarantee would be computed @ 5% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document. However, this value would be computed @ 3% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document for the projects for which RFP has been issued till 31.12.2021]. The Contract Performance Guarantee shall be initially valid for a period up to three (3) months after the Scheduled COD of the Project and shall be extended from time to time to be valid for a period up to three (3) months after the COD of the Project and thereafter shall be dealt with in accordance with the provisions of the Transmission Service Agreement. The Contract Performance Guarantee shall be issued by any of the banks listed in Annexure-17.
- 2.12.2. In case the Selected Bidder is unable to obtain the Contract Performance Guarantee for the total amount from any one bank specified in Annexure-17, the Selected Bidder may obtain the same from not more than three (3) banks specified in Annexure-17.

## 2.13 Opening of Bids

- 2.13.1. Technical Bid will be opened by the Bid Opening Committee as per the following time schedule and in the office of Central Electricity Authority, in the online presence of Bidders' representatives who wish to attend:

Opening of Envelope (Technical Bid): ..... hours (IST) [Insert time of opening of Technical Bid] on ..... [Insert Bid Deadline date]

or such other dates as may be intimated by BPC to the Bidders.

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

Opening of Initial Offer: Initial Offer shall be opened by the Bid Opening Committee in presence of the Bid Evaluation Committee at ..... hours (IST) [Insert time of opening of Initial Offer] on ..... [Insert date of opening of Initial Offer] in the office of CEA.

- 2.13.2. The following information from each Bid will be read out to all the Bidders at the time of opening of Technical Bid:

- Name of the Bidding Company / Consortium Members in case of Bidding Consortium.

### Information to be provided after opening of Initial Offer:

Only the lowest Initial Offer (s) shall be communicated to all the Qualified Bidders to participate in the e-reverse bidding process. During the e-reverse bidding process only the lowest prevailing bid should be visible to all the bidders on the electronic platform.

## 2.14 Enquiries

Written clarifications on the RFP and other RFP Project Documents as per Clause 2.3 and 2.4 may be sought from:

..... [Insert Designation of Authorized official of BPC]

..... [Insert name and address of BPC]

Tel. ....

Fax .....

Email: ..... [Insert contact details of Authorized Official of BPC]

## 2.15 Other Aspects

2.15.1. The draft of the Transmission Service Agreement has been attached to this RFP. In addition to above, the following documents have also been attached to this RFP:

- a) Share Purchase Agreement
- b) [BPC to insert name of agreement(s) required, if any, under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time]

Further, the draft of the following RFP Project Documents shall be provided at least forty five (45) days before the Bid Deadline:

- a) ..... [to be inserted by the BPC],
- b) ..... [to be inserted by the BPC]

[Note: In case of project specific RFP, the above immediate paragraph to be removed in case all the RFP Project Documents are attached with this RFP]

When the drafts of the above RFP Project Documents are provided by the BPC, these RFP Project Documents shall form part of this RFP as per Formats – 1 & 2 of Annexure 20.

Upon finalization of the RFP Project Documents after incorporating the amendments envisaged in Clause 2.4 of this RFP, all the finalized RFP Project Documents shall be provided by BPC to the Bidders at least fifteen (15) days prior to the Bid Deadline.

The Transmission Service Agreement and Share Purchase Agreement shall be signed in required number of originals so as to ensure that one (1) original is retained by each party to the Agreement(s) on the date of transfer of SPV.

2.15.2. Within ten (10) days of the issue of the Letter of Intent, the Selected Bidder shall:

- a) provide the Contract Performance Guarantee in favour of the Nodal Agency as per the provisions of Clause 2.12;
- b) execute the Share Purchase Agreement and the Transmission Service Agreement;

- c) acquire, for the Acquisition Price, one hundred percent (100%) equity shareholding of \_\_\_\_\_ [Insert Name of SPV] from \_\_\_\_\_ [Insert name of holding company of SPV], who shall sell to the Selected Bidder, the equity shareholding of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities;

Stamp duties payable on purchase of one hundred percent (100%) of the equity shareholding of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities, shall also be borne by the Selected Bidder.

Provided further that, if for any reason attributable to the BPC, the above activities are not completed by the Selected Bidder within the above period of ten (10) days as mentioned in this Clause, such period of ten (10) days shall be extended, on a day for day basis till the end of the Bid validity period.

- 2.15.3. After the date of acquisition of the equity shareholding of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities, by the Selected Bidder,
- i. the authority of the BPC in respect of this Bid Process shall forthwith cease and any actions to be taken thereafter will be undertaken by the Nodal Agency,
  - ii. all rights and obligations of \_\_\_\_\_ [Insert Name of SPV], shall be of the TSP,
  - iii. any decisions taken by the BPC prior to the Effective Date shall continue to be binding on the Nodal Agency and
  - iv. contractual obligations undertaken by the BPC shall continue to be fulfilled by the TSP.
  - v. Further, the TSP shall execute the Agreement(s) required, if any, under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time.
- 2.15.4. Within five (5) working days of the issue of the acquisition of the SPV by the Successful Bidder, the TSP shall apply to the Commission for grant of Transmission License and make an application to the Commission for the adoption of Transmission Charges, as required under Section – 63 of The Electricity Act 2003.
- 2.15.5. If the Selected Bidder / TSP fails or refuses to comply with any of its obligations under Clauses 2.15.2, 2.15.3 and 2.15.4, and provided that the other parties are willing to execute the Share Purchase Agreement and \_\_\_\_\_ [Insert Name of holding company of the SPV] is willing to sell the entire equity shareholding of \_\_\_\_\_ [Insert Name of SPV], along with all its related assets and liabilities, to the Selected Bidder, such failure or refusal on the part of the Selected Bidder shall constitute sufficient grounds for cancellation of the Letter of Intent. In such cases, the BPC / its authorized representative(s) shall be entitled to invoke the Bid Bond of the Selected Bidder.
- 2.15.6. If the TSP fails to obtain the Transmission License from the Commission, it will constitute sufficient grounds for annulment of award of the Project.

- 2.15.7. The annulment of award, as provided in Clauses 2.15.5 and 2.15.6 of this RFP, will be done by the Government on the recommendations of National Committee on Transmission. However, before recommending so, National Committee on Transmission will give an opportunity to the Selected Bidder / TSP to present their view point.
- 2.15.8. The annulment of the award, under Clause 2.15.5 or 2.15.6 of this RFP, shall be sufficient grounds for blacklisting the bidder, whose award has been annulled, for a period of five years or more, as decided by the National Committee on Transmission, provided that the blacklisting shall be done only after giving the bidder an opportunity for showing cause.

## **2.16 Confidentiality**

2.16.1. The parties undertake to hold in confidence this RFP and RFP Project 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, financers, who need to have access to such information for the proper performance of their activities;
- c) disclosures required under Law, without the prior written consent of the other parties of the concerned agreements.

Provided that the TSP agrees and acknowledges that the Nodal Agency may at any time, disclose the terms and conditions of the RFP and RFP Project Documents to any person, to the extent stipulated under the Law or the Bidding Guidelines.

## **2.17 Right of the BPC to reject any Bid**

BPC reserves the right to reject all or any of the Bids/ or cancel the RFP without assigning any reasons whatsoever and without any liability.

**2.18** Non submission and/or submission of incomplete data/ information required under the provisions of RFP shall not be construed as waiver on the part of BPC of the obligation of the Bidder to furnish the said data / information unless the waiver is in writing.

## **2.19 Fraudulent and Corrupt Practices**

2.19.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid process and subsequent to the issue of the LoI Notwithstanding anything to the contrary contained herein, or in the LoI, the BPC shall reject a Bid, withdraw the LoI, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the BPC shall forfeit the Bid Bond, without prejudice to any other right or remedy that may be available to the BPC hereunder or otherwise.

2.19.2. Without prejudice to the rights of the BPC under Clause 2.19.1 hereinabove and the rights and remedies which the BPC may have under the LoI, if a Bidder is found by the BPC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of the LoI, such Bidder & its Affiliates shall not be eligible to participate in any tender or RFP issued by any BPC for an indefinite period from the date such Bidder is found by the BPC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

2.19.3. For the purposes of this Clause 2.19, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the BPC who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LoI or has dealt with matters concerning the Transmission Service Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the BPC, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LoI or after the execution of the Transmission Service Agreement, as the case may be, any person in respect of any matter relating to the Project or the LoI or the Transmission Service Agreement, who at any time has been or is a legal, financial or technical adviser of the BPC in relation to any matter concerning the Project;
- b) **"Fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;
- c) **"Coercive practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bid process;
- d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the BPC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and
- e) **"Restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid process.

## **SECTION - 3**

### **EVALUATION OF THE TECHNICAL AND FINANCIAL BID**

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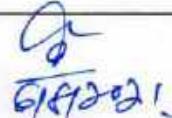
**SECTION 3****1. EVALUATION OF BID****3.1. The evaluation process of Technical Bid comprises the following five steps:**

- Step I – Responsiveness check
- Step II – Compliance with submission requirements
- Step III – Evaluation of Technical Bids
- Step IV – Evaluation of Financial Bids
- Step V – Bidder Selection

**3.2. STEP I – Responsiveness check**

The Technical Bid submitted by the Bidder shall be initially scrutinized to establish "Responsiveness". Subject to clause 2.5.6 (k), any of the following conditions shall cause the Technical Bid to be "Non-responsive":

- a) Technical Bid that are incomplete.
- b) Technical Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP.
- c) All pages of the Technical Bid submitted but not initialed by the authorized signatories on behalf of the Bidder.
- d) Technical Bid not including the covering letter as per Annexure 1.
- e) Technical Bid submitted by a Bidding Consortium not including the Consortium Agreement.
- f) Technical Bid contains material inconsistencies in the information and documents submitted by the Bidder, affecting the Qualification Requirements.
- g) Bidder submitting or participating in more than one Bid either as a Bidding Company or as a Member of Bidding Consortium.
- h) More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent/Affiliate.
- i) Information not submitted in formats specified in the RFP.
- j) Applicable Board resolutions, or any other document, as provided in Clause 2.5.2, not being submitted;
- k) Bid not accompanied by a valid Bid Bond or Bid Security Declaration, as applicable;
- l) Non submission of power of attorney, supported by a Board resolution;
- m) Bid validity being less than that required as per Clause 2.8 of this RFP;
- n) Bid not containing Format-1 (Bidders' Undertakings) of Annexure-8;



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- o) Bidder having Conflict of Interest
- p) The Bidder has not submitted a disclosure as per Annexure 13.
- q) Bidders delaying in submission of additional information or clarifications sought by the BPC.
- r) If the Bidder makes any misrepresentation as specified in Clause 3.7.
- s) Bid being conditional in nature.
- t) More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent/Affiliate.

### **3.3. STEP II - Compliance with submission requirements**

Each Bidder's Technical Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Technical Bid is taken up. Annexure 16 and Annexure 11A shall be used to check whether each Bidder meets the stipulated requirements.

### **3.4. STEP III -Evaluation of Technical Bid**

Evaluation of Technical Bid will be carried out considering the information and documents furnished by the Bidders as required under this RFP. This step would involve technical and financial evaluation of the details/ documents furnished by the Bidding Company / Bidding Consortium in support of meeting the Qualification Requirements

#### **3.4.1. Interpolation of financial data.**

For the Qualification Requirements data 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 their Banker.

For the purpose of calculating the aggregate capital expenditure/construction experience of the projects completed/ commissioned where such projects are executed outside India and capital expenditure is denominated in foreign currency, bills selling exchange rates (card rate) USD/INR of State Bank of India prevailing on the date of closing of the financial year in which the projects were completed and as certified by their Banker shall be considered.

For the projects executed in the current financial year bills selling (card rate) USD/INR of State Bank of India prevailing on seven (7) days prior to the last date of submission of Technical Bid and as certified by their Banker shall be considered.

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. Such Bidders shall submit necessary certification from their Banker for the exchange rate used in the conversation.

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.

**3.4.2.** Bidders meeting the Qualification Requirements, subject to evaluation as specified in Clauses 3.2 to 3.4 shall be declared as Qualified Bidders and eligible for opening of Initial Offer.

**3.4.3.** The BPC shall upload the list of all Qualified Bidders and Non-Qualified Bidders on the bidding portal along with the reasons for non-qualification.

### **3.5. STEP IV - Evaluation of Financial Bids**

**3.5.1.** The Bids which have been found Qualified by the BPC, based on the Steps I to III as specified above in Clauses 3.2.to 3.4, shall be opened and Quoted Transmission Charges of such Initial Offer shall be ranked on the basis of the ascending Initial Offer submitted by each Qualified Bidder.

Based on such ranking of the Qualified Bidders, in the first fifty per cent of the ranking (with any fraction rounded off to higher integer) or four Qualified Bidders, whichever is higher, shall qualify for participating in the electronic reverse auction.

Provided however, in case only one Bidder remains after the Evaluation of Technical Bid (Steps I to III) as per Clause 3.2 to 3.4, the Initial Offer of such Bidder shall not be opened and the matter shall be referred to the Government.

Provided that in the event the number of Qualified Bidders is between two and four, then each of the responsive Bidder shall be considered as Qualified Bidders.

Provided that in the event of identical Quoted Transmission Charges discovered from the Initial Offer having been submitted by one or more Bidders, all such Bidders shall be assigned the same rank for the purposes of determination of Qualified Bidders. In such cases, all Qualified Bidders who shares the same rank till 50% of the rank (with any fraction rounded off to higher integer) determined above, shall qualify to participate in the electronic reverse auction stage. In case 50% of the rank is having less than four (4) Bidders and the rank of the fourth (4<sup>th</sup>) Bidder is shared by more than one Bidder, then all such all such Bidders who share the rank of the fourth Bidder shall qualify to participate in the electronic reverse auction.

**3.5.2.** The Financial Bids comprising of both Initial Offer and Final Offer submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.5.3 of this RFP. Any Bid not meeting any of the requirements as per Clause 2.5.3 of this RFP may cause the Bid to be considered "Non-responsive", at the sole decision of the BPC. Financial Bid not in conformity with the requirement of SI. No. (c) of Clause 2.5.3 of this RFP shall be rejected.

**3.5.3** The Bidders shall quote the single annual Quoted Transmission Charges as specified in the format at Annexure – 21.

### **3.6. STEP V - Bidder Selection**

**3.6.1.** The prevailing lowest Quoted Transmission Charges discovered from Final Offers shall only be displayed during the e-reverse bidding and the Bidder quoting such Final Offer will

always remain anonymous during the e-reverse bidding. The Bidder with the prevailing lowest Quoted Transmission Charges discovered from Final Offers at the close of the scheduled or extended period of e-reverse bidding as mentioned in clause 2.5 shall be declared as the Successful Bidder, subject to verification of the original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14. The Letter of Intent shall be issued to such Successful Bidder in two (2) copies.

However, if no bid is received during the e-reverse bidding stage then the Bidder with lowest quoted initial transmission charges ("Initial Offer") during e-bidding stage shall be declared as the Successful Bidder, subject to verification of the original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14. The Letter of Intent shall be issued to such Successful Bidder in two (2) copies.

In case, there is a discrepancy between the online submission and physical documents, the bid would be outrightly rejected and the bidder shall be construed to have engaged in the fraudulent practice as defined in Clause 2.19.3 with consequences as mentioned in Clause 2.19.2. Further, in such a case, the provisions of Clause 2.5.6 (j) shall apply.

- 3.6.2. The Selected 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 BPC within seven (7) days of issue of LoI.
- 3.6.3. If the Successful Bidder, to whom the Letter of Intent has been issued, does not fulfill any of the conditions specified in Clauses 2.15.2, 2.15.3 and Clause 2.15.4, then subject to Clause 2.15.5, the BPC reserves the right to annul the award of the Project and cancel the Letter of Intent. Further, in such a case, the provisions of Clause 2.5.6 (j) shall apply.
- 3.6.4. The BPC, in its own discretion, has the right to reject all Bids if the Quoted Transmission Charges are not aligned to the prevailing prices.

### **3.7. Misrepresentation by the Bidder**

If the Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in the Technical Bid or Bid, as the case may be, in any manner whatsoever, in order to create circumstances for the acceptance of its Technical Bid/Bid, the BPC reserves the right to reject such Technical Bid/Bid, and/ or cancel the Letter of Intent, if issued. Further, in case Letter of Intent is cancelled, consequences as per provisions of the RFP shall follow.

### **3.8. Disposition of Technical Bid**

- 3.8.1. Technical Bid found to be Non-responsive as per Clause 3.2, due to any of the following conditions, shall be liable for rejection.
  - Technical Bid that is incomplete.
  - Technical Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP.
  - All pages of the Technical Bid submitted but not initialed by the authorized signatories on behalf of the Bidder.
  - Technical Bid not including the covering letter as per Annexure 1.
  - Technical Bid contains material inconsistencies in the information and documents submitted by the Bidder, affecting the Qualification Requirements.

- Information not submitted in formats specified in the RFP.
  - The Bidder has not submitted a disclosure as per Annexure 13.
  - Bidders delaying in submission of additional information or clarifications sought by the BPC.
- 3.8.2. Technical Bid found to be Non-responsive as per Clause 3.2, due to any of the following conditions, shall be rejected.
- Technical Bid not received by the scheduled date and time.
  - Technical Bid submitted by a Bidding Consortium not including the Consortium Agreement.
  - Bidder submitting or participating in more than one response either as a Bidding Company or as a Member of Bidding Consortium.
  - More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent/Affiliate.
  - Technical Bid having Conflict of Interest.
  - If the Bidder makes any misrepresentation as specified in Clause 3.7.
- 3.9. BPC reserves the right to interpret the Bid in accordance with the provisions of this RFP document and make its own judgment regarding the interpretation of the same. In this regard, BPC shall have no liability towards any Bidder and no Bidder shall have any recourse to BPC with respect to the qualification process.

BPC shall evaluate Bid using the process specified in Clause 3.1 to 3.6, at its sole discretion. BPC's decision in this regard shall be final and binding.

## **SECTION - 4**

### **ANNEXURES FOR BID**

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## SECTION – 4

### I. Formats for Bid

The following formats are required to be included in the Bidder's Technical and Financial Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section – 2.

#### **Technical Bid**

1. Format for the Covering Letter
2. Format for Letter of Consent from Consortium Members
3. Format for evidence of authorized signatory's authority (Power of Attorney)
4. Format for Power of Attorney from to be provided by each of the other Members of the Consortium in favor of the Lead Member
5. Format for Bidder's composition and ownership structure and Format for Authorization
6. Format for Consortium Agreement
7. Formats for Qualification Requirement
8. Format of Bidders Undertaking and details of Equity Investment
9. Authorization from Parent/Affiliate of Bidding Company/Member of Bidding Consortium whose technical/financial capability has been used by the Bidding Company/Member of Bidding Consortium.
10. Undertaking from the Technically / Financially Evaluated Entity(ies) or from Ultimate Parent Company for equity investment
11. Format of Board Resolutions
12. Format for Illustration of Affiliates
13. Format for Disclosure
14. Format for Bid Bond
- 14A. Format for Bid Security Declaration
15. Format for Contract Performance Guarantee
16. Checklist for Technical Bid submission requirements
22. Format for Affidavit

In addition to the online submission, the Bidder with lowest Final Offer will be required to submit original hard copies of Annexure 3, Annexure 4 (if applicable), Annexure 6 (if applicable) and Annexure 14 before issuance of LoI.

#### **Financial Bid**

21. Format for Financial Bid
- II. The following formats are for the information to the Bidders to enable them to submit their Bid.
- 11A. Illustration For Applicable Board Resolution Requirements Under Clause 2.5.2
  17. List of Banks
  18. GRID Map of the Project
  19. Format for clarification/amendments on the RFP/RFP Project Documents
  20. Formats for RFP Project Documents

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

**ANNEXURE 1 - COVERING LETTER**

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

Date: .....  
 From: .....

Tel. No.: .....  
 Fax No.: .....  
 E-mail address: .....

To,  
**[Insert Name and Address of BPC]**

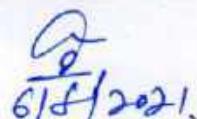
Dear Sir,

**Sub: Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for “\_\_\_\_\_ [Name of Project]” through tariff based competitive bidding process.**

1. Being duly authorized to present and act on behalf of M/s ..... (insert name of Bidding Company / Bidding Consortium) (hereinafter called the “Bidder”) and having read and examined in detail the Request for Proposal (RFP) document, the undersigned hereby submit our Technical Bid with duly signed formats and Financial Bid (Initial Offer) as stipulated in RFP document for your consideration.
2. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP document and subsequent clarifications/amendments as per Clause 2.3 and 2.4 of RFP.
3. The information submitted in our Bid is complete, is strictly as per the requirements stipulated in the RFP document and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.
4. We hereby agree and undertake to procure the products associated with the Transmission System as per provisions of Public Procurement (Preference to Make in India) orders issued by Ministry of Power vide orders No. 11/5/2018 - Coord. dated 28.07.2020 for transmission sector, as amended from time to time read with Department for Promotion of Industry and Internal Trade (DPIIT) orders in this regard.

We hereby also agree and undertake to comply with Department of Expenditure, Ministry of Finance vide Order (Public Procurement No 1) bearing File No. 6/18/2019-PPD dated 23.07.2020, Order (Public Procurement No 2) bearing File No. 6/18/2019-PPD dated 23.07.2020 and Order (Public Procurement No. 3) bearing File No. 6/18/2019-PPD, dated 24.07.2020, as amended from time to time, regarding public procurement from a bidder of a country, which shares land border with India.

5. We hereby agree to comply with Ministry of Power order no. 25-11/6/2018 – PG dated 02.07.2020 as amended from time to time.



6/8/2021

6. We are herewith submitting legally binding board resolution for the total equity requirement of the Project.
7. We hereby confirm that in accordance with Clause 2.1.4 of the RFP, we are herewith submitting legally binding undertaking supported by a board resolution from the .....(Insert name of Technically Evaluated Entity and/or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be) that all the equity investment obligations of ..... (Insert name of the Bidding Company) shall be deemed to be equity investment obligations of the .....(Insert name of Technically Evaluated Entity and/or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be) and in the event of any default by..... (Insert name of the Bidding Company), the same shall be met by ..... (Insert name of Technically Evaluated Entity and/or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be).

**[SI. No 7 to be inserted only in case the Bidder is a Bidding Company / Lead Member of a Consortium and has sought qualification on the basis of technical and financial capability of its Affiliate(s) and/or its Parent]**

8. We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to the Project.
9. We hereby confirm that we shall continue to maintain compliance with Qualification Requirements till the execution of the Transmission Service Agreement. Further, in case we emerge as Selected Bidder for the Project, we shall continue to maintain compliance with Qualification Requirements till the COD of the Project.
10. We confirm that we have studied the provisions of relevant Indian laws and regulations required to enable us to build, own, operate and transfer the said Project and to prepare this Bid.
11. We hereby confirm that we shall abide unreservedly with BPC's decision in the qualification process for selection of Qualified Bidder and further warrant that under no circumstances we shall challenge either the BPC's decision or its right to make such decision at any time in the future.
12. We confirm that the Bid shall remain valid for a period of one eighty (180) days from the Bid Deadline.
13. The details of contact person are furnished as under:  
 Name: .....  
 Designation: .....  
 Name of the Company: .....  
 Address of the Bidder: .....  
 Phone Nos.: .....  
 Fax Nos.: .....  
 E-mail address: .....
14. **Bid Bond**

We have enclosed a Bid Bond of Rupees ..... Crores (Rs. ....) only or US\$ ..... (.....US Dollars), in the form of bank guarantee no.....[Insert number of the Bank Guarantee] dated.....[Insert Date of the Bank Guarantee] as per your proforma (Annexure-14) from.....[Insert name of bank providing Bid Bond] and valid up to ..... in terms of Clause 2.11 of the RFP.

Or

We have enclosed a Bid Security Declaration as per your proforma (Annexure-14A) [To be inserted for projects wherein RFP has been issued before 31.12.2021 otherwise to be deleted]

**15. Acceptance**

We hereby unconditionally and irrevocably agree and accept that the decision made by the BPC on 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.

**16. Familiarity With Relevant Indian Laws & Regulations**

We confirm that we have studied the provisions of relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Project Documents (other than TSA), in the event of our selection as the TSP. We further undertake and agree that all such factors as mentioned in Clause 2.5.7 of RFP have been fully examined and considered while submitting the Bid.

It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from BPC.

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.

We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated at Clause 2.5.1, of this RFP.

Thanking you,

Yours sincerely,

(Name and Signature of the authorized signatory in whose name Power of Attorney/Board Resolution as per Clause 2.5.2 is issued)

Name: .....

Designation: .....

Address: .....

Date: .....  
Place: .....

**Company Rubber Stamp**

*[Signature]*  
6/8/2021

**ANNEXURE 2 - LETTER OF CONSENT FROM CONSORTIUM MEMBERS**

(On the letter head of each Member of the Consortium including Lead Member)

Date: .....

From: .....

.....

Tel. No.: .....

Fax No.: .....

E-mail address: .....

To,  
**[Insert Name and Address of BPC]**

Dear Sir,

**Sub: Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for " \_\_\_\_\_ [Insert Name of Project]" through tariff based competitive bidding process.**

We, the undersigned Member of ..... (Insert name of the Bidding Consortium) have read, examined and understood the RFP document for the short-listing of Bidders as prospective TSP to establish Inter-State Transmission System for " \_\_\_\_\_ [Name of Project]" through tariff based competitive bidding process. We hereby confirm our concurrence with the Bid including in particular the Consortium Agreement submitted by ..... (Insert name of the Lead Member) in response to the RFP document.

We hereby confirm our commitment to participate in the said Bidding Consortium and invest ..... % of the total equity requirement for the Project as per the terms of the Consortium Agreement dated ..... and board resolution for such investment commitment is enclosed herewith.

We hereby confirm that in accordance with Clause 2.1.4 of the RFP, we are enclosing legally binding undertaking supported by a board resolution from the ..... (Insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be) that all the equity investment obligations of ..... (Insert name of the Member) shall be deemed to be equity investment obligations of the ..... (Insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be) and in the event of any default by ..... (Insert name of the Member), the same shall be met by ..... (Insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be). [Insert if applicable]

**[To be inserted by the Lead Member only]** We are also enclosing legally binding board resolution for the total equity requirement of the Project in case of any breach of any of the equity investment commitment by any of the Consortium Members, in line with the provisions of the Consortium Agreement dated ..... [Bidder to insert date of Consortium Agreement].

The details of contact person are furnished as under:

Name: .....

Designation: .....

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

Dated the ..... day of ..... of 20...

Thanking you,

Yours faithfully,

.....  
**(Signature)**

**Name:** .....  
**Designation:** .....

(Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal)

**ANNEXURE 3 - FORMAT FOR EVIDENCE OF AUTHORIZED SIGNATORY'S  
AUTHORITY (POWER OF ATTORNEY)**

**POWER OF ATTORNEY**

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

Know all men by these presents, We .....(name and address of the registered office of the Bidder) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of ..... as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for " [Name of Project]" through tariff based competitive bidding process in the country of India, including signing and submission of all documents related to the Bid, including, undertakings, letters, certificates, acceptances, clarifications, guarantees, etc., making representations to the BPC, and providing information / responses to the BPC, representing us in all matters before the BPC, and generally dealing with the BPC in all matters in connection with our Bid for the said Project till the completion of the bidding process in accordance with the RFP and signing of the Share Purchase Agreement by all the parties thereto.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**For .....** [Insert name of the Bidder on whose behalf PoA is executed]

.....  
**(Signature)**

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

**Accepted**

.....  
**(Signature of the Attorney)**

Name: .....  
Designation: .....  
Address: .....

.....  
**(Name, Designation and Address of the Attorney)**

Specimen signatures of attorney attested by the Executant

.....  
**(Signature of the Executant)**

.....  
**(Signature of Notary Public)**

Place: .....

Date: .....

**Notes:**

- 1) To be executed by Bidding Company or the Lead Member, in the case of a Bidding Consortium, as the case maybe.
- 2) The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- 3) Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favour of the Person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).
- 4) In case of foreign Bidders, refer to clause 2.5.6 (p)

*G  
6/8/2021.*

**ANNEXURE 4 - FORMAT FOR POWER OF ATTORNEY TO BE PROVIDED BY  
EACH OF THE OTHER MEMBERS OF THE CONSORTIUM IN FAVOUR 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. Foreign companies submitting bids are required to follow the applicable law in their country)

**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**") which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium's Bid for the Project, including signing and submission of the Bid and all documents related to the Bid, including, undertakings, letters, certificates, acceptances, clarifications, guarantees, etc, making representations to the BPC, and providing information / responses to the BPC, representing us and the Consortium in all matters before the BPC, and generally dealing with the BPC in all matters in connection with our Bid for the said Project, till completion of the bidding process in accordance with the RFP and signing of the Share Purchase Agreement by all the parties thereto.

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 all RFP Project Documents.

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.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**IN WITNESS WHEREOF M/s ....., as the Member of the Consortium have executed these presents on this..... day of .....**

For and on behalf of  
Consortium Member

(Signature of the Authorized Signatory)

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

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

**Accepted**

Specimen signatures of attorney attested

.....  
**(Signature)**

.....

**(Signature of Notary Public)**

**(Name, Designation and Address  
of the Attorney)**

Place: .....  
Date: .....

**Notes:**

1. The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
2. Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favour of the Person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).
3. In case of foreign Bidders, refer to clause 2.5.6 (p)

G  
6/8/2011.

**ANNEXURE 5 - FORMAT FOR BIDDER'S COMPOSITION AND OWNERSHIP STRUCTURE**

**1. Corporate Details:**

Please provide the following information for the Bidder. If the Bidder is a Consortium, please provide this information for each Member including the Lead Member:

**a. Company's Name, Address, and Nationality:**

Name: .....

Address: .....

Website Address: .....

Country of Origin: .....

**b. Year Organized:** .....

**c. Company's Business Activities:** .....

**d. Status as a Bidder:**

- i. Bidding Company
- ii. Lead Member of the Bidding Consortium
- iii. Member of the Bidding Consortium

**Note:** tick the applicable serial number

**e. Company's Local Address in India (if applicable):**

.....  
.....  
.....

**f. Name of the Authorized Signatory:** .....

**g. Telephone Number:** .....

**h. Email Address:** .....

**i. Telefax Number:** .....

**j. Please provide the following documents:**

- i. Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable), including their amendments, certified by the Company Secretary as

**Attachment 1** for Bidding Company / each Member of Bidding Consortium including Lead Member.

- ii. Authority letter (as per format for authorization given below) in favour of BPC from the Bidder/every Member of the Consortium authorizing BPC to seek reference from their respective bankers & others as **Attachment 2** as per Clause 2.1.6 of the RFP.

**2. Details of Ownership Structure:**

Equity holding of Bidding Company/ each Member of Bidding Consortium including Lead Member owning 10% or more of total paid up equity.

Name of the Bidding Company / Consortium Member: .....

Status of equity holding as on .....

Name of the Equity Holder	Type and No. of Shares owned	Extent of Voting Control (%)
1. ....		
2. ....		
3. ....		
4. ....		
5. ....		
6. ....		
7. ....		
8. ....		
....		

**Notes:**

- 1. The above table is to be filled in separately for each Consortium Member.
- 2. Status of equity holding should be provided not earlier than thirty (30) days prior to Bid Deadline.

**For and on behalf of Bidding Company / Lead Member of the Bidding Consortium**  
M/s.....

.....  
**(Signature of authorized representative)**

Name: .....

Designation: .....

.....  
**(Stamp)**

Date: .....

Place: .....

6/6/2021

## **FORMAT FOR AUTHORISATION**

**(In case of Bidding Consortium, to be given separately by each Member)  
(On Non – judicial stamp paper duly attested by notary public. Foreign companies  
submitting bids are required to follow the applicable law in their country)**

The undersigned hereby authorize(s) and request(s) all our Bankers, including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by \_\_\_\_\_ [Name of BPC] to verify our Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission system for “\_\_\_\_\_ [Name of Project]” through tariff based competitive bidding process or regarding our project development experience, financial standing and general reputation.

**For and on behalf of M/s..... (Insert Name of Bidding Company or Member of the Consortium)**

.....  
**(Signature)**

Name of Authorized Signatory: .....

**(Signature and Name of the authorized signatory of the Company)**

Place: .....  
Date: .....

.....  
**(Company rubber stamp/seal)**

.....  
**(Signature of Notary Public)**

Place: .....  
Date: .....

**ANNEXURE 6 - FORMAT FOR CONSORTIUM AGREEMENT**

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

**THIS CONSORTIUM 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 n", which expression shall include its successors, executors and permitted assigns) and for the purpose of submitting the Bid, acquisition of {Name of the SPV Company or "Project specific SPV to be incorporated by the BPC"}(in case of award) and entering into other Agreement(s) as specified in the RFP (hereinafter referred to as "Agreements") as may be entered into with the Nodal Agency.

**WHEREAS**, the BPC had invited Bid in response to RFP issued to ..... (insert the name of purchaser of RFP) for selection of the bidder as the Transmission Service Provider to establish Inter-State Transmission System for " \_\_\_\_\_ [Name of Project]".

**AND WHEREAS**, Clause 2.2.4 of the RFP document stipulates that the Bidders qualifying on the strength of a Bidding Consortium will have to submit a legally enforceable Consortium Agreement in a format specified in the RFP document wherein the Consortium Members have to commit equity of a specific percentage in the Project.

**AND WHEREAS**, Clause 2.2.4 of the RFP document also stipulates that the Bidding Consortium shall provide along with the Bid, a Consortium Agreement as per prescribed format whereby the Consortium Members undertake to be liable for raising the required funds for its respective equity investment commitment as specified in Consortium Agreement.

**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 selected bidder by the BPC, 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 the Members.

3. Notwithstanding anything contrary contained in this Consortium Agreement, the Lead Member shall always be liable for the equity investment obligations of all the Consortium Members, i.e., for both its own equity contribution as well as the equity contribution of other Members.
4. 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.
5. Subject to the terms of this agreement, the share of each Member of the Consortium in the "issued equity share capital of the project company" shall be in the following proportion: (if applicable)

Name	Percentage of equity holding in the Project
Party 1	.....
.....	.....
Party n	.....
<b>Total</b>	<b>100%</b>

[Note: The percentage equity holding for any Consortium Member in the Project cannot be zero in the above table]

6. The Lead Member shall inter alia undertake full responsibility for liaising with lenders and mobilizing debt resources for the Project and achieving financial closure.
7. In case of any breach of any of the equity investment commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences thereof.
8. 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.
9. 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.
10. 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 **Appendix-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 Project.
11. 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.

12. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at **Delhi** alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
13. It is hereby agreed that, the Lead Member shall furnish the bid bond, as stipulated in the RFP, on behalf of the Consortium Members.

Or

It is hereby agreed that, the Lead Member shall furnish the bid security declaration, as stipulated in the RFP, on behalf of the Consortium Members. [To be inserted for projects wherein RFP has been issued before 31.12.2021 otherwise to be deleted]

14. It is hereby agreed that in case of selection of Bidding Consortium as the selected bidder, the parties to this Consortium Agreement do hereby agree that they shall furnish the contract performance guarantee on behalf of the TSP in favor of the Nodal Agency, as stipulated in the RFP and Transmission Service Agreement.
15. It is further expressly agreed that the Consortium Agreement shall be irrevocable and shall form an integral part of the RFP Project Document and shall remain valid till the execution of the Share Purchase Agreement, unless expressly agreed to the contrary by the Nodal Agency. Over the term of the Transmission Service Agreement, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time shall apply on the Consortium Members.
16. 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 and for the purposes of the Project.
17. 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 the prior written consent of the Nodal Agency.

#### **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 the Nodal Agency.

**IN WITNESS WHEREOF**, the parties to the Consortium Agreement have, through their authorized representatives, executed these present on the Day, Month and Year first mentioned above.

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

(Signature of authorized signatory)

Name: .....

Designation: .....

Place: .....

Date: .....

For and on behalf of Consortium Member n (Party n)

M/s.....

(Signature of authorized signatory)

Name: .....

Designation: .....

Place: .....

Date: .....

**Attested:**

.....  
(Signature)

(Notary Public)

Place: .....

Date: .....

Note: In case of foreign Bidders, refer to clause 2.5.6 (p)

**Appendix 1 to the Consortium Agreement:**

Name of the Consortium Member	Responsibilities under the Consortium Agreement
M/s .....	
(Party 1)	
M/s .....	
M/s .....	
(Party n)	

*GJ*  
6/8/2021.

**ANNEXURE 7 A - FORMAT FOR QUALIFICATION REQUIREMENT****A. NET WORTH**

To,

[Insert Name and Address of BPC]

Dear Sir,

**Sub: Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for " \_\_\_\_\_ [Name of Project]" through tariff based competitive bidding process**

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

We certify that the Financially Evaluated Entity(ies) had a Networth of Rs. .... Crore or equivalent USD\* computed as per instructions in this RFP based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years as provided in Clause 2.2.3, immediately preceding the Bid Deadline. Also, the Networth of any of the last three (3) financial years is not negative.

Name of Financially Evaluated Entity(ies)	Relationship with Bidding Company**	Financial Year	Networth (Rs. Crore)
1. .....			
2. .....			
3. .....			
....			
<b>Total Networth</b>			

\*Equivalent USD shall be calculated as per provisions of Clause 3.4.1.

\*\* The column for "Relationship with Bidding Company" is to be filled in only in case financial capability of Parent/Affiliate has been used for meeting Qualification Requirements.

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

We certify that the Financially Evaluated Entity(ies) had a minimum Networth of Rs. .... Crore or equivalent USD\* computed as per instructions in the RFP and based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years as provided in Clause 2.2.3, immediately preceding the Bid Deadline. Also, the Networth of any of the last three (3) financial years is not negative.

Name of Consortium Member	Equity Commitment in the Project (%)	Networth of Member (Rs. Crore)	Networth Requirement to be met by Member in proportion to the Equity Commitment (Rs. Crore)	Whether the Member meets the Networth Requirement
(1)	(2)	(3) (As per table below)	(4) = (2 x Total Networth requirement for the Project )	(5)
1. ....				Yes / No
2. ....				Yes / No
..				Yes / No
<b>Total Networth for financial requirement</b>				

**Member – I (Lead Member)**

[Note: Similar particulars for each Member of the Consortium is to be furnished, duly certified by the Member's Statutory Auditors]

- i. Name of Member: .....
- ii. Total Networth requirement: Rs ..... Crore
- iii. Percentage of equity commitment for the Project by the Member: ..... %
- iv. Networth requirement for the Member\*\*\*: Rs. ..... Crore
- v. Financial year considered for the Member: .....

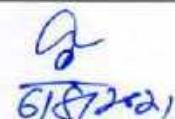
Name of Financially Evaluated Entity(ies)	Relationship** with Member of Consortium	Financial Year	Networth (Rs. Crore)
1. ....			
2. ....			
3. ....			
<b>Total Networth</b>			

\* Equivalent USD shall be calculated as per provisions of Clause 3.4.1;

\*\* The column for "Relationship with Member of Consortium" is to be filled in only in case the financial capability of Parent / Affiliate has been used for meeting Qualification Requirements;

\*\*\* Networth requirement to be met by Member should be in proportion to the equity commitment of the Member for the Project.

**Yours faithfully**


  
 6/8/2021

(Signature and name of the authorized signatory of the Company and Stamp)

Name: .....  
Date: .....  
Place: .....

(Signature and Stamp of statutory Auditors of Bidding Company / each Member of Consortium)

Name: .....  
Date: .....  
Place: .....

Date: .....

Notes:

1. Along with the above format, in a separate sheet, please provide details of computation of Networth of last three (3) financial years duly certified by Statutory Auditor.
2. Audited consolidated annual accounts of the Bidder may be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.
3. In case Bidder or a Member of Consortium takes recourse to its Parent/Affiliate for meeting technical / financial requirements, then the financial years considered for such purpose should be same for the Bidder / Member of Consortium and their respective Parent / Affiliate.

6/8/2021

**ANNEXURE 7B - FORMAT FOR TECHNICAL REQUIREMENT**

To,

**[Insert Name and Address of BPC]**

Dear Sir,

**Sub: Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for " \_\_\_\_\_ [Name of Project]" through tariff based competitive bidding process**

**1. To be used by Bidder using the development experience in infrastructure sector**

We certify that M/s. .... (Insert name of Technically Evaluated Entity(ies)) have experience of development of projects in the Infrastructure sector in the last five (5) years whose aggregate capital expenditure is Rs. ..... Crore or equivalent USD\*. We further certify that the capital expenditure of any single project considered for meeting the technical Qualification Requirement is not less than Rs. ..... Crore or equivalent USD\*. For this purpose, capital expenditure incurred on projects which have been either wholly completed / commissioned or partly completed projects put under commercial operation and for which operation has commenced till at least seven (7) days prior to the Bid Deadline has been considered.

The project(s) considered for the purpose of technical experience (as per table given below) have been executed and owned to the extent as indicated in the table below (to be atleast twenty – six percent (26%)) by the Bidding Company / Lead Member of the Consortium / our Parent / our Affiliate(s) [strike off whichever is not applicable] on operation of the projects.

This technical requirement has been calculated as per the instructions provided in the RFP on the basis of following projects:

Name of Company (which has executed the project at (3)) whose technical capability has been used for Qualification Requirement	Relationship** with Bidding Company / Lead Member	Project name	Nature of Project (BOOT, BOT, BOOM, DBFOT etc.)	Relevant Infrastructure sector	Date of Financial Closure of the Project (in DD / MM / YYYY)	Date of Completion / Commissioning / Commercial Operation of partly completed projects	Project cost (Rs. Crore)	Percentage Equity Holding of Company at (1) in Completed project(s)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
.....	.....	(Project 1)						
<b>Total (Rs. Crore)</b>								

\* Equivalent USD shall be calculated as per provisions of Clause \_\_\_\_\_

\*\* The column for "Relationship with Bidding Company / Lead Member" is to be filled in only in case technical capability of Parent/Affiliate has been used for meeting Qualification Requirements.

07/09/2021

We further certify that the Company(ies) as indicated in column (1) of the above table, whose technical capability has / have been used for meeting the qualification requirement, has / have held shareholding respectively of atleast twenty – six percent (26%)from the date of financial closure till the date of commissioning / completion of the above project(s).

## **2. To be used by Bidder using construction experience in infrastructure sector.**

We certify that M/s. .... (Insert name of Technically Evaluated Entity(ies)) have received aggregate payments not less than Rs. ..... Crore or equivalent USD (calculated as per provisions in Clause 3.4.1) from its client(s) for construction works fully completed during the last 5(five) financial years. We further certify that the payment received from each project shall not be less than Rs. ..... Crore or equivalent USD (calculated as per provisions in Clause 3.4.1). For this purpose, payments received on projects that have been commissioned/completed at least seven (7) days prior to the Bid Deadline shall be considered. Further only the payments (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the technical capacity.

We also confirm that construction works does not include cost of land supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project.

This technical requirement has been calculated as per the instructions provided in the RFP on the basis of following projects:

Name of Company (which has executed the project at (3)) whose technical capability has been used for Qualification Requirement	Relationship** with Bidding Company / Lead Member	Project name	Nature of Project (EPC, Turnkey etc)	Relevant Infrastructure sector	Date of award of contract (in dd/mm/yy)	Date of Completion / Commissioning	Payment received (Rs. Crore)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
.....	.....	Project I					
.....	.....						
.....	.....						
		Total (Rs. Crore)					

Yours faithfully

**(Signature and name of the authorized signatory of the Company and stamp)**

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

Place: .....

.....  
**(Signature and Stamp of statutory Auditors of Bidding Company/ Lead Member of Consortium)**

Name: .....

Date: .....

Place: .....

Date: .....

**Notes:**

1. Along with the above format, in a separate sheet, please provide details of computation of capital expenditure of projects duly certified by Statutory Auditor of the project company. In addition, the Statutory Auditor of the project company should also certify that the capital expenditure of projects commissioned or completed 7 days prior to Bid Deadline has been capitalized in the books of accounts.

Additionally, in case construction experience is used, a certificate(s) from the statutory auditors stating the payments received and the concerned client(s) stating the works commissioned during the past 5 years in respect of the projects specified above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client.

2. In case the accounts for the financial year in which the project claimed for meeting qualification requirement has been commissioned are not audited, the Bidder shall give declaration in this regard duly certified by its statutory auditor. In such a case, Bidder shall provide details of computation of capital expenditure of such project(s) duly certified by Statutory Auditor of the project company and the Statutory Auditor of the project company should also certify that the capital expenditure of projects commissioned or completed shall be capitalized in the books of accounts upon finalization.
3. The unconsolidated audited annual accounts of both the TEE and the Bidding Company / Lead Member for the respective financial years (financial years in which financial closure was achieved to the financial year in which the said project was completed / commissioned) should be submitted.

*Ch  
6/8/2021.*

**ANNEXURE 7C - FORMAT FOR TECHNICAL & FINANCIAL REQUIREMENT –  
RELATIONSHIP & DETAILS OF EQUITY SHAREHOLDING**

[To be filled by Bidding Company / each Member of the Bidding Consortium including Lead Member if credentials of Parent and / or Affiliates have been used by them]

To,

[Insert Name and Address of BPC]

Dear Sir,

**Sub: Bid for selection of Bidder as Transmission Service Provider to establish Inter-State Transmission System for “ \_\_\_\_\_ [Name of Project]” through tariff based competitive bidding process**

We certify that M/s. .... (insert name of the **Bidding Company / Consortium Members**) have considered the technical and financial capability of its Parent and / or Affiliates, for the purpose of meeting Qualification Requirements as per the instructions provided in the RFP. The name of Parent and / or Affiliate, nature of relationship(s) with such Parent and / or Affiliate and details of equity holding are as follows:

Name of Company whose credentials considered	Type of credentials considered (technical and / or financial)	Relationship with Bidding Company / Consortium Member (Parent / Affiliate)	Details of equity shareholding (refer notes below)
Company 1			
.....			
.....			
.....			
.....			

**NOTES:**

- i. In case of Parent, the equity holding of the Parent in the Bidding Company / Member of the Bidding Consortium, including the Lead Member of the Consortium, need to be specified.
- ii. In case of Affiliate under direct control of Bidder, the equity holding of the Bidding Company / Member of the Bidding Consortium, including the Lead Member of the Consortium in the Affiliate, needs to be specified.
- iii. In case of Affiliate under common control of Parent, the equity holding of the Parent in the Affiliate of the Bidding Company / Member of the Bidding Consortium, including the Lead Member of the Consortium, needs to be specified.
- iv. Relationship of Parent / Affiliate with Bidding Company / Member of Consortium to be at the most seven (7) days prior to the Bid Deadline (as per Clause 2.1.4 of RFP)

Yours faithfully

..... [Insert name of the BPC]

79

*G  
6/8/2021.*

(Signature and name of the authorized signatory of the Company and stamp)

Name: .....

Date: .....

Place: .....

(Signature and Stamp of statutory Auditors of Bidding Company / each Member of  
Bidding Consortium)

Name: .....

Date: .....

Place: .....

Date: .....

  
6/8/2021.

**ANNEXURE 7D - ADDITIONAL INFORMATION FOR VERIFICATION OF FINANCIAL AND TECHNICAL CAPABILITIES OF BIDDERS.**

**(Name of Bidder (Bidding Company/ Bidding Consortium or Technically/Financially Evaluated Entity(ies))**

**(Note:** In case of Consortium, details to be filled in by Lead Member for each Member of the Consortium including the Lead Member and in case of the qualification requirements of Technically / Financially Evaluated Entity(ies) being used, to be filled by each of such entity(ies)

**i. Financial capability (Attachment 1):**

1. Bidders shall attach unconsolidated / consolidated audited annual accounts, statements, as the case may be, (refer Clause 2.1.3) for the last three (3) financial years as Attachment 1. Such unconsolidated audited annual accounts shall include a Balance Sheet, Profit and Loss Account, Auditors Report and profit appropriation account.

**ii. Technical capability (Attachment 2):**

- a. This attachment shall include details of projects completed/commissioned or partly completed projects for which commercial operation has commenced to be considered for the purpose of meeting Qualification Requirements.

1. To be used by Bidder using development experience in infrastructure sector

Particulars	Year 1	Year 2	Year 3	Year 4	Year 5
Name(s) of project(s) from Infrastructure sectors					
Location(s) including country(s) where project was set up					
Nature of Project					
Voltage level (if any)					
Capital cost of project(s) Rs. in Crore					
*Status of the project					
% of equity owned in the project(s)					

**\*Note 1:** Date of completion/commissioning/commercial operation to be mentioned

**Note 2:** For each project listed in the table, the Bidder shall furnish an executive summary including the following information:

- Project model, i.e., BOO, BOOT, BOOM;
- Debt financing and equity raised and provided by Bidder/Bidder's Parent/Bidder's Affiliate for the project, including names of lenders and investors;

- Size and type of installation;
- Technical data/information on major equipment installed
- Description of role performed by the Bidder/Bidder's Parent/Bidder's Affiliate on the project
- Clearances taken by the Bidder/Bidder's Parent/Bidder's Affiliate including but limited to right-of-way (RoW), forest clearance and other statutory / Govt. clearances.
- Cost data (breakdown of major components)
- Name of EPC and/or other major contractor
- Construction time for the project
- Names, addresses and contact numbers of owners of the projects
- Operating reliability over the past five (5) years or since date of commercial operation
- Operating environmental compliance history
- Names of supervisory entities or consultant, if any
- Date of commercial operation
- Total duration of operation

2. To be used by Bidder using construction experience in infrastructure sector

<b>Particulars</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Name(s) of project(s) from Infrastructure sectors					
Location(s) including country(s) where project was set up					
Nature of Project					
Voltage level (if any)					
Revenue received Rs. in Crore					
*Status of the project					
% of equity owned in the project(s)					

**\*Note 1:** Date of completion/commissioning/commercial operation to be mentioned

**Note 2:** For each project listed in the table, the Bidder shall furnish an executive summary including the following information:

- Project model, i.e., EPC, Turnkey;
- Size and type of installation;
- Technical data/information on major equipment installed
- Description of role performed by the Bidder/Bidder's Parent/Bidder's Affiliate on the project
- Cost data (breakdown of major components)
- Name of sub-contractor
- Construction time for the project
- Names, addresses and contact numbers of owners of the projects
- Operating reliability over the past five (5) years or since date of commercial operation
- Operating environmental compliance history
- Names of supervisory entities or consultant, if any
- Date of commercial operation
- Total duration of operation

iii. Attachment-3:

- a. For each project listed in Attachment 2 above, certificates of final acceptance and/or certificates of good operating performance duly issued by owners for the project and the same shall be certified as true by authorized signatory of the Bidding Company or the Lead Member of Consortium). In case the project listed in Attachment 2 is under BOOT / DBFOT mechanism, the certificates of final acceptance and/or certificates of good operating performance must be issued by the authority / independent engineer of the project as defined in the respective project agreement.

For and on behalf of Bidding Company/Consortium

M/s.....

.....  
**(Signature of authorized signatory)**

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

*G  
1/12/2021*

**ANNEXURE 8 -UNDERTAKING AND DETAILS OF EQUITY INVESTMENT****Format 1: Bidders' Undertakings****[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]****Date:** .....**To,****[Insert Name and Address of BPC]**

Dear Sir,

**Sub: Bidders' Undertakings in respect of Bid for selection of Bidder as TSP to establish Inter-State transmission system for \_\_\_\_\_ [Name of Project]**

We hereby undertake on our own behalf and on behalf of the TSP, that if selected as the Successful Bidder for the Project:

1. The Project shall comply with all the relevant electricity laws, codes, regulations, standards and Prudent Utility Practices, environment laws and relevant technical, operational and safety standards, and we shall execute any agreements that may be required to be executed as per law in this regard.
2. We confirm that the Project shall also comply with the standards and codes as per Clause 1.6.1.2 of the RFP and the TSP shall comply with the provisions contained in the Central Electricity Regulatory Commission Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters Open Access) Regulations, 2009.
3. We give our unconditional acceptance to the RFP dated \_\_\_\_\_ issued by the BPC and the RFP Project Documents, as amended, and undertake to ensure that the TSP shall execute all the RFP Project Documents, as per the provisions of this RFP.
4. We have submitted the Bid on the terms and conditions contained in the RFP and the RFP Project Documents. Further, the Financial Bid submitted by us is strictly as per the format provided in Annexure 21 of the RFP, without mentioning any deviations, conditions, assumptions or notes in the said Annexure.
5. Our Bid is valid up to the period required under Clause 2.8 of the RFP.
6. Our Bid has been duly signed by authorized signatory and stamped in the manner and to the extent indicated in this RFP and the power of attorney / Board resolution in requisite format as per RFP has been enclosed with this undertaking.
7. We have assumed that if we are selected as the Successful Bidder, the provisions of the Consortium Agreement, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of Clause 2.5.8 of this

6/8/2021

RFP and Article 18.1 of the Transmission Service Agreement. (*Note: This is applicable only in case of a Bidding Consortium*)

8. We confirm that our Bid meets the Scheduled COD of each transmission Element and the Project as specified below:

S. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element [BPC to insert precedence of commissioning of Element(s)] in project specific RFP and RFP Project Documents]
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

We agree that the payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after the successful commissioning of Element(s) which are pre - required for declaring the commercial operation of such Element as mentioned in the above table.

**Scheduled COD for the Project:** \_\_\_ months from the Effective Date

9. We confirm that our Financial Bid conforms to all the conditions mentioned in this RFP, and in particular, we confirm that:
  - a. Financial Bid in the prescribed format of Annexure 21 has been submitted duly signed by the authorized signatory.

- b. Financial Bid is unconditional.
  - c. Only one Financial Bid has been submitted.
10. 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 acquisition of \_\_\_\_\_ [Name of SPV], pursuant to our selection as Selected Bidder, we agree that the same would be treated as a TSP's Event of Default under Transmission Service Agreement, and relevant provisions of Transmission Service Agreement shall apply.
11. We confirm that there are no litigations or other disputes against us which materially affect our ability to fulfill our obligations with regard to the Project as per the terms of RFP Project Documents.
12. Power of attorney/ Board resolution as per Clause 2.5.2 is enclosed.

**Signature and name of the authorized signatory of the Company and stamp of Bidding Company or Lead member of Consortium**

**Note:**

- 1. In case of foreign Bidders, refer to clause 2.5.6 (p)

*G  
6/8/2021.*

**Format 2: Details of equity investment in Project**

- 1.1.a Name of the Bidding Company/ Bidding Consortium:
- 1.1.b Name of the Lead Member in the case of a Bidding Consortium:
- 1.2 Investment details of the Bidding Company/Member of the Bidding Consortium investing in \_\_\_\_\_ [Name of SPV] as per Clause 2.5.8.2.

S. No.	Name of the Bidding Company/ Member in case of a Bidding Consortium	Name of the Company investing in the equity of the _____ [Name of SPV]	Relationship with Bidding Company /Member of the Bidding Consortium	% of equity participation in the _____ [Name of SPV]
(1)	(2)	(3)	(4)	(5)
TOTAL				100%

\* In case the Bidder proposes to invest through its Affiliate(s) / Parent Company / Ultimate Parent Company, the Bidder shall declare shareholding pattern of such Affiliate(s) / Parent Company / Ultimate Parent Company and provide documentary evidence to demonstrate relationship between the Bidder and the Affiliate(s) / Parent Company / Ultimate Parent Company. These documentary evidences could be, but not limited to, demat account statement(s) / Registrar of Companies' (ROC) certification / share registry book, etc duly certified by Company Secretary.

Members of the Consortium or the Bidding Company making investment in the equity of the \_\_\_\_\_ [Name of SPV] themselves to fill in their own names in the column (3)

**Signature and Name of authorized signatory in whose name power of attorney has been issued**

Signature of authorized signatory

Name: .....

Designation: .....

Date.....

Company rubber stamp

**ANNEXURE 9 -AUTHORISATION FROM PARENT / AFFILIATE OF BIDDING COMPANY / MEMBER OF BIDDING CONSORTIUM WHOSE TECHNICAL / FINANCIAL CAPABILITY HAS BEEN USED BY THE BIDDING COMPANY / MEMBER OF BIDDING CONSORTIUM.**

[On the Letter Head of the Parent /Affiliate]

Name: .....  
Full Address: .....  
Telephone No.: .....  
E-mail address: .....  
Fax / No.: .....

To

[Insert Name and Address of BPC]

Dear Sir,

**Sub: Authorization for use of Technical / Financial Capability of M/s.....  
(Insert name of Parent / Affiliate) by M/s ..... (Insert name of Bidding Company / Member of Bidding Consortium).**

We refer to the RFP dated ..... ('RFP') issued by you for selection of Bidder as Transmission Service Provider for establishing the Inter-State Transmission System for " \_\_\_\_\_ [Name of Project]" .

We confirm that M/s. .... (Insert name of Bidding Company/ Consortium Member) has been authorized by us to use our technical and/or financial capability [strikeout whichever is not applicable] for meeting the Qualification Requirements for " \_\_\_\_\_ [Name of Project]" .

We have carefully read and examined in detail the RFP including in particular, Clause 2.1.4 of the RFP, and we are also submitting legally binding undertaking supported by a board resolution that all the equity investment obligations of M/s.....(Insert Name of Bidding Company / Consortium Member), shall be deemed to be our equity investment obligations and in the event of any default the same shall be met by us.

For and on behalf of M/s..... (Insert Name of Parent / Affiliate)

.....  
**(Signature and Name of the authorized signatory of the Company and stamp)**

Name: .....  
Date: .....  
Place: .....

Notes:

*G  
6/8/2021*

1. The above undertaking can be furnished by Ultimate Parent of Technically Evaluated Entity or Financially Evaluated Entity, as the case maybe, if legally binding undertaking is also furnished by the Ultimate Parent on behalf of such Financially Evaluated Entity/Technically Evaluated Entity.

*G  
6/09/2021*

**ANNEXURE 10- FORMAT OF UNDERTAKING BY TECHNICALLY / FINANCIALLY EVALUATED ENTITY / ULTIMATE PARENT COMPANY**

**[On the Letter Head of the Technically / Financially Evaluated Entity / Ultimate Parent Company]**

Name: .....

Full Address: .....

Telephone No.: .....

E-mail address: .....

Fax/No.: .....

**To:**

**Chief Executive Officer  
[Name & Address of BPC]**

**Sub:      Undertaking for equity investment**

Dear Sir,

We refer to the Request for Proposal dated \_\_\_\_\_ ('RFP') issued by you regarding setting up of Inter-State transmission system for \_\_\_\_\_ [Name of Project] Project on build, own, operate and transfer basis.

We have carefully read and examined in detail the RFP and the RFP Project Documents, including in particular, Clause 2.1.4 of the RFP and Clauses 2.5.2 and 2.5.8 of the RFP, regarding submission of an undertaking regarding the investment in the equity share capital of \_\_\_\_\_ [Name of SPV] and provisions for minimum equity holding and equity lock-in. We have also noted the amount of the equity investment required to be made in \_\_\_\_\_ [Name of SPV] by the ..... [Insert the name of the Bidder or the Consortium Member] for the Project.

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... [Insert the name of the Bidder or the Consortium Member] to invest in full or in part, in the equity share capital of \_\_\_\_\_ [Name of SPV] as specified in the Bid, we shall invest the said amount not invested by ..... [Insert the name of the Bidder or the Consortium Member] in \_\_\_\_\_ [Name of SPV] by purchase of existing shares or subscribing to the new shares of \_\_\_\_\_ [Name of SPV], as stipulated by you.

We have attached hereto certified true copy of the Board resolution whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

Certified as true.

(Signature and Name of the authorized signatory of the Company and stamp)

**Note:**

1. Wherever required, extract of the charter documents and documents such as a Board resolution should be submitted for verification.

*[Signature]*  
6/8/2021,

**ANNEXURE 11 - FORMATS FOR BOARD RESOLUTIONS****Format 1**

**Format of the Board resolution for the Bidding Company / each Member of the Consortium / investing Affiliate / Parent Company / Ultimate Parent Company, where applicable**

[Reference Clause 2.5.2 of the RFP and the illustrations in Annexure 11A]

**[Note:** The following resolution no.1 needs to be passed by the Boards of each of the entity(ies) making equity investment]

The Board, after discussion, at the duly convened Meeting on ..... [Insert date], with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956/2013, passed the following Resolution:

**1. RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 / Companies Act 2013 (as the case may be) 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 for investment of.....% (.....per cent) of the total equity share capital of \_\_\_\_\_ [Name of SPV] representing the entire amount proposed to be invested by the company for the transmission system for \_\_\_\_\_ [Name of Project], partly by acquisition of the existing equity shares from \_\_\_\_\_ [Name of BPC] and / or partly by subscribing to the new equity shares, as per the terms of the RFP.

**[Note:** Equity investment obligations by the Bidding Company/each Member of the Bidding Consortium/investing Affiliate or Parent or Ultimate Parent should add up to 100%.]

**[Note:** In the event the Bidder is a Bidding Consortium, the following Board resolution no. 2 also needs to be passed by the Lead Member of the Bidding Consortium]

**2. RESOLVED THAT** approval of the Board be and is hereby accorded to contribute such further amount over and above the ;..... percentage (%) limit to the extent becoming necessary towards the total equity share in the \_\_\_\_\_ [Name of SPV], obligatory on the part of the company pursuant to the terms and conditions contained in the Consortium Agreement dated .....executed by the company as per the provisions of the RFP.

**[Note:** In the event, the investing entity is an Affiliate or Parent or Ultimate Parent of the Bidder, the following Board resolution no. 3 shall also be passed by the Bidder]

**3. FURTHER RESOLVED THAT** the Board hereby acknowledges the Board Resolution(s) passed by the..... [Name of the Affiliate(s)/ Parent / Ultimate Parent] regarding the investment of.....(....%) of the equity share capital requirements of \_\_\_\_\_ [Name of SPV], which is to be invested by the .....[Name of the Affiliate(s)/ Parent / Ultimate Parent] for the \_\_\_\_\_ [Name of SPV], partly by acquisition of the existing equity shares from \_\_\_\_\_ [Name of BPC] and partly by subscribing to the new equity shares, as per the terms of the RFP.

**[Note:** The following resolution no. 4 is to be provided by the Bidding Company / Lead Member of the Consortium only]

4. FURTHER RESOLVED THAT MR/MS .....be and is hereby authorized to take all the steps required to be taken by the Company for submission of the Bid, including in particular, signing of the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to BPC as part of the Bid or such other documents as may be necessary in this regard.

Certified True Copy

Company rubber stamp to be affixed

[Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary or any Whole Time Director/ Manager (supported by a specific board resolution) of the Bidding Company or the Lead Member of Consortium.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution, i.e., the Bidding Company, each Member of the Bidding Consortium.
- 3) 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 / Companies Act 2013 (as the case may be) 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.]

6/8/2021,

**Format 2**

**Format for the Board resolution of Technically / Financially Evaluated Entity / Ultimate Parent Company (in case credentials of such TEE/ FEE has been utilized by the Bidding Company or Bidding Consortium)**

The Board, after discussion, at the duly convened Meeting on ..... [Insert date], with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956 / 2013, passed the following Resolution:

**RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 / Companies Act, 2013 (as the case may be) 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 for issuing an Undertaking to the BPC, in the format specified in the RFP issued by the BPC, draft of which is attached hereto and initialed by the Chairman whereby the company undertakes to invest ..... percent (.... %) of the total equity share capital of ..... [Name of SPV] representing the entire amount proposed to be invested by ..... [insert the name of the Bidder or Member] for the said Project, in case of failure of ..... [Insert the name of the Bidder or Member] to make such investment".

**FURTHER RESOLVED THAT** ..... be and is hereby authorized to take all the steps required to be taken by the Company, including in particular, signing the said Undertaking, submitting the same to the BPC through ..... [Insert name of Bidding Company/Lead Member of the Consortium] of all the related documents, certified copy of this Board resolution or letter, undertakings etc, required to be submitted to BPC as part of the Bid or such other documents as may be necessary in this regard.

**Certified True Copy**

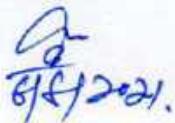
**Company rubber stamp to be affixed**

**Note:**

1. This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary or any Whole-time Director/Manager (supported by a specific board resolution) of Bidding Company or Lead Member of the Consortium.
2. The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
3. 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 / Companies Act 2013 (as the case may be) 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.

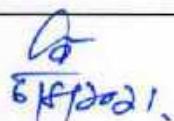
**ANNEXURE 11A – ILLUSTRATION FOR APPLICABLE BOARD RESOLUTION REQUIREMENTS UNDER CLAUSE 2.5.2**

<b>Investor in the TSP</b>	<b>Entities (other than Bidder) whose credentials (financial and/or technical) used by the Bidder for meeting RFP criteria</b>	<b>Applicable Board Resolutions</b>	<b>Requirement of Undertaking (Annexure 10)</b>
Bidder himself for 100% equity	None	a) Format 1 of Annexure 11 - Resolution: 1, 2 and 4 from the Bidder	None
Bidder himself for 100% equity	Affiliate and/or Parent Company and/or Ultimate Parent	<p>a) Format 1 of Annexure 11 - Resolution: 1, 2, and 4 from the Bidder</p> <p>b) Format 2 of Annexure 11 by either Technically/ Financially Evaluated Entity(ies) whose credentials have been used, or Ultimate Parent.</p> <p>Provided, if the Bidder himself is the Ultimate Parent, then Format 2 need not be provided.</p>	<p>Yes, by either Technically / Financially Evaluated Entity(ies) Affiliate(s) whose credentials have been used, or Ultimate Parent.</p> <p>Provided, if the Bidder himself is the Ultimate Parent, then the undertaking need not be provided.</p>
Bidder himself + others (Affiliate and/or Parent Company and/or Ultimate Parent) in aggregate holding 100% equity	None	<p>a) Format 1 of Annexure 11 - Resolution: 1,2, 3 and 4 from the Bidder.</p> <p>b) Format 1 of Annexure 11 - Resolution: 1 from the Affiliate and /or Parent and /or Ultimate Parent investing in the equity</p>	None
Bidder himself + others (Affiliate and/or Parent Company and/or Ultimate Parent) in	Affiliate and/or Parent Company and/or Ultimate Parent	<p>a) Format 1 of Annexure 11 - Resolution: 1,2, 3 and 4 from the Bidder.</p> <p>b) Format 1 of Annexure 11 - Resolution: 1 from the Affiliate and/or Parent and/or Ultimate Parent</p>	Yes, by either Parent/ Affiliate(s) whose credentials have been used, or Ultimate Parent



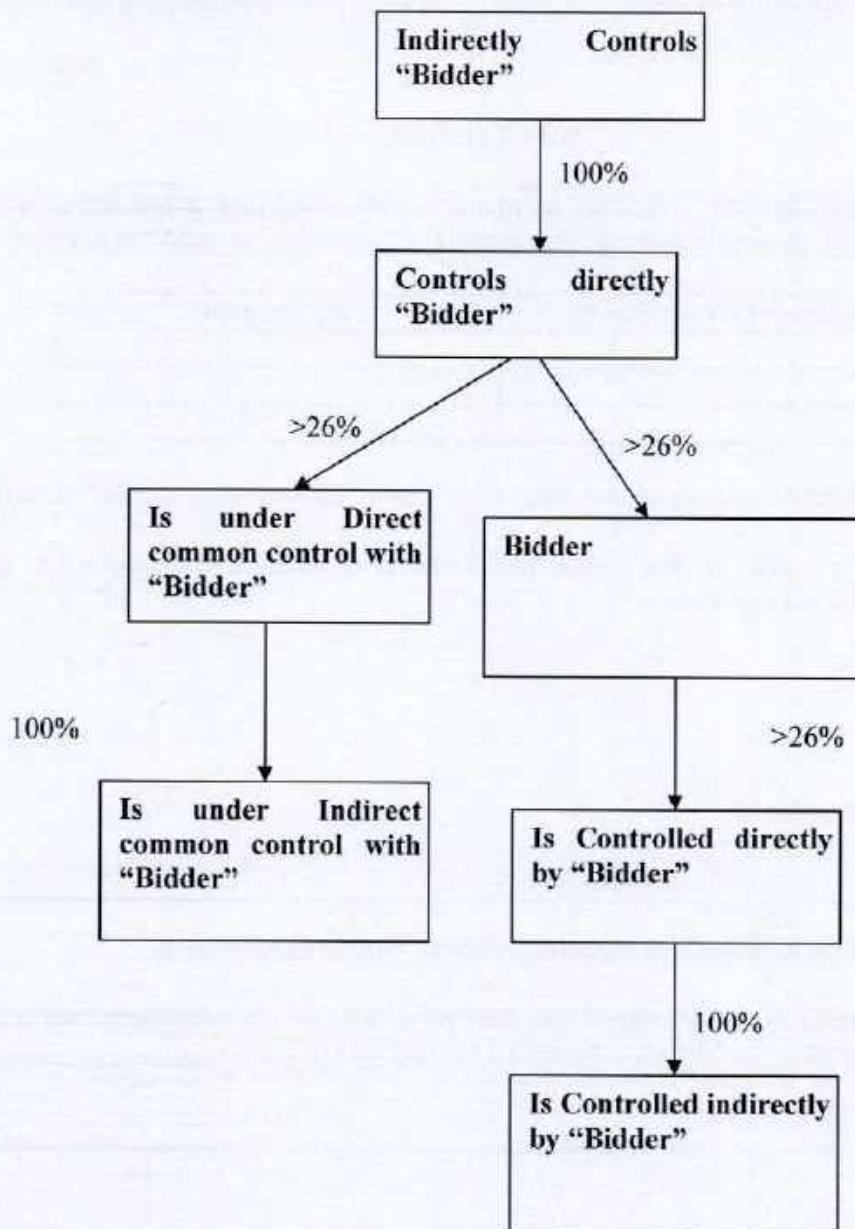
8/8/2021.

Investor in the TSP	Entities (other than Bidder) whose credentials (financial and/or technical) used by the Bidder for meeting RFP criteria	Applicable Board Resolutions	Requirement of Undertaking (Annexure 10)
aggregate holding 100% equity		investing in the equity c) Format 2 of Annexure 11 by either Parent / Affiliate(s) whose credentials have been used and /or Ultimate Parent investing in the equity	



A handwritten signature in blue ink, appearing to read "6/6/2021".

## ANNEXURE 12 - FORMAT FOR ILLUSTRATION OF AFFILIATES



**NOTE:** Bidder to provide the illustration, as applicable in their case, duly certified by the Company Secretary and supported by documentary evidence in this regard.

**ANNEXURE 13 - FORMAT FOR DISCLOSURE****[On the letter head of Bidding Company / Each Member in a Bidding Consortium]****Date: .....****DISCLOSURE**

We hereby declare that the following companies with which we/ have direct or indirect relationship are also separately participating in this Bid process as per following details

S. No.	Name of the Company	Relationship
1.		
2.		
3.		

In case there is no such company please fill in the column "name of the company" as Nil.

Further we confirm that we don't have any Conflict of Interest with any other company participating in this bid process.

**Certified as True**

.....  
**(Signature)**

**Name:** .....

**Signature & Name of authorized signatory of the Company and Stamp**

The above disclosure should be signed and certified as true by the authorized signatory of the Bidding Company or of the Member, in case of a Consortium).

A handwritten signature in blue ink, appearing to read 'Q' and '98/2021.'

**ANNEXURE 14 - FORMAT OF THE 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.)**

In consideration of the ..... [Insert name of the Bidder] submitting the Bid inter alia for establishing the Inter-State transmission system for ..... [Name of Project] on build, own, operate and transfer basis, in response to the RFP dated ..... issued by ..... [Name of BPC], and the Bid Process Coordinator (hereinafter referred to as BPC) agreeing to consider such 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] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to ..... [Name of BPC] or its authorized representative at ..... [Address of BPC] forthwith on demand in writing from ..... [Name of BPC] or any representative authorized by it in this behalf, any amount up to and not exceeding Rupees ..... Only (Rs ..... Crore), 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 ..... [Date to be inserted on the basis of Clause 2.11 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 alterations 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 ..... Only (Rs ..... Crore). Our Guarantee shall remain in force until ..... [Date to be inserted on the basis of Clause 2.11 of this RFP]. ..... [Name of BPC] or its authorized representative shall be entitled to invoke this Guarantee until ..... [Insert Date, which is three sixty five days (365) 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 ..... [Name of BPC] 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 ..... [Name of BPC] 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 ..... [Name of BPC] or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against ..... [Name of BPC] or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India.

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

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

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly \_\_\_\_\_ [Name of BPC] 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 \_\_\_\_\_ [Name of BPC] or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees ..... Only (Rs \_\_\_\_ Crore) and it shall remain in force until ..... [Date to be inserted on the basis of Clause 2.11 of RFP], with an additional claim period of three hundred sixty five (365) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if \_\_\_\_\_ [Name of BPC] 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 .....

**Witness:**

1.....  
Name and Address

Signature: .....  
Name: .....

2.....  
Name and Address

Designation with Stamp:

Signature .....

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:**

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

**ANNEXURE 14 A- FORMAT OF THE BID SECURITY DECLARATION [VALID TILL RFP ISSUED ON OR BEFORE 31.12.2021]**

[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]

Date: .....

**To,**

**[Insert Name and Address of BPC]**

Dear Sir,

**Sub: Bid Security Declaration in lieu of Bid Bond in respect of Bid for selection of Bidder as TSP to establish transmission system for “..... [Insert Name of the Project]”**

Being duly authorized to present and act on behalf of M/s ..... (insert name of Bidding Company / Bidding Consortium) (hereinafter called the “Bidder”) and having read and examined in detail the Request for Proposal (RFP) document, the undersigned hereby agree the following:

1. We, ..... (insert name of Bidding Company / Bidding Consortium) are submitting the Bid for establishing the transmission system for “.....[Insert Name of the Project]” on build, own, operate and maintain basis, in response to the RFP dated \_\_\_\_\_ issued by \_\_\_\_\_ [Name of BPC], as per the terms of the RFP.
2. We, ..... (insert name of Bidding Company / Bidding Consortium) are submitting this Bid Security Declaration in lieu of the Bid Bond.
3. We, ..... (insert name of Bidding Company / Bidding Consortium) have read the terms & conditions of RFP in particular regarding invocation/ forfeiting of the Bid Bond by the BPC under various circumstances.

We agree that, ..... (insert name of Bidding Company / Bidding Consortium) shall be suspended from participation in the bidding process for future Inter-State transmission projects of Ministry of Power, GoI to be developed through tariff based competitive bidding route for a period of two years from the bid submission date upon occurrence of a situation that otherwise would have led to revocation/forfeiture of Bid Bond as per provisions of RFP.

For and on behalf of Bidding Company/Consortium

M/s.....

(Signature of authorised signatory)

Name: .....

Designation: .....

Date: .....

Place: .....



A handwritten signature consisting of stylized initials and the number 102.

**ANNEXURE 15 - FORMAT FOR CONTRACT PERFORMANCE 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 SPV or Selected Bidder on behalf of SPV or Lead Member in case of the Consortium, with address] agreeing to undertake the obligations under the Transmission Service Agreement dated ..... and the other RFP Project Documents and the Nodal Agency and ..... [Name of BPC], agreeing to execute the RFP Project Documents with the Selected Bidder, regarding setting up the Project, 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 Nodal Agency at ..... [Insert Place and Address of the Nodal Agency indicated in TSA] forthwith on demand in writing from the Nodal Agency or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... Crores (Rs.....) only [Insert the amount of the bank guarantee] on behalf of M/s ..... [Insert name of the Selected Bidder / SPV].

This guarantee shall be valid and binding on the Guarantor Bank up to and including ..... and shall not be terminable by notice or any change in the constitution of the Bank or the term of the Transmission Service Agreement or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations 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 Rupees ..... Crores (Rs.....) only. Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Clause 2.12.1 of the RFP]. The Nodal Agency shall be entitled to invoke this Guarantee up to three hundred sixty five (365) days of the last date of the validity of this Guarantee.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by ..... [Name of SPV], ..... [Insert name of the Selected Bidder], ..... [Insert name of the TSP] and/or any other person. The Guarantor Bank shall not require the Nodal Agency to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Nodal Agency in respect of any payment made hereunder.

**This BANK GUARANTEE** shall be interpreted in accordance with the laws of India.

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 Nodal Agency shall not be obliged before enforcing this **BANK GUARANTEE** to take any action in any court or arbitral proceedings against \_\_\_\_\_ [Name of SPV] or the Selected Bidder, to make any claim against or any demand on \_\_\_\_\_ [Name of SPV] or the Selected Bidder, as the case may be, or to give any notice to \_\_\_\_\_ [Name of SPV] or the Selected Bidder, as the case may be, or to enforce any security held by the Nodal Agency or to exercise, levy or enforce any distress, diligence or other process against ..... [Name of SPV] or the Selected Bidder, as the case may be.

The Guarantor Bank acknowledges that this **BANK GUARANTEE** is not personal to the Nodal Agency and may be assigned, in whole or in part, (whether absolutely or by way of security) by Nodal Agency to any entity to whom the Nodal Agency is entitled to assign its rights and obligations under the Transmission Service Agreement.

The Guarantor Bank hereby agrees and acknowledges that the Nodal Agency 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 Rupees ..... Crores (Rs .....) only and it shall remain in force until [Date to be inserted on the basis of Article 3.1.2 of TSA], with an additional claim period of three hundred sixty five (365) days thereafter. This **BANK GUARANTEE** shall be extended from time to time for such period, as may be desired by..... [Insert name of the Selected Bidder or Lead Member in case of the Consortium or SPV]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Nodal Agency serves upon us a written claim or demand.

**In witness where of:**

Signature.....

Name: .....

Power of attorney No.: .....

**For:**

..... [Insert Name of the Bank]  
Banker's Seal and Full Address, including mailing address of the Head Office

**Notes:**

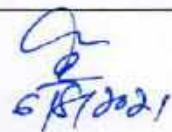
1. The Stamp Paper should be in the name of the Executing Bank.

**ANNEXURE 16 – FORMAT OF CHECKLIST FOR TECHNICAL BID SUBMISSION REQUIREMENTS**

[This format needs to be duly filled in, signed by the authorized signatory of the Bidder (Bidding Company / Lead Member in case of a Bidding Consortium) and submitted along with the Bidder's Technical Bid]

Technical Bid Submission Requirements	Response (Yes / No)
<ol style="list-style-type: none"> <li>1. Format for the Covering Letter on the letterhead of Bidding Company or Lead Member of the Consortium, as applicable;</li> <li>2. Format for Letter of Consent from each Consortium Member, including Lead Member, on their respective letterheads;</li> <li>3. Format for evidence of authorized signatory's authority ;</li> <li>4. Board resolution from the Bidding Company / Lead Member of the Consortium in favour of the person executing the Power of Attorney as per <b>Annexure 3</b>;</li> <li>5. Power of Attorney from each Consortium Member in favour of Lead Member to be provided by each of the other Members of the Consortium as per <b>Annexure 4</b>;</li> <li>6. Board Resolution from each Member of the Consortium, other than the Lead Member, in favour of their respective authorized representatives for executing the POA, Consortium Agreement and signing of the requisite formats;</li> <li>7. Format for Bidder's composition and ownership structure, along with status of equity holding (owning ten percent or more of the total paid up equity) not earlier than thirty (30) days prior to the Bid Deadline as per <b>Annexure 5</b>;</li> <li>8. Consortium Agreement duly signed as per <b>Annexure 6</b>, along with Appendix-1, indicating the responsibilities and obligations of each Member of the Consortium;</li> <li>9. Format for Qualification Requirement:           <ol style="list-style-type: none"> <li>a. Calculation sheets, detailing computation of Networth considered for meeting Qualifying Requirements, duly signed and stamped by the Statutory Auditor of the Bidding Company / each Member in case of a Bidding Consortium / FEE in cases where credentials of FEE is taken;</li> <li>b. Calculation sheets, detailing computation of capital expenditure of projects and revenue received in construction projects considered for meeting Qualification Requirements, duly signed and stamped by the Statutory Auditor of the Bidding Company /</li> </ol> </li> </ol>	

Technical Bid Submission Requirements	Response (Yes / No)
<p>Lead Member in case of Bidding Consortium / TEE in cases where credentials of TEE is taken;</p> <ul style="list-style-type: none"> <li>c. Last financial year unconsolidated / consolidated audited annual accounts / statements, as the case may be, of the Financially Evaluated Entity / Technical Evaluated Entity</li> <li>d. Unconsolidated audited annual accounts of both the TEE and the Bidding Company/Lead member, as applicable, from the financial years in which financial closure was achieved till the financial year in which the said project was completed / commissioned.</li> </ul> <p>10. Copy of the Memorandum and Articles of Association and certificate of incorporation or other organizational document (as applicable), including their amendments, certified by the Company Secretary of Bidding Company or each Member in case of a Consortium including Lead Member.</p> <p>11. Attachment of <b>Annexure 7(D)</b>, detailing projects completed / commissioned and for which commercial operation has commenced including Executive Summary for each project.</p> <p>12. For each project listed in the attachment above, certified true copy of the certificates of final acceptance and / or certificates of good operating performance duly issued by owners or clients for the project, duly signed by authorized signatory in support of technical capability as defined in Clause 2.1.2 of RFP.</p> <p>13. Authority letter in favour of BPC from the Bidder/every Member of the Consortium authorizing the BPC to seek reference from their respective bankers &amp; others.</p> <p>14. Authorization from Parent / Affiliate of Bidding Company / Member of Bidding Consortium whose technical / financial capability has been used by the Bidding Company / Member of Bidding Consortium.</p> <p>15. Initialing of all pages of Technical Bid by the Authorized Signatory in whose favour the POA (<b>Annexure 3</b>) has been executed.</p> <p>16. Format for Illustration of Affiliates at the most seven (7) days prior to the Bid Deadline, duly certified by Company Secretary and supported by documentary evidence.</p> <p>17. Certified copy of the Register of Members / Demat Account Statement, Share Certificate, Annual Return filed with ROC etc. submitted as documentary evidence along with</p>	



6/8/2021

Technical Bid Submission Requirements	Response (Yes / No)
<b>Annexure 12.</b>	
18. Format for Disclosure by Bidding Company / each Member of the Consortium.	
19. Format for Affidavit by the Bidding Company / each Member of the Consortium	
20. Format for Authorization submitted in Non-Judicial stamp paper duly notarized.	
21. Bidders Undertaking and details of Equity Investment	
22. Proof of Payment of RFP Fees	
23. Bid Bond/ Bid Security Declaration (As applicable)	
24. Board Resolution as per Annexure 11 (If required)	

**[Note:** The checklist is not exhaustive. Bidders are required to submit all the information/documents as per requirement of RFP]

**For and on behalf of Bidder**

M/s. ....

.....  
**(Signature of authorized signatory)**

### **ANNEXURE 17 – LIST OF BANKS**

The list of banks shall include all Scheduled Commercial Banks as per Second Schedule of RBI Act-1934 and any amendments thereof.

Note:

The above list of banks is indicative and can be modified by the BPC as required and any such change shall not be construed as a deviation from this document.

*G  
6/8/2021.*

**ANNEXURE 18 - GRID MAP OF THE PROJECT**

*[Signature]*  
6/8/2021

**ANNEXURE 19 - FORMAT FOR CLARIFICATIONS / AMENDMENTS ON THE RFP / RFP  
PROJECT DOCUMENTS**

S. No.	Name of the Document	Clause No. and Existing provision	Clarification required	Suggested text for the amendment	Rationale for the Clarification or Amendment

Signature .....

Name.....

For

**Bidder's Rubber Stamp and Full Address.**

(Note: This format shall be used for submission of requests for clarifications/ amendments on the draft RFP Project Documents as per the provisions of Clause 2.3.1)

G  
6/8/2021.

**ANNEXURE 20 - LIST FOR RFP PROJECT DOCUMENTS**

**ENCLOSURE 1: TRANSMISSION SERVICE AGREEMENT (Provided separately)**

**ENCLOSURE 2: SHARE PURCHASE AGREEMENT (Provided Separately)**

.....

[To be inserted by the BPC]

**ANNEXURE 21 - FORMAT FOR FINANCIAL BID**

[To be uploaded online]

**Quoted Transmission Charges .....**

**Notes**

1. The Bidders are required to ensure compliance with the provisions of Clause 2.5.3 of this RFP.
2. Quotes to be in Rupees Millions and shall be up to two (2) decimal points.
3. The contents of this format shall be clearly typed.
4. The Financial Bid shall be digitally signed by the authorized signatory in whose name power of attorney as per Clause 2.5.2 is issued.
5. Ensure only one value for annual Transmission Charges is quoted. The same charge shall be payable every year to TSP for the term of TSA.

*g  
6/8/2021.*

**ANNEXURE 22 – FORMAT FOR AFFIDAVIT**

**[On non-judicial stamp paper. Foreign companies submitting bids are required to follow the applicable law in their country]**

**AFFIDAVIT**

We [including any of our Affiliate and Consortium Member & any of its Affiliate], hereby declare that as on Bid Deadline:

- the Bidder & any of its Affiliate including any Consortium Member & any of its Affiliate, their directors or key personnel have not been barred or included in the blacklist by any government agency or authority in India, the government of the jurisdiction of the Bidder or Members where they are incorporated or the jurisdiction of their principal place of business, any international financial institution such as the World Bank Group, Asian Development Bank, African Development Bank, Inter-American Development Bank, Asian Infrastructure Investment Bank etc. or the United Nations or any of its agencies; or
- the Bidder & any of its Affiliate including any Consortium Member & any of its Affiliate or their directors have not been convicted of any offence in India or abroad.

We further declare that following investigations are pending / no investigation is pending [strike off whichever is not applicable] against us [including any of our Consortium Member or Affiliate or Parent or Ultimate Parent or Affiliate] or CEO or any of our directors/ manager/key managerial personnel of the Applicant /Consortium Member or their Affiliates.

We further undertake to inform the BPC of any such matter as mentioned above on its occurrence after the date of this affidavit till the Effective Date.

We undertake that, in case, any information provided in relation to this affidavit is found incorrect at any time hereafter, our BID / Letter of Intent / contract (if entered) would stand rejected / recalled / terminated, as the case may be.

.....  
Signature and Name of the authorized signatory of the Company Bidding Company / Lead Member of the Bidding Consortium

.....  
(Signature of Notary Public)

Place: .....  
Date: .....

Note: In case any investigation is pending against the Applicant, including any Consortium Member or Affiliate, or CEO or any of the directors/ manager/key managerial personnel of the Applicant /Consortium /Member or their Affiliates, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed under this affidavit.

## ANNEXURE A

### Technical Details with respect to electronic bidding

[To be provided by software vendor for electronic bidding & e- reverse auction]

*Aj*  
6/8/2021

## ANNEXURE B

### Draft Pre-Award Integrity Pact

[Can be suitably modified by BPC]

#### **GENERAL**

This pre-bid contract Agreement (herein after called the Integrity Pact) is made on ..... day of the month of ..... 20....., between, on one hand, ..... [Insert name of BPC] through Shri ..... [Insert Name & designation of representative of BPC] (hereinafter called the "Bid Process Coordinator/ BPC", which expression shall mean and include, unless the context otherwise requires, his successors in the office and assigns) of the First Part and M/s ..... represented by Shri ..... [Insert Name & Designation of Authorized Signatory of the Bidder/ Lead Member of Consortium] (hereinafter called the "Bidder" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BPC is conducting the bidding process for selection of bidder as Transmission Service Provider (TSP), who will be responsible to set up the transmission project on build, own, operate and transfer (BOOT) basis and to provide Transmission Service.

WHEREAS the Bidder is a Private Company/Public Company/Government Undertaking/ Partnership, constituted in accordance with the relevant law in the matter and the BPC is a Public Sector Undertaking (PSU) performing its function on behalf of the Ministry of Power, Government of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings during the complete bidding process with a view to:-

Enabling the BPC to select the bidder as TSP in conformity with the defined procedures by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling Bidder to abstain from bribing or indulging in any corrupt practice in order to emerge as selected bidder by providing assurance to them that their competitors will also abstain from bribing and other practices and the BPC will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

### **Commitments of BPC**

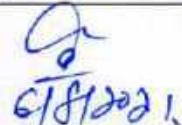
- 1.1 The BPC undertakes that no official of the BPC, connected directly or indirectly with the bidding process, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the bidding process in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The BPC will, during the bidding stage, treat all bidders alike, and will provide to all bidders the same information and will not provide any such information to any particular bidder which could afford an advantage to that particular bidder in comparison to the other bidders.
- 1.3 All the officials of the BPC will report the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
- 2 In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the BPC with the full and verifiable facts and the same is *prima facie* found to be correct by the BPC, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the BPC and such a person shall be debarred from further dealings related to the bidding process. In such a case while an enquiry is being conducted by the BPC the proceedings under the bidding process would not be stalled.

### **Commitments of Bidder**

3. The Bidder commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre award stage in order to emerge as Selected Bidder or in furtherance to secure it and in particular commits itself to the following:-
- 3.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BPC, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the bidding process in exchange for any advantage in the bidding, evaluation, contracting and implementation of the bidding process.
- 3.2 The Bidder further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit

or other advantage, commission, fees, brokerage or inducement to any official of the BPC or otherwise in bidding process or for bearing to do or having done any act in relation to bidding process or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the bidding process or any other contract with the Government.

- 3.3 The Bidder shall disclose the name and address of agents and representatives and Indian Bidder shall disclose their foreign principals or associates.
- 3.4 The Bidder shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid .
- 3.5 The Bidder further confirms and declares to the BPC that the Bidder has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BPC or any of its functionaries, whether officially or unofficially for selection of Bidder as TSP, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The Bidder, either while presenting the bid or during pre-award negotiations or before signing the Share Purchase Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the BPC or their family members, agents, brokers or any other intermediaries in connection with the bidding process and the details of services agreed upon for such payments.
- 3.7 The Bidder will not collude with other parties interested in the bidding process to impair the transparency, fairness and progress of the bidding process.
- 3.8 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The Bidder shall not use improperly, for purpose of competition or personal gain, or pass on to others, any information provided by the BPC as part of the business relationship, regarding plans, technical proposal and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.



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- 3.12 The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the BPC.

#### **4. Previous Transgression**

- 4.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Bidder's exclusion from the bidding process.
- 4.2 The Bidder agrees that if it makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **5. Bid Bond (Security Deposit)/ Bid Security Declaration (as applicable)**

- 5.1 Along with the technical bid, the Bidder shall submit Bid Bond for an amount of Rs. .... (as per the amount specified in Request for Proposal (RFP) Document) issued by ..... [Insert Name of the Banks from the list provided in RFP Document] as Earnest Money/Security Deposit, with the BPC.
- 5.2 The Earnest Money/Security Deposit shall be valid & retained by the BPC for such period as specified in the RFP Document.
- 5.3 No interest shall be payable by the BPC to the Bidder on Earnest Money/Security Deposit for the period of its currency.

[In case of projects for which RFP has been issued before 31.12.2021, the above clauses shall be replaced by following:

Along with the technical bid, the Bidder shall submit Bid Security Declaration in lieu of Bid Bond as per the format specified in Request for Proposal (RFP) Document.]

#### **6. Sanctions for Violations**

- 6.1 Any breach of the aforesaid provisions by the Bidder or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder) shall entitle the BPC to take all or anyone of the following actions, wherever required:-
- (i) To immediately call off the pre-award negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

- (ii) The Bid Bond (in pre-award stage) shall stand forfeited either fully or partially, as decided by the BPC and the BPC shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the award, if already awarded, without giving any compensation to the Bidder.
  - (iv) To cancel all or any other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the BPC resulting from such cancellation/rescission.
  - (v) To debar the Bidder from participation in any tender or RFP issued by any BPC for an indefinite period.
  - (vi) To recover all sums paid in violation of this Pact by Bidder to any middleman or agent or broker with a view to securing the award.
- 62 The BPC will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (vi) of this Pact also on the Commission by the Bidder or anyone employed by it or acting on its behalf (whether with or without the knowledge of the Bidder), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 63 The decision of the BPC to the effect that a breach of the provisions of this Pact has been committed by the Bidder shall be final and conclusive on the Bidder. However, the Bidder can approach the Independent Monitor(s) appointed for the purposes of this Pact.
- 7. Independent Monitors**
- 7.1 The BPC has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 7.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 7.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 7.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BPC.

- 7.6 The Bidder accepts that the Monitors has the right to access without restriction to all Project documentation of the BPC including that provided by the Bidder. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder /Subcontractors(s) with confidentiality. [As all the bid documents are with BPConly]
- 7.7 The BPC will provide to the Monitors sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the monitor the option to participate in such meetings.
- 7.8 The Monitor will submit a written report to the designated Authority of the BPC/Secretary in the Department within 8 to 10 weeks from the date of reference or intimation to him by the BPC / Bidder and, should the occasion arise, submit proposals for correcting problematic situations.

## **8. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BPC or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder and the Bidder shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

## **9. Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BPC.

## **10. Other Legal Actions**

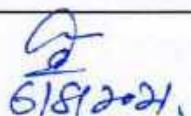
The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the any extent law in force relating to any civil or criminal proceedings.

## **11. Validity**

- 11.1 The validity of this Integrity Pact shall be from date of its signing and upto 6 months from the date of transfer of project specific SPV i.e. signing of Share Purchase Agreement with BPC. In case Bidder is unsuccessful, this Integrity Pact shall expire after 15 days from the date of transfer of project specific SPV to successful bidder.
- 11.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

12. The Parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

Bid Process Coordinator (BPC)	BIDDER
Name of the Officer Designation Name of the BPC with address	Name of Whole time Director/Authorized Signatory Name of the Bidder with address
Witness: 1. _____ 2. _____	Witness: 1. _____ 2. _____

  
6/8/2021.

**STANDARD  
TRANSMISSION SERVICE AGREEMENT**

**FOR**

**DEVELOPMENT AND OPERATION OF INTER-STATE  
TRANSMISSION SYSTEM**

**FOR TRANSMISSION OF ELECTRICITY THROUGH  
TARIFF BASED COMPETITIVE BIDDING FOR**

.....  
**[INSERT THE NAME OF PROJECT]**

**BETWEEN THE**

.....  
**(NODAL AGENCY)**

**AND**

.....  
**[INSERT THE NAME OF TRANSMISISON SERVICE  
PROVIDER]**

.....2021

| August 2021

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08/2021*

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**THIS TRANSMISISON SERVICE AGREEMENT** (hereinafter referred to as "TSA" or "Agreement" or "the Agreement" or "this Agreement") is made on the ..... [Insert day] of ..... [Insert month] of Two Thousand and ..... [Insert Year]

**BETWEEN:**

The ..... [Insert name and registered address of Nodal Agency for the project], acting as a Nodal Agency (referred to as the "Nodal Agency"), which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as Party of the one part;

**AND**

..... [Insert Name of the Transmission Service Provider], incorporated under the Companies Act, 1956/ Companies Act, 2013 (as the case may be), having its registered office at ..... (herein after referred to as "Transmission Service Provider" or "TSP" or "ISTS Licensee", which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as Party of the other part;

(“Nodal Agency” and “TSP” are individually referred to as “Party” and collectively as the “Parties”)

**AND WHEREAS:**

- A) In accordance with the Bidding Guidelines, the Bid Process Coordinator (hereinafter referred to as BPC) had initiated a competitive e-reverse bidding process through issue of RFP for selecting a Successful Bidder to build, own, operate and transfer the Project comprising of the Elements mentioned in Schedule 1 (hereinafter referred to as the Project)
- B) Pursuant to the said e-reverse bidding process, the BPC has identified the Successful Bidder, who will be responsible to set up the Project on build,

..... [Insert Name of the SPV]

own, operate and transfer basis to provide Transmission Service in accordance with the terms of this Agreement and the Transmission License.

- C) The Selected Bidder have submitted the Contract Performance Guarantee and acquired one hundred percent (100%) of the equity shareholding of ..... [Insert Name of the SPV], along with all its related assets and liabilities in terms of the provisions of the Share Purchase Agreement.
- D) The TSP has agreed to make an application for a Transmission License to the Commission for setting up the Project on build, own, operate and transfer basis.
- E) The TSP has further agreed to make an application to the Commission for the adoption of the Transmission Charges under Section 63 of the Electricity Act, 2003, along with a certification from the Bid Evaluation Committee in accordance with the Bidding Guidelines issued by Ministry of Power, Government of India.
- F) The TSP has agreed to execute the agreement(s) required, if any, under Sharing Regulations within fifteen (15) days from the date of grant of Transmission License from the Commission.
- G) The TSP agrees to the terms and conditions laid down under Sharing Regulations, for making available the ISTS and charge the Transmission Charges in accordance with the terms and conditions of Sharing Regulations.
- H) The billing, collection and disbursement of the Transmission Charges by the CTU to the ISTS Licensee shall be governed as per Sharing Regulations.
- I) The terms and conditions stipulated in the Transmission License issued by the Commission to the TSP shall be applicable to this Agreement and the TSP agrees to comply with these terms and conditions. In case of inconsistency between the Transmission License terms & conditions and the conditions of this Agreement, the conditions stipulated in the Transmission License granted by the Commission shall prevail.

**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 HERETO AS FOLLOWS:**

## ARTICLE: 1

### 1 DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions:

1.1.1 The words / expressions 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 Commission (as defined hereunder), as amended or re-enacted from time to time or the General Clauses Act, failing which it shall bear its ordinary English meaning.

The words/expressions when used in this Agreement shall have the respective meanings as specified below:

**"Acquisition Price"** shall have the same meaning as defined in the Share Purchase Agreement;

**"Act"** or **"Electricity Act"** or **"Electricity Act 2003"** shall mean the Electricity Act, 2003 and any amendments made to the same or any succeeding enactment thereof;

**"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 entity of at least twenty six percent (26%) of the voting rights of the other entity;

**"Availability"** in relation to the Project or in relation to any Element of the Project, for a given period shall mean the time in hours during that period the Project is capable to transmit electricity at its Rated Voltage and shall be expressed in percentage of total hours in the given period and shall be calculated as per the procedure contained in ..... [BPC to insert reference to applicable regulations], attached herewith in Schedule 6;

**"Bid"** shall mean technical bid and financial bid submitted by the Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;

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

**"Bidding Company"** shall refer to such single company that has made a Response to RFP for the Project;

**"Bidding Consortium / Consortium"** shall refer to a group of companies that has collectively made a Response to RFP for the Project;

**"Bid Documents"** or **"Bidding Documents"** shall mean the RFP, along with all attachments thereto or clarifications thereof;

**"Bidding Guidelines"** shall mean the "Tariff Based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act as amended from time to time;

**"Bid Process Coordinator"** or **"BPC"** shall mean a person or its authorized representative as notified by the Government of India, responsible for carrying out the process for selection of Bidder who will acquire Transmission Service Provider;

**"Bill"** shall mean any bill raised by the CTU on the DICs to recover the Transmission Charges pursuant to the Sharing Regulations;

**"Business Day"** shall mean a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State in which the Nodal Agency's registered office is located and the concerned TSP are located;

**"CEA"** shall mean the Central Electricity Authority constituted under Section -70 of the Electricity Act;

**"Change in law"** shall have the meaning ascribed thereto in Article 12;

**"Commercial Operation Date"** or **"COD"** shall mean the date as per Article 6.2;

**"Commission"** or **"CERC"** shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of Section 76 of the Electricity Act, 2003 or its successors and assigns;

**"Competent Court of Law"** shall mean the Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project;

**"Connection Agreement"** shall mean the agreement between the CTU or STU or any other concerned parties and the TSP, setting out the terms relating to the connection of the Project to the Inter-connection Facilities and use of the Inter State Transmission System as per the provisions of the IEGC, as the case may be;

**"Consultation Period"** shall mean the period of sixty (60) days or such longer period as the Parties may agree, commencing from the date of issue of a TSP's Preliminary Notice or a Nodal Agency's Preliminary Termination Notice, as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

**"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 development, execution and operation of Project including without any limitation for the construction, ownership, operation and maintenance of the Transmission Lines and/or sub-stations;

**"Construction Period"** shall mean the period from (and including) the Effective Date of the Transmission Service Agreement up to (but not including) the COD of the Element of the Project in relation to an Element and up to (but not including) the COD of the Project in relation to the Project;

**"Contractors"** shall mean the engineering, procurement, construction, operation & maintenance contractors, surveyors, advisors, consultants, designers, suppliers to the TSP and each of their respective sub-contractors (and each of their respective successors and permitted assigns) in their respective capacities as such;

**"Contract Performance Guarantee"** shall mean the irrevocable unconditional bank guarantee, submitted and to be submitted by the TSP

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or by the Selected Bidder on behalf of the TSP to the Nodal Agency from a bank mentioned in Annexure 17 of the RFP, in the form attached here to as Schedule 8, in accordance with Article 3 of this Agreement and which shall include the additional bank guarantee furnished by the TSP under this Agreement;

**"Contract Year"**, for the purpose of payment of Transmission Charges, shall mean the period beginning on the COD, 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 the last Contract Year shall end on the last day of the term of the TSA;

**"CTU"** or **"Central Transmission Utility"** shall have same meaning as defined in the Electricity Act, 2003;

**"Day"** shall mean a day starting at 0000 hours and ending at 2400 hours;

**"D/C"** shall mean Double Circuit;

**"Designated ISTS Customers"** or **"DICs"** shall have the meaning as ascribed in the Sharing Regulations;

**"Dispute"** shall mean any dispute or difference of any kind between the Parties, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16;

**"Effective Date"** for the purposes of this Agreement, shall have the same meaning as per Article 2.1 of this Agreement;

**"Electrical Inspector"** shall mean a person appointed as such by the Government under sub-section (1) of Section 162 of the Electricity Act 2003 and also includes Chief Electrical Inspector;

**"Electricity Rules 2005"** shall mean the rules framed pursuant to the Electricity Act 2003 and as amended from time to time;

**"Element"** shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) or each bay of Sub-station or switching station or HVDC terminal or inverter station of the Project, including ICTs, Reactors, SVC, FSC, etc. forming part of the ISTS, which will be owned, operated and maintained by the concerned ISTS Licensee, and which has a separate Scheduled COD as per

Schedule 2 of this Agreement and has a separate percentage for recovery of Transmission Charges on achieving COD as per Schedule 5 of this Agreement;

**"Event of Default"** shall mean the events as defined in Article 13 of this Agreement;

**"Expiry Date"** shall be the date which is thirty five (35) years from the COD of the Project;

**"Financial Closure"** shall mean the first Business Day on which funds are made available to the TSP pursuant to the Financing Agreements;

**"Financially Evaluated Entity"** shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth in the RFP;

**"Financing Agreements"** shall mean the agreements pursuant to which the TSP is to finance the 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 the Designated ISTS Customers / Nodal Agency;

**"Financial Year"** shall mean a period of twelve months at midnight Indian Standard Time (IST) between 1st April & 31st March;

**"Force Majeure"** and **"Force Majeure Event"** shall have the meaning assigned thereto in Article 11;

**"GOI"** shall mean Government of India;

**"Grid Code"** / **"IEGC"** shall mean the Grid Code specified by the Central Commission under Clause (h) of sub-section (1) of Section 79 of the Electricity Act;

**"Independent Engineer"** shall mean an agency/ company, appointed by Nodal Agency in accordance with the Guidelines for Encouraging Competition in Development of Transmission Projects.

**"Indian Governmental Instrumentality"** shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or both,

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any political sub-division of any of them including any court or Commission or tribunal or judicial or quasi-judicial body in India but excluding the CTU, TSP and the Designated ISTS Customers;

**"Insurances"** shall mean the insurance cover to be obtained and maintained by the TSP in accordance with Article 9 of this Agreement;

**"Interconnection Facilities"** shall mean the facilities as may be set up for transmission of electricity through the use of the Project, on either one or both side of generating station's / CTU's / STU's / ISTS Licensee's / Designated ISTS Customer's substations (as the case may be) which shall include, without limitation, all other transmission lines, gantries, substations and associated equipments not forming part of the Project;

**"ISTS Licensee"** shall be the TSP under this Agreement, consequent to having been awarded a Transmission License by the CERC and shall be referred to as the TSP or the ISTS Licensee, as the context may require in this Agreement;

**"Law" or "Laws"** in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Commission;

**"Lead Member of the Bidding Consortium" or "Lead Member"** shall mean a company who commits at least 26% equity stake in the Project, meets the technical requirement as specified in the RFP and so designated by other Member(s) in Bidding Consortium;

**"Lenders"** means the banks, financial institutions, multilateral funding agencies, non banking financial companies registered with the Reserve Bank of India (RBI), insurance companies registered with the Insurance Regulatory & Development Authority (IRDA), pension funds regulated by the Pension Fund Regulatory & Development Authority (PFRDA), mutual funds registered with Securities & Exchange Board of India (SEBI), etc., including their successors and assigns, who have agreed on or before COD of the Project to provide the TSP with the debt financing described in the capital structure schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned;

Provided that, such assignment or transfer shall not relieve the TSP of its obligations to the Nodal Agency under this Agreement in any manner and shall also does not lead to an increase in the liability of the Nodal Agency;

**"Lenders Representative"** shall mean the person notified by the Lender(s) in writing as being the representative of the Lender(s) or the Security Trustee and such person may from time to time be replaced by the Lender(s) pursuant to the Financing Agreements by written notice to the TSP;

**"Letter of Intent"** or **"LOI"** shall have the same meaning as in the RFP;

**"Member in a Bidding Consortium / Member"** shall mean each company in the Bidding Consortium;

**"Month"** shall mean a period of thirty (30) days from (and excluding) the date of the event;

**"Monthly Transmission Charges"** for any Element of the Project, after COD of the Element till COD of the Project, and for the Project after COD of the Project, shall mean the amount of Transmission Charges as specified in Schedule 5 of this Agreement multiplied by no. of days in the relevant month and divided by no. of days in the year;

**"National Load Despatch Centre"** shall mean the centre established as per sub-section (1) of Section 26 of the Electricity Act 2003;

**"Nodal Agency"** shall mean CTU, which shall execute and implement the Transmission Service Agreement (TSA);

Provided that while taking major decisions, CTU shall consult CEA on technical matters and any other matter it feels necessary.

**"Notification"** shall mean any notification, issued in the Gazette of India;

**"Operating Period"** for any Element of the Project shall mean the period from (and including) the COD of such Element of the Project, up to (and including) the Expiry Date and for the Project, shall mean the period from (and including) the COD of the Project, up to (and including) the Expiry Date;

**"Parent Company"** shall mean an entity 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 in a Bidding Consortium, as the case may be;

**"Preliminary Termination Notice"** shall mean a Nodal Agency's Preliminary Termination Notice as defined in Article 13 of this Agreement;

**"Project"** shall mean ..... [Insert Name of the Project], as detailed in Schedule 1 of this Agreement;

**"Project Assets"** shall mean all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Site for substations, ROW for transmission lines;
- (b) tangible & intangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices, Sub-stations, software, tower and sub-stations designs etc;
- (c) project facilities situated on the Site;
- (d) all rights of the TSP under the project agreements;
- (e) financial assets, such as receivables, security deposits etc;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Transmission System;"

**"Project Execution Plan"** shall mean the plan referred to in Article 3.1.3(c) hereof;

**"Prudent Utility Practices"** shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric transmission utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of the Project and which practices, methods and standards shall be adjusted as necessary, to take account of:

- (i) operation, repair and maintenance guidelines given by the manufacturers to be incorporated in the Project,
- (ii) the requirements of Law, and

- (iii) the physical conditions at the Site;
- (iv) the safety of operating personnel and human beings;

**"Rated Voltage"** shall mean voltage at which the Transmission System is designed to operate or such lower voltage at which the line is charged, for the time being, in consultation with the Central Transmission Utility;

**"Rebate"** shall have the meaning as ascribed to in Article 10.3 of this Agreement;

**"RFP"** shall mean Request For Proposal dated ..... along with all schedules, annexures and RFP Project Documents attached thereto, issued by the BPC for tariff based competitive bidding process for selection of Bidder as TSP to execute the Project, including any modifications, amendments or alterations thereto;

**"RFP Project Documents"** shall mean the following documents to be entered into in respect of the Project, by the Parties to the respective agreements:

- a. Transmission Service Agreement,
- b. Share Purchase Agreement,
- c. Agreement(s) required under Sharing Regulations and
- d. Any other agreement as may be required;

**"RLDC"** shall mean the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region(s) in which the Project is located;

**"RPC"** shall mean the relevant Regional Power Committee established by the Government of India for the specific Region(s) in accordance with the Electricity Act, 2003 for facilitating integrated operation of the Power System in that Region;

**"Scheduled COD"** in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 2 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 2 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties;

**"Scheduled Outage"** shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code;

**"Selected Bid"** shall mean the technical Bid and the Final Offer of the Selected Bidder submitted during e-reverse bidding, which shall be downloaded and attached in Schedule 7 on or prior to the Effective Date;

**"Share Purchase Agreement"** shall mean the agreement amongst ..... [Insert name of the holding company of SPV]..... [Insert Name of the SPV] and the Successful Bidder for the purchase of one hundred (100%) per cent of the shareholding of the ..... [Insert name of SPV] for the Acquisition Price, by the Successful Bidder on the terms and conditions as contained therein;

**"Sharing Regulations"** shall mean the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 and as amended from time to time;

**"Site"** in relation to a substation, switching station or HVDC terminal or inverter station, shall mean the land and other places upon which such station / terminal is to be established;

**"SLDC"** shall mean the State Load Despatch Centre established as per sub-section (1) of Section 31 of the Electricity Act 2003;

**"STU"** or **"State Transmission Utility"** shall be the Board or the Government company, specified as such by the State Government under sub-section (1) of Section 39 of the Electricity Act 2003;

**"Successful Bidder"** or **"Selected Bidder"** shall mean the Bidder selected pursuant to the RFP and who has to acquire one hundred percent (100%) equity shares of ..... [Insert name of SPV], along with all its related assets and liabilities, which will be responsible as the TSP to establish the Project on build, own, operate and transfer basis as per the terms of the TSA and other RFP Project Documents;

**"TSP's Preliminary Notice"** shall mean a notice issued by the TSP in pursuant to the provisions of Article 13.3 of this Agreement;

**"Target Availability"** shall have the meaning as ascribed hereto in Article 8.2 of this Agreement;

**"Technically Evaluated Entity"** shall mean the company which has been evaluated for the satisfaction of the technical requirement set forth in RFP;

**"Termination Notice"** shall mean a Nodal Agency's Termination Notice given by the Nodal Agency to the TSP pursuant to the provisions of Articles 3.3.2, 3.3.4, 4.4.2, 5.8, 13.2 and 13.3 of this Agreement for the termination of this Agreement;

**"Term of Agreement"** for the purposes of this Agreement shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

**"Transmission Charges"** shall mean the Final Offer of the Selected Bidder during the e-reverse bidding and adopted by the Commission, payable to the TSP as per Sharing Regulations;

**"Transmission License"** shall mean the license granted by the Commission in terms of the relevant regulations for grant of such license issued under the Electricity Act;

**"Transmission Service"** shall mean making the Project available as per the terms and conditions of this Agreement and Sharing Regulations;

**"Unscheduled Outage"** shall mean an interruption resulting in reduction of the Availability of the Element(s) / Project (as the case may be) that is not a result of a Scheduled Outage or a Force Majeure Event.

**"Ultimate Parent Company"** shall mean an entity which owns at least twenty six percent (26%) equity in the Bidding Company or Member of a Consortium, (as the case may be) and in the Technically Evaluated Entity and / or Financially Evaluated Entity (as the case may be) and such Bidding Company or Member of a Consortium, (as the case may be) and the Technically Evaluated Entity and / or Financially Evaluated Entity (as the case may be) shall be under the direct control or indirectly under the common control of such entity;

## 1.2 Interpretation:

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

**"Agreement"** shall be construed as including a reference to its Schedules, Appendices and Annexures;

**"Rupee", "Rupees" and "Rs."** shall denote lawful currency of India;

"**crore**" shall mean a reference to ten million (10,000,000) and a "**lakh**" shall mean a reference to one tenth of a million (1,00,000);

"**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;

"**holding company**" of a company or corporation shall be construed as a reference to any company or corporation of which the other company or corporation is a subsidiary;

"**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;

"**person**" shall have the meaning as defined in Section 2 (49) of the Act;

"**subsidiary**" of a company or corporation (the holding company) shall be construed as a reference to any company or corporation:

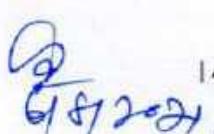
- (i) which is controlled, directly or indirectly, by the holding company, or
- (ii) more than half of the issued share capital of which is beneficially owned, directly or indirectly, by the holding company, or
- (iii) which is a subsidiary of another subsidiary of the holding company,

for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;

"**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" in the context of a company or corporation shall have the same meaning as defined in the Companies Act, 1956/ Companies Act, 2013 (as the case may be).

1.2.1 Words importing the singular shall include the plural and vice versa.

- 1.2.2 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.
- 1.2.3 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.4 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.5 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.
- 1.2.6 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.
- 1.2.7 All interest 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.
- 1.2.8 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement.
- 1.2.9 The contents of Schedule 7 shall be referred to for ascertaining accuracy and correctness of the representations made by the Selected Bidder in Article 17.2.1 hereof.

  
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## ARTICLE: 2

### 2 EFFECTIVENESS AND TERM OF AGREEMENT

#### 2.1 Effective Date:

This Agreement shall be effective from later of the dates of the following events:

- a. The Selected Bidder, on behalf of the TSP, has provided the Contract Performance Guarantee, as per terms of Article 3.1 of this Agreement; and
- b. The Selected Bidder has acquired for the Acquisition Price, one hundred percent (100%) of the equity shareholding of ..... [Insert Name of the Holding Company] in ..... [Insert Name of the SPV] along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement. and
- c. The Agreement is executed and delivered by the Parties;

#### 2.2 Term and Termination:

- 2.2.1 Subject to Article 2.2.3 and Article 2.4, this Agreement shall continue to be effective in relation to the Project until the Expiry Date, when it shall automatically terminate.
- 2.2.2 Post the Expiry Date of this Agreement, the TSP shall ensure transfer of Project Assets to CTU or its successors or an agency as decided by the Central Government at zero cost and free from any encumbrance and liability. The transfer shall be completed within 90 days of expiry of this Agreement failing which CTU shall be entitled to take over the Project Assets *Suo moto*.
- 2.2.3 This Agreement shall terminate before the Expiry Date in accordance with Article 13 or Article 3.3.2 or Article 3.3.4.

..... [Insert Name of the SPV]

  
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**2.3 Conditions prior to the expiry of the Transmission License**

- 2.3.1 In order to continue the Project beyond the expiry of the Transmission License, the TSP shall be obligated to make an application to the Commission at least two (2) years before the date of expiry of the Transmission License, seeking the Commission's approval for the extension of the term of the Transmission License up to the Expiry Date.
- 2.3.2 The TSP shall timely comply with all the requirements that may be laid down by the Commission for extension of the term of the Transmission License beyond the initial term of twenty-five (25) years & upto the Expiry Date and the TSP shall keep the Nodal Agency fully informed about the progress on its application for extension of the term of the Transmission License.

**2.4 Survival:**

The expiry or termination of this Agreement shall not affect any accrued rights, obligations/ roles and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it effect the survival of any continuing obligations/ roles for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Articles 3.3.3, 3.3.5, Article 9.3 (Application of Insurance Proceeds), Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability & Indemnification), Article 16 (Governing Law & Dispute Resolution), Article 19 (Miscellaneous).

**2.5 Applicability of the provisions of this Agreement**

- 2.5.1 For the purpose of Availability, Target Availability and the computation of Availability, Incentive, Penalty, the provisions provided in this Agreement shall apply and any future modifications in the relevant Rules and Regulations shall not be applicable for this Project.
- 2.5.2 For the purposes of this Agreement for ISTS systems developed under the tariff based competitive bidding framework, the provisions relating to the definitions (Availability and COD), Article 3 (Contract Performance Guarantee and Conditions Subsequent), Article 5 (Construction of the Project), Article 6 (Connection and Commissioning of the Project), Article 8 (Target Availability and calculation of Availability), Article 11 (Force

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Majeure), Article 12 (Change in Law), Article 13 (Event of Default), Article 14 (Indemnification), Article 15 (Assignment and Charges), Articles 16.1, 16.2 and 16.4 (Governing Laws and Dispute Resolution) and Article 17 (representation and warranties of the ISTS Licensee) of this agreement shall supersede the corresponding provisions under Sharing Regulations.

..... [Insert Name of the SPV]

  
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## ARTICLE: 3

### 3 CONDITIONS SUBSEQUENT

#### 3.1 Satisfaction of conditions subsequent by the TSP

3.1.1 Within ten (10) days from the date of issue of Letter of Intent, the Selected Bidder, shall:

- a. Provide the Contract Performance Guarantee, and
- b. Acquire, for the Acquisition Price, one hundred percent (100%) equity shareholding of ..... [Insert Name of the SPV] from ..... [Insert name of holding company of the SPV], who shall sell to the Selected Bidder, the equity shareholding of ..... [Insert Name of the SPV], along with all its related assets and liabilities.
- c. Execute this Agreement;

The TSP shall, within five (5) working days from the date of acquisition of SPV by the Selected Bidder, undertake to apply to the Commission for the grant of Transmission License and for the adoption of tariff as required under section-63 of the Electricity Act.

The Selected Bidder, on behalf of the TSP, will provide to the ..... (being the Nodal Agency) the Contract Performance Guarantee for an amount of Rs. ..... Crores (Rupees ..... Crores only) [BPC to insert value both in numbers and figures] [Contract Performance Guarantee would be computed @ 5% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document. However, this value would be computed @ 3% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document for the projects for which RFP has been issued till 31.12.2021]

3.1.2 The Contract Performance Guarantee shall be initially valid for a period up to three (3) months after the Scheduled COD of the Project and shall be extended from time to time to be valid for a period up to three (3) months after the COD of the Project. In case the validity of the Contract

  
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Performance Guarantee is expiring before the validity specified in this Article, the TSP shall, at least thirty (30) days before the expiry of the Contract Performance Guarantee, replace the Contract Performance Guarantee with another Contract Performance Guarantee or extend the validity of the existing Contract Performance Guarantee until the validity period specified in this Article.

- 3.1.3 The TSP agrees and undertakes to duly perform and complete the following activities within six (6) months from the Effective Date (except for c) below), unless such completion is affected due to any Force Majeure Event, or if any of the activities is specifically waived in writing by the Nodal Agency:
- a. To obtain the Transmission License for the Project from the Commission;
  - b. To obtain the order for adoption of Transmission Charges by the Commission, as required under Section 63 of the Electricity Act 2003;
  - c. To submit to the Nodal Agency, CEA & Independent Engineer, the Project Execution Plan, immediately after award of contract(s) and maximum within one hundred and twenty (120) days from the Effective Date. Also, an approved copy each of Manufacturing Quality Plan (MQP) and Field Quality Plan (FQP) would be submitted to Independent Engineer & Nodal Agency in the same time period. The TSP's Project Execution Plan should be in conformity with the Scheduled COD as specified in Schedule 2 of this Agreement, and shall bring out clearly the organization structure, time plan and methodology for executing the Project, award of major contracts, designing, engineering, procurement, shipping, construction, testing and commissioning to commercial operation;
  - d. To submit to the Nodal Agency, CEA & Independent Engineer a detailed bar (GANTT) chart of the Project outlining each activity (taking longer than one Month), linkages as well as durations;
  - e. To submit to the Nodal Agency, CEA & Independent Engineer detailed specifications of conductor meeting the functional specifications specified in RFP;
  - f. To achieve Financial Closure;

..... [Insert Name of the SPV]

  
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- g. To provide an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the provisions of Article 15.3 of this Agreement and all other RFP Project Documents;
- h. To award the Engineering, Procurement and Construction contract ("EPC contract") for the design and construction of the Project and shall have given to such Contractor an irrevocable notice to proceed; and
- i. To sign the Agreement(s) required, if any, under Sharing Regulations.

**3.2 Recognition of Lenders' Rights by the Nodal Agency**

- 3.2.1 The Nodal Agency hereby accepts and acknowledges the rights provided to the Lenders as per Article 15.3 of this Agreement and all other RFP Project Documents.

**3.3 Consequences of non-fulfilment of conditions subsequent**

- 3.3.1 If any of the conditions specified in Article 3.1.3 is not duly fulfilled by the TSP even within three (3) Months after the time specified therein, then on and from the expiry of such period and until the TSP has satisfied all the conditions specified in Article 3.1.3, the TSP shall, on a monthly basis, be liable to furnish to ..... (being the Nodal Agency) additional Contract Performance Guarantee of Rupees. ..... Crores (Rs. ....) [BPC to insert amount] [additional Contract Performance Guarantee to be computed at ten percent (10%) of the original Contract Performance Guarantee amount as per Article 3.1.1] within two (2) Business Days of expiry of every such Month. Such additional Contract Performance Guarantee shall be provided to ..... (being the Nodal Agency) in the manner provided in Article 3.1.1 and shall become part of the Contract Performance Guarantee and all the provisions of this Agreement shall be construed accordingly. ..... (being the Nodal Agency) shall be entitled to hold and / or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this Agreement.

- 3.3.2 Subject to Article 3.3.4, if:

- (i) the fulfilment of any of the conditions specified in Article 3.1.3 is

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delayed beyond nine (9) Months from the Effective Date and the TSP fails to furnish additional Contract Performance Guarantee to the Nodal Agency in accordance with Article 3.3.1 hereof; or

- (ii) the TSP furnishes additional Performance Guarantee to the Nodal Agency in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.1.3 within a period of twelve (12) months from the Effective Date,

the Nodal Agency shall have the right to terminate this Agreement, by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to CEA and the Lenders' Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement.

- 3.3.3 If the Nodal Agency elects to terminate this Agreement as per the provisions of Article 3.3.2, the TSP shall be liable to pay to the Nodal Agency an amount of Rupees ..... Crores (Rs. .......) [Amount to be inserted in words and figures by the BPC] [Amount to be computed @ 5% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document. However, this value would be computed @ 3% of the required aggregate capital cost of projects/ aggregate payments received for the project as calculated under Clause 2.1.2 of RFP Document for the projects for which RFP has been issued till 31.12.2021] only as liquidated damages. The Nodal Agency shall be entitled to recover this amount of damages by invoking the Contract Performance Guarantee to the extent of liquidated damages, which shall be required by the Nodal Agency, and the balance shall be returned to TSP, if any.

It is clarified for removal of doubt that this Article shall survive the termination of this Agreement.

- 3.3.4 In case of inability of the TSP to fulfil the conditions specified in Article 3.1.3 due to any Force Majeure Event, the time period for fulfilment of the condition subsequent as mentioned in Article 3.1.3, may be extended for a period of such Force Majeure Event. Alternatively, if deemed necessary, this Agreement may be terminated by the Nodal Agency by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to CEA and the Lenders' Representative in order to

..... [Insert Name of the SPV]

  
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enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement and the Contract Performance Guarantee shall be returned as per the provisions of Article 6.5.1.

Provided, that due to the provisions of this Article 3.3.4, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1.3, shall lead to an equal increase in the time period for the Scheduled COD. If the Scheduled COD is extended beyond a period of one hundred eighty (180) days due to the provisions of this Article 3.3.4, the TSP will be allowed to recover the interest cost during construction corresponding to the period exceeding one hundred eighty (180) days by adjustment in the Transmission Charges in accordance with Schedule 9.

- 3.3.5 Upon termination of this Agreement as per Articles 3.3.2 and 3.3.4, the Nodal Agency may take steps to bid out the Project again.
- 3.3.6 The Nodal agency, on the failure of the TSP to fulfil its obligations, if it considers that there are sufficient grounds for so doing, apart from invoking the Contract Performance Guarantee under para 3.3.3 may also initiate proceedings for blacklisting the TSP as per provisions of Article 13.2 of TSA.

#### **3.4 Progress Reports**

The TSP shall notify the Nodal Agency and CEA in writing at least once a Month on the progress made in satisfying the conditions subsequent in Articles 3.1.3.

  
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## ARTICLE: 4

### 4 DEVELOPMENT OF THE PROJECT

#### 4.1 TSP's obligations in development of the Project:

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

- a. for procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for development of the Project;
- b. for financing, constructing, owning and commissioning each of the Element of the Project for the scope of work set out in Schedule 1 of this Agreement in accordance with:
  - i. the Electricity Act and the Rules made thereof;
  - ii. the Grid Code;
  - iii. the CEA Regulations applicable, and as amended from time to time, for Transmission Lines and sub-stations:
    - the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007;
    - Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electric Lines) Regulation, 2010;
    - Central Electricity Authority (Grid Standard) Regulations, 2010;
    - Central Electricity Authority (Safety requirements for construction, operation and maintenance of Electrical Plants and Electrical Lines) Regulation, 2011;
    - Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulation, 2010;

..... [Insert Name of the SPV]

  
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- Central Electricity Authority (Technical Standards for Communication System in Power System Operation) Regulations, 2020.
  - iv. Safety/ security Guidelines laid down by the Government;
  - v. Prudent Utility Practices, relevant Indian Standards and the Law;
- not later than the Scheduled COD as per Schedule 2 of this Agreement;
- c. for entering into a Connection Agreement with the concerned parties in accordance with the Grid Code.
  - d. for owning the Project throughout the term of this Agreement free and clear of any encumbrances except those expressly permitted under Article 15 of this Agreement;
  - e. to co-ordinate and liaise with concerned agencies and provide on a timely basis relevant information with regard to the specifications of the Project that may be required for interconnecting the Project with the Interconnection Facilities;
  - f. for providing all assistance to the Arbitrators as they may require for the performance of their duties and responsibilities;
  - g. to provide to the Nodal Agency and CEA, on a monthly basis, progress reports with regard to the Project and its execution (in accordance with prescribed form) to enable the CEA to monitor and co-ordinate the development of the Project matching with the Interconnection Facilities;
  - h. to comply with Ministry of Power order no. 25-11/6/2018 – PG dated 02.07.2020 as well as other Guidelines issued by Govt. of India pertaining to this;
  - i. to procure the products associated with the Transmission System as per provisions of Public Procurement (Preference to Make in India) orders issued by Ministry of Power vide orders No. 11/5/2018 - Coord. dated 28.07.2020 for transmission sector, as amended from time to time read with Department for Promotion of Industry and Internal Trade (DPIIT) orders in this regard (Procuring Entity as defined in

above orders shall deemed to have included Selected Bidder and/ or TSP).

Also, to comply with Department of Expenditure, Ministry of Finance vide Order (Public Procurement No 1) bearing File No. 6/18/2019-PPD dated 23.07.2020, Order (Public Procurement No 2) bearing File No. 6/18/2019-PPD dated 23.07.2020 and Order (Public Procurement No. 3) bearing File No. 6/18/2019-PPD, dated 24.07.2020, as amended from time to time, regarding public procurement from a bidder of a country, which shares land border with India;

- j. to submit to Nodal Agency information in the prescribed format [To be devised by Nodal Agency] for ensuring compliance to Article 4.1 i) above.
- k. to comply with all its obligations undertaken in this Agreement.

#### **4.2 Roles of the Nodal Agency in implementation of the Project:**

- 4.2.1 Subject to the terms and conditions of this Agreement, the Nodal Agency shall be the holder and administrator of this Agreement and shall inter alia:
  - a. appoint an Independent Engineer within 90 days of the Effective Date
  - b. provide letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time, for obtaining the Consents, Clearances and Permits required for the Project;
  - c. coordinate among TSP and upstream/downstream entities in respect of Interconnection Facilities; and
  - d. monitor the implementation of the Agreement and take appropriate action for breach thereof including revocation of guarantees, cancellation of Agreement, blacklisting etc
  - e. provide all assistance to the Arbitrators as required for the performance of their duties and responsibilities; and
  - f. perform any other responsibility (ies) as specified in this Agreement.

**4.3 Time for Commencement and Completion:**

- a. The TSP shall take all necessary steps to commence work on the Project from the Effective Date of the Agreement and shall achieve Scheduled COD of the Project in accordance with the time schedule specified in Schedule 2 of this Agreement;
- b. The COD of each Element of the Project shall occur no later than the Scheduled COD or within such extended time to which the TSP shall be entitled under Article 4.4 hereto.

**4.4 Extension of time:**

- 4.4.1 In the event that the TSP is unable to perform its obligations for the reasons solely attributable to the Nodal Agency, the Scheduled COD shall be extended, by a 'day to day' basis, subject to the provisions of Article 13.
- 4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a 'day to day' basis for a period of such Force Majeure Event. Alternatively, if deemed necessary, the Nodal Agency may terminate the Agreement as per the provisions of Article 13.4 by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to CEA and the Lenders' Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement.
- 4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

**4.5 Metering Arrangements:**

- 4.5.1 The TSP shall comply with all the provisions of the IEGC and the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time, with regard to the metering arrangements for the Project. The TSP shall fully cooperate with the CTU / STU / RLDC and extend all necessary assistance in taking meter readings.

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**4.6 Interconnection Facilities:**

- 4.6.1 Subject to the terms and conditions of this Agreement, the TSP shall be responsible for connecting the Project with the interconnection point(s) specified in Schedule 1 of this Agreement. The Interconnection Facilities shall be developed as per the scope of work and responsibilities assigned in Schedule 1 of this Agreement. The Nodal Agency shall be responsible for coordinating to make available the Interconnection Facilities.
- 4.6.2 In order to remove any doubts, it is made clear that the obligation of the TSP within the scope of the project is to construct the Project as per Schedule-1 of this Agreement and in particular to connect it to the Interconnection Facilities as specified in this Agreement.

..... [Insert Name of the SPV]

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## ARTICLE: 5

### 5 CONSTRUCTION OF THE PROJECT

#### 5.1 TSP's Construction Responsibilities:

- 5.1.1 The TSP, at its own cost and expense, shall be responsible for designing, constructing, erecting, testing and commissioning each Element of the Project by the Scheduled COD in accordance with the Regulations and other applicable Laws specified in Article 4.1 of this Agreement.
- 5.1.2 The TSP acknowledges and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or any compensation whatsoever by reason of the unsuitability of the Site or Transmission Line route(s).
- 5.1.3 The TSP shall be responsible for obtaining all Consents, Clearances and Permits related but not limited to road / rail / river / canal / power line / crossings, Power and Telecom Coordination Committee (PTCC), defence, civil aviation, right of way / way-leaves and environmental & forest clearances from relevant authorities required for developing, financing, constructing, maintaining/ renewing all such Consents, Clearances and Permits in order to carry out its obligations under this Agreement in general and shall furnish to the Nodal Agency such copy/ies of each Consents, Clearances and Permits, on demand. Nodal Agency shall provide letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time, for obtaining the Consents, Clearances and Permits required for the Project.
- 5.1.4 The TSP shall be responsible for:
- (a) [To be deleted by the BPC in case no land acquisition is involved in the Project and replaced by "deleted"] acquisition of land for location specific substations, switching stations or HVDC terminal or inverter stations. Also, the actual location of substations, switching stations or HVDC terminal or inverter stations shall not be beyond 1 Km radius of the location proposed by the BPC in the survey report;

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- (b) [To be deleted by the BPC in case no land acquisition is involved in the Project and replaced by "deleted"] final selection of Site including its geo-technical investigation;
  - (c) survey and geo-technical investigation of line route in order to determine the final route of the Transmission Lines;
  - (d) seeking access to the Site and other places where the Project is being executed, at its own risk and costs, including payment of any crop, tree compensation or any other compensation as may be required.
- 5.1.5 In case the Project involves any resettlement and rehabilitation, the resettlement and rehabilitation package will be implemented by the State Government authorities, for which the costs is to be borne by the TSP and no changes would be allowed in the Transmission Charges on account of any variation in the resettlement and rehabilitation cost. The TSP shall provide assistance on best endeavour basis, in implementation of the resettlement and rehabilitation package, if execution of such package is in the interest of expeditious implementation of the Project and is beneficial to the Project affected persons.

**5.2 Appointing Contractors:**

- 5.2.1 The TSP shall conform to the requirements as provided in this Agreement while appointing Contractor(s) for procurement of goods & services.
- 5.2.2 The appointment of such Contractor(s) shall neither relieve the TSP of any of its obligations under this Agreement nor make the Nodal Agency liable for the performance of such Contractor(s).

**5.3 Monthly Progress Reporting:**

The TSP shall provide to the CEA, Nodal Agency & Independent Engineer, on a monthly basis, progress reports along with likely completion date of each Element with regard to the Project and its execution (in accordance with prescribed form). The Nodal Agency/ CEA shall monitor the development of the Project for its timely completion for

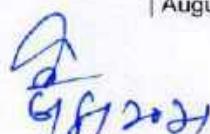
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improving and augmenting the electricity system as a part of its statutory responsibility.

**5.4 Quality of Workmanship:**

The TSP shall ensure that the Project is designed, built and completed in a good workmanship using sound engineering and construction practices, and using only materials and equipment that are new and manufactured as per the MQP and following approved FQP for erection, testing & commissioning and complying with Indian /International Standards such that, the useful life of the Project will be at least thirty five (35) years from the COD of the Project.

The TSP shall ensure that all major substation equipment / component (e.g. transformers, reactors, Circuit Breakers, Instrument Transformers (IT), Surge Arresters (SA), Protection relays, clamps & connectors etc.), equipment in terminal stations of HVDC installations including Thyristor/ IGBT valves, Converter Transformers, smoothing reactors, Transformer bushings and wall bushings, GIS bus ducts, towers and gantry structures and transmission towers or poles and line materials (conductors, earthwire, OPGW, insulator, accessories for conductors, OPGW & earthwires, hardware fittings for insulators, aviation lights etc), facilities and system shall be designed, constructed and tested (Type test, Routine tests, Factory Acceptance Test (FAT)) in accordance with relevant CEA Regulations and Indian Standards. In case Indian Standards for any particular equipment/ system/ process is not available, IEC/ IEEE or equivalent International Standards and Codes shall be followed.

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### **5.5 Progress Monitoring & Quality Assurance:**

- 5.5.1 The Project Execution Plan submitted by the TSP in accordance with Article 3.1.3 c) shall comprise of detailed schedule of all the equipments/items /materials required for the Project, right from procurement of raw material till the dispatch from works and receipt at the site. Further, it should also include various stages of the construction schedule up to the commissioning of the Project.
- 5.5.2 Nodal Agency, CEA & Independent Engineer shall have access at all reasonable times to the Site and to the Manufacturer's works and to all such places where the Project is being executed.
- 5.5.3 Independent Engineer shall ensure conformity of the conductor specifications with the functional specifications specified in RFP.
- 5.5.4 The Independent Engineer shall monitor the following during construction of the Project:
  - a) Quality of equipments, material, foundation, structures and workmanship etc. as laid down in Article 5.4 and 6.1.4 of the TSA. Specifically, quality of Sub-station equipments, transmission line material and workmanship etc. would be checked in accordance with the Article 5.4.
  - b) Progress in the activities specified in Condition Subsequent
  - c) Verification of readiness of the elements including the statutory clearances & completion of civil works, fixing of all components and finalisation of punch points (if any) prior to charging of the elements
  - d) Progress of construction of substation and Transmission Lines
- 5.5.5 The progress shall be reviewed by the Independent Engineer against the Project Execution Plan. The Independent Engineer shall prepare its report on monthly basis and submit the same to Nodal Agency highlighting the progress achieved till the end of respective month vis-à-vis milestone activities, areas of concern, if any, which may result in delay in the timely completion of the Project. Based on the progress, Nodal Agency and/ or CEA shall issue written instructions to the TSP to take corrective measures, as may be prudent for the timely completion of the Project. In

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case of any deficiency, the Nodal Agency would be at liberty to take action in accordance with the procedure of this Agreement.

- 5.5.6 For any delay in commissioning any critical Element(s), as identified in Schedule 1 & Schedule 2 of this Agreement, beyond a period of 45 days shall lead to a sequestration of 10% of the Contract Performance Guarantee.

**5.6 Site regulations and Construction Documents**

The TSP shall abide by the Safety Rules and Procedures as mentioned in Schedule 3 of this Agreement

The TSP shall retain at the Site and make available for inspection at all reasonable times, copies of the Consents, Clearances and Permits, construction drawings and other documents related to construction.

**5.7 Supervision of work:**

The TSP shall provide all necessary superintendence for execution of the Project and its supervisory personnel shall be available to provide full-time superintendence for execution of the Project. The TSP shall provide skilled personnel who are experienced in their respective fields.

**5.8 Remedial Measures:**

The TSP shall take all necessary actions for remedying the shortfall in achievement of timely progress in execution of the Project, if any, as intimated by the Independent Engineer and/ or CEA and/ or the Nodal Agency. However, such intimation by the Independent Engineer and/ or CEA and/ or the Nodal Agency and the subsequent effect of such remedial measures carried out by the TSP shall not relieve the TSP of its obligations in the Agreement. Independent Engineer and/ or CEA and/ or the Nodal Agency may carry out random inspections during the Project execution, as and when deemed necessary by it. If the shortfalls as intimated to the TSP are not remedied to the satisfaction of the CEA and/ or the Nodal Agency, this Agreement may be terminated by the Nodal Agency by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to CEA and the Lenders' Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement .

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## ARTICLE: 6

### 6 CONNECTION AND COMMISSIONING OF THE PROJECT

#### 6.1 Connection with the Inter-Connection Facilities:

- 6.1.1 The TSP shall give the RLDC(s), CTU, / STU, as the case may be, and any other agencies as required, at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which date shall not be earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 & 4.4.2 of this Agreement, unless mutually agreed to by Parties. Further, any preponing of COD of any element prior to Scheduled COD must be approved by the Nodal Agency.
- 6.1.2 The RLDC / SLDC (as the case may be) or the CTU / STU (as the case may be), for reasonable cause, including non-availability of Interconnection Facilities as per Article 4.2, can defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1, if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be for more than an aggregate period of thirty (30) days. Further, the Scheduled COD would be extended as required, for all such deferments on "day to day" basis.
- 6.1.3 Subject to Articles 6.1.1 and 6.1.2, any Element of Project may be connected with the Interconnection Facilities when:
- a. it has been completed in accordance with this Agreement and the Connection Agreement;
  - b. it meets the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 as amended from time to time and all other Indian legal requirements, and
  - c. The TSP has obtained the approval in writing of the Electrical Inspector certifying that the Element is ready from the point of view of safety of supply and can be connected with the Interconnection Facilities.

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- d. It has satisfactorily met all the testing requirements as per Articles 6.1.4
- 6.1.4 Site Acceptance Test (SAT)/ pre-commissioning tests of all major substation equipment, component, system, facilities shall be successfully carried out before commissioning. The Type tests, FAT and SAT reports should be available at the substation / terminal station of HVDC installations for ready reference of operation and maintenance staff and has to be made available to the Independent Engineer appointed for quality monitoring or their authorised representatives, as and when they wish to examine the same.
- 6.2 Commercial Operation:**
- 6.2.1 An Element of the Project shall be declared to have achieved COD twenty four (24) hours following the connection of the Element with the Interconnection Facilities pursuant to Article 6.1 or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP subject to Article 6.1.2.
- Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 2 of this Agreement, have been declared to have achieved their respective COD.
- 6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, TSP shall be eligible for the Monthly Transmission Charges applicable for such Element
- 6.3 Compensation for Direct Non Natural Force Majeure Event or Indirect Non Natural Force Majeure Event or Natural Force Majeure Event (affecting the Nodal Agency)**
- 6.3.1 If the TSP is otherwise ready to connect the Element(s) of the Project and has given due notice, as per provisions of Article 6.1.1, to the concerned agencies of the date of intention to connect the Element(s) of the Project, where such date is not before the Scheduled COD, but is not

  
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able to connect the Element(s) of the Project by the said date specified in the notice, due to Direct Non Natural Force Majeure Event or Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency, provided such Direct Non Natural Force Majeure Event or Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency has continued for a period of more than three (3) continuous or non-continuous Months, the TSP shall, until the effects of the Direct Non Natural Force Majeure Event or of Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency no longer prevent the TSP from connecting the Element(s) of the Project, be deemed to have achieved COD relevant to that date and to this extent, be deemed to have been providing Transmission Service with effect from the date notified, and shall be treated as follows:

- a. In case of delay due to Direct Non Natural Force Majeure Event, TSP is entitled for Transmission Charges calculated on Target Availability for the period of such events in excess of three (3) continuous or non continuous Months in the manner provided in (c) below.
- b. In case of delay due to Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency, TSP is entitled for payment for debt service which is due under the Financing Agreements, subject to a maximum of Transmission Charges calculated on Target Availability, for the period of such events in excess of three (3) continuous or non continuous Months in the manner provided in (c) below.
- c. In case of delay due to Direct Non Natural Force Majeure Event or Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency, the TSP is entitled for payments mentioned in (a) and (b) above, after commencement of Transmission Service, in the form of an increase in Transmission Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event or Natural Force Majeure Event affecting the Nodal Agency and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Nodal Agency from the TSP.

Provided such increase in Transmission Charges shall be so as to put the TSP in the same economic position as the TSP would have been in case the TSP had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.

For the avoidance of doubt, it is clarified that the charges payable under this Article 6.3.1 shall be recovered as per Sharing Regulations.

#### **6.4 Liquidated Damages for Delay in achieving COD of Project:**

6.4.1 If the TSP fails to achieve COD of any Element of the Project or the Project, by the Element's / Project's Scheduled COD or such Scheduled COD as extended under Articles 4.4.1 and 4.4.3, then the TSP shall pay to the Nodal Agency, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project [in case where no Elements have been defined, to be on the Project as a whole] / Project, for each day of delay up to sixty (60) days of delay and beyond that time limit, at the rate of five percent (5%) of the Monthly Transmission Charges applicable to such Element / Project, as liquidated damages for such delay and not as penalty, without prejudice to any rights of the Nodal Agency under the Agreement.

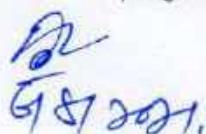
6.4.2 The TSP's maximum liability under this Article 6.4 shall be limited to the amount of liquidated damages calculated in accordance with Article 6.4.1 for and up to six (6) months of delay for the Element or the Project.

Provided that, in case of failure of the TSP to achieve COD of the Element of the Project even after the expiry of six (6) months from its Scheduled COD, the provisions of Article 13 shall apply.

6.4.3 The TSP shall make payment to the Nodal Agency of the liquidated damages calculated pursuant to Article 6.4.1 within ten (10) days of the earlier of:

- a. the date on which the applicable Element achieves COD; or
- b. the date of termination of this Agreement.

The payment of such damages shall not relieve the TSP from its obligations to complete the Project or from any other obligation and liabilities under the Agreement.

  
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- 6.4.4 If the TSP fails to pay the amount of liquidated damages to the Nodal Agency within the said period of ten (10) days, the Nodal Agency shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the TSP to the Nodal Agency under this Article 6.3 and the TSP fails to make payment of the balance amount of the liquidated damages not covered by the Contract Performance Guarantee, then such balance amount shall be deducted from the Transmission Charges payable to the TSP. The right of the Nodal Agency to encash the Contract Performance Guarantee is without prejudice to the other rights of the Nodal Agency under this Agreement.
- 6.4.5 For avoidance of doubt, it is clarified that amount payable by TSP under this Article is over and above the penalty payable by TSP under Article 5.5.6 of this Agreement.

#### **6.5      Return of Contract Performance Guarantee**

- 6.5.1 The Contract Performance Guarantee as submitted by TSP in accordance with Article 3.1.1 shall be released by the Nodal Agency within three (3) months from the COD of the Project. In the event of delay in achieving Scheduled COD of any of the Elements by the TSP (otherwise than due to reasons as mentioned in Article 3.1.3 or Article 11) and consequent part invocation of the Contract Performance Guarantee by the Nodal Agency, Nodal Agency shall release the Contract Performance Guarantee, if any remaining unadjusted, after the satisfactory completion by the TSP of all the requirements regarding achieving the Scheduled COD of the remaining Elements of the Project. It is clarified that the Nodal Agency shall also return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.3.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees .....Crores (Rs. ....) [Amount to be inserted by the BPC, as computed in Article 3.3.3], or (ii) termination of this Agreement by the Nodal Agency as mentioned under Article 3.3.4 of this Agreement.
- 6.5.2 The release of the Contract Performance Guarantee shall be without prejudice to other rights of the Nodal Agency under this Agreement.

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## **ARTICLE: 7**

### **7      OPERATION AND MAINTENANCE OF THE PROJECT**

#### **7.1    Operation and Maintenance of the Project:**

The TSP shall be responsible for ensuring that the Project is operated and maintained in accordance with the regulations made by the Commission and CEA from time to time and provisions of the Act.



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## ARTICLE: 8

### 8 AVAILABILITY OF THE PROJECT

#### 8.1 Calculation of Availability of the Project:

Calculation of Availability for the Elements and for the Project, as the case may be, shall be as per..... [BPC to insert reference to applicable regulations], as applicable on the Bid Deadline and as appended in Schedule 6 of this Agreement.

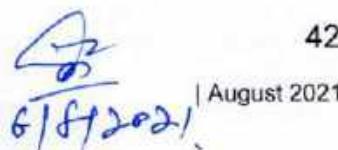
#### 8.2 Target Availability:

The Target Availability of each Element and the Project shall be ..... [to be inserted by the BPC] [The target availability shall be indicated as 98% for AC system and 95% for HVDC system].

Payment of monthly Transmission charges based on actual availability will be calculated as per para 1.2 of Schedule 4 of this Agreement.

If the availability of any Element or the Project is below the Target Availability, for six consecutive months in a Contract Year, the DIC(s) or the Nodal Agency may issue a show cause notice to the TSP, asking them to show cause as to why the Transmission Service Agreement be not terminated, and if no satisfactory cause is shown it may terminate the Agreement. If the Nodal Agency is of the opinion that the transmission system is of critical importance, it may carry out or cause to carry the operation and maintenance of transmission system at the risk and cost of TSP.

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## ARTICLE: 9

### 9 INSURANCES

#### 9.1 Insurance:

- 9.1.1 The TSP shall effect and maintain or cause to be effected and maintained during the Construction Period and the Operating Period, adequate Insurances against such risks, with such deductibles including but not limited to any third party liability and endorsements and co-beneficiary/insured, as may be necessary under
- any of the Financing Agreements,
  - the Laws, and
  - in accordance with Prudent Utility Practices.

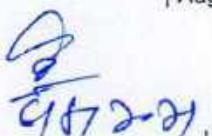
The Insurances shall be taken effective from a date prior to the date of the Financial Closure till the Expiry Date.

#### 9.2 Evidence of Insurance cover:

- 9.2.1 The TSP shall furnish to the Nodal Agency copies of certificates and policies of the Insurances, as and when the Nodal Agency may seek from the TSP as per the terms of Article 9.1

#### 9.3 Application of Insurance Proceeds:

- 9.3.1 Save as expressly provided in this Agreement, the policies of Insurances and the Financing Agreements, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.
- 9.3.2 If a Natural Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the portion of the proceeds of such Insurance available to the TSP (after making admissible payments to the Lenders as per the Financing



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Agreements) shall be allocated only to the TSP. Nodal Agency and / or concerned Designated ISTS Customers shall have no claim on such proceeds of the Insurance.

9.3.3 Subject to the requirements of the Lenders under the Financing Agreements, any dispute or difference between the Parties as to whether the Project is no longer economically and technically viable due to a Force Majeure Event or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Article 16.

**9.4 Effect on liability of the Nodal Agency / Designated ISTS Customers**

9.4.1 The Nodal Agency and / or the Designated ISTS Customers shall have no financial obligations or liability whatsoever towards the TSP in respect of this Article 9.

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## ARTICLE: 10

### 10 BILLING AND PAYMENT OF TRANSMISSION CHARGES

**10.1** Subject to provisions of this Article 10, the Monthly Transmission Charges shall be paid to the TSP, in Indian Rupees, on monthly basis as per the provisions of the Sharing Regulations, from the date on which an Element(s) has achieved COD until the Expiry Date of this Agreement, unless terminated earlier and in line with the provisions of Schedule 4 of this Agreement.

**10.2 Calculation of Monthly Transmission Charges:**

The Monthly Transmission Charges for each Contract Year including Incentive & Penalty payment shall be calculated in accordance with the provisions of Schedule 4 of this Agreement.

**10.3 Rebate & Late Payment Surcharge:**

The rebate and late payment surcharge shall be governed as per Sharing Regulations.

**10.4 Disputed Bills, Default in payment by the Designated ISTS Customers & Annual Reconciliation:**

Any Disputed Bill, Default in payment by the Designated ISTS Customers & Annual Reconciliation shall be governed as per Sharing Regulations.

  
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## ARTICLE: 11

### 11 FORCE MAJEURE

#### 11.1 Definitions

11.1.1 The following terms shall have the meanings given hereunder.

#### 11.2 Affected Party

11.2.1 An Affected Party means any Party whose performance has been affected by an event of Force Majeure.

11.2.2 Any event of Force Majeure shall be deemed to be an event of Force Majeure affecting the TSP only if the Force Majeure event affects and results in, late delivery of machinery and equipment for the Project or construction, completion, commissioning of the Project by Scheduled COD and/or operation thereafter;

#### 11.3 Force Majeure

A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations/ roles 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) Natural Force Majeure Events:

- i. act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions, which are in excess of the statistical measures for the last hundred (100) years; and
- ii. epidemic/ pandemic notified by Indian Governmental Instrumentality.

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**(b) Non-Natural Force Majeure Events :**

i. Direct Non-Natural Force Majeure Events

- Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Affected Party; or
- the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Affected Party to perform their obligations/roles under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or
- any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

ii. Indirect Non - Natural Force Majeure Events

- 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
- radio active contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural 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 Site by the Affected Party or those employed or engaged by the Affected Party; or
- industry-wide strikes and labour disturbances, having a nationwide impact in India.

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#### **11.4 Force Majeure Exclusions**

- 11.4.1 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 machinery, equipment, materials, spare parts etc. for the Project;
  - (b) Delay in the performance of any Contractors or their agents;
  - (c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;
  - (d) Strikes or labour disturbance 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 or any Project Documents.
  - (g) Any error or omission in the survey report provided by BPC during the bidding process.

#### **11.5 Notification of Force Majeure Event**

- 11.5.1 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

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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 reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

- 11.5.2 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/ roles under this Agreement, as soon as practicable after becoming aware of each of these cessations.

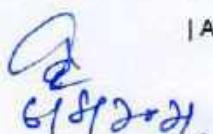
#### **11.6 Duty to perform and duty to mitigate**

To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations/ roles as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

#### **11.7 Available Relief for a Force Majeure Event**

Subject to this Article 11,

- (a) no Party shall be in breach of its obligations/ roles pursuant to this Agreement to the extent that the performance of its obligations/ roles was prevented, hindered or delayed due to a Force Majeure Event;
- (b) each Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations/ roles under Articles 3.3.4, 4.4.2 and 6.3.1 of this Agreement.
- (c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Appendix .... [To be inserted by the BPC as per the relevant appendix] to the Central Electricity Regulatory Commission (Terms and Conditions of

  
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Tariff) Regulations ..... [BPC to insert reference to applicable regulations] as on Bid Deadline. For the event(s) for which the Element(s) is/are deemed to be available as per ..... [BPC to insert reference to applicable regulations], then the Transmission Charges, as applicable to such Element(s), shall be payable as per Schedule 4, for the duration of such event(s).

- (d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Nodal Agency may, if it so desires, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Nodal Agency's personnel with access to the Project to carry out such inspections.
- (e) For avoidance of doubt, the TSP acknowledges that for extension of Scheduled COD a period up to one hundred eighty (180) days due to Force Majeure event, no compensation on the grounds such as interest cost, incident expenditure, opportunity cost will be made to the TSP. However, if Scheduled COD is extended beyond a period of one hundred eighty (180) days due to Force Majeure event, the TSP will be allowed to recover the interest cost during construction corresponding to the period exceeding one hundred eighty (180) days by adjustment in the Transmission Charges in accordance with Schedule 9.

## ARTICLE: 12

### 12 CHANGE IN LAW

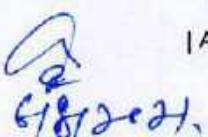
#### 12.1 Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any savings of the TSP:

- 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, subject to the provisions under Article 12.1.2;
- 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;
- any change in the licensing regulations of the Commission, under which the Transmission License for the Project was granted if made applicable by such Commission to the TSP;
- change in wind zone; or
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.

12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:

- a) Taxes on corporate income; and



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- b) Withholding tax on income or dividends distributed to the shareholders of the TSP.

## **12.2 Relief for Change in Law**

12.2.1 During Construction Period, the impact of increase/decrease in the cost of the Project on the Transmission Charges shall be governed by the formula given in Schedule 9 of this Agreement.

12.2.2 During the Operation Period:

During the operation period, if as a result of Change in Law, the TSP suffers or is benefited from a change in costs or revenue, the aggregate financial effect of which exceeds 0.30% (zero point three percent) of the Annual Transmission Charges in aggregate for a Contract Year, the TSP may notify so to the Nodal Agency and propose amendments to this Agreement so as to place the TSP in the same financial position as it would have enjoyed had there been no such Change in Law resulting in change in costs or revenue as aforesaid.

12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Nodal Agency documentary proof of such increase / decrease in cost of the Project / revenue for establishing the impact of such Change in Law.

In cases where Change in Law results in decrease of cost and it comes to the notice of Nodal Agency that TSP has not informed Nodal Agency about such decrease in cost, Nodal Agency may initiate appropriate claim.

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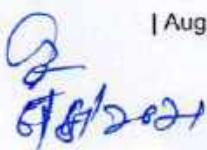
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**12.3 Notification of Change in Law:**

- 12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Nodal Agency of such Change in Law as soon as reasonably practicable after becoming aware of the same.
- 12.3.2 The TSP shall also be obliged to serve a notice to the Nodal Agency even when it is beneficially affected by a Change in Law.
- 12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its estimated impact on the TSP.

**12.4 Payment on account of Change in Law**

- 12.4.1 The payment for Change in Law shall be through a separate Bill. However, in case of any change in Monthly Transmission Charges by reason of Change in Law, as determined in accordance with this Agreement, the Bills to be raised by the Nodal Agency after such change in Transmission Charges shall appropriately reflect the changed Monthly Transmission Charges.



## ARTICLE: 13

### 13 EVENTS OF DEFAULT AND TERMINATION

#### 13.1 TSP's Event of Default

The occurrence and continuation of any of the following events shall constitute a TSP Event of Default, unless any such TSP Event of Default occurs as a result of any non-fulfilment of its obligations as prescribed under this Agreement by the Nodal Agency or a Force Majeure Event:

- a. After having taken up the construction of the Project, the abandonment by the TSP or the TSP's Contractors of the construction of the Project for a continuous period of two (2) months and such default is not rectified within thirty (30) days from the receipt of notice from the Nodal Agency in this regard;
- b. The failure to commission any Element of the Project by the date falling six (6) months after its Scheduled COD unless extended by Nodal Agency as per provisions of this Agreement;
- c. If the TSP:
  - i. assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or
  - ii. transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement;

Except where such transfer is in pursuance of a Law and

- it does not affect the ability of the transferee to perform, and such transferee has the financial and technical capability to perform, its obligations under this Agreement;
- is to a transferee who assumes such obligations under the Project and this Agreement remains effective with respect to the transferee;

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- d. If:
- i. The TSP 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
  - ii. any winding up or bankruptcy or insolvency order is passed against the TSP; or
  - iii. the TSP 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 a dissolution or liquidation of the TSP will not be a TSP's Event of Default, where such dissolution or liquidation of the TSP is for the purpose of a merger, consolidation or reorganization with the prior approval of the Commission as per the provisions of Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 or as amended from time to time; or
- e. Failure on the part of the TSP to comply with the provisions of Article 19.1 of this Agreement; or
  - f. the TSP repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Nodal Agency in this regard; or
  - g. after Commercial Operation Date of the Project, the TSP fails to achieve monthly Target Availability of ..... [to be inserted by the BPC as applicable] [98% for AC system and 95% for HVDC system], for a period of six (6) consecutive months or within a non-consecutive period of six (6) months within any continuous aggregate period of eighteen(18) months except where the Availability is affected by Force Majeure Events as per Article 11; or

  
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- h. any of the representations and warranties made by the TSP in Article 17 of this Agreement being found to be untrue or inaccurate. Further, in addition to the above, any of the undertakings submitted by the Selected Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company / Affiliates related to the minimum equity obligation; or
- i. the TSP fails to complete / fulfil all the activities / conditions within the specified period as per Article 3; or
- j. except for the reasons solely attributable to Nodal Agency, the TSP is in material breach of any of its obligations under this Agreement and such material breach is not rectified by the TSP within thirty (30) days of receipt of notice in this regard from the Nodal Agency; or
- k. **[To be deleted by the BPC in case no land acquisition is involved in the Project and replaced with "deleted"]** the TSP fails to take the possession of the land required for location specific substations, switching stations or HVDC terminal or inverter stations and / or fails to pay the requisite price to the parties and / or any State Government authority from whom the land is acquired, within twelve (12) months from the Effective Date.

### **13.2 Termination Procedure for TSP Event of Default**

- a. Upon the occurrence and continuance of any TSP's Event of Default under Article 13.1 the Nodal Agency may serve notice on the TSP, with a copy to the CEA and the Lenders' Representative, of their intention to terminate this Agreement (a "Nodal Agency's Preliminary Termination Notice"), which shall specify in reasonable detail, the circumstances giving rise to such Nodal Agency's Preliminary Termination Notice.
- b. Following the issue of a Nodal Agency's Preliminary Termination Notice, the Consultation Period shall apply and would be for the Parties to discuss as to what steps shall be taken with a view to

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mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

- c. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations/ roles under this Agreement, and the TSP shall not remove any material, equipment or any part of the Project, without prior consent of the Nodal Agency.

Following the expiry of the Consultation Period, unless the Parties shall have otherwise agreed to the contrary or the circumstances giving rise to Nodal Agency's Preliminary Termination Notice shall have ceased to exist or shall have been remedied, this Agreement may be terminated by the Nodal Agency by giving a Termination Notice to the TSP, in writing, of at least seven (7) days, with a copy to CEA and the Lenders' Representative in order to enable the Lenders to exercise right of substitution in accordance with Article 15.3 of this Agreement.

Further, the Nodal Agency may also initiate proceedings to blacklist the TSP & its Affiliates from participation in any RFP issued by BPCs for a period of 5 years.

### **13.3 Procedure for Nodal Agency's non-fulfilment of Role**

- a. Upon the Nodal Agency not being able to fulfil its role under Article 4.2, the TSP may serve notice on the Nodal Agency, with a copy to CEA and the Lenders' Representative (a "TSP's Preliminary Notice"), which notice shall specify in reasonable detail the circumstances giving rise to such non-fulfilment of role by the Nodal Agency.
- b. Following the issue of a TSP's Preliminary Notice, the Consultation Period shall apply.
- c. The Consultation Period would be for the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant non-fulfilment of role by the Nodal Agency including giving time extension to TSP, having regard to all the circumstances.

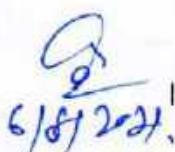
- d. During the Consultation Period, both Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations/ roles under this Agreement.

#### **13.4 Termination due to Force Majeure**

- 13.4.1 In case the Parties could not reach an agreement pursuant to Articles 3.3.4 and 4.4.2 of this Agreement and the Force Majeure Event or its effects continue to be present, the Nodal Agency shall have the right to cause termination of the Agreement. In case of such termination, the Contract Performance Guarantee shall be returned to the TSP as per the provisions of Article 6.5.1.
- 13.4.2 In case of termination of this Agreement, the TSP shall provide to the Nodal Agency the full names and addresses of its Contractors as well as complete designs, design drawings, manufacturing drawings, material specifications and technical information, as required by the Nodal Agency within thirty (30) days of Termination Notice.

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**13.5 Termination or amendment due to non-requirement of any Element or Project during construction**

- 13.5.1 In case any Element or Project, which is under construction, is no longer required due to any reason whatsoever, the Nodal Agency may issue a notice to this effect to the TSP.
- 13.5.2 Nodal agency may also issue notice to the TSP seeking their response to the proposed termination/ amendment (as the case may be) of the Agreement. The Nodal Agency shall issue copy of such notice to Lenders. In the notice, Nodal Agency shall also include an assessment of the physical progress made by TSP in the Element/ Project (as the case may be) that is no longer required.
- 13.5.3 The TSP shall neither carry out further investment nor carry out any work on the Element/ Project (as the case may be) that is no longer required after delivery of the notice.
- 13.5.4 After taking into account the comments of the TSP, the Nodal Agency may terminate the Agreement or amend it if both Parties agree to the amendment.

**13.6 Revocation of the Transmission License**

- 13.6.1 The Commission may, as per the provisions of the Electricity Act, 2003, revoke the Transmission License of the ISTS Licensee. Further, in such a case, the Agreement shall be deemed to have been terminated.

**13.7 Termination Payment**

- 13.7.1 If Agreement is terminated on account of Force Majeure Events, non-requirement of any Element or Project during Construction, Nodal Agency's non-fulfilment of Role & TSP's Event of Default, the TSP shall be entitled for Termination Payment equivalent to valuation of Project Assets. Upon payment, the Nodal Agency shall take over the Project Assets.

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## ARTICLE: 14

### 14 LIABILITY AND INDEMNIFICATION

#### 14.1 Indemnity

14.1.1 The TSP shall indemnify, defend and hold the Nodal Agency harmless against:

- (a) any and all third party claims, actions, suits or proceedings against the Nodal Agency 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 TSP of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or non-fulfilment of statutory duty on the part of Nodal Agency; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Nodal Agency from third party claims arising by reason of:
  - i. a breach by the TSP of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the TSP, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or non-fulfilment of statutory duty on the part of the Nodal Agency, or
  - ii. any of the representations and warranties of the TSP under this Agreement being found to be inaccurate or untrue.

14.1.2 The Nodal Agency shall, in accordance with the Regulations framed by CERC in this regard, indemnify, defend and hold the TSP harmless against:

- (a) any and all third party claims, actions, suits or proceedings against the TSP, for any loss of or damage to property of such third party,

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or death or injury to such third party, arising out of any material breach by the Nodal Agency of any of their roles under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the TSP, its Contractors, servants or agents; 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 TSP from third party claims arising by reason of:
  - i. any material breach by the Nodal Agency of any of its roles under this Agreement (provided that, this Article 14 shall not apply to such breaches by the Nodal Agency, for which specific remedies have been provided for under this Agreement), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the TSP, its Contractors, servants or agents or
  - ii. any of the representations and warranties of the Nodal Agency under this Agreement being found to be inaccurate or untrue.

#### **14.2 Patent Indemnity:**

##### **14.2.1**

- (a) The TSP shall, subject to the Nodal Agency's compliance with Article 14.2.1 (b), indemnify and hold harmless the Nodal Agency and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Nodal Agency may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Project by the TSP.

Such indemnity shall not cover any use of the Project or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Project or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the TSP, pursuant to the Agreement.

- (b) If any proceedings are brought or any claim is made against the Nodal Agency arising out of the matters referred to in Article 14.2.1(a), the Nodal Agency shall promptly give the TSP a notice thereof, and the TSP shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The TSP shall promptly notify the Nodal Agency of all actions taken in such proceedings or claims.
- (c) If the TSP fails to notify the Nodal Agency within twenty-eight (28) days after receipt of such notice from the Nodal Agency under Article 14.2.1(b) above, that it intends to attend any such proceedings or claim, then the Nodal Agency shall be free to attend the same on their own behalf at the cost of the TSP. Unless the TSP has so failed to notify the Nodal Agency within the twenty eight (28) days period, the Nodal Agency shall make no admission that may be prejudicial to the defence of any such proceedings or claims.
- (d) The Nodal Agency shall, at the TSP's request, afford all available assistance to the TSP in attending to such proceedings or claim, and shall be reimbursed by the TSP for all reasonable expenses incurred in so doing.

#### 14.2.2

- (a) The Nodal Agency, in accordance with the Regulations framed by CERC in this regard, subject to the TSP's compliance with Article 14.2.2(b) shall indemnify and hold harmless the TSP and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the TSP may suffer as a result of any

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infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Project by the TSP.

- (b) If any proceedings are brought or any claim is made against the TSP arising out of the matters referred to in Article 14.2.2 (a) the TSP shall promptly give the Nodal Agency a notice thereof, and the Nodal Agency shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Nodal Agency shall promptly notify the TSP of all actions taken in such proceedings or claims.
- (c) If the Nodal Agency fails to notify the TSP within twenty-eight (28) days after receipt of such notice from the TSP under Article 14.2.2(b) above, that it intends to attend any such proceedings or claim, then the TSP shall be free to attend the same on its own behalf at the cost of the Nodal Agency. Unless the Nodal Agency has so failed to notify the TSP within the twenty (28) days period, the TSP shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- (d) The TSP shall, at the Nodal Agency request, afford all available assistance to the Nodal Agency in attending to such proceedings or claim, and shall be reimbursed by the Nodal Agency for all reasonable expenses incurred in so doing.

#### **14.3 Monetary Limitation of liability**

- 14.3.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 14 for any indemnity claims made in a Contract Year only up to an amount of Rupees ..... Crores (Rs. ....) [6.667% of Contract Performance Guarantee value].

#### **14.4 Procedure for claiming indemnity**

- 14.4.1 Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Articles 14.1 or 14.2 the Indemnified

Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Articles 14.1 or 14.2 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, proceeding, action or suit. 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 contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 14.4.3 below; 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.

- 14.4.2 The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Articles 14.1 or 14.2 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, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- 14.4.3 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.

#### 14.5 Limitation on Liability

- 14.5.1 Except as expressly provided in this Agreement, neither the TSP nor the Nodal Agency nor their respective officers, directors, agents, employees

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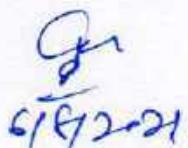
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or Affiliates (including, officers, directors, agents or employees of such Affiliates), shall be liable or responsible to the other Party or its Affiliates including its officers, directors, agents, employees, successors, insurers or permitted assigns for incidental, indirect or consequential, punitive or exemplary 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 transmission capacity or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Nodal Agency, the TSP or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

- 14.5.2 The Nodal Agency shall have no recourse against any officer, director or shareholder of the TSP or any Affiliate of the TSP or any of its officers, directors or shareholders for such claims excluded under this Article. The TSP shall also have no recourse against any officer, director or shareholder of the Nodal Agency, or any Affiliate of the Nodal Agency or any of its officers, directors or shareholders for such claims excluded under this Article.

**14.6 Duty to Mitigate**

The party entitled to the benefit of an indemnity under this Article 14 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

  
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## ARTICLE: 15

### 15 ASSIGNMENTS AND CHARGES

#### 15.1 Assignments:

15.1.1 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, except as provided in Article 15.3.

#### 15.2 Permitted Charges:

15.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

15.2.2 However, the TSP may create any encumbrance over all or part of the receivables, or the Project Assets of the Project in favour of the Lenders or the Lenders' Representative on their behalf, as security for amounts payable under the Financing Agreements and any other amounts agreed by the Parties.

Provided that:

- i. the Lenders or the Lenders' Representative on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and
- ii. any encumbrance granted by the TSP in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the TSP to release from such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements.

15.2.3 Article 15.2.1 does not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the TSP developing and operating the Project;

  
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- b. pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of the TSP developing and operating the Project; or
- c. security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the TSP developing and operating the Project.

### **15.3 Substitution Rights of the Lenders**

- 15.3.1 The TSP would need to operate and maintain the Project under the provisions of this Agreement and cannot assign the Transmission License or transfer the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the Nodal Agency.
- 15.3.2 However, in the case of default by the TSP in debt repayments or in the case of default by the TSP as per Article 13 of this Agreement during the debt repayments, the Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 and as amended from time to time.

## ARTICLE: 16

### 16 GOVERNING LAW AND DISPUTE RESOLUTION

#### 16.1 Governing Law:

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.

#### 16.2 Amicable Settlement:

- 16.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement, including its existence or validity or termination or whether during the execution of the Project or after its completion and whether prior to or after the abandonment of the Project or termination or breach of the Agreement by giving a written notice to the other Party, which shall contain:
- (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- 16.2.2 The other Party shall, within thirty (30) days of issue of notice issued under Article 16.2.1, furnish:
- (i) counter-claim and defences, if any, regarding the Dispute; and
  - (ii) all written material in support of its defences and counter-claim.
- 16.2.3 Within thirty (30) days of issue of notice by the Party pursuant to Article 16.2.1, if the other Party does not furnish any counter claim or defense under Article 16.2.2, 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 16.2.3, the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

**16.3 Dispute Resolution:**

All Disputes shall be adjudicated by the Commission.

**16.4 Parties to Perform Obligations:**

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

## ARTICLE: 17

### 17 REPRESENTATION AND WARRANTIES

#### 17.1 Representation and warranties of the Nodal Agency

17.1.1 The Nodal Agency hereby represents and warrants to and agrees with the TSP as follows and acknowledges and confirms that the TSP is relying on such representations and warranties in connection with the transactions described in this Agreement:

- a. It has all requisite powers and authority to execute and consummate this Agreement;
- b. This Agreement is enforceable against the Nodal Agency in accordance with its terms;
- c. The consummation of the transactions contemplated by this Agreement on the part of Nodal Agency will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Nodal Agency is a Party or to which the Nodal Agency is bound, which violation, default or power has not been waived;

#### 17.2 Representation and Warranties of the TSP:

17.2.1 The TSP hereby represents and warrants to and agrees with the Nodal Agency as follows and acknowledges and confirms that the Nodal Agency is relying on such representations and warranties in connection with the transactions described in this Agreement:

- a. It has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- b. This Agreement is enforceable against it, in accordance with its terms;
- c. The consummation of the transactions contemplated by this Agreement on the part of the TSP will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to

  
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- which the TSP is a Party or to which the TSP is bound which violation, default or power has not been waived;
- d. The TSP is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the TSP;
  - e. There are no actions, suits, claims, proceedings or investigations pending or, to the best of the TSP's knowledge, threatened in writing against the TSP at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.
- 17.2.2 The TSP makes all the representations and warranties above to be valid as on the Effective Date of this Agreement.

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## ARTICLE: 18

### 18 INDEPENDENT ENGINEER

#### 18.1 Appointment of Independent Engineer

The Nodal Agency shall appoint an agency/ company as Independent Engineer as per framework provided in the Guidelines for Encouraging Competition in Development of Transmission Projects for selection of Independent Engineer.

#### 18.2 Roles and functions of Independent Engineer

The role and functions of the Independent Engineer shall include the following:

- a. Progress Monitoring as required under this Agreement;
- b. Ensuring Quality as required under this Agreement;
- c. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness during construction phase;
- d. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation during construction phase;
- e. determining, as required under the Agreement, the valuation of the Project Assets.
- f. Assisting the Parties in resolution of Disputes and
- g. Undertaking all other duties and functions in accordance with the Agreement.

#### 18.3 Remuneration of Independent Engineer

The fee and charges of the Independent Engineer shall be paid by the Nodal Agency as per terms & conditions of appointment.

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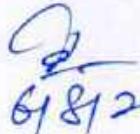
#### **18.4 Termination of appointment**

18.4.1 The Nodal Agency may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer.

18.4.2 If the TSP has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Nodal Agency and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Nodal Agency shall hold a tripartite meeting with the TSP and Independent Engineer for an amicable resolution, and the decision of Nodal agency is final. In the event that the appointment of the Independent Engineer is terminated hereunder, the Nodal Agency shall appoint forthwith another Independent Engineer.

#### **18.5 Authorised signatories**

The Nodal Agency shall require the Independent Engineer to designate and notify to the Nodal Agency up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

  
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## ARTICLE: 19

### 19 MISCELLANEOUS PROVISIONS

#### 19.1 Equity Lock-in Commitment:

- 19.1.1 The aggregate equity share holding of the Selected Bidder in the issued and paid up equity share capital of ..... [Insert Name of the SPV] shall not be less than Fifty one percent (51%) up to a period of one (1) year after COD of the Project.

Provided that, in case the Lead Member or Bidding Company is holding equity through Affiliate/s, Ultimate Parent Company or Parent Company, such restriction as specified above shall apply to such entities.

Provided further, that in case the Selected Bidder is a Bidding Consortium, the Lead Member shall continue to hold equity of at least twenty six percent (26%) upto a period of one (1) year after COD of the Project and any Member of such Bidding Consortium 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 above.

- 19.1.2 If equity is held by the Affiliates, Parent Company or Ultimate Parent Company of the Selected Bidder, then, subject to the second proviso to Article 19.1.1, such Affiliate, Parent Company or Ultimate Parent Company shall be eligible to transfer its shareholding in ..... [Insert Name of the SPV] to another Affiliate or to the Parent Company / Ultimate Parent Company of the Selected Bidder. 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 of the Selected Bidder.
- 19.1.3 Subject to Article 19.1.1, all transfer(s) of shareholding of ..... [Insert Name of SPV] by any of the entities referred to in Article 19.1.1 and 19.1.2 above, shall be after prior written intimation to the Nodal Agency.
- 19.1.4 For computation of effective Equity holding, the Equity holding of the Selected Bidder or its Ultimate Parent Company in such Affiliate(s) or

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Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in ..... [Insert Name of SPV] shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Selected Bidder A directly holds thirty percent (30%) of the equity in ..... [Insert name of the SPV], then holding of Selected Bidder A in ..... [Insert name of the SPV] shall be thirty percent (30%);

If Selected Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in ..... [Insert Name of the SPV], then, for the purposes of ascertaining the minimum equity/equity lock-in requirements specified above, the effective holding of Bidder A in ..... [Insert Name of SPV] shall be fifteen percent (15%), (i.e., 30% x 50%)

- 19.1.5 The provisions as contained in this Article 19.1 shall override the terms of the consortium agreement submitted as part of the Bid.
- 19.1.6 The TSP shall be responsible to report to Nodal Agency, within thirty (30) days from the occurrence of any event that would result in any change in its equity holding structure from that which existed as on the date of signing of the Share Purchase Agreement. In such cases, the Nodal Agency would reserve the right to ascertain the equity holding structure and to call for all such required documents / information / clarifications as may be required.

## 19.2 Commitment of maintaining Qualification Requirement

- 19.2.1 The Selected Bidder will be required to continue to maintain compliance with the Qualification Requirements, as stipulated in RFP Document, till the COD of the Project. Where the Technically Evaluated Entity and/or the Financially Evaluated Entity is not the Bidding Company or a Member in a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Technically Evaluated Entity and/or Financially Evaluated Entity till the COD of the Project.
- 19.2.2 Failure to comply with the aforesaid provisions shall be dealt in the same manner as TSP's Event of Default as under Article 13 of this Agreement.

  
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**19.3 Language:**

- 19.3.1 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.
- 19.3.2 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.

**19.4 Affirmation**

The TSP and the Nodal Agency, each affirm that:

1. neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
2. it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the TSP and the Nodal Agency hereby undertake not to engage in any similar acts during the Term of Agreement.

**19.5 Severability**

The invalidity or enforceability, 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.

**19.6 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

**19.7 Breach of Obligations/ Roles**

The Parties acknowledge that a breach of any of the obligations/ roles contained herein would result in injuries. The Parties further acknowledge

..... [Insert Name of the SPV]

  
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that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting Party in each case specified under this Agreement.

#### **19.8 Restriction of Shareholders / Owners Liability**

- 19.8.1 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.
- 19.8.2 Further, the financial liabilities of the shareholder(s) of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956 / Companies Act, 2013 (as the case may be).

#### **19.9 Taxes and Duties:**

- 19.9.1 The TSP shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/levied on the TSP, its Contractors or their employees that are required to be paid by the TSP as per the Law in relation to the execution of the Project and for providing Transmission Service as per the terms of this Agreement.
- 19.9.2 The Nodal Agency shall be indemnified and held harmless by the TSP against any claims that may be made against the Nodal Agency in relation to the matters set out in Article 19.9.1.
- 19.9.3 The Nodal Agency shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the TSP by the Nodal Agency on behalf of TSP or its personnel, provided the TSP has consented in writing to the Nodal Agency for such work, for which consent shall not be unreasonably withheld.

#### **19.10 No Consequential or Indirect Losses**

The liability of the TSP shall be limited to that explicitly provided in this Agreement.

Provided that, notwithstanding anything contained in this Agreement, under no event shall the Nodal Agency or the TSP claim from one another any indirect or consequential losses or damages.

**19.11 Discretion:**

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

**19.12 Confidentiality**

19.12.1 The Parties undertake to hold in confidence this Agreement and RFP Project 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; or
- (c) disclosures required under Law,

without the prior written consent of the other Parties.

Provided that, the TSP agrees and acknowledges that the Nodal Agency, may, at any time, disclose the terms and conditions of the Agreement and the RFP Project Documents to any person, to the extent stipulated under the Law and the Competitive Bidding Guidelines.

**19.13 Order of priority in application:**

Save as provided in Article 2.5, in case of inconsistencies between the terms and conditions stipulated in Transmission License issued by the Commission to the TSP, agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- terms and conditions of Transmission License;
- applicable Law, rules and regulations framed thereunder;
- this Agreement;
- Agreement(s), if any, under Sharing Regulations.

**19.14 Independent Entity:**

- 19.14.1 The TSP shall be an independent entity performing its obligations pursuant to the Agreement.
- 19.14.2 Subject to the provisions of the Agreement, the TSP shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the TSP or Contractors engaged by the TSP in connection with the performance of the Agreement shall be under the complete control of the TSP and shall not be deemed to be employees, representatives, Contractors of the Nodal Agency and nothing contained in the Agreement or in any agreement or contract awarded by the TSP shall be construed to create any contractual relationship between any such employees, representatives or Contractors and the Nodal Agency.

**19.15 Amendments:**

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

**19.16 Waiver:**

- 19.16.1 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 authorised representative of such Party.
- 19.16.2 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.

**19.17 Relationship of the Parties:**

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

..... [Insert Name of the SPV]

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bind, the other Party.

**19.18 Entirety:**

- 19.18.1 This Agreement along with its sections, schedules and appendices is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement.
- 19.18.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the provision of Transmission Service under this Agreement to the Nodal Agency by the TSP shall stand superseded and abrogated.

**19.19 Notices:**

- 19.19.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language
- 19.19.2 If to the TSP, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the addressee below:

Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

- 19.19.3 If to the Nodal Agency, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the addresses below:

(i) ..... [Insert Name of the Nodal Agency]

Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

..... [Insert Name of the SPV]

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- 19.19.4 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.
- 19.19.5 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.

#### **19.20 Fraudulent and Corrupt Practices**

- 19.20.1 The TSP and its respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Nodal Agency may terminate the Agreement without being liable in any manner whatsoever to the TSP, if it determines that the TSP has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Nodal Agency shall forfeit the Contract Performance Guarantee of the TSP, without prejudice to any other right or remedy that may be available to the Nodal Agency hereunder or subsistence otherwise.
- 19.20.2 Without prejudice to the rights of the Nodal Agency under Clause 19.20.1 hereinabove and the rights and remedies which the Nodal Agency may have under this Agreement, if a TSP is found by the Nodal Agency to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of Letter of Intent (hereinafter referred to as Lol) or after the execution of the agreement(s) required under Sharing Regulations, the Nodal Agency may terminate the Agreement without being liable in any manner whatsoever to the TSP. Further, the TSP & its Affiliates shall not be eligible to participate in any tender or RFP issued by any BPC for an indefinite period from the date such TSP is found by the Nodal Agency to have directly or indirectly or through an agent, engaged or indulged in

any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

19.20.3 For the purposes of this Clause 19.20, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the BPC who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the Lol or has dealt with matters concerning the RFP Project Documents or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the BPC, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the Lol or after the execution of the RFP Project Documents, as the case may be, any person in respect of any matter relating to the Project or the Lol or the RFP Project Documents, who at any time has been or is a legal, financial or technical adviser of the BPC in relation to any matter concerning the Project;

(b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) "**coercive practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bid process;

(d) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the BPC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and

(e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid process;

**19.21 Compliance with Law:**

Despite anything contained in this Agreement but without prejudice to Article 12, 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 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 THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORISED REPRESENTATIVES AS OF THE DATE AND PLACE SET FORTH ABOVE.**

1. For and on behalf of TSP

[Signature, Name, Designation and Address]

2. For and on behalf of .....[Insert name of the Nodal Agency]

[Signature, Name, Designation and Address]

**WITNESSES:**

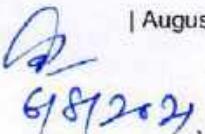
1. For and on behalf of

: BPC

[Signature]

..... [Insert Name of the SPV]

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[Insert, Name, Designation and Address of the Witness]

2. For and on behalf of  
: Nodal Agency

.....  
[Signature]

.....  
[Insert Name, Designation and Address of the Witness]

..... [Insert Name of the SPV]

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# SCHEDULES

..... [Insert Name of the SPV]

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**Schedule: 1**

**Project Description and Scope of Project**

[Note: Detail description of the Project, including all the Elements and identified critical Element(s), details of the Interconnection Facilities, along with corresponding Scheduled COD, as referred to in recital of this Agreement and in Article 4.1 of this Agreement<sup>1</sup>]

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<sup>1</sup> [CEA/CTU shall provide to the BPC the inputs for this Schedule including in particular the scope pertaining to Interconnection Facilities.]

..... [Insert Name of the SPV]

  
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**Schedule: 2****Scheduled COD**

[Note: As referred to in the definition of "Element", "Scheduled COD", and in Articles 3.1.3 (c), 4.1 (b) and 4.3 (a) of this Agreement]

[BPC to replicate the following table from the RFP]

Sl. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Elements which are pre-required for declaring the commercial operation (COD) of the respective Element [BPC to insert precedence of commissioning of Element(s)] in project specific RFP and RFP Project Documents]
1.				
2.				
3.				
....				

The payment of Transmission Charges for any Element, irrespective of its successful commissioning on or before its Scheduled COD, shall only be considered after successful commissioning of the Element(s), which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.

Scheduled COD for the Project is: ..... [to be inserted by BPC from the RFP].

[Note: List of Element(s) along with the critical Element(s) to be provided by CEA]

### Schedule: 3

#### Safety Rules and Procedures

[Note: As referred to in Articles 5.6 of this Agreement]

##### 1: Site Regulations and Safety:

The TSP shall establish Site regulations within sixty (60) days from fulfilment of conditions subsequent, as per Prudent Utility Practices setting out the rules to be observed till expiry of the Agreement at the Site and shall comply therewith.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Project, gate control, sanitation, medical care, and fire prevention, public health, environment protection, security of public life, etc.

Copies of such Site regulations shall be provided to the Nodal Agency and the CEA for the purpose of monitoring of the Project.

##### 2: Emergency Work:

In cases of any emergency, the TSP shall carry out all necessary remedial work as may be necessary.

If the work done or caused to be done by any entity , other than the TSP, the TSP shall, reimburse the actual costs incurred, to the other Party carrying out such remedial works.

##### 3: Site Clearance:

In the course of execution of the Agreement, the TSP shall keep the Site reasonably free from all unnecessary obstruction, storage, remove any surplus materials, clear away any wreckage, rubbish and temporary works from the Site, and remove any equipment no longer required for execution of the Agreement. After completion of all Elements of the Project, the TSP shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site clean and safe.

**4: Watching and Lighting:**

The TSP shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper construction, operation, maintenance / repair of any of the Elements of the Project, or for the safety of the owners and occupiers of adjacent property and for the safety of the public, during such maintenance / repair.

..... [Insert Name of the SPV]

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**Schedule: 4****Computation of Transmission Charges****1.1 General**

The Monthly Transmission Charges to be paid to the TSP for providing Transmission Service for any Contract Year during the term of the Agreement shall be computed in accordance with this Schedule and paid as per Sharing Regulations.

Illustration regarding payment of Transmission Charges under various scenarios (considering definitions of Contract Year, Expiry Date & Monthly Transmission Charges above) is as below: -

**Illustration-1: In case the Project Elements achieve CoD as per Schedule**

Quoted Transmission Charges: Rs. 140 Million

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	28	1-Feb-2018	1-Feb-2018	25%
Element 2	38	1-Dec-2018	1-Dec-2018	75%

Tariff Payable as follows:

Transmission Charges for Element 1			Transmission Charges for Element 2		
1-Feb-18 to 31-Mar-18	140 X 25% X ((28+31)/365)	5.65		--	0.00
1-Apr-18 to 30-Nov-18	140 X 25% X (244/365)	23.39		--	0.00
1-Dec-18 to 31-Mar-19	140 X 100% X (121/365)				46.41
2	140 X 100% X 1				140
3	140 X 100% X 1				140
4	140 X 100% X 1				140
5	140 X 100% X 1				140
.....					
.....					
36 (1-Apr to 30-Nov)	140 X 100% X (244/365)				93.59

**Illustration-2: In case of extension of Scheduled COD as per Article 4.4.1 & 4.4.2 of this Agreement**

Quoted Transmission Charges: **Rs. 140 Million**

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	20	1-Feb-2018	1-Jul-2018	25%
Element 2	28	1-Oct-2018	1-Dec-2018	75%

Tariff Payable as follows:

Transmission Charges for Element 1			Transmission Charges for Element 2		
1-Feb-18 to 31-Mar-18	--	0.00		--	0.00
1-Apr-18 to 30-Jun-18	--	0.00		--	0.00
1-Jul-18 to 30-Nov-18	140 X 25% X (153/365)	14.67		--	0.00
1-Dec-18 to 31-Mar-19	140 X 100% X (121/365)				
2	140 X 100% X 1				
3	140 X 100% X 1				
4	140 X 100% X 1				
5	140 X 100% X 1				
.....					
.....					
36 (1-Apr to 30-Nov)	140 X 100% X (244/365)				

**Illustration-3: In case of delay in achieving COD of Project & all individual Elements (COD of the Project achieved in Contract Year 1)**

Quoted Transmission Charges: Rs. 140 Million

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	20	1-Feb-2018	1-Dec-2018	25%
Element 2	28	1-Oct-2018	1-Dec-2018	75%

Tariff Payable as follows:

Transmission Charges for Element 1			Transmission Charges for Element 2			
1-Feb-18 to 31-Mar-18	--	0.00		--	0.00	
1-Apr-18 to 30-Sept-18	--	0.00		--	0.00	
1-Oct-18 to 30-Nov-18	--	0.00	1-Oct-18 to 30-Nov-18	--	0.00	
1-Dec-18 to 31-Mar-19	$140 \times 100\% \times (121/365)$					46.41
2	$140 \times 100\% \times 1$					140
3	$140 \times 100\% \times 1$					140
4	$140 \times 100\% \times 1$					140
5	$140 \times 100\% \times 1$					140
.....						
.....						
36 (1-Apr to 30-Nov)	$140 \times 100\% \times (244/365)$					93.59

..... [Insert Name of the SPV]

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**Illustration-4: In case of delay in achieving COD of Project & all individual Elements (COD of the Project achieved in Contract Year other than Contact Year 1)**

Quoted Transmission Charges: **Rs. 140 Million**

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	38	1-Oct-2019	1-May-2020	25%
Element 2	38	1-Oct-2019	1-May-2020	75%

Tariff Payment to be paid as:

Transmission Charges for Element 1			Transmission Charges for Element 2		
1-Oct-19 to 31-Mar-20	--	0.00	1-Oct-19 to 31-Mar-20	--	0.00
1-Apr-20 to 30-Apr-20	-	0.00	1-Apr-20 to 30-Apr-20	-	0.00
1-May-20 to 31-Mar-21		140 X 100% X (335/365)			128.49
2		140 X 100% X 1			140
3		140 X 100% X 1			140
4		140 X 100% X 1			140
5		140 X 100% X 1			140
.....					
.....					
36 (1-Apr to 30-Apr)		140 X 100% X (30/365)			11.51

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**Illustration5: In case of delay in achieving COD of Element but Project COD achieved on time**

Quoted Transmission Charges: Rs. 140 Million

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	20	1-Feb-2018	1-Jul-2018	25%
Element 2	30	1-Dec-2018	1-Dec-2018	75%

Tariff Payable as follows:

Transmission Charges for Element 1			Transmission Charges for Element 2			
1-Feb-18 to 31-Mar-18	--	0.00		--	0.00	
1-Apr-18 to 30-Jun-18	--	0.00		--	0.00	
1-Jul-18 to 30-Nov-18	140 X 25% X (153/365)	14.67		--	0.00	
1-Dec-18 to 31-Mar-19	140 X 100% X (121/365)					46.41
2	140 X 100% X 1					140
3	140 X 100% X 1					140
4	140 X 100% X 1					140
5	140 X 100% X 1					140
.....						
.....						
36 (1-Apr to 30-Nov)	140 X 100% X (244/365)					93.59



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**Illustration-6: In case of early commissioning of Project**Quoted Transmission Charges: **Rs. 140 Million**

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	38	1-Oct-2019	1-Jul-2019	25%
Element 2	38	1-Oct-2019	1-Jul-2019	75%

Tariff Payment to be paid as:

Transmission Charges for Element 1		Transmission Charges for Element 2
1-July-19 to 31-Mar-20	140 X 100% X (274/365)	105.09
2	140 X 100% X 1	140
3	140 X 100% X 1	140
4	140 X 100% X 1	140
5	140 X 100% X 1	140
.....		
.....		
36 (1-Apr to 30-Jun)	140 X 100% X (91/365)	34.91

**Illustration-7: In case of early commissioning of an element**Quoted Transmission Charges: **Rs. 140 Million**

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Element	Actual CoD of the Element	% Charges recoverable on Scheduled CoD of the Element
Element 1	38	1-Oct-2019	1-Apr-2019	25%
Element 2	38	1-Jul-2019	1-Jul-2019	75%

..... [Insert Name of the SPV]

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Tariff Payment to be paid as:

Transmission Charges for Element 1			Transmission Charges for Element 2		
1-Apr-2019 to 30-Jun-19	140 X 25% X (91/365)	8.72	1-Apr-2019 to 30-Jun-19	--	0.00
1-July-19 to 31-Mar-20	140 X 100% X (274/ 365)			105.09	
2	140 X 100% X 1			140	
3	140 X 100% X 1			140	
4	140 X 100% X 1			140	
5	140 X 100% X 1			140	
.....					
36 (1-Apr-30- Jun)	140 X 100% X (91/365)			34.91	

The Transmission Charges shall be payable on monthly basis as computed above.

### 1.2 Computation of Monthly Transmission Charges

The Monthly Transmission Charges for any month m in a Contract Year n shall be calculated as below:

For AC System:

- a. If Actual Transmission System Availability for the month m of contract year n is greater than or equal to 98% and less than or equal to 98.5%;

$$\text{Monthly Transmission Charges MTC}(m) = T_{mn} * 1$$

- a. If Actual Transmission System Availability for the month m of contract year n exceeds 98.5% and less than or equal to 99.75%;

$$\text{Monthly Transmission Charges MTC}(m) = T_{mn} * (\text{AA}/ 98.5\%)$$

- c. If Actual Transmission System Availability for the month m of contract year n is greater than 99.75%;

$$\text{Monthly Transmission Charges MTC}(m) = T_{mn} * (99.75\% / 98.5\%)$$

- d. If Actual Transmission System Availability for the month m of contract year n is less than 98% and greater than or equal to 95.00%;

$$\text{Monthly Transmission Charges MTC}(m) = T_{mn} * (\text{AA}/ 98\%)$$

[Insert Name of the SPV]

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- e. If Actual Transmission System Availability for the month m of contract year falls below 95%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * (AA/ 98\%) - 0.02 * (T_{mn} * (AA/ 95\%))$

For DC System:

- a. If Actual Transmission System Availability for the month m of contract year n is greater than or equal to 95% and less than or equal to 96%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * 1$

- b. If Actual Transmission System Availability for the month m of contract year n exceeds 96% and less than or equal to 99.75%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * (AA/ 96\%)$

- c. If Actual Transmission System Availability for the month m of contract year n is greater than 99.75%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * (99.75\% / 96\%)$

- d. If Actual Transmission System Availability for the month m of contract year n is less than 95% and greater than or equal to 92.00%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * (AA/ 95\%)$

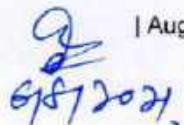
- e. If Actual Transmission System Availability for the month m of contract year falls below 92%;

Monthly Transmission Charges MTC(m) =  $T_{mn} * (AA/ 95\%) - 0.02 * (T_{mn} * (AA/ 92\%))$

where:

- AA is the actual Availability, as certified by RPC, as per procedure provided in Schedule 6.
- m is the month in Contract Year 'n'
- $T_{mn}$  = Transmission Charges for the month 'm' in Contract Year 'n' =  $(= \text{Transmission Charge} / \text{no. of days in the Year } n) * \text{no. of days in month } m$

Provided, no Transmission Charges shall be paid during the period for which the RLDC has not allowed the operation of the Element/Project due to the failure of the TSP to operate it as per the provisions of the Grid Code.

  
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### 1.3 RLDC Fee & Charges

The payment of RLDC fee & charges, in accordance with relevant regulations of CERC, shall be the responsibility of the TSP.

..... [Insert Name of the SPV]

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**Schedule: 5**

**Quoted Transmission Charges**

[Quoted Transmission Charges from Annexure - 21 of the RFP of the Selected Bidder to be inserted here]

[To be incorporated from the Bid of the Selected Bidder submitted during the e-reverse auction after its selection]

**Quoted Transmission Charges: Rs. ..... Million**

**Proportionate Transmission Charges payable for each Element of the Project:**

Name of the Transmission Element	Percentage of total Transmission Charges payable to the TSP on Commissioning / COD of the Element
1.....	
2.....	
3.....	
.....	
n.....	

**[Instruction to the BPC: BPC to fill in details for project-specific TSA based on information provided by the CEA as applicable]**

**Schedule: 6**

**Appendix .....**

**[Appendix of Regulations applicable on the Bid Deadline to be inserted by  
BPC]**

**[To be attached here by the BPC]**

..... [Insert Name of the SPV]

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| August 2021

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**Schedule: 7**

**Entire Bid (both financial bid and technical bid) of the Selected Bidder to  
be attached here**

..... [Insert Name of the SPV]

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## Schedule: 8

### Contract Performance 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 SPV or Selected Bidder on behalf of the TSP, or Lead Member in case of the Consortium, with address] agreeing to undertake the obligations under the Transmission Service Agreement dated .....and the other RFP Project Documents and the Nodal Agency and the .....[Insert the name of the BPC], agreeing to execute the *RFP Project Documents* with the Selected Bidder, regarding setting up the Project, 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 ..... (being the Nodal Agency) \_at .....[Insert the Place from the address of the Nodal Agency indicated in the TSA] forthwith on demand in writing from the Nodal Agency or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... Crores (Rs. ....) only [Insert the amount of the bank guarantee] on behalf of M/s. ..... [Insert name of the Selected Bidder or SPV].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....and shall not be terminable by notice or any change in the constitution of the Bank or the term of the Transmission Service Agreement 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. ..... Crores (Rs. ....) only. Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Article 3.1.2 of this Agreement]. The Nodal Agency,

shall be entitled to invoke this Guarantee up to three hundred sixty five (365) days of the last date of the validity of this Guarantee.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by ..... [Insert name of the Selected Bidder], ..... [Insert name of the TSP] and / or any other person.

The Guarantor Bank shall not require Nodal Agency to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against Nodal Agency in respect of any payment made hereunder.

**THIS BANK GUARANTEE** shall be interpreted in accordance with the laws of India.

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 Nodal Agency shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against ..... [Insert name of the SPV] or the Selected Bidder, as the case may be, to make any claim against or any demand on ..... [Insert name of the SPV] or the Selected Bidder, as the case may be, or to give any notice to ..... [Insert name of the SPV] or the Selected Bidder, as the case may be, or to enforce any security held by the Nodal Agency or to exercise, levy or enforce any distress, diligence or other process against ..... [Insert name of the SPV] or the Selected Bidder, as the case may be.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to Nodal Agency and may be assigned, in whole or in part, (whether absolutely or by way of security) by Nodal Agency to any entity to

Transmission Service Agreement

whom the Nodal Agency is entitled to assign its rights and obligations under the Transmission Service Agreement.

The Guarantor Bank hereby agrees and acknowledges that Nodal Agency 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. ....) only and it shall remain in force until ..... [Date to be inserted on the basis of Article 3.1.2of the Transmission Service Agreement], with an additional claim period of three hundred sixty five (365) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Selected Bidder or Lead Member in case of the Consortium or SPV]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if Nodal Agency serves upon us a written claim or demand.

**In witness where of:**

Signature .....

Name: .....

Power of attorney No.: .....

**For:**

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

**Banker's Seal and Full Address, including mailing address of the Head Office**

..... [Insert Name of the SPV]

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| August 2021

**Schedule: 9**

**Methodology for determining the Relief Under Force Majeure Event & Change in Law during Construction Period**

The relief in the form of revision in tariff due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days and/ or Change in Law during the construction period shall be as under:

$$\Delta T = [(P \times d)] + [1 - (1 + d)^{-n}]$$

Where,

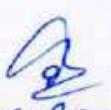
$\Delta T$  = Change in Transmission Charges for each year

P = Sum of cumulative increase or decrease in the cost of the Project due to Change in Law and interest cost during construction corresponding to the period exceeding one hundred eighty (180) due to Force Majeure Event leading to extension of Scheduled COD for a period beyond one hundred eighty (180) days

n = number of years over which the Transmission Charges has to be paid

d = Discount rate as notified by the CERC, applicable on the Bid Deadline

The increase in Transmission Charges as stated above shall be applicable only if the value of increase in Transmission Charges as calculated above exceeds 0.30% (zero point three percent) of the quoted Transmission Charges of the TSP.

  
6/8/2021

399858/2020/OFFICE OF BIHARI LAL

No.3/7/2017-Trans-Part (6)  
 Ministry of Power  
 (Trans. Desk)  
 Shram Shakti Bhawan, Rafi Marg,

New Delhi, Dated: 03.12.2020.

To

Chairperson,  
 Central Electricity Authority,  
 Sewa Bhawan, R.K. Puram,  
 New Delhi.

**Sub:- "Bid Bond" in the Standard Bidding Documents for selection of Transmission Service Provider through Tariff Based Competitive Bidding (TBCB) to establish Inter State Transmission System (ISTS).**

Sir,

I am directed to refer to Department of Expenditure, Ministry of Finance's OM dated 12.11.2020 (copy enclosed) regarding replacing Bid Security with Bid Security Declaration in all public procurement tenders issued till 31.12.2021.

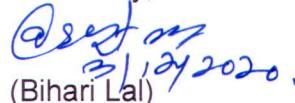
2. Representation has been received in the Ministry to extend similar relief to ISTS projects developed through TBCB. The matter has been examined and it has been decided that:-

- i. "Bid Bond" in the Standard Bidding Documents (SBDs) for the under-bidding ISTS TBCB projects as well as future ISTS TBCB projects (to be issued till 31.12.2021) may be replaced with "Bid Security Declaration" to be signed by bidder.
- ii. In case of default by a bidder (not complying with conditions as specified in the SBDs leading to invocation of bid bond), the bidder will be suspended from participation in the bidding process for future ISTS TBCB projects of Ministry of Power for a period of two years from the bid submission date of the particular bid.

3. This issues with the approval of the Hon'ble Minister of State (I/C) for Power, NRE and Skill Development and Entrepreneurship.

Encl.: As above.

Yours faithfully,



31/12/2020  
 (Bihari Lal)

Under Secretary(Trans)  
 TeleFax: 011-23325242  
 Email: transdesk-mop@nic.in

Copy to:

1. CEO, RECTPCL
2. CEO, PFFCL

No. F.9/4/2020-PPD  
Government of India  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi  
Dated the 12<sup>th</sup> November 2020

**OFFICE MEMORANDUM**

**Subject: Bid Security/ Earnest Money Deposit.**

The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

2. As per Rule 170 of General Financial Rules (GFRs) 2017, Micro and Small Enterprises (MSEs) and the firms registered with concerned Ministries/ Departments are exempted from submission of Bid Security. Further, in lieu of Bid Security, Ministries/ Departments may ask bidders to sign "Bid Security Declaration" accepting that if they withdraw or modify their bids during period of validity etc., they will be suspended for the time specified in the tender documents. Similar provisions also exist in the Manuals for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017.

3. In this context it is noted that Bid Security (also known as Earnest Money Deposit) is still being taken from the contractors by the various Ministries/ Departments, though the relaxations have already been provided in General Financial Rules (GFRs) 2017.

4. In view of above, it is reiterated that notwithstanding anything contained in Rule 171 of GFRs 2017 or any other Rule or any provision contained in the Procurement Manuals, **no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents.**

5. Wherever, there are compelling circumstances to ask for Bid Security, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender or the Secretary of the Ministry/ Department, whichever is lower.

6. The above instructions will be applicable for all the tenders issued till 31.12.2021.

7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.

  
(Kotluru Narayana Reddy)  
Deputy Secretary to the Govt. of India  
Tel: 24621305  
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).

426681/2021/OFFICE OF BIHARI LAL

No. 3/7/2017-Trans-Pt(6)  
 Government of India  
 Ministry of Power  
 Shram Shakti Bhawan, Rafi Marg, New Delhi- 110001

Dated, 25<sup>th</sup> March, 2021

To

Chairperson,  
 Central Electricity Authority,  
 Sewa Bhawan, RK Puram,  
 New Delhi.

**Subject: Reduction in Contract Performance Guarantee for Tariff Based Competitive Bidding (TBCB) transmission projects in line with Department of Expenditure's OM dated 12.11.2020 reg.**

Sir,

In order to address the acute financial crunch among many commercial entities and contractors due COVID-19 pandemic, Department of Expenditure (DoE), Ministry of Finance has issued an Office Memorandum dated 12.11.2020 inter-alia stipulating reduction in Performance Security in all kinds of government procurements from existing 5-10% to 3% of the value of the contract for all existing tender/contracts as well as tenders/contracts to be issued/concluded till 31.12.2021 (copy enclosed).

2. Representation has been received from Transmission Developers Association to reduce the Contract Performance Guarantee (CPG) for TBCB transmission projects in line with above DoE's OM dated 12.11.2020.

3. In view of above, it has been decided that CPG for the TBCB transmission Projects for (a) Projects under construction where CPG is valid, (b) Projects where Letter of Award has been issued but CPG is yet to be submitted, (c) projects where Request for Proposal (RfP) has been issued but bids are yet to be submitted, and (d) For projects where RfP is not yet issued, but to be issued till 31.12.2021, may be revised as under:-

	Existing	Proposed
CPG Value	@ Rs. 13.5 lakh per km for the total Transmission Line length and @ Rs. 1.125 lakh per MVA for substations	@ Rs. 5.25 lakh per km for the total Transmission Line length and @ Rs. 0.45 lakh per MVA for substations

4. The above reduction in CPG is subject to following conditions:

- (i) It should not be given in the contracts under dispute wherein arbitration/ court proceeding have already been started or are contemplated.
- (ii) The reduced Performance Security shall continue for the entire duration of the contract and there would not be subsequent increase of Performance Security even beyond 31.12.2021.

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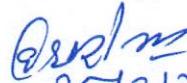
(iii) Whenever, there is compelling circumstances to ask for CPG in excess of reduced value, as stipulated in para 3 above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded.

5. The Standard Bidding Documents for procurement of Transmission Services on Tariff Based Competitive Bidding stand amended to the above extent.

6. This issues with the approval of Secretary (Power).

Encl.: As above

Yours faithfully,

  
25/3/2021  
(Bihari Lal)

Under Secretary to the Govt. of India

Copy to

1. CEO, RECPDCL.
2. CEO, PFCCCL.
3. PS to Hon'ble MoSP (IC) / Sr PPS/ PPS/ PS to Secretary (Power) / AS (SKGR) / AS (VKD) / AS&FA / Sr Advisor/ All JSs/ CE(Th), MoP
4. Technical Director, NIC, Ministry of Power- with the request to host this letter on the website of Ministry of Power

No. F.9/4/2020-PPD  
Government of India  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi  
Dated the 12<sup>th</sup> November 2020

**OFFICE MEMORANDUM**

**Subject: Performance Security.**

As per Rule 171 of General Financial Rules (GFRs) 2017, Performance Security is to be obtained from the successful bidder awarded the contract for an amount of five to ten percent of the value of the contract to ensure due performance of the contract. Similar provisions also exist in the Manual for Procurement of Works 2019 and Manual for Procurement of Consultancy & other Services 2017 issued by this Department.

2. The Government is in receipt of many representations that on account of slowdown in economy due to the pandemic, there is acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It has also been represented that this may affect the ability of contractors to bid in tenders and hence reduce competition. Requests are being received for reduction in quantum of Security Deposits in the Government contracts.

3. In view of all above, it is decided to reduce **Performance Security from existing 5-10% to 3% of the value of the contract** for all existing contracts. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated.

4. Further, all tenders/ contracts issued/ concluded till 31.12.2021 should also have the provision of reduced Performance Security.

5. In all contracts where Performance Security has been reduced to 3% in view of above stipulations, the reduced percentage of Performance Security shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.12.2021.

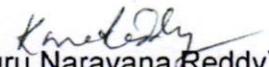
Similarly, in all contracts entered into with the reduced percentage of Performance Security of 3%, there will be no subsequent increase in Performance Security even beyond 31.12.2021.

6. Wherever, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the

426681/2021/OFFICE OF BIHARI LAL

particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded.

7. These instructions will be applicable for all kinds of procurements viz. Goods, Consultancy, Works, non-consulting Services etc and are issued under Rule 6(1) of the GFRs 2017.

  
(Kotluru Narayana Reddy)  
Deputy Secretary to the Govt. of India  
Tel: 24621305  
Email: kn.reddy@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Copy to: Secretary, Department of Public Enterprises with a request to issue the same instructions to Central Public Sector Undertakings (CPSUs).