



**SOLAR BUSINESS
DIVISION**

**NOTICE INVITING TENDER (NIT)
Rev 01**

**TENDER NO.
TGPWCC0028**

2024

**BHARAT HEAVY ELECTRICALS LIMITED
SOLAR BUSINESS DIVISION, BENGALURU
TENDER DOCUMENT**

Name: PRAGADEESH T G

Designation: Sr. Manager/WCC

BHEL- SBD, Bengaluru



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NOTICE INVITING TENDER

1. BHEL/ SBD (A Govt. of India Undertaking) invites Tender for Selection of Solar Project Developer for Setting up of Grid Connected Solar Photo Voltaic (PV) Project of 900 KWp solar Rooftop Power plant under BOOT mode at Bharat Heavy Electricals Limited, SBD, Bangalore.
2. The enquiry has been floated through e-procurement and offers shall be accepted through e-procurement only.
3. BHEL shall neither entertain offers through hard copy nor provide any due date extension on account of the same. Interested vendors who do not have login ID and password are requested to register themselves on **<https://eprocurebhel.co.in>** through “Online Bidder Enrolment” link available on the portal.
4. Class-III, SHA2 2048 BIT – Signing & Encryption, Digital Signature Certificate (DSC) is required for bidders for authentication purpose (log in and bid submission). Vendors, who do not possess the DSC, are requested to obtain the same. The procedure for obtaining DSCs is detailed in the “Seller Manual” available on the above-mentioned website.



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Important Note:

“Bidder is requested to visit site in person and then submit their best offer. Any type of denial /objection will not be entertained after finalization of order” May please refer to the format 6.12 for submission.

It is mandatory for all bidders to undertake site visit before submitting their bids and submit the site visit certificate as per format 6.12 The purpose of the site visit is to provide the bidders with a comprehensive understanding of the site requirements and the conditions that may affect the execution of the work. **The offers which does not contain the site visit format shall be rejected.**

Bidders are required to arrange their own site visit and cover all costs associated with it. The site visit schedule and contact details of the authorized personnel to be contacted for scheduling the site is as below:

Site visit shall be open on 14/06/2024 only. Timing for the Visit is 09:30 Hrs to 16:30 hrs.

Authorized contact person: Mr. Vijay Kumar Choudhary Sr. Manager BHEL SBD

Contact no. 9415041583

Bidders must ensure that they have obtained all necessary information and have a complete understanding of the site requirements before submitting their bids. BHEL will not entertain any requests for clarification or modification of the tender document after the bid submission deadline. By submitting their bids, bidders acknowledge that they have undertaken a site visit and have a complete understanding of the site requirements

For all clarifications/ issues related to the tender, please contact:

(i) Commercial:

Mr. PRAGADEESH T G, Sr. Manager / Works Engineering Contract, BHEL-SBD,
Prof CNR Rao Circle, IISc Post, Malleswaram, Bengaluru- 560 012

E-MAIL: pragadeeshtg@bhel.in

Ph. No. +91-080-2218-2232

Mr. Vinay Kumar, AGM / Works Contract Cell, BHEL-SBD,
Prof CNR Rao Circle, IISc Post, Malleswaram, Bengaluru- 560 012

E-MAIL: vinay@bhel.in

Ph. No. +91-080-2218-2435



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(ii) Technical:

Mr. Vijay K Choudhary Sr Manager/PV-Engg

BHEL-SBD, Prof CNR Rao Circle, IISc Post, Malleswaram, Bengaluru- 560 012

E-MAIL: vijayk.choudhary@bhel.in

Ph. No. +91-080-2218-2284

Mr. Jubburu Krishna, Dy. Manager/ PV-Engg

BHEL-SBD, Prof CNR Rao Circle, IISc Post, Malleswaram, Bengaluru- 560 012

E-MAIL: krishnaj@bhel.in

Ph. No. +91-080-2218-2127

| | | |
|-------|---|--|
| 1. | General Bid Information | |
| 1.1. | Tender Reference Number: | TGPWCC0028 |
| 1.2. | Tender Name: | Selection of Solar Project Developer for Setting up of Grid Connected Solar Photo Voltaic (PV) Project of 900 KWp solar Rooftop Power plant under BOOT mode at Bharat Heavy Electricals Limited, SBD, Bangalore. |
| 1.3. | Tender System | Single Stage, Two Part Bid Part – A: Techno-Commercial & PQR Part – B: Price Bid |
| 1.4. | Tender Type | Open Tender |
| 1.5. | Duration of Contract | 25 Years |
| 1.6. | Qualifying Requirement | As per NIT Terms & Conditions |
| 1.7. | Earnest Money Deposit to accompany Tender | INR 20,00,000.00 (Indian Rupees twenty lakhs only) |
| 1.8. | Cost of Tender documents | NIL |
| 1.9. | Issue of tender documents | As per Enquiry / RFQ / Notification on www.bhel.com & https://eprocurebhel.co.in |
| 1.10. | Pre- BID Meeting | As per Enquiry / RFQ / Notification on www.bhel.com & https://eprocurebhel.co.in |
| 1.11. | Last date for Issue of tender documents | As per Enquiry / RFQ / Notification on www.bhel.com & https://eprocurebhel.co.in |
| 1.12. | Last date for submission of tender doc | As per Enquiry / RFQ / Notification on www.bhel.com & https://eprocurebhel.co.in |



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| 1.13. | Date and time of opening of Tender (Part-A) | As per Enquiry / RFQ / Notification on www.bhel.com & https://eprocurebhel.co.in |
| 1.14. | Tender Submission Place | Online at https://eprocurebhel.co.in |
| 1.15. | Tender Opening Place | Online at https://eprocurebhel.co.in |
| 1.16. | Dealing Officer (For any Clarifications) | Pragadeesh T G Sr. Manager – Works Contract Cell Contact No.: 080-2218-2232 Email: pragadeeshtg@bhel.in |
| 1.17. | Reverse Auction | BHEL shall be resorting to Reverse Auction (RA) (Guidelines for Reverse Auction – 2021 as available on www.bhel.com) for this tender. RA shall be conducted among the techno commercially qualified bidders. Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered for RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking. |
| 1.18. | Bid participation note | Firms debarred/Banned by BHEL are not eligible to participate in the tender. Any bidder on whom Show Cause Notice / Risk & Cost action initiated/ implemented in last 2 years from tender opening date are not eligible for participation in this tender. The tender envelope submitted by such a firms/ bidder will not be considered for evaluation and no communication in this regard will be entertained. |
| 1.19. | Integrity Pact | APPLICABLE (As per attached Format) (a)IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL. |



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| | | <p>Sl no IEM EMAIL</p> <ol style="list-style-type: none">1. Shri. Otem Dai, IAS (Retd.) Iem1@bhel.in2. Shri Bishwamitra Pandey IRAS (Retd.) Iem2@bhel.in3. Shri Mukesh Mittal, IRS (Retd) Iem3@bhel.in <p>(b)The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/Three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.</p> <p>(c)Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.</p> <p>Note:</p> <p>No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc. on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department officials whose contact details are provided below..</p> <p>Details of contact person(s):</p> <p>NAMEPRAGADEESH T G</p> <p>DEPT WCC</p> <p>ADDRESS BHEL SBD BENGALURU</p> |
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| | | PHONE 080-22182232 EMAIL pragadeeshtg@bhel.in VINAY KUMAR WCC BHEL SBD BENGALURU 080-22182435 vinay@bhel.in |
| 1.20. | Clarity of clauses in case of conflict | In case of any conflict between the NIT and BHEL GCC, the provisions of NIT shall prevail. |
| 1.21. | Pre Bid Meeting | A Prebid meeting shall be conducted on 15/06/2024 from 14:00 hrs -15:00 hrs. at BHEL SBD Campus. Authorized contact person: Mr. Vijay Kumar Choudhary Sr. Manager BHEL SBD Contact no. 9415041583 |



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CHAPTER-1: INTRODUCTION, BACKGROUND & PROJECT DETAILS

1.1. INTRODUCTION

- 1.1.1. Bharat Heavy Electricals Limited, SBD, Bangalore (hereinafter called “BHEL”) is a Public Sector Undertaking company under the Ministry of Heavy Industries.
- 1.1.2. BHEL wishes to invite proposals for setting up the grid connected Solar Photo Voltaic Project on “Build Own Operate and Transfer” basis. BHEL shall enter into a Power Purchase agreement (PPA) with the selected bidder for purchase of solar power for a period of 25 years as per the terms, conditions and provisions of the NIT.

1.2. BACKGROUND

As part of its initiatives towards transformation into a ‘Green’ Company, BHEL, SBD has proposed to set up a 900KWp solar PV Project.

1.3. SELECTION OF TECHNOLOGY & ELIGIBLE PROJECT UNDER THIS SCHEME

The Project under developer mode will be free to procure solar cells/modules under open category.

1.4. PROJECT DETAILS

- 1.4.1. BHEL-Solar Business Division has its factory premises in Malleshwarm, Bengaluru intends to install 900 kWp roof top solar PV on multiple roofs inside its factory premises.
- 1.4.2. The scope of work for setting up 900 kWp roof top solar PV power plant under Developer model shall include but not limited to develop, design, construct, synchronize, commission, operate and maintain the 900 kWp roof top solar PV power plant and selling the power to BHEL for period of 25 years in accordance with the terms of the PPA.
- 1.4.3. The project site is situated within BHEL-SBD Malleshwaram factory complex. The complete address of the project site is as follows:
Bharat Heavy Electricals Limited
Solar Business Division (SBD) (Earlier EPD)
Prof. C.N.R. Rao Circle, Opp IISc, Malleshwaram, Bengaluru-560 012.
- 1.4.4. All the roofs are available inside factory premises. At present, the roofs were selected based on



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their area availability and strength for execution of roof top solar on them. The following roofs of buildings are considered for installation of roof top solar PV:

| Sr. No. | Name of Building* | Approx. Area of roof (Sq. M) | Facing of roof | Approx. Slope of roof | No. of sections | Type of roof sheeting | Height of roofs |
|---------|--|------------------------------|----------------|-----------------------|-----------------|---|---|
| 1 | SPV Production | 4050 | NS | 15° | 9 | 0.5mm Profile Galvalume Top – 20mm Insulation – 0.3 mm Galvalume Bottom (550 Mpa) | 6m-9m for about 90% of area. 9m-13m for balance 10% |
| 2 | SPV Warehouse | 1360 | NS | 13° | 1 | 0.5mm Galvalume Profile Sheet. (550 Mpa) | 8m-12m |
| 3 | NSK Building | 625 | NS | 18° | 1 | Pre-painted galvanized iron profile sheet. (250-300 Mpa) | 8m-12m |
| 4 | OTK Building | 1250 | NS | 16° | 1 | | 8m-10m |
| 5 | SCR Production – Light Weight Arch Roof with a monitor bay on top. | 7500 | EW | 20° | 6 | | |
| 6 | Kneader Mixer Bay | 1200 | EW | 18° | 8 | | 10m-13m |

* In case during execution, if any one of the above roofs will found unsuitable for installation, similar kind of alternate roof for installation will be provided. However, no addition cost will be given for change in roof location as all roofs are within factory premises only.

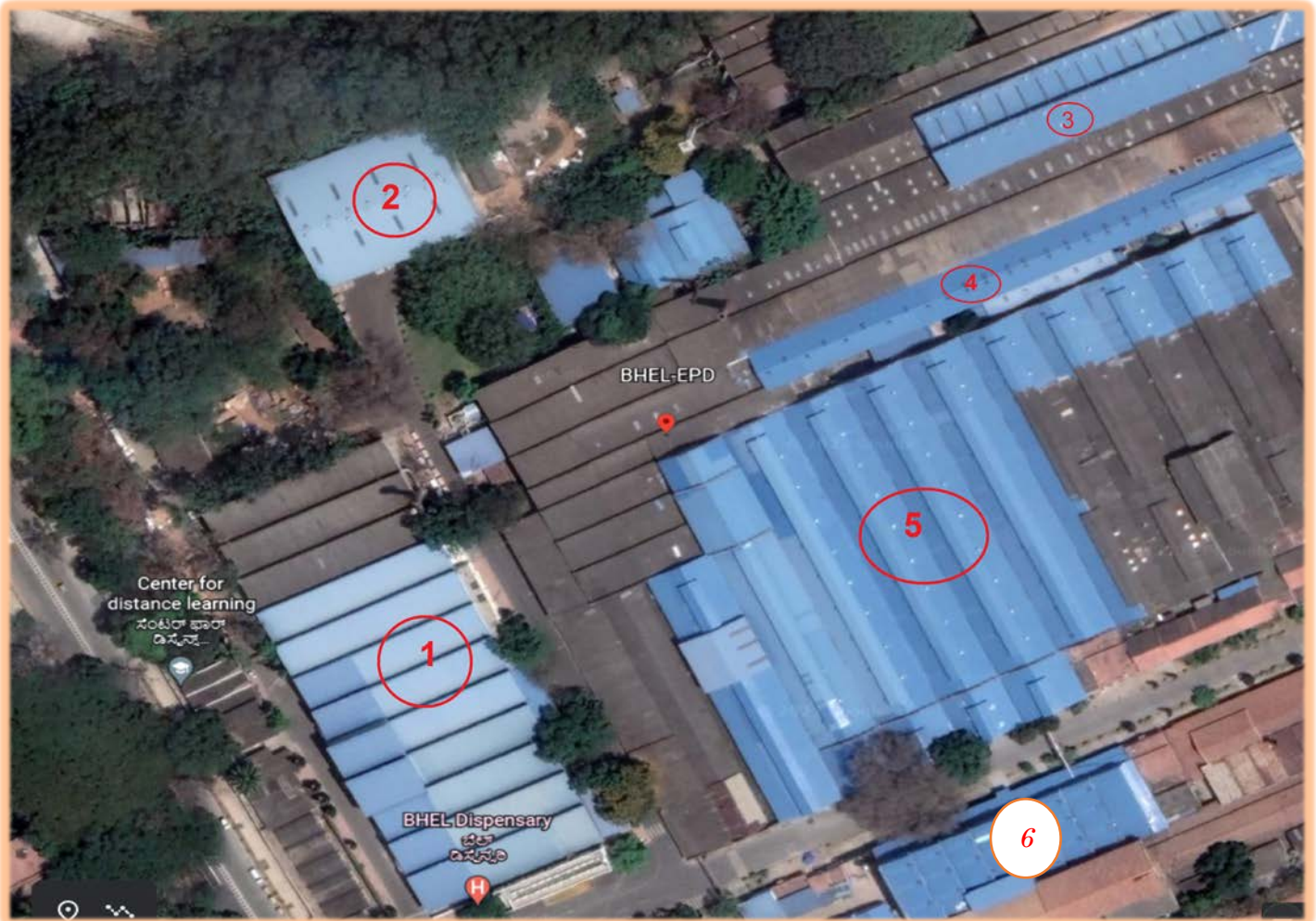


FIGURE: GOOGLE IMAGE OF THE ROOFS FOR INSTALLATION

Google map link: <https://www.google.com/maps/@13.0131214,77.5629059,249m/data=!3m1!1e3>

- 1.4.5. Presently the buildings are not accessible properly through ground except at few places on SPV production building. Hence, all the roofs shall be made accessible first by putting suitable permanent ladders by Bidder. The ladders to be provided from ground to the roof entrance as well as in the subsections for movement from one to another section during execution and O & M. Approx. nos. of permanent ladders to be fabricated/constructed shall be as follows:



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| Sr. No. | Name of Building | No. of permanent ladders required | Remark |
|--------------------|-----------------------------|---|---|
| 1 | SPV Production | 2 nos. from ground to roof and 11 nos. for accessing subsection | |
| 2 | SPV Warehouse | 2 no. from ground to roof | No sub sections. |
| 3 | NSK Building | 1 no. from ground to roof | One roof sheet to be removed and made openable (hinged door) and accessible from shop |
| 4 | OTK Building | 1 no. from ground to roof | One roof sheet to be removed and made openable (hinged door) and accessible from shop |
| 5 | SCR Production | 5 no. from ground to roof | One roof sheet to be removed and made openable (hinged door) and accessible from shop |
| 6 | Kneader Mixer Bay | 2 nos. from ground to roof and 6 nos. for accessing subsection | |

Height, slope, width of ladders will be depending upon roof and subsection heights. Bidder to submit design and drawing of permanent ladders to BHEL for approval before Installation at site. The installation of ladders shall be done before start of work on the roofs. No temporary ladders will be used during execution except wherever utmost necessary.



CHAPTER-2: DEFINITIONS

Following terms used in the document will carry the meaning and interpretations as described below:

1. **"Act" or "Electricity Act, 2003"** shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
2. **"Affiliate"** shall mean a Company that, directly or indirectly,
 - i. controls, or
 - ii. is controlled by, or
 - iii. is under common control with, a Company developing a Project or a Member in a Consortium developing the Project and control means ownership by one Company of at least 26% (twenty-six percent) of the voting rights of the other Company;
3. **"Appropriate Commission"** shall mean as defined in the PPA
4. **"Bidder"** shall mean Bidding Company (including a foreign company) or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company /Bidding Consortium / Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require; foreign companies participating in the bidding process shall be registered as companies as per the rules of their country of origin;
5. **"Bidding Company"** shall refer to such single Company that has submitted the response in accordance with the provisions of this NIT;
6. **"Bidding Consortium"** or **"Consortium"** shall refer to a group of Companies that have collectively submitted the response in accordance with the provisions of this NIT under a Consortium Agreement;
7. **"Capacity Utilization Factor (CUF)"** shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; For illustration, CUF shall be calculated based on the annual energy injected and metered at the Delivery Point. In any Contract Year, if 'X' MWh of energy has been metered out at the Delivery Point for 'Y' MW Project capacity,

$$CUF = (X \text{ MWh} / Y \text{ MW} \times 8766) \times 100\%;$$



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

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

10. **“Contracted capacity”** shall mean the AC capacity in MW contracted with BHEL for supply by the SPD to BHEL at the Delivery Point from the Solar Power Project;

11. **“Commercial Operation Date (COD)”** shall mean the date as defined in Clause no. 3.14, Section-III, Instructions to Bidders (ITB) of NIT Documents;

12. **“Contract Year”** shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:

i. in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and

ii. provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

13. **“Control”** shall mean holding not less than 51% of paid up share capital

14. **“Controlling shareholding”** shall mean not less than 51% of the voting rights and paid up share capital in the Company;

15. **“Day”** shall mean calendar day;

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

17. **“Equity”** shall mean Net Worth as defined in Companies Act, 2013

18. **“Financial Closure or Project Financing Arrangements”** means arrangement of necessary funds equivalent to the total estimated project cost, by the Solar Project Developer either by way of commitment



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of funds by the Company from its internal resources and/or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance;

19. **“Group Company”** of a Company means

i. a Company which, directly or indirectly, holds 10% (ten percent) or more of the share capital of the Company or;

ii. a Company in which the Company, directly or indirectly, holds 10% (ten percent) or more of the share capital of such Company or;

iii. a Company in which the Company, directly or indirectly, has the power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;

iv. a Company which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;

v. a Company which is under common control with the Company, and control means ownership by one Company of at least 10% (ten percent) of the share capital of the other Company or power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise.;

vi. Provided that a financial institution, scheduled bank, foreign institutional investor, Non-Banking Financial Company, and any mutual fund shall not be deemed to be Group Company, and its shareholding and the power to direct or cause to be directed the management and policies of a Company shall not be considered for the purposes of this definition unless it is the Project Company developing the Project;

20. **“Inter-connection point / Delivery Point”** shall mean the point at the grid substation designated by BHEL, where the power from the solar power Project is injected (including the dedicated transmission line connecting the solar power project with the interconnection point). For interconnection with grid and metering, the SPD shall abide by the relevant CERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time;

21. **“Joint Control”** shall mean a situation where control is equally distributed among the interested parties;



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22. **“Letter of Intent”** or **“LOI”** shall mean the letter issued by Bharat Heavy Electricals Limited (BHEL) to the Selected Bidder for award of the Project;
23. **“Limited Liability Partnership”** or **“LLP”** shall mean a Company governed by Limited Liability Partnership Act 2008 or as amended;
24. **“LLC”** shall mean Limited Liability Company;
25. **“Month”** shall mean calendar month;
26. **“Metering Point”** shall mean the location at which the Main, Check and Stand – By energy meters are connected to the grid through instrument transformers (voltage transformers and current transformers) and energy injected or drawn is measured
27. **“Paid-up Share Capital”** shall mean such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- i. Paid-up share capital includes:
- ii. Paid-up equity share capital;
- iii. Fully, compulsorily and mandatorily convertible Preference shares and
- iv. Fully, compulsorily and mandatorily convertible Debentures.
28. **“Parent”** shall mean a Company, which holds not less than 51% equity either directly or indirectly in the Project Company or a Member of Consortium developing the Project;
29. **“PPA”** shall mean the Power Purchase Agreement signed between the successful SPD and BHEL according to the terms and conditions of the standard PPA enclosed with this NIT;
30. **“Power Project”** or **“Project”** shall mean the solar power generation facility having separate points of injection into the grid at Inter-connection/Metering Point and having a separate boundary, control systems and metering. This includes all units and auxiliaries such as water supply, treatment or storage facilities, bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to BHEL;



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31. **“Project Capacity”** shall mean the maximum AC capacity at the delivery point that can be scheduled on which the Power Purchase Agreement shall be signed.
32. **“Project Commissioning”**: The Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA;
33. **“Project Developer”** or **“Developer”** or **“Solar Project Developer (SPD)”** shall mean the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a project capacity by BHEL (through a competitive bidding process), including the SPV formed by the selected bidder/consortium for the purpose of setting up of project and signing of PPA.
34. **“NIT document”** shall mean the bidding document issued by BHEL including all attachments, clarifications and amendments thereof vide NIT no. **TGPWCC0028 dated 11/06/2024**
35. **“BHEL”** shall mean Bharat Heavy Electricals Limited,
36. **“Selected Bidder”** or **“Successful Bidder”** shall mean the Bidder selected pursuant to this NIT to set up the Project and supply electrical output as per the terms of PPA;
37. **“Solar PV Project”** shall mean the Solar Photo Voltaic power Project that uses sunlight for direct conversion into electricity through Photo Voltaic technology;
38. **“STU or State Transmission Utility”** shall mean the Board or the Government Company notified by the respective State Government under Sub-Section I of Section 39 of the Electricity Act, 2003;
39. **“TOE”** shall mean Tender Opening Event;
40. **“Ultimate Parent”** shall mean a Company, which owns not less than fifty-one percent (51%) equity either directly or indirectly in the Parent and Affiliates;
41. **“Week”** shall mean calendar week.



CHAPTER-3: INSTRUCTIONS TO BIDDERS (ITB)

3.1. OVERVIEW OF NIT

- 3.1.1. Solar Power Developers (hereinafter referred to as SPD) selected by M/s BHEL, Hyderabad based on this NIT, shall set up 02 MW Solar PV Projects on Build Own Operate and Transfer (BOOT) basis in accordance with the provisions of this NIT document and standard Power Purchase Agreement (PPA). PPA formats shall downloaded from BHEL portal <https://eprocurebhel.co.in/nicgep/app>.
- 3.1.2. M/s BHEL, SBD shall enter into PPA for the project with successful SPD for a period of 25 years. The tariff payable to the Project Developer is fixed for 25 years. This shall be exclusive of GST but inclusive of all other statutory taxes, duties, levies, cess applicable as on the last date of bid submission.
- 3.1.3. It is clarified here that “Change in Law” means the occurrence of any of the following events after the last date of Bid submission resulting into any additional recurring/ nonrecurring expenditure by SPD or any income to SPD:
- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
 - a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to apply such Law, or any Competent Court of Law;
 - the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
 - a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Buying Entity;
 - any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax, duties and cess made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project.
- 3.1.4. However, Change in Law shall not include:



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- Any change in taxes on corporate income or any change in any withholding tax on income or dividends distributed to the shareholders of the SPD (if applicable), or any change on account of regulatory measures by the Appropriate Commission
- In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.
- In the event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, BHEL, SBD shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.

3.2. RELIEF FOR CHANGE IN LAW

- 3.2.1. The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.
- 3.2.2. The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.
- 3.2.3. The Bidders will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays etc. as available for such Projects. The same will not have any bearing on comparison of bids for selection. As equal opportunity is being provided to all bidders at the time of tendering itself, it is up to the bidders to avail various tax and other benefits.
- 3.2.4. No claim shall arise on M/s BHEL for any liability if bidders are not able to avail fiscal incentives and this will not have any bearing on the applicable tariff. M/s BHEL does not however, give a representation on the availability of fiscal incentive and submission of bid by the bidder shall be independent of such availability or non-availability as the case may be of the fiscal incentives.



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3.2.5. Bidders shall submit their bid by offering a single tariff for the above project, which shall be applicable for all the 25 years.

3.2.6. If the Project is transferred or sold to a third party during its tenure, M/s BHEL will retain full rights to operationalize the PPA with the third party, which will be under full obligation to honour all the obligations and terms & conditions of the PPA.

3.3. OBTAINING NIT DOCUMENT

3.3.1. The NIT document can be downloaded free of cost from the website of GePNIC BHEL (Bharat Heavy Electricals Limited, SBD) Portal <https://eprocurebhel.co.in>.

Note: - Interested bidders have to download the NIT & other documents after logging into the GePNIC BHEL (Bharat Heavy Electricals Limited, SBD, Bangalore) Portal <https://eprocurebhel.co.in>.

3.3.2. The bids without EMD, shall not be considered for the bidding and such bids shall not be opened by BHEL.

3.4. BID SUBMISSION DATE AND BID OPENING DATE

3.4.1. The bidding methodology adopted for this Project shall be Single Stage Two bid system i.e. the Bidders shall upload their Project proposals (Both Techno-Commercial and Financial Bids within due date and time) in line with this NIT document.

3.4.2. The last date for submission of bids is indicated in the Bid Information Sheet. No bids shall be accepted after the date and time mentioned above.

3.4.3. Techno-Commercial bids shall be opened as per the schedule indicated on the Bid Information Sheet. Date of opening of financial bids shall be notified on BHEL's website after short listing of eligible Bidders based on Techno-Commercial bid evaluation.

3.5. PROJECT SCOPE AND TECHNOLOGY SELECTION:

3.5.1. The SPD shall set up a Solar PV Power Project of 900 KWp Capacity including setting up of the evacuation network up to the BHEL building local switchgear panels.

3.5.2. The roofs identified for the project shall be made available to the SPD by BHEL, given under "Right-to-Use based" to the SPD. The SPD shall set up a roof top Solar PV Power Project



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including setting up of the evacuation network up to the nearest electrical network owned by BHEL, on Build Own Operate & Transfer (BOOT) basis, at SPD's own cost. The SPD shall also provide metering arrangement at/near the Delivery point as per the BESCOM/CEA Metering Regulations, 2006 and its latest amendments.

- 3.5.3. The roofs shall not be used for any other purpose other than the purpose mentioned above.
- 3.5.4. All the necessary permits and licenses required for construction and operation of the Solar Power Plant shall be obtained by the SPD. The roofs for the Project shall be made available to the Project developer on 'as-is where-is basis', by BHEL through "Right-to-Use based on free of cost".
- 3.5.5. The SPD shall make necessary arrangement for meeting water requirement for power project. The SPD shall make necessary arrangements for tapping water from the nearest water source available with BHEL. This water shall be provided on chargeable basis.
- 3.5.6. All permits and clearances required for setting up the Project including those required from State/central Government and local bodies shall be in the scope of the SPD. However, BHEL will arrange for the Connectivity Letter from concerned authorities to the SPD.

3.6. CAPACITY OF THE PROJECT:

- 3.6.1. Solar power Project shall be of 900 KWp capacity at delivery point i.e. at the interconnection point of 415V system at local switchgear panel of respective SBD building.
- 3.6.2. The SPD shall demonstrate the contracted capacity at the delivery point, as defined in the Commissioning procedure enclosed in Annexure-B. It may be noted that the bidders are required to bid for the entire capacity of the Project and part capacity allocation is not envisaged in this NIT.

3.7. SELECTION OF SUCCESSFUL BIDDER:

The bidding shall be conducted through an 'e-bidding' followed by e-reverse auctioning process. Refer NIT for e-auction details.

3.8. CONNECTIVITY WITH THE GRID



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- 3.8.1. The plant should be designed for interconnection with the existing 415V LV switchgear system at respective building in BHEL SBD. Please refer the tentative AC SLD (Annexure-A). During execution of the project, bidders are allowed to modify the SLD by adapting effective system with prior approval from BHEL.
- 3.8.2. The Direct Current (DC) from modules will be converted into Alternating Current (AC) by Inverters. The inverter outputs are connected to the Solar LT Panel and The Combined AC output will be connected to BHEL's Distribution Board installed inside the building. The main components of solar PV grid interactive power plants are
- I. Solar modules or array
 - II. Interconnecting Wiring
 - III. Inverter to convert DC voltage to AC voltage
 - IV. Inverter Output to Solar LT Panel MCCB
 - V. Solar LT Panel Output to Customer LT Panel
- 3.8.3. The maintenance of full system up to the Inter-Connection Points shall be the responsibility of the SPD.
- 3.8.4. Reactive power charges, if required, as per BESCOM/CERC/SERC regulations shall be payable by SPD as per provisions of PPA.
- 3.8.5. Metering arrangement of project shall have to be adhered to in line with relevant clause of PPA.

3.9. POWER GENERATION BY SOLAR PROJECT DEVELOPER

3.9.1. CRITERIA FOR GENERATION

- 3.9.1.1. The SPD will declare the minimum annual CUF of the Project at the time of submission of response to NIT as per the table at Annexure – J, which shall be allowed to be modified at the time of signing of PPA if the modified CUF is more than the minimum CUF as mentioned in Annexure – J. Thereafter, the CUF for the Projects shall remain unchanged for the entire term of the PPA. The declared annual CUF shall in no case be less than the CUF mentioned as per the table in Annexure – J.
- 3.9.1.2. SPD shall maintain generation so as to achieve annual CUF value as mentioned in the table as per Annexure – J till the end of the PPA duration of 25 years. The minimum CUF as



mentioned for each year will, however, be relaxable by BHEL for that year to the extent of non-availability of grid for evacuation which is beyond the control of the SPD. The annual CUF will be calculated every year from 1st April of the year to 31st March next year.

3.9.2. SHORTFALL IN GENERATION

- 3.9.2.1. If for any Contract Year, it is found that the SPD has not been able to generate minimum energy corresponding to the value of annual CUF below the lower limit of CUF declared by the SPD, on account of reasons solely attributable to the SPD, such shortfall in performance shall make the SPD liable to pay the compensation as payable to BHEL and shall duly pay such compensation to BHEL.
- 3.9.2.2. The amount of compensation shall be equal to the difference in per unit rate payable by BHEL to DISCOM for the same period and the PPA tariff.
- 3.9.2.3. The determination of compensation shall as per terms of the PPA. This compensation shall be applied to the amount of shortfall in generation during the Contract Year.
- 3.9.2.4. If the SPD is not able to generate minimum energy corresponding to the annual CUF or CUF declared by the SPD on account of reasons solely attributable to the SPD continuously for three years, then the amount of compensation payable shall be doubled over the actual compensation payable for the third year.
- 3.9.2.5. If the SPD is not able to generate minimum energy corresponding to the annual CUF or CUF declared by the SPD on account of reasons solely attributable to the SPD continuously for five years then BHEL reserves the right to terminate PPA without notice and SPD shall cease to have rights on the power plant and shall immediately vacate the premises without any cost liability to BHEL.
- 3.9.2.6. However, this compensation shall not be applicable in the events of Force Majeure identified under the PPA with BHEL, affecting supply of solar power by SPD.



3.9.3. EXCESS GENERATION

- 3.9.3.1. As per the present guidelines of Karnataka Electricity Regulatory Commission (KERC) dated 18.07.2022 “The facility of Net Metering in respect of SRTPV plants shall not be available to the consumers availing power from the other sources/ captive sources through Open Access Mechanism. The consumers shall opt for Gross Metering arrangements or may opt for establishing Captive Plant for self-consumption.” Refer Annexure-L -KERC order for net metering i.e. the energy generated by the Roof Top plant should be consumed by SBD only. The excess energy produced (Expected on Sundays/holidays) will be monitored through Zero export controller. For this, bidirectional meter shall be installed at incomer side, working with a maximum and minimum set point which can be configured through software. The zero export solution polls connected energy meters and inverters to determine the current load and help to use solar as per demanded load. This solution will throttle the power of solar inverters as per building load and there will be no Export to grid.
- 3.9.3.2. However, in case of change in KERC regulations regarding net metering, BHEL reserves the right to change to PPA accordingly.
- 3.9.3.3. While the SPD would be free to install DC solar field as per his design of required output, including his requirement of auxiliary consumption, in case at any point of time, the peak of capacity reached is higher than the rated DC capacity (900KWp) and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity.

3.10. CLEARANCES REQUIRED FROM THE STATE GOVERNMENT AND OTHER LOCAL BODIES

The Solar Project Developer is required to obtain necessary statutory clearances and permits from BESCOM/CERC/SERC as required for setting up the Solar rooftop PV Power Projects.

3.11. EARNEST MONEY DEPOSIT (EMD) AND PERFORMANCE BANK GUARANTEES (PBG)

- 3.11.1. Earnest Money Deposit (EMD) of Rs. 20.00 Lakh in the form as follows and valid for 06 months from the Techno commercial bid opening date, shall be submitted by the Bidders along with their bid, failing which the bid shall be summarily rejected.

The EMD may be accepted only in the following forms:

- (i) Cash deposit as permissible under the extant Income Tax Act (before tender opening)
- (ii) Electronic Fund Transfer credited in BHEL account (before tender opening)



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(iii) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer)

(iv) Fixed Deposit Receipt (FDR) issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL

(v) Insurance Surety Bonds

In addition to above, the EMD amount in excess of Rs Two lakh may also be submitted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee (As per format 6.4B) in such cases shall be valid for atleast six months.

3.11.2. Performance Bank Guarantee (PBG): Bidder selected based on this NIT shall submit Performance Guarantee for a value of Rs. 23.13 lakhs before signing of PPA or 21 days from the date of issue of letter of Intent (LOI) whichever is earlier. The It may be noted that successful Bidders shall submit the Performance Guarantee according to the Format 6.4A from the date of signing of PPA.

3.11.3. The Performance Bank Guarantee shall be submitted in two parts: 1st part for an amount of Rs. 6 Lakh and 2nd part for an amount of Rs. 17.13 lakhs. On submission and successful verification of Performance Bank Guarantee, the DD submitted towards EMD shall be returned by BHEL to the successful Bidder.

3.11.4. The PBG shall be valid for the tenure of PPA on full/renewal basis. The PBG shall preferably be for full tenure of 25 years or shall be submitted in the break up tenure of 10 years +10 years and 5 years only with Auto extension of guarantee clause. The extension of expiry period shall be automatic and the bank guarantee extended for period of up to 25 years. The PBG shall have such provisions in the bank guarantees for automatic extension of the guarantee period.

3.11.5. The Bidder shall furnish the DD against EMD from any of the nationalized / scheduled banks. The SPD shall furnish the PBG from any of the Banks listed at Annexure D.

3.11.6. The format of the PBG 6.4 A and 6.4 B shall be in the form as given and any deviation from the above Formats may result in rejection of the PBG and consequently, the bid/Project.

3.11.7. The SPD selected based on this NIT is required to sign PPA with BHEL within 30 days after the issue LOI. In case, BHEL offers to execute the PPA with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Clause 3.15 of Chapter- 3 or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, then the DD submitted towards EMD shall be forfeited as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.



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3.11.8. The Bank Guarantees have to be executed on non-judicial stamp paper of appropriate value as per Stamp Act relevant to the place of execution. The Bank Guarantees have to be in the name of the Bidding Company/ Lead Member of the Bidding Consortium.

3.11.9. All expenditure towards execution of Bank Guarantees such as stamp duty etc. shall be borne by the Bidders.

3.11.10. In order to facilitate the Bidders to submit the Bank Guarantee as per the prescribed format and in line with the requirements, checklist at Annexure-C has been attached. Bidders are advised to take note of the above checklist while submitting the Bank Guarantees.

3.11.11. After the bidding process is over, BHEL shall release the EMD of the unsuccessful Bidders within 15 days after PPA agreement with the Successful bidder. The PBG of SPD shall be returned to the SPD within 15 days after successful completion of the tenure of the PPA as per terms of PPA.

3.11.12. FORFEITURE OF EMD

The EMD shall be encashed by BHEL in following cases:

- i. If the bidder withdraws or varies the bid after due date and time of bid submission and during the validity of bid;
- ii. In case, BHEL offers to execute the PPA between the Selected Bidder and BHEL, if the Selected Bidder does not submit the requisite documents as per Clause No. 3.19 of, Section-3, Instructions to Bidders (ITB) of NIT or does not execute the PPA within the stipulated time period;
- iii. If after issuance of LOI, it is found that the documents furnished by the bidders as part of response to NIT are misleading or misrepresented in any way.

3.12. POWER PURCHASE AGREEMENT

3.12.1. BHEL shall enter into Power purchase agreement (PPA) with the Bidder selected based on this NIT. A format of Power Purchase Agreement to be executed between BHEL and the selected SPD as per annexure-M. The terms & conditions are given in detailed in PPA format. Any contradiction in terms between Chapter-3 of this specification and PPA format terms & Conditions, PPA terms & conditions shall supersede. Bidder is requested to go through PPA



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format thoroughly and make their offer accordingly. The PPA shall be signed within 30 days of the date of issue of Letter of Intent (LOI)/Work order. The PPA shall be valid for a period of 25 years from the date of signing as per the provisions of PPA.

- 3.12.2. The Performance Bank Guarantee as per NIT, shall be submitted by the SPD prior to signing of PPA of the project. Before signing of PPA with the selected Bidder for the project. BHEL will verify the documents furnished by the Bidder at the time of submission of response to NIT including the shareholding of the Project Company along with a copy of complete documentary evidence supported with the original documents. Bidders will be required to furnish the documentary evidence for meeting the NIT Qualification Requirement and financial requirements mentioned elsewhere in NIT. If at this stage it is found that the documents furnished by the Bidder are false/ misleading or misrepresented in any way then the provisions contained in this NIT will be applicable.
- 3.12.3. Any extension of the PPA period beyond 25 years shall be through mutual Agreement between the Solar Project Developer and BHEL.
- 3.12.4. Successful bidders will have to submit the required documents to BHEL within 21 days from the issue of LOI. In case of delay in submission of documents beyond the 21 days as mentioned above, BHEL shall not be liable for delay in verification of documents and subsequent delay in signing of PPA.
- 3.12.5. Irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on 30th day from the date of issuance of LOI for the projects. In extraordinary cases of unavoidable delays on the part of BHEL in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.
- 3.12.6. In case of termination of agreement (premature or after completion of 25 years), the SPD will remove the assets from allocated land within 90 days, failing which, the infrastructure will be the property of BHEL. Cost of removal the assets shall be recovered from vendor PBG.

3.13. FINANCIAL CLOSURE OR PROJECT FINANCING ARRANGEMENTS

- 3.13.1. The Project shall achieve Financial Closure within 03 (Three) months from the Effective Date of the Power Purchase Agreement (PPA) (for e.g. if Effective Date of the PPA is 01-06-2023, then scheduled Financial Closure date shall be 01-09-2023). At this stage, the SPD shall report 100%



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tie-up of Financing Arrangements for the Projects. In this regard the SPD shall submit a certificate from all financing agencies regarding the 100% tie-up of total cost indicated for the Project.

- 3.13.2. In case of delay in achieving above condition as may be applicable, BHEL shall encash Performance Bank Guarantees, unless the delay is on account of delay from BHEL, or due to Force Majeure as per PPA. An extension maximum of One Month from scheduled Financial Closure date can however be considered, on the sole request of SPD, on advance payment of extension charges of INR 1000/- per day per MW+18% GST. This extension will not have an impact on the Scheduled Commissioning Date of the Projects. Subsequent to the completion of deadline for achieving financial closure, BHEL shall issue notices to the SPD of not meeting the requirements of Financial Closure as per the NIT deadlines. The notice shall provide a period of 7 business days to the SPD to either furnish the necessary documents or make the above-mentioned payment of INR 1,000/ MW/ day+18% GST. In case of non-submission of either the requisite documents or the necessary amount upon expiry of the above-mentioned notice period of 7 days, BHEL shall encash the PBG of the SPD and terminate the PPA. The amount of INR 1000/ MW/ day+18% GST shall be paid by the SPD in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the SPD. In case of the SPD meeting the requirements of Financial Closure before the last date of such proposed delay period, the remaining amount deposited by the SPD shall be returned by BHEL.
- 3.13.3. Interest on account of delay in deposition of the above-mentioned charges or on any subsequent extension sought, shall be levied @ one-year RBI Repo rate/annum +18% GST on pro-rata basis. Any extension charges paid so, shall be returned to the SPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date.
- 3.13.4. The SPD will have to submit the required documents to BHEL at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, BHEL, shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.
- 3.13.5. No interest shall be payable by BHEL on earnest money or security deposit or any money due to the SPD/Bidder by BHEL.

3.14. COMMISSIONING



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The Commissioning of the Project shall be carried out by the SPD selected based on this NIT, in line with the Procedure elaborated in draft PPA document Commissioning Procedure at Annexure-B-1 and Commissioning certificate shall be issued by BHEL after successful commissioning.

I. PART COMMISSIONING

There shall be no Part Commissioning allowed for the Project.

II. COMMISSIONING SCHEDULE AND LIQUIDATED DAMAGE FOR DELAY IN COMMISSIONING

The project shall be commissioned within 3 months from the effective date of PPA. In this regard, BHEL will physically inspect and certify successful commissioning of the Project. In case of failure to achieve any of the milestones, provisions of PPA as mentioned below shall apply:

BHEL shall encash the Performance Bank Guarantee in the following manner:

- a) Delay in commissioning beyond the scheduled commissioning date up to one month – part of the PBG amounting to Rs. 6 Lakh shall be encashed, proportionally calculated on per-day basis.
- b) Delay of more than one month and up to three months: BHEL will encash the remaining PBG (Rs. 17.13 Lakh), proportionally calculated on per day basis for delay up to another two months.
- c) In case of part or full encashment of PBG as per NIT conditions, the PBG shall be replenished to the full amount as per NIT. All the charges for the replenishment/renewal shall be borne by the SPD.
- d) In case the commissioning of the Project is delayed by more than 3 months after scheduled commissioning date, i.e. beyond 6 months from effective date of PPA, BHEL reserves the right to terminate the PPA and cancel the Project.
- e) For the purpose of calculations for penalty, the month shall be considered consisting of 30 days.



iii. EARLY COMMISSIONING

The SPD shall be permitted for full commissioning of the Project even prior to the Scheduled Commissioning Date (SCD). In case the entire capacity is commissioned prior to the Scheduled Commissioning Date, BHEL may purchase the generation at PPA Tariff. However, early commissioning of the Project and subsequent energy procurement from the same shall be subject to the approval of BHEL.

iv. COMMERCIAL OPERATION DATE (COD)

Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project. The 25-year tenure of PPA shall be as per the provisions of PPA.

v. OBLIGATION ON EXPIRY OF THE AGREEMENT

At the end of the Term of the Agreement, ownership of the assets will be decided at the time of completion of contract. Vendor shall have to offer two options (both the options will be free of cost):

- a) Vendor will remove the complete setup of 900KWp Solar Plant.
- b) Vendor will hand over the 900KWp Solar power plant in working condition to BHEL SBD.

Both the options will be available. BHEL reserves the right to choose and will be decided at the time of completion of contract period.

3.15. MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY PROJECT PROMOTER

3.15.1. The Bidder shall provide complete information in their bid in reference to this NIT about the Promoters and upon issuance of LoI, the SPD shall indicate its shareholding in the company indicating the controlling shareholding before signing of PPA with BHEL.

3.15.2. No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to NIT till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

3.15.3. Following shall not be considered as change in shareholding as mentioned above:

- a. Infusion of Fresh equity capital amongst the existing shareholders/promoters at the time of Bid Submission to meet equity requirements.



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- b. Conversion of CCDs, CCPs etc. already issued to existing shareholders.
 - c. Death, marriage, Divorce, minor attaining major (any legal heir who was minor at the time of signing of PPA), insolvent, insane of existing shareholders.
 - d. Transfer of shares within the members of Promoter Group.
 - e. Transfer of shares to IEPF.
 - f. Issue of Bonus Shares
- 3.15.4. In case of SPVs: The successful Bidder, if being a single company, shall ensure that its shareholding in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 01 (One) year from the COD, except with the prior approval of BHEL.
- 3.15.5. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 01 (One) year from COD, except with the prior approval of BHEL. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- 3.15.6. In case of the successful Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 01 (One) year from the COD, except with the prior approval of BHEL. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- 3.15.7. In case of companies having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.
- 3.15.8. Any change in the shareholding after the expiry of 1 year from COD can be undertaken under intimation to BHEL. Transfer of controlling shareholding of the company developing the project within the same group of companies will however be allowed after COD with the permission of BHEL, subject to the condition that, the management control remains within the same group of companies.
- 3.15.9. In the event of Change in Shareholding/ Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of INR 10 Lakh per



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MW +18% GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to BHEL.

3.16. STRUCTURING OF THE BID SELECTION PROCESS

The bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit single response to NIT. Single stage, two bidding followed by e-reverse auction has been envisaged under this NIT. Bidders have to submit both Techno-commercial bid and Financial bid together in response to this NIT online. The preparation of bid proposal has to be in the manner described in Clause 3.19. Detailed instructions to be followed by the bidders for online submission of response to NIT are stated at **Annexure -E.**

Online submission of bid proposals by Bidders in response to NIT shall be in the manner described below:

1. Covering Letter as per Format 6.1.
2. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium in original as per Format 6.2. In the event any Member of the Bidding Consortium (other than Lead Member) is a foreign entity, it may submit Board Resolutions in place of Power of Attorney for the purpose of fulfilling the requirements under this clause. Provided that such Board Resolutions shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board Resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.
3. Earnest Money Deposit (EMD).
4. Format for Financial Requirements as per Format 6.3 along with the certificate from practicing Chartered Accountant/ Statutory Auditors showing details of computation of the financial credentials of the Bidder.
5. Performance Bank Guarantee (to be submitted by the successful bidder at the time of signing of PPA) in the form as per Format 6.4.
6. Board Resolutions, as per prescribed formats enclosed as Format 6.5 duly certified by the Company Secretary or the Director of the relevant Bidder, as applicable to the Bidder and mentioned hereunder:
 - a. Board resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the response to NIT and in the event of selection of the Project, to sign the PPA with BHEL and Board Resolution from each of the Consortium Members in favour of the person signing Consortium Agreement.



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b. Board Resolution from the Bidding Company committing one hundred percent (100%) of the equity requirement for the Project/ Board Resolutions from each of the Consortium Members together in aggregate committing to one hundred percent (100%) of equity requirement for the Project (in case of Bidding Consortium); and

c. Board Resolutions from each of the Consortium Members and Lead member contributing such additional amount over and above the percentage limit (specified for the Lead Member and other member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions in the Consortium Agreement.

7. In case of a Consortium, the Consortium Agreement between the Members in the Consortium as per Format 6.6 along with Board resolution from each Member of the Consortium for participating in Consortium.

8. Declaration by the Bidding Company for the Proposed Technology break-up as per Format 6.7.

9. Disclosure as per Format 6.8.

10. Covering letter as per Format 6.9.

11. Format for Technical Criteria as per Format 6.10 in line with Clause No. 3.17, Section-III, Instructions to Bidders (ITB) of NIT

12. Details of all types of securities/instruments which are pending conversion into equity whether optionally or mandatorily.

13. No Deviation Certificate as per mentioned in Format – 6.11

14. Preliminary estimate of Cost of the solar PV Project as per Annexure-I.

15. Attachments

a. Memorandum of Association, Article of Association and Certificate of Incorporation of the Bidding Company/all member Companies of the Bidding Consortium needs to be attached along with the bid. The Bidder should also highlight the relevant provision which highlights the objects relating to Power/ Energy/ Renewable Energy/ Solar Power plant development.

b. In case, there is no mention of the above provisions in the MOA/ AOA of the bidding company, the same has to be amended and submitted prior to signing of PPA, if the bidder is selected as Successful bidder. • If the selected bidder wishes to execute the project through a Special Purpose Vehicle (SPV), the MOA/ AOA of the SPV highlighting the relevant provision which highlights the objects relating to



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Power/ Energy/ Renewable Energy/ Solar Power plant development has to be submitted prior to signing of PPA.

c. Copy of the NIT document along with all amendments and clarifications, duly stamped and signed on each page by the Authorized Signatory of the Bidder.

d. A certificate of shareholding of the bidding company duly certified by a practicing Chartered Accountant/ Company Secretary as on the bid submission date.

e. Documents containing information about the Promoters and their shareholding in the Company to BHEL indicating the controlling shareholding as on 7 days prior to last date of bid submission, at the stage of submission of response to NIT to BHEL as per Clause 3.19 of Section-3 The bidder shall be required to submit a certificate indicating shareholding patterns of its Parent Company and Ultimate Parent Companies too (if any), as on the date 7 days prior to the last date of bid submission, duly certified by a practicing Chartered Accountant/ Company Secretary.

f. Certified copies of annual audited accounts for the last financial year, i.e. FY 2022-23, In case of a newly formed company, then the certificate issued by a Chartered Accountant with certified copy of Balance sheet, Profit & Loss account as on 7 days prior to bid submission, Schedules and cash flow statement supported with bank statement.

3.17. IMPORTANT NOTES AND INSTRUCTIONS TO BIDDERS

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

3.17.2. The Bidders shall be shortlisted based on the declarations made by them in relevant schedules of NIT. The documents submitted along with the bid may be verified before signing of PPA in terms of Clause 3.15.

3.17.3. If the Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its response to NIT, in any manner whatsoever, BHEL reserves the right to reject such response to NIT and/or cancel the Letter of Intent, if issued and the EMD/Bank Guarantee provided up to that stage shall be forfeited/encashed. Bidder shall be solely responsible for disqualification based on their declaration in the submission of response to NIT.

3.17.4. If the event specified at Clause 3.17(c) is discovered after the Effective Date of PPA, consequences specified in PPA shall apply.



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- 3.17.5. Response submitted by the Bidder shall become the property of the BHEL and the BHEL shall have no obligation to return the same to the Bidder. However, the EMD submitted by unsuccessful Bidders shall be returned as specified in Clause 3.11.
- 3.17.6. All documents of the response to NIT submitted online must be digitally signed by the person authorized by the Board as per Format 6.2.
- 3.17.7. The response to NIT shall be submitted as mentioned in Clause 3.19. No change or supplemental information to a response to NIT will be accepted after the scheduled date and time of submission of response to NIT. BHEL reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the response to NIT.
- 3.17.8. The bidder shall make sure that the correct, valid Bid-part is submitted to BHEL on or before the commencement of the Online Tender Opening.
- 3.17.9. All the information should be submitted in English language only.
- 3.17.10. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.
- 3.17.11. Responses to NIT that are incomplete, which do not substantially meet the requirements prescribed in this NIT, will be liable for rejection by BHEL.
- 3.17.12. Response to NIT not submitted in the specified formats will be liable for rejection by BHEL.
- 3.17.13. Bidders delaying in submission of additional information or clarifications sought shall be liable for rejection.
- 3.17.14. Non-submission and/or submission of incomplete data/ information required under the provisions of NIT shall not be construed as waiver on the part of BHEL of the obligation of the Bidder to furnish the said data/information unless the waiver is in writing.
- 3.17.15. Only Bangalore Courts shall have exclusive jurisdiction in all matters pertaining to this NIT.

3.18. NON-RESPONSIVE BID

The electronic response to NIT submitted by the bidder to BHEL shall be scrutinized to establish “Responsiveness of the bid”. Each bidder’s response to NIT shall be checked for compliance with the



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submission requirements set forth in this NIT. Any of the following conditions shall cause the Bid to be “Non-responsive”:

- a. Non-submission of EMD in acceptable form along with NIT document.
- b. Response to NIT not received by the due date and time of bid submission;
- c. Non-submission of the original documents by due date and time of bid submission;
- d. Any indication of tariff in any part of response to the NIT, other than in the financial bid.
- e. Data filled in the Electronic form of financial bid not in line with the instructions mentioned in the same electronic form.
- f. In case it is found that the Bidding Company including Ultimate Parent Company/ Parent Company/ Affiliate/ Group Companies have submitted more than one response to this NIT, then all these bids submitted shall be treated as nonresponsive and rejected.

3.19. METHOD OF SUBMISSION OF RESPONSE TO NIT BY THE BIDDER

A. Documents to be submitted Online

1. Detail instructions to be followed by the bidders for online submission of response to NIT as stated as Annexure E and Annexure-F. The bidders shall strictly follow the instructions mentioned in the electronic form in respective technical bid and financial bid while filling the form.
2. All documents in response to NIT submitted online must be Signed/ digitally signed on <https://eprocurebhel.co.in> which should contain the following:

Technical Bid (First Envelope):

The Bidder shall upload single technical bid containing the scanned copy of following documents duly signed and stamped on each page by the authorized person as mentioned below.

- i. Formats- 6.1, 6.2, 6.3, 6.3A, 6.4A and 6.4B, 6.5, 6.6, 6.7, 6.8, 6.9, Annexure-I as elaborated in Clause 3.20;
- ii. All the attachments elaborated in Clause 3.16 of Section-3, under the sub-clause 12, Attachments with proper names.
- iii. All documents (NIT, PPA) digitally signed by the person authorized by the board as per Format 6.4, on behalf of the Bidder.
- iv. All supporting documents regarding meeting the eligibility criteria.



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Financial Bid (Second Envelope):

Bidders shall submit the single Financial Bid.

The tariff bid shall have to be filled online in the Price Bid Format provided at the GePNIC BHEL (Bharat Heavy Electricals Limited, SBD) Portal.

Important Note:

- i. The Bidders shall not deviate from the naming and the numbering formats mentioned above, in any manner.
- ii. The Bidder submits the online documents on GePNIC BHEL (Bharat Heavy Electricals Limited, SBD) Portal within the bid submission deadlines within the bid submission deadlines.

3.20. NOTICE BOARD FOR DISPLAY

Before declaration of the COD, the selected SPD will have to put a notice board (at least 180cm x 120cm) at its project site main entrance prominently displaying the following message before declaration of COD.

900KWp Grid Connected Solar Roof Top PV Project for supply of power to BHEL SBD, Bangalore

Operated by

----- (insert name of the SPD)

LOCATION:

BHEL SBD, MALLESWARAM COMPLEX, BANGALORE-560012

3.21. VALIDITY OF THE RESPONSE TO NIT

The Bidder shall submit the response to NIT which shall remain valid up to One Hundred Eighty (180) days from the last date of submission of response to NIT ("Bid Validity"). BHEL reserves the right to reject any response to NIT which does not meet the afore mentioned validity requirement.

3.22. BID PREPARATION COST

The Bidder shall be responsible for all the costs associated with the preparation of the response to NIT and participation in discussions, site visits and attending pre-bid meeting(s), etc. BHEL shall not be responsible in any way for such costs, regardless of the conduct or outcome of the bid process.

3.23. CLARIFICATIONS/ PRE-BID MEETING/ ENQUIRIES/ AMENDMENTS



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- 3.23.1. Bidders are advised to acquire full knowledge of the NIT, Scope of work, Place of work, Site conditions of the work, working hours, work permit, minimum manpower to be deployed, Labour License, Payment terms & conditions; Payment of Wages, Bonus, PF, ESI as per statute / BHEL norms etc., distribution of PPEs & Uniforms, etc.
- 3.23.2. Clarifications/ Doubts, if any, on NIT document may be emailed to the members as listed elsewhere in the NIT.
- 3.23.3. BHEL will make effort to respond to the same in the Pre-Bid Meeting to be held as mentioned in the Bid Information Sheet. A compiled list of such questionnaire and BHEL response will be uploaded in the website <https://eprocurebhel.co.in> If necessary, amendments, clarifications, elaborations shall be issued by BHEL which will be notified on BHEL/ GePNIC BHEL Portal e-procurement portal. No separate reply/ intimation will be given for the above, elsewhere.
- 3.23.4. Bidders are advised to obtain all kinds of clarifications before closure of bidding. Once bidding is closed or Technical Bids are opened, NO CLARIFICATION(S) / QUERIES IN ANY FORM SHALL BE PERMITTED.
- 3.23.5. A Pre-Bid Meeting shall be held as mentioned in the Bid Information Sheet. Enquiries/ Clarifications may be sought by the Bidder from the details given in NIT above.
- 3.23.6. Clarification(s) / queries raised by the bidder after closure of bidding and before evaluation of the Technical Bids may lead to disqualification of his bid. Price bid of such disqualified bidder shall not be opened and EMD of such disqualified bid shall be forfeited. Tender evaluation shall be continued with remaining bidders.
- 3.23.7. Clarification(s) queries raised by the bidder after opening of Price Bids may lead to disqualification of his bid and EMD of such disqualified bid shall be forfeited.
- 3.23.8. If any bidder raises clarification(s) / queries after opening of Price Bids or after conducting Reverse Auction, offer of such bidder shall be disqualified and disciplinary action against such disqualified bidder shall be initiated as per BHEL Rules. However, Tender evaluation shall be continued with remaining bidders as per BHEL Rules.

3.24. RIGHT OF BHEL TO REJECT A BID

BHEL reserves the right to reject any or all of the responses to NIT or cancel the NIT without assigning any reasons whatsoever and without any liability.



CHAPTER-4: PRE-QUALIFICATION CRITERIA FOR BIDDERS

Short listing of Bidders will be based on meeting the following criteria:

4.1. GENERAL ELIGIBILITY CRITERIA:

- 4.1.1. Companies incorporated in India under the Companies Act 1956 or Companies Act, 2013 including subsequent amendments as applicable.
- 4.1.2. Bidding Consortium with one of the Companies as Lead member. Consortium shortlisted and selected based on this NIT has to necessarily form a Project Company and get it registered under the Companies Act, 2013 prior to signing of PPA, keeping the original shareholding of the Bidding Consortium unchanged. In case applications for multiple Projects have been made by a Consortium, separate Project Companies can be formed for each Project. For the avoidance of doubt, it is hereby clarified that the shareholding pattern of the Project Company shall be identical to the shareholding pattern of the Consortium as indicated in the Consortium Agreement (Format 6.6).
- 4.1.3. In case of foreign company participating on standalone basis and its selection as successful Bidder, it has to form a “Special Purpose Vehicle” (SPV), i.e. an Indian Company registered under the Companies Act, 2013 as its subsidiary Company, with at least 51% shareholding in the SPV, before signing of PPA. In case the foreign company participating as a member of consortium, the clause no. 4.1.7 mentioned below shall be applicable.
- 4.1.4. Limited Liability Companies (LLC) shall be eligible. Further, if such Limited Liability Companies are selected as successful Bidders, they will have to register as a Company under the Indian Companies Act, 2013, before signing of PPA, keeping the original shareholding of LLC unchanged. In case the LLC fails to incorporate as an Indian Company before signing of PPA or is not able to sign the PPA with BHEL, EMD of such Bidders shall be forfeited.
- Note: Limited Liability Companies (LLC) shall be eligible only which are formed by Companies.**
- 4.1.5. Limited Liability Partnership (LLPs) are not eligible for participation.
- 4.1.6. A Bidder which has been selected as Successful Bidder based on this NIT can also execute the Project through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated/acquired as a subsidiary Company of the successful bidder for setting up of the Project, with at least 51% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of PPA. A Bidder which has been selected as Successful



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Bidder based on this NIT can also execute the Project through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated/acquired as a subsidiary Company of the successful bidder for setting up of the Project, with at least 51% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of PPA.

- 4.1.7. Any consortium, if selected as Successful Bidder for the purpose of supply of power to BHEL, shall incorporate a Project company with equity participation by the Members in line with consortium agreement before signing of PPA with BHEL, i.e. the Project Company incorporated shall have the same shareholding pattern as that indicated in the Consortium Agreement given at the time of submission of response to NIT. This shall not change till the signing of PPA and the Controlling Shareholding (held by the Lead Member holding not less than 51% of the voting rights and paid up share capital) shall not change from submission deadline of response to NIT up to one year after the COD of the Project. Transfer of controlling shareholding within the same group of companies will however be allowed after COD with the permission of BHEL, subject to the condition that, the management control remains within the same group of companies.
- 4.1.8. The Bidder or any of its Affiliates should not be a willful defaulter to any lender, and that there is no major litigation pending or threatened against the Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project. The Bidder shall submit an undertaking to this effect.
- 4.1.9. For avoidance of doubt, it is clarified that the fully owned subsidiary Company as mentioned in Clauses 4.1.3 and 4.1.6 above should be an immediate 51% subsidiary of the bidder, without any intermediaries involved. The following illustrations are provided to clarify the same:

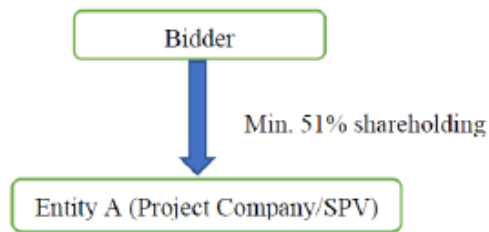


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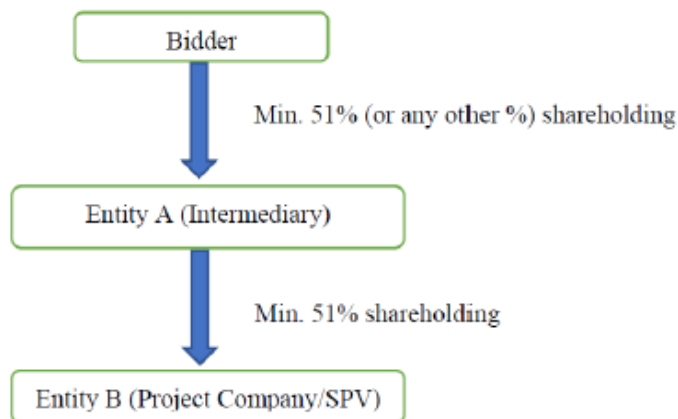
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Scenario 1:



Scenario 2:



4.1.10. As per the NIT conditions, only Scenario 1 is permissible in case of projects being implemented by SPVs.

4.2. TECHNICAL ELIGIBILITY CRITERIA

4.2.1. Under this NIT, it is proposed to promote only commercially established and operational technologies to minimize the technology risk and to achieve timely commissioning of the Projects. The Bidder may indicate regarding the selection of technology and its details at the time of submission of bids in the prescribed Format 6.7. However, the Successful Bidder has to confirm the selection of technology in line with the above at the time of Financial Closure. The technology proposed at the time of submission of response to NIT can be changed at the time of Financial Closure.

4.2.2. The Bidder is required to undertake to furnish evidence of meeting the above criteria in line with provisions of Clause No. 3.13 Section-3 under the sub title “Financial Closure” in Section-III, Instructions to Bidders (ITB) of NIT. The undertaking shall be submitted as per enclosed Format 6.9.



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4.2.3. Detailed technical parameters for Solar PV Projects to be met by SPD are at Annexure-B. The Bidders shall strictly comply with the technical parameters detailed in the Annexure-B. Further, the cells and modules used in the Project shall be sourced only from the models and manufacturers included in the “Approved List of Models and Manufacturers” as published by MNRE updated as on the date of signing of PPA for the Project.

4.2.4. The Projects shall also comply with the criteria for power generation detailed in Clause No. 3.9.

4.2.5. The bidder should have established Roof Top Solar Power Plants of Capacity as following and should have operated and maintained the same solar power plants in the last 07 (Seven) Financial Years prior to the bid submission deadline:

The bidder should have established & Maintain one Roof Top Solar Power Plants of Capacity not less than 720 KWp

(OR)

The bidder should have established & Maintain two Roof Top Solar Power Plants of Capacity not less than 500 KWp

(OR)

The bidder should have established & maintain three Roof Top Solar Power Plants of Capacity not less than 360 KWp

And

The Solar PV Power Plants must be commissioned and should be operating satisfactorily for a period not less than 1 year.

The bidder shall furnish work completion certificate as proof of document for the establishment and experience certificate from End Customer for Operation & Maintenance as mentioned above.

4.2.6. In case of the Bidder being a Bidding Consortium, any Member may provide the above work completion certificate and experience certificate on behalf of the Affiliate(s). In such cases, the Bidder shall be required to submit Board Resolutions from the respective Affiliate(s) for submitting the above documents on the behalf of its affiliate(s)

4.2.7. Failure to provide the documents mentioned at above Clause shall lead to rejection of the offer.



4.3. FINANCIAL ELIGIBILITY CRITERIA

4.3.1. NET-WORTH

- a. The Net Worth of the Bidder should be equal to or greater than Rs. 240.94 lakhs, as on the last date of previous Financial Year, i.e. FY 2022-23 or on the date (i.e. NIT opening date).
- b. The net worth to be considered for the above purpose will be the cumulative net-worth of the Bidding Company or Consortium together with the Net Worth of those Affiliates of the Bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the Bidder(s) fail to do so in accordance with the NIT.
- c. Net Worth to be considered for this clause shall be the total Net Worth as calculated in accordance with the Companies Act, 2013 and any further amendments thereto.
- d. Net worth means the sum total of the paid-up share capital and free reserves. Free reserves mean all reserves credited out of the profits and share premium account but does not include reserves credited out of the revaluation of the assets, write back of depreciation provision and amalgamation. Further, any debit balance of Profit and Loss account and miscellaneous expenses to the extent not adjusted or written off, if any, shall be reduced from reserves and surplus.

4.3.2. LIQUIDITY

In order to ascertain that the Bidder has sufficient means to manage the fund requirements for the Project, the Bidder shall be required to demonstrate at least one of the following parameters:

- a. A minimum annual average turnover of Rs. 481.89 lakhs during the last three financial years, i.e., 2022-23, 2021-22, and 2020-21. It is hereby clarified that “Other Income” as indicated in the annual accounts of the Bidder shall not be considered for arriving at the annual turnover.
- b. In-principle sanction letter from the lending institutions/ banks of the Bidder, committing a Line of Credit for a minimum amount of Rs. 301.18 Lakhs, towards meeting the working capital requirement of the project quoted under this NIT. Such letter can also be obtained by the Affiliate(s) of the Bidder.

- 4.3.3. The Bidder may seek qualification on the basis of financial capability of its Affiliate(s) for the purpose of meeting the qualification requirements as per 4.3.1 and 4.3.2 above. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Affiliate(s). In such cases, the Bidder shall be required to submit Board Resolutions from the respective Affiliate(s), undertaking to contribute the required equity funding and Performance Bank Guarantees in case the Bidder(s) fail to do so in accordance with the NIT. In case of non-availability of the Board Resolution as required above, a letter from the CEO/



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Managing Director of the respective Affiliate(s), undertaking the above, shall be required to be submitted and the requisite Board Resolution from the Affiliate(s) shall be required to be submitted prior to signing of PPA.

4.3.4. For the purposes of meeting financial requirements, only latest unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty-six percent (26%) equity in each Company whose accounts are merged in the audited consolidated account.

4.3.5. A Company/ Consortium would be required to submit annual audited accounts for the last financial year, i.e. FY 2022-23, along with net worth, annual turnover and PBDIT certificate (as applicable) from a practicing Chartered Accountant/ Statutory Auditor to demonstrate fulfilment of the criteria. In case of foreign companies, the Bidders shall be required to submit the annual audited accounts for the last respective financial year as per the general norm in the country where the Bidder or its Affiliate(s) is/ are located.

Note: In case of foreign Bidders, in the event the Bidder is unable to furnish the audited annual accounts for the previous financial year as per the prevalent norm in the respective country, the Bidder shall submit the annual audited accounts of the last financial year for which the audited accounts are available. This, however, would be acceptable, subject to the condition that the last date of response to this NIT falls on or within the deadline for completion of audit of annual accounts of companies, as stipulated by the laws/rules of the respective country, and the Bidder shall submit the corresponding documentary evidence against the same. In case the annual accounts are submitted in a language other than English, a certified English translation from an approved translator shall be required to be submitted by the Bidder.

4.3.6. Deleted

4.3.7. Deleted

4.3.8. In case the response to NIT is submitted by a Consortium, then the financial requirement (both the Net-Worth and Turnover requirements, if applicable) to be met by each Member of the Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company. For example, if two companies A and B form a Consortium with equity participation in 70:30 ratio and submit their bid for a capacity of 5MW, then, total Net-Worth to be met by the Consortium is Rs. 240.94 Lakhs. Minimum requirement of Net-Worth to be met by Lead Member A would be minimum Rs. 168.65 Lakhs and to be met by Consortium Member B would be Rs. 72.28 Lakhs. Similar methodology shall be followed for computation of turnover and other liquidity requirement.



CHAPTER-5: BID EVALUATION AND SELECTION OF PROJECT DEVELOPER

5.1. BID EVALUATION

Bid evaluation will be carried out considering the information furnished by Bidders as per provisions specified in Section-3, Instructions to Bidders (ITB) of this NIT. The detailed evaluation procedure and selection of bidders are described in subsequent clauses in this Section.

5.2. TECHNO-COMMERCIAL EVALUATION OF BIDDERS

5.2.a FIRST ENVELOPE (TECHNICAL BID) EVALUATION (STEP - 1)

- i. The first envelope (Technical Bid submitted online) of only those bidders will be opened by BHEL whose required documents as mentioned at Clause No. 3.19 of this NIT are received on or before the due date and time of bid submission.
- ii. Documents (as mentioned in the previous clause) received after the bid submission deadline specified in the Bid Information Sheet shall be rejected.
- iii. Subject to Clause No. 3.17 of this NIT, BHEL will examine all the documents submitted by the Bidders and ascertain meeting of eligibility conditions prescribed in the NIT. During the examination of the bids, BHEL may seek clarifications/ additional documents to the documents submitted etc. from the Bidders if required to satisfy themselves for meeting the eligibility conditions by the Bidders. Bidders shall be required to respond to any clarifications/ additional documents sought by BHEL within 07 (seven) days from the date of such intimation from BHEL.
- iv. All correspondence in this regard shall be made through email/ BHEL e-procurement portal only. It shall be the responsibility of the Bidder to ensure that the email id of the authorized signatory of the Bidder is functional. The Bidder may provide an additional email id of the authorized signatory. No reminders in this case shall be sent. It shall be the sole responsibility of the Bidders to remove all the discrepancies and furnish additional documents as requested. BHEL shall not be responsible for rejection of any bid on account of the above.
- v. The response to NIT submitted by the Bidder shall be scrutinized to establish Techno-Commercial eligibility as per NIT.

5.2.b SECOND ENVELOPE (FINANCIAL BID) EVALUATION (STEP - 2)

- i. In this step, evaluation of Techno-Commercially Qualified Bid for the project shall be done based on the "First Round Tariff Bid" quoted by the project by the bidders in the Price Bid Format of Financial



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Bid. After this step, the shortlisted bidders shall be invited for the Reverse Auction for the project. Second Envelope (containing First Round Tariff) of only those bidders shall be opened for the project whose technical bids are found to be qualified.

ii. The Bidder including its Parent, Affiliate or Ultimate Parent or any Group Company will have to submit a single bid (single application) per project and quoting a single tariff per kWh for the project. The tariff has to be quoted up to two places of decimal only. If it is quoted with more than two digits after decimal, it shall be ignored after first two decimal places. (For e.g. if the quoted tariff is INR 2.337, then it shall be considered as INR 2.33).

iii. For e.g., if the Bidder has submitted their bids for the Project, then the bidder must quote tariff for the project as per the price bid format on BHEL e-procurement portal.

iv. In this step, evaluation will be carried out for the Project based on tariff quoted by Bidders.

v. If the first-round tariff quoted is same for two or more Bidders for the project, then all the Bidders with same tariff shall be considered of equal rank/ standing in the order.

vi. Ranking of bidders after Financial Bid Evaluation: Following illustrates an example of ranking of bidders after financial bid opening and evaluation.

vii. Quoted Tariff must be applicable for sale of Solar Power to BHEL. Bidder to provide the Quoted Tariff up to 2 decimal places.

viii. Quoted Tariff shall be fixed for complete PPA tenure.

ix. The above Quoted Tariff is inclusive of all applicable Taxes and duties. However, if any new change in tax/duty is affected in the period after the Bid Deadline and any time during the period of Agreement, the same will be passed on the Power Producer.

5.3. REVERSE AUCTION (STEP - 3)

BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among the techno- commercially qualified bidders.

5.4. SELECTION OF SUCCESSFUL BIDDERS

5.4.1. The bidders shall be selected in the ascending order with lowest quoted tariff (being L1) for the project.



- 5.4.2. At the end of selection process, a Letter of Intent (LOI) will be issued to the successful Bidders for the Project. In case of a Consortium being selected as the successful Bidder, the LOI shall be issued to the Lead Member of the Consortium. In all cases, BHEL's decision regarding selection of Bidder through e-Reverse Auction or other- wise based on tariff or annulment of tender process shall be final and binding on all participating bidders for the project.

5.5. LIMITATION OF LIABILITY

- 5.5.1. Except as provided otherwise in the Contract and except for willful misconduct or gross negligence, neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or any other indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract. Neither party liability for any direct damages resulting from its performance or failure to perform here under shall not exceed the total contract price.
- 5.5.2. However, that this limitation shall not apply to the cost of repairing or replacing defective equipment by the bidder, or to any obligation of the bidder to indemnify the BHEL with respect to Intellectual Property Rights or Under any other provisions of the Contract which expressly impose a greater liability or in cases of fraud, willful misconduct or illegal or unlawful acts.
- 5.5.3. In case of contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:
- "In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No 4(1)/2013-DPE(GM/FTS 1835 dated 22 05-2018".

5.6. ARBITRATION & CONCILIATION CLAUSE:

- 5.6.1. The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.



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- 5.6.2. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof
- 5.6.3. Except as provided elsewhere in this contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the contract; or, the respective rights and liabilities of the parties; or, in relation to interpretation of any provision of the contract; or, in any manner touching upon the contract, then, either party may, by a notice in writing to the other party refer such dispute or difference to the sole arbitration of an arbitrator appointed mutually by both the parties." Appointment by head of one of the parties has been deemed illegal by Supreme Court in various judgments.
- 5.6.4. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.
- 5.6.5. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause, the seat of arbitration shall be at Bangalore.
- 5.6.6. The cost of arbitration shall be borne as per the award of the Arbitrator.
- 5.6.7. Subject to the arbitration in terms of above clause, the courts at Bangalore, Karnataka State shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.
- 5.6.8. Notwithstanding the existence or any dispute or differences and / or reference for the arbitration, the contractor shall proceed with and continue without hindrance the performance of its obligations under this contract with due diligence and expedition in a professional manner except where the contract has been terminated by either party in terms of this contract.



CHAPTER-6: FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the NIT. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Section 4 and other submission requirements specified in the NIT.

- I. Format of Covering Letter (Format 6.1)
- II. Format for Power of Attorney (Format 6.2)
- III. Format for Financial requirement (Format 6.3)
- IV. Format for Performance Bank Guarantee for SD (Format 6.4A)
- V. Format for Performance Bank Guarantee for EMD (Format 6.4B)
- VI. Format for Board Resolutions (Format 6.5)
- VII. Format for the Consortium Agreement (Format 6.6)
- VIII. Format for Technology break-up (Format 6.7)
- IX. Format for Disclosure (Format 6.8)
- X. Format for financial proposal 6.9
- XI. Format for technical criteria 6.10
- XII. No deviation 6.11
- XIII. Format for Site Inspection 6.12
- XIV. Format for Integrity Pact
- XV. Format for Preliminary estimate of cost of Solar PV Power Project (Annexure-I)

The Bidder may use additional sheets to submit the information for his detailed response.



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FORMAT 6.1 FORMAT FOR COVERING LETTER

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

From: _____ (Insert name and address of Bidding Company)

Tel. #:

Fax #:

E-mail address #

Date: _____

Reference No: _____

To

Sr. Manager (WCC)

BHEL-SBD, Prof CNR Rao Circle, IISc Post

Malleswaram, Bengaluru- 560 012

Subject: Response to NIT No-----dated ----- for development of 900 KWp Solar Roof Top PV Project

Dear Sir,

We, the undersigned [insert name of the 'Bidder'] having read, examined and understood in detail the NIT including Qualification Requirements in particular, terms and conditions of the standard PPA for supply of power for 25 years to BHEL, hereby submit our response to NIT. We confirm that in response to the aforesaid NIT, we, including our Ultimate Parent Company / Parent Company / Affiliate / Group Companies directly or indirectly have not submitted more than one response to NIT including this response to NIT. We are submitting application for Setting up of 900 KWp solar Rooftop Power plant at Bharat Heavy Electricals Limited, SBD, Bangalore.

1. We give our unconditional acceptance to the NIT, dated [Insert date in dd/mm/yyyy], standard PPA attached thereto, issued by BHEL. In token of our acceptance to the NIT, PPA and the same have been signed by us and enclosed with the response to NIT. We shall ensure that the PPA are executed as per the provisions of the NIT, provisions of PPA shall be binding on us. Further, we confirm that the Project shall be commissioned as per the provisions of the NIT/PPA.

2. VOID.

3. We have enclosed EMD of Rs. (Insert Amount), in the form [Insert detail] dated [Insert date] from [Insert name of bank] and valid up to.....in terms of Clause



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3.14 of this NIT. 4. We have submitted our response to NIT strictly as per Section – 6 (Formats) of this NIT, without any deviations, conditions and without mentioning any assumptions or notes in the said Formats.

4. Acceptance – We hereby unconditionally and irrevocably agree and accept that the decision made by BHEL in respect of any matter regarding or arising out of the NIT shall be binding on us. We hereby expressly waive and withdraw any deviations and all claims in respect of this process.

5. Familiarity with Relevant Indian Laws & Regulations - We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this response to NIT, execute the PPA in the event of our selection as Successful Bidder.

6. We are enclosing herewith our response to the NIT with formats duly signed as desired by you in the NIT for your consideration.

7. It is confirmed that our response to the NIT is consistent with all the requirements of submission as stated in the NIT and subsequent communications from BHEL.

8. The information submitted in our response to the NIT is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our response to the NIT.

9. We confirm that all the terms and conditions of our Bid are valid up to _____ (Insert date in dd/mm/yyyy) for acceptance (i.e. a period of one hundred eighty (180) days from the last date of submission of response to NIT).

10. Details of the representative to be contacted by BHEL are furnished as under:

1. Name:

2. Designation:

3. Company:

4. Address:

5. Phone Nos.:

6. Mobile Nos.:

7. E-mail address:

11. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree that the same would be treated as a Seller's event of default under PPA agreement and consequent provisions of PPA agreement shall apply.



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Dated the _____ day of _____, 2024

Thanking you,

Yours faithfully,

(Name, Designation and Signature of Person authorized by the Board)



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FORMAT 6.2: FORMAT FOR POWER OF ATTORNEY

(Applicable only in case of Consortiums)

(To be provided by each of the other members of the Consortium in favor of the Lead Member)

POWER OF ATTORNEY

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

KNOW ALL MEN BY THESE PRESENTS THAT M/s..... having its registered office at,and M/s having its registered office at, (Insert names and registered offices of all Members of the Consortium) the Members of Consortium have formed a Bidding Consortium named (insert name of the Consortium if finalized) (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 ofand having its Registered /Head Office atas our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the response to NIT No..... . We also authorize the said Lead Member to undertake the following acts:

- a) To submit on behalf of Consortium Members response to NIT.
- b) To do any other act or submit any information and document related to the above response to NIT Bid.

It is expressly understood that in the event of the Consortium being selected as Successful Bidder, this Power of Attorney shall remain valid, binding and irrevocable until the Bidding Consortium achieves execution of PPA. We as the Member of the Consortium agree and undertake to ratify and confirm all whatsoever the said Attorney/Lead Member has done on behalf of the Consortium Members pursuant to this Power of Attorney and the same shall bind us and deemed to have been done by us.

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

For and on behalf of Consortium Member

M/s.....

----- (Signature of person authorized by the board)

(Name

Designation

Place:

Date:)



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Accepted

(Signature, Name, Designation and Address of the person authorized by the board of the Lead Member)

Attested

(Signature of the executant)

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

Place:-----

Date:-----

Note: - Lead Member in the Consortium shall have the controlling shareholding in the Company as defined in Chapter 2 of the NIT.



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FORMAT 6.3 FORMAT FOR FINANCIAL REQUIREMENT

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

Ref. No. _____

Date: _____

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

Tel. #:

E-mail address#

To

Sr. Manager (WCC)

BHEL-SBD, Prof CNR Rao Circle, IISc Post

Malleswaram, Bengaluru- 560 012

Subject: Response to NIT No-----dated ----- for development of 900 KWp Solar Roof Top PV Project

Dear Sir/ Madam,

We certify that the Bidding Company/ Member in a Bidding Consortium has a Net Worth of INR Crore (.....in words) as on the end of Financial Year 2022-23. This Net Worth has been calculated in accordance with instructions provided in Clause No. C1, Section-IV, Qualifying Requirements (QR) of the NIT as amended.

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the Net Worth by Bidding Company and/ or its Affiliate(s) as per following details:

| Name of bidding company | Name of bidding company | Name of bidding company | Name of bidding company |
|-------------------------|-------------------------|-------------------------|-------------------------|
| Company 1 | | | |
| TOTAL | | | |

The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format. **Exhibit (ii): Applicable in case of Bidding Consortium (To be filled by each Member in a Bidding Consortium separately)**



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Name of Member: [Insert name of the Member]

PBDIT Requirement to be met by Member in Proportion to the Equity Commitment: INR ----- --
Crore (Equity Commitment (%) * Rs. [] Crore) For the above calculations, we have considered PBDIT
by Member in Bidding Consortium and/ or its Affiliate(s) as per following details:

| Name of Consortium Member Company | Name of Affiliate(s) whose PBDIT is to be considered | Relationship with Bidding Company* (If Any) | PBDIT (in Rs. Crore) | Equity Commitment (in %age) in Bidding Consortium | Proportionate PBDIT (in Rs. Crore) |
|-----------------------------------|--|---|----------------------|---|------------------------------------|
| Company 1 | | | | | |
| Company 2 | | | | | |
| TOTAL | | | | | |

* The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format Further, we certify that the Bidding Company/ Member in the Bidding Consortium has an Annual Turnover of INR _____ (_____in words) as on the end of Financial Year 2022-23

(Strike out if not applicable)

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the Annual Turnover by Bidding Company and/or its Affiliate(s) as per following details:

| Name of bidding company | Name of Affiliate(s) whose Annual Turnover is to be considered | Name of bidding company | Name of bidding company |
|-------------------------|--|-------------------------|-------------------------|
| Company 1 | | | |
| TOTAL | | | |

*The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format. **Exhibit (ii): Applicable in case of Bidding Consortium**



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

Name of Member: [Insert name of the Member]

Annual Turnover Requirement to be met by Member in Proportion to the Equity Commitment: INR ----
-----Crore (Equity Commitment (%) * Rs. [] Crore) For the above calculations, we have considered
Annual Turnover by Member in Bidding Consortium and/ or its Affiliate(s) as per following details:

| Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company |
|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Company 1 | | | | | |
| Company 2 | | | | | |
| TOTAL | | | | | |

* The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format Further, we certify that the Bidding Company/ Member in the Bidding Consortium has a Profit Before Depreciation Interest and Taxes (PBDIT) of INR _____(in words) as on the end of Financial Year 2022-23. (Strike out if not applicable)

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the PBDIT by Bidding Company and/ or its Affiliate(s) as per following details:

| Name of bidding company | Name of bidding company | Name of bidding company | Name of bidding company |
|-------------------------|-------------------------|-------------------------|-------------------------|
| Company 1 | | | |
| TOTAL | | | |

*The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format. Exhibit (ii): Applicable in case of Bidding Consortium

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

Name of Member: [Insert name of the Member]



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PBDIT Requirement to be met by Member in Proportion to the Equity Commitment: INR -----
Crore (Equity Commitment (%) * Rs. [] Crore) For the above calculations, we have considered PDBIT
by Member in Bidding Consortium and/ or its Affiliate(s) as per following details:

| Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company | Name of Consortium Member Company |
|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Company 1 | | | | | |
| Company 2 | | | | | |
| TOTAL | | | | | |

* The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format:

(Signature & Name of the Authorized Signatory)

(Signature and Stamp of CA)
Membership No.
Regn. No. of the CA's Firm:

Note: (i) Along with the above format, in a separate sheet on the letterhead of the Chartered Accountant's Firm, provide details of computation of Net Worth and Annual Turnover duly certified by the Chartered Accountant.

(i) Certified copies of Balance sheet, Profit & Loss Account, Schedules and Cash Flow Statements are to be enclosed in complete form along with all the Notes to Accounts.



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**FORMAT 6.4A: FORMAT FOR PERFORMANCE BANK GUARANTEE (in lieu of
SECURITY DEPOSIT) FOR SOLAR PV PROJECT**

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

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at _____ 1 through its Unit at.....(name of the Unit) having agreed to exempt (Name of the Vendor / Contractor / Supplier) with its registered office at _____ 2 (hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract reference No. _____ dated _____ 3 valued at Rs.4 (Rupees -----)4 (hereinafter called the said Contract), of Security Deposit for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract, on production of a Bank Guarantee for Rs. _____ 5 (Rupees _____ only),

We _____ (indicate the name and address of the Bank) having its Head Office at _____ (address of the head Office) (hereinafter referred to as the Bank), at the request of _____ [Contractor(s)], being the Guarantor under this Guarantee, do hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand. Any such demand made on the bank, shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator or any other authority, our liability under this present being absolute and unequivocal. The payment so made by us under this guarantee shall be a valid discharge of our liability for payment hereunder and the Contractor(s) shall have no claim against us for making such payment. We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force up to and including _____ 6 and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand



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or claim under this guarantee is made on us in writing on or before the _____7, we shall be discharged from all the liability under this guarantee thereafter.

We, ____ (indicate the name of the Bank) ____ further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

We,..... BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed..... 5
- b) This Guarantee shall be valid up to6
- c) Unless the Bank is served a written claim or demand on or before _____7 all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

Date _____ Day of _____
for _____ (indicate the name of the Bank) _____
(Signature of Authorised signatory)

1 ADDRESS OF THE EMPLOYER. i.e Bharat Heavy Electricals Limited

2 ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER.

3 DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE



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4 CONTRACT VALUE

5 BG AMOUNT IN FIGURES AND WORDS

6 VALIDITY DATE

7 DATE OF EXPIRY OF CLAIM PERIOD

Note:

1. Expiry of claim period may be kept 3-6 months after validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.

2. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.

3. In line with the GCC, SCC or contractual terms, Unit may carry out minor modifications in the Standard BG Formats. If required, such modifications may be carried out after taking up appropriately with the Unit/Region's Law Deptt.

4. In Case of Bank Guarantees submitted by Foreign Vendors

a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India) can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.

b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)

b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by any of the Consortium Banks only will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.

b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.



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FORMAT 6.4B FOR PERFORMANCE BANK GUARANTEE (in lieu of EARNEST MONEYFOR SOLAR PV PROJECT

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

Bank Guarantee No.....
Date.....

To
(Employer's Name and Address)

.....

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....1(Tender Conditions), M/s. having its registered office at2 (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of.....3 invited by4.(name of the Employer) through its Unit at

The Tender Conditions provide that the Tenderer shall pay a sum of Rs as Earnest Money Deposit in the form therein mentioned. The form of payment of Earnest Money Deposit includes Bank Guarantee executed by a Scheduled Bank.

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of5 is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee.

we, the [Name & address of the Bank] having our Registered Office at.....(hereinafter referred to as the Bank) being the Guarantor under this Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs. 5(in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Vendor/Contractor/Supplier in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.



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The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder and the Tenderer shall have no claim against us for making such payment.

We Bank further agree that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend the time of submission of from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Tenderer and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Tenderer or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Tenderer or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Tenderer and notwithstanding any security or other guarantee that the Employer may have in relation to the Tenderer's liabilities.

This Guarantee shall be irrevocable and shall remain in force upto and including.....6 and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the 7 we shall be discharged from all liabilities under this Guarantee.

We, Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

a) The liability of the Bank under this Guarantee shall not exceed.....5.....

b) This Guarantee shall be valid up to6

c) Unless the Bank is served a written claim or demand on or before7 all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank

We, Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of
(Name of the Bank)

Date.....

Place of Issue.....

1 Details of the Invitation to Bid/Notice Inviting Tender

2 Name and Address of the Tenderer

3 Details of the Work

4 Name of the Employer



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5 BG Amount in words and Figures

6 Validity Date

7 Date of Expiry of Claim Period

Note:

1. Expiry of claim period may be kept 3-6 months after validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.

2. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.

3. In line with the GCC, SCC or contractual terms, Unit may carry out minor modifications in the Standard BG Formats. If required, such modifications may be carried out after taking up appropriately with the Unit/Region's Law Deptt.

4. In Case of Bank Guarantees submitted by Foreign Vendors

a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India) can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.

b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)

b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by any of the Consortium Banks only will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.

b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.



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FORMAT 6.5 FORMAT FOR BOARD RESOLUTIONS
(To be submitted on the Letter Head of the Bidding Company)

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 / the Companies Act, 2013 (as applicable) passed the following Resolution:

1. **RESOLVED THAT** Mr/Ms....., be and is hereby authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to NIT vide NIT No. _____ for Setting up of 5 MW Grid Connected Solar PV Project at BHEL, SBD, Bangalore, including signing and submission of all documents and providing information / response to NIT to Bharat Heavy Electricals Limited (BHEL), representing us in all matters before BHEL, and generally dealing with BHEL in all matters in connection with our bid for the said Project. (To be provided by the Bidding Company or the Lead Member of the Consortium)

2. **FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 / the Companies Act, 2013 (as applicable) and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest total equity in the Project. (To be provided by the Bidding Company)

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

FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 or Companies Act, 2013, as applicable and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest (-----%) equity [Insert the % equity commitment as specified in Consortium Agreement] in the Project. (To be provided by each Member of the Bidding Consortium including Lead Member such that total equity is 100%)

FURTHER RESOLVED THAT approval of the Board be and is hereby accorded to participate in consortium with M/s -----[Insert the name of other Members in the Consortium] and Mr/Ms....., be and is hereby authorized to execute the Consortium Agreement. (To be provided by the each Member of the Bidding Consortium including Lead Member)

And

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

Certified true copy

----- (Signature, Name and stamp of Company Secretary)

Notes:



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- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.



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FORMAT 6.6: FORMAT FOR CONSORTIUM AGREEMENT

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

THIS Consortium Agreement (“Agreement”) executed on this _____ day of _____
Two thousand _____ between M/s [insert name of Lead
Member] _____ a Company incorporated under the
laws of _____ and having its Registered Office at _____
(hereinafter called the “Member-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 “Member-2”,
which expression shall include its successors, executors and permitted assigns), M/s
_____ a Company incorporated under the laws of
_____ and having its Registered Office at
_____ (hereinafter called the “Member-n”, which expression shall
include its successors, executors and permitted assigns), [The Bidding Consortium should list the details
of all the Consortium Members] for the purpose of submitting response to NIT, execution of Power
Purchase Agreement (against NIT No. _____ dated _____ issued by Bharat Heavy Electricals
Limited, SBD, Bangalore (BHEL) a Company incorporated under the Companies Act, 1956 or
Companies Act, 2013 as applicable, and having its Registered Office at _____ or
_____ constituted under WHEREAS, each Member individually shall be referred to as the
“Member” and all of the Members shall be collectively referred to as the “Members” in this Agreement.
WHEREAS BHEL, SBD, Bangalore desires to purchase power for transformation towards “Green
Company”
WHEREAS, BHEL had invited response to NIT vide its Notice Inviting Tender (NIT) dated
_____ WHEREAS the NIT stipulates that in case response to NIT is being submitted by a
Bidding Consortium, the Members of the Consortium will have to submit a legally enforceable
Consortium Agreement in a format specified by BHEL wherein the Consortium Members have to commit
equity investment of a specific percentage for the Project.

1. We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s _____), shall act as the Lead Member as defined in the NIT for self and agent for and on behalf of Member – 2, Member – 3, ..., Member – n and to submit the response to the NIT
2. The Lead Member is hereby authorized by the Members of the Consortium and Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.



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3. Notwithstanding anything contrary contained in this Agreement, the Lead Member shall always be liable for the equity investment obligations of all the Consortium Members i.e., for both its own liability as well as the liability 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 of their respective equity obligations. Each 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 is/shall be in the following proportion:

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the Members in this Bidding Consortium do hereby mutually agree as follows:

| NAME | PERCENTAGE |
|----------|------------|
| Member-1 | |
| Member-2 | |
| Member-3 | |
| Member-n | |
| Total | 100 % |

6. We acknowledge that after the execution of PPA, the controlling shareholding (having not less than 51% of the voting rights and paid up share capital) in the Project Company developing the Project shall be maintained for a period of (1) one year after commencement of supply of power.

7. The Lead Member, on behalf of the Consortium, shall inter alia undertake full responsibility for liaising with Lenders or through internal accruals and mobilizing debt resources for the Project, and ensuring that the Seller achieves Financial Closure in terms of the PPA.

8. In case of any breach of any equity investment commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences thereof.

9. 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.

10. It is further specifically agreed that the financial liability for equity contribution of the 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 its scope of work or financial commitments.



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11. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at alone shall have the exclusive jurisdiction in all matters relating thereto and arising thereunder.

12. It is hereby further agreed that in case of being selected as the Successful Bidder, the Members do hereby agree that they shall furnish the Performance Guarantee in favour of BHEL in terms of the NIT.

13. It is further expressly agreed that the Agreement shall be irrevocable and shall form an integral part of the Power Purchase Agreement (PPA) and shall remain valid until the expiration or early termination of the PPA in terms thereof, unless expressly agreed to the contrary by BHEL.

14. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the response to NIT.

15. It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under the PPA except with prior written consent of BHEL.

16. This Agreement a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of BHEL.

17. All the terms used in capitals in this Agreement but not defined herein shall have the meaning as per the NIT, PPA .

IN WITNESS WHEREOF, the Members have, through their authorized representatives, executed these present on the Day, Month and Year first mentioned above.

For M/s----- [Member 1]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated)

Witness:

| | |
|---------------|---------------|
| Signature – 1 | Signature – 2 |
| Name: | Name: |
| Address | Address: |

Name:

Address:

Name:

Address:

For M/s-----[Member 2]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated)



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Witnesses:

| | |
|---------------|---------------|
| Signature – 1 | Signature – 2 |
| Name: | Name: |
| Address | Address: |

Address:

For M/s-----[Member n]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated)

Witnesses:

| | |
|---------------|---------------|
| Signature – 1 | Signature – 2 |
| Name: | Name: |
| Address | Address: |

Signature and stamp of Notary of the place of execution



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**FORMAT 6.7: DECLARATION BY THE BIDDER FOR THE PROPOSED TECHNOLOGY
BREAK-UP**

| Sr. No. | Description | |
|---------|---|-----|
| 1 | Name of Bidding Company | |
| 2 | Estimated Capacity Utilization Factor | % |
| 3 | Estimated Annual Generation of Electrical Energy | KWH |
| 4 | Proposed Technology Break-up | |
| 4.1 | Capacity to be installed with tracker (single-axis/dual-axis) | |
| 4.2 | Capacity to be installed using Thin Film Modules | |
| 4.3 | Capacity to be installed using Crystalline Silicon Technology | |
| 4.4 | Any Other Technology | |

Signature of the Authorized Signatory
Name of the Authorized Signatory



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FORMAT 6.8 FORMAT FOR DISCLOSURE

[On the letter head of Bidding Company/ Each Member in a Bidding Consortium]

Disclosure

We hereby declare and confirm that only we are participating in the NIT Selection process for the NIT No. _____ and that our Parent, Affiliate or Ultimate Parent or any Group Company with which we have direct or indirect relationship are not separately participating in this selection process.

We further declare that the above statement is true & correct. We are aware that if at any stage it is found to be incorrect, our response to NIT will be rejected and if LOI has been issued or PPA has been signed, the same will be cancelled and the DD/Bank guarantees will be forfeited/encashed and recoveries will be effected for the payments

done.

(Signature & Name of the person Authorized by the board)

Date:



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FORMAT 6.9 FINANCIAL PROPOSAL

Covering Letter (On letter head of the Bidder/Lead Member of the Bidding Consortium- to be submitted online)

[Date and Reference]

To,

Sr. Manager (WCC)

BHEL-SBD, Prof CNR Rao Circle, IISc Post

Malleswaram, Bengaluru- 560 012

Subject: Response to NIT No-----dated ----- for development of 900 KWp Solar Roof Top PV Project

Dear Sir,

I/ We, _____ (Applicant's name) upload herewith the Financial Proposal (to be filled in the format provided in the tender site) for selection of my / our company for setting up of 900 KWp Solar Roof Top PV Project at BHEL SBD Bangalore, Malleshwaram Complex as a Bidder.

I/ We agree that this offer shall remain valid for a period of 180 (One hundred and eighty) days from the due date of submission of the response to NIT such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

Notes:

1. There can be only one tariff for all the projects applied for. If the bidder quotes two tariffs or combination thereof for the projects, then the bid shall be considered as non-responsive.
2. If the bidder submits the financial bid in the Electronic Form at e-procurement portal of BHEL not in line with the instructions mentioned therein, then the bid shall be considered as non-responsive.
3. Tariff requirement shall be quoted as a fixed amount in Indian Rupees only. Conditional proposal shall be summarily rejected.
4. In the event of any discrepancy between the values entered in figures and in words, the values entered in words shall be considered.
5. Tariff should be in Indian Rupee up to two places of decimals only.

(Signature, name and designation of the Authorized Signatory)



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FORMAT 6.10 FORMAT FOR TECHNICAL CRITERIA

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

From: _____ (Insert name and address of Bidding Company)

Tel. #:

Fax #:

E-mail address#

Date: _____

Reference No: _____

To

Sr. Manager (WCC)

BHEL-SBD, Prof CNR Rao Circle, IISc Post

Malleswaram, Bengaluru- 560 012

Subject: Response to NIT No-----dated ----- for development of 900 KWp Solar Roof Top PV Project

Dear Sir/ Madam,

We hereby undertake to certify in line with Clause No. 3.17, Section-III, ITB under the title “Financial Closure” that the following details shall be furnished within 03 (Three) months of Effective Date of the PPA.

1.0 Evidence of achieving complete-tie-up of the Project cost through internal accruals or through a Financing Agency.

Failure or delay on our part in achieving the above condition shall constitute sufficient grounds for encashment of our Performance Bank Guarantee.



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FORMAT 6.11: "NO DEVIATION" CONFIRMATION

To,
M/s Bharat Heavy Electricals Limited, SBD Bangalore

SUB:
BID NO:

Dear Sir,

We understand that any 'deviation / exception' in any form may result in rejection of Bid. We, therefore, certify that we have not taken any 'exception / deviation' anywhere in the Bid and we agree that if any 'deviation / exception' is mentioned or noticed, our Bid may be rejected.

Place:

Date:

[Signature of Authorized Signatory of Bidder]

Name:

Designation:

Seal:



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FORMAT 6.12 FORMAT FOR SITE INSPECTION CERTIFICATE

Ref.

Date:

This is to Certify that, I / We M/s
..... had inspected the proposed solar power plant
site i.e. BHEL SBD Malleswaram in Bengaluru thoroughly and understood the scope of works to be
carried out in line with the drawings/designs/data/Bill of quantities/schedule of items / specifications as
brought out in the Tender as desired by BHEL and as will be required during the execution of the work
at site.

Signature of BHEL Representative with Seal

Signature of the contractor

Name:

Seal:



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FORMAT 6.13 FORMAT FOR NETWORTH

To satisfy the requirements specified at 4.3.1 of NIT we give below the following details:

We hereby confirm that Net worth of our company as on the last day of the preceding financial year is **Positive** as on the last day of the preceding financial year.is INR _____ crores

The Details are as under:

| Sl No | Description | As on last day of the preceding financial year (in INR Crores) |
|----------|---|---|
| 1 | Paid-up Share Capital | |
| 2 | Net Worth | |
| 3 | %age of Net worth to Paid-up Share Capital | |
| 4 | Documentary evidence like Annual Report/ Audited financial statements for the last preceding | |

Financial year/ in case Audited results **for the last preceding three (3) Financial Years** are not available, certification of financial statements from a practicing Chartered Accountant etc. in support of above is enclosed at Annexure.....to this Attachment.

To be signed by the Chartered Accountant with UDIN no.



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FORMAT 6.14 TECHNO-COMMERCIAL BID APPLICATION

To,

Sr.Manager / WCC

Bharat Heavy Electricals Limited

Solar Business Division,

IISc Post, Malleswaram,

Bengaluru – 560 012

Dear Sir,

I / We hereby offer to carry out the contract for “Selection of Solar Project Developer for Setting up of Grid Connected Solar Photo Voltaic (PV) Project of 900 KWp solar Rooftop Power plant under BOOT mode at Bharat Heavy Electricals Limited, SBD, Bangalore.”

I/We have carefully perused the all the clauses mentioned in NIT (Complete Tender documents and other T&C) and agree to abide with the same.

I/ We further agree to execute all the works referred to in the said documents.

I declare that, there was never / is no litigation or charge under investigation / enquiry / trial against me / us, nor conviction in a court of law or suspended or blacklisted by any organization on any grounds.

Signature of Tenderer

Date:



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Format 6.15 BIDDER INFORMATION

| <i>S. No.</i> | <i>DETAILS REQUIRED</i> | <i>Requirement fulfilled (Yes / No / NA/ Value)</i> |
|---------------|--|---|
| <i>1</i> | <i>Name of the Company</i> | |
| <i>2</i> | <i>Name of Authorized Signatory</i> | |
| <i>3</i> | <i>Name of Contact person for this tender</i> | |
| <i>4</i> | <i>Email-id of contact person</i> | |
| <i>5</i> | <i>Contact number</i> | |
| <i>6</i> | <i>Bank Account Details (Name of Bank, Branch and Account Number). Cancelled Cheque to be enclosed</i> | |
| <i>7</i> | <i>Details of Relatives employed in BHEL, Name Designation and Unit - Clause 4.8</i> | |
| | <i>Relative 1</i> | |
| | <i>Relative 2</i> | |
| | <i>Relative 3</i> | |



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Format 6.16 CHECKLIST OF ENCLOSURES

| <i>S. No.</i> | <i>DETAILS REQUIRED</i> | <i>Requirement fulfilled (Yes / No / NA/ Value)</i> | <i>Whether proof / document enclosed (YES / NO)</i> |
|---------------|--|---|---|
| 1 | <i>Documentary Evidence as per PQC</i> | | |
| 2 | <i>Declaration as per 6.</i> | | |
| 3 | <i>Copy of GST Certificate</i> | | |
| 4 | <i>Average turnover of last 3 years as per PQC</i> | | |
| 5 | <i>PAN Copy</i> | | |
| 6 | <i>ESI -registration certificate copy</i> | | |
| 7 | <i>PF- registration certificate copy</i> | | |
| 8 | <i>Non-Disclosure Agreement</i> | | |
| 9 | <i>EMD Details (DD No., Amount, Date & Bank)</i> | | |
| 10 | <i>Formats 6.1 to 6.21 And Annexures A to M</i> | | |



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Format 6.17: BIDDER DECLARATION - I

| S. No. | DETAILS REQUIRED | Requirement fulfilled (Yes / No / NA/ Value) |
|--------|---|--|
| 1 | <i>I have carefully read the Tender Terms and Conditions and I submit my agreement for the same.</i> | |
| 2 | <i>I have completely understood the scope of work and submit my agreement to carry out the work as per mentioned in Tender document.</i> | |
| 3 | <i>I have quoted rates for the total scope of work mentioned in the tender document</i> | |
| 5 | <i>I have understood and accepted the payment terms of BHEL as per Cl.6</i> | |
| 6 | <i>I am responsible for the safety of workmen deployed and agree to fulfil the requirements as per tender terms</i> | |
| 7 | <i>I agree to participate in the tender and carry out the work (if awarded) ethically and submit my agreement to various requirements in this contract.</i> | |
| 8 | <i>I have carefully read the Tender Terms and Conditions and I submit my agreement for the same.</i> | |
| 9 | <i>Signed and submitted the deviations sheet</i> | |



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Format 6.18 BIDDER DECLARATION - II

I, -----, aged-----Yrs., S/o -----,

Residing at -----

Hereby declare as follows:

- (i) That my nationality is _____.
- (ii) That I am a major and eligible to enter into contract / my firm / my company is competent to enter into an agreement.
- (iii) I shall employ only such personnel who have not been found unfit for employment in Organizations such as Central / state / Public undertaking by the Police Authorities.
- (iv) I shall not employ persons against whom Criminal cases are pending or under investigation.
- (v) I shall also not employ persons found guilty of offences involving moral turpitude for executing work in BHEL contracts.
- (vi) That there are no Criminal cases/Civil/Labor pending or under investigation against me or my firm or company.
- (vii) I have not been found guilty of offences involving moral turpitude nor any of the company directors / partners of my firm have been found guilty of offences involving moral turpitude.
- (viii) Neither I nor my firm nor my company has been declared insolvent in the past.
- (ix) I have taken due care and efforts to furnish only information which are true in the tender document.
- (x) I shall employ labor who is more than 18 years of age and less than 58 years and having sound physical and mental health.
- (xi) I shall keep Photograph / identity proof / residential proof of the laborers to be employed against this tender and arrange for police verification.
- (xii) I shall employ and deploy suitable qualified personnel for supervision of the work in each shift and additionally as required for monitoring compliance to process requirements and compliance to contract terms & conditions.

[Signature with Name & seal of the Tenderer]

Date :

Place :



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Format 6.19 PPP-MII Format

***FORMAT FOR VERIFICATION OF LOCAL CONTENT UNDER PREFERENCE TO
MAKE IN INDIA ORDER***

(To be submitted with the offer)

[Applicable for procurement value from Rs. 5.00 Lac to Rs. 10.00 Crore]

*Self-certification giving the percentage of local content, in line with PPP-MII order, if
applicable [to be submitted on the letter head of the issuer.]*

Item Name : **Selection of Solar Project Developer**

Enquiry No. : **TGPWCC0028**

Project: **Selection of Solar Project Developer for Setting up of Grid Connected Solar Photo Voltaic
(PV) Project of 900 KWp solar Rooftop Power plant under BOOT mode at Bharat Heavy Electricals
Limited, SBD, Bangalore.**

Applicable percentage of Local Content.....

(Bidder to indicate local content in percentage)

*We have read and understood the provisions of “Public Procurement (Preference to Make
in India) Order, 2017” dated 15/06/2017, its revision dated 28/05/2018 and any
subsequent modifications/Amendments, if any [hereinafter, “PPP-MII Order”] issued by
Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and
Industry, Government of India.*

*In line with the provisions of the PPP-MII Order, We, M/s.
..... [Enter the name of the Bidder] [hereinafter, “Local
Supplier”] submits self-certification to M/s. Bharat Heavy Electricals Limited
[hereinafter, BHEL] regarding Local Content in Goods/Services/Works to be supplied
by the Local Supplier for the “Selection of Solar Project Developer for Setting up of Grid
Connected Solar Photo Voltaic (PV) Project of 900 KWp solar Rooftop Power plant under BOOT*



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mode at Bharat Heavy Electricals Limited, SBD, Bangalore..” (Enter the name of the Equipment/Item for Project), wherein we have agreed to abide by the terms and conditions of the PPP-MII Order.

Details of location at which local value addition will be made is as follows:

We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

For and on behalf of, Date:

Authorized Signatory

(With Company Seal & Signature)

Note: This is a guiding format. In case the bidder submits the certificate in a format different from the above, the same may be considered provided it meets the intent and purpose, as may be ascertained by BHEL.



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Format 6.20 DEVIATION SHEET

| <i>Sl No.</i> | <i>Volum e</i> | <i>Part/Clause no.</i> | <i>Sl</i> | <i>NIT requirement</i> | <i>Bidder's Deviation</i> |
|----------------------|---------------------------|-----------------------------------|------------------|-------------------------------|----------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total No. of deviations proposed by the Bidder- _____ nos.

BIDDER'S SIGN & SEAL:

Note: The Offers should be in full conformity with the terms and conditions of this tender. Incorrect and incomplete tenders are liable to be rejected. Deviations, if any, should only be mentioned as per format for Non-Technical Deviations (i.e. General Terms & Conditions, Commercial Terms etc.) & Technical Deviations (i.e. Scope of Work, Modalities of Contract etc.). BHEL at its discretion whether to give any further chance to a bidder in case of any deviation or reject the same offer.



Format 6.21

CONFLICT OF INTEREST AMONG BIDDERS/ AGENTS

“A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; or*
- b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or*
- c) they have the same legal representative/agent for purposes of this bid; or*
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or*
- e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid; or*
- f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:*
 - 1. The principal manufacturer directly or through one Indian agent on his behalf; and*
 - 2. Indian/foreign agent on behalf of only one principal;**or*
- g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or*
- h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.”*

Signature with company seal -

Name –

Company / Organization –

Designation within Company / Organization –

Address of Company / Organization –



**SOLAR BUSINESS
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Rev 01**

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TGPWCC0028**

Format 6.22 for E-payment

To:

AGM (Finance)

BHEL-EPD/ Bengaluru

Opp. Indian Institute of Science

Prof. CNR Rao Circle

Bengaluru – 560093

Subject: E-payments vide RTGS/ NEFT.

I/ We request and authorize you to effect E-payment vide any two modes to my/ our bank account as per the details given below:

Vendor Name :

Title/ Name of Account in the bank :

Account Type (Saving/ Current) :

Bank Account Number

:

| | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

Name and address of bank :

Bank/ Branch contact person name :

Bank. Branch phone numbers with STD code :

Bank Branch MICR code

| | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

:



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Bank Branch RTGS IFSC code

| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

:

Bank Branch NEFT IFSC code

| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

:

Your E-mail address

:

Name of the Authorized Signatory

:

Contact person Name

:

I/ We confirm that information provided above is correct & any consequences due to any mistake in above will be borne by us.

Thanking you,

For

(Authorized Signatory)

We confirm that we are enabled for receiving RTGS/ NEFT credits and we further confirm that the account number of (please mention here the name of account holder) _____, the signature of the Authorized Signatory and MICR and IFSC codes of our branch mentioned above are correct.

Bank's Verification

(Manager's/ Officer's signature under bank stamp)

Note: Please attach cancelled original cheque leaf.



**SOLAR BUSINESS
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**NOTICE INVITING TENDER (NIT)
Rev 01**

**TENDER NO.
TGPWCC0028**

Bank Detail (For EMD/SD submission as applicable):

**Bharat Heavy Electricals Limited Solar Business Division Prof. CNR Rao Circle Malleswaram
Bengaluru-560012**

| | | |
|---|----------------------------|--|
| 1 | Name of the Beneficiary: | Bharat Heavy Electricals Limited |
| 2 | Name of the Bank & Branch: | IDBI Bank Limited, Trade Finance |
| 3 | Address of the Branch: | Trade Finance IDBI House, 58, 1 st Floor, Mission road, Bengaluru-560027 |
| 4 | Bank Telephone No: | 080-2227 9576 |
| 5 | NEFT IFSC code | IBKL0000377 |
| 6 | Account Type: | Current |
| 7 | Account No. | 008103000003605 |
| 8 | RTGS IFSC code: | IBKL0000377 |

QR-CODE for EMD/SD Submission



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**NOTICE INVITING TENDER (NIT)
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**TENDER NO.
TGPWCC0028**



Annexure-B

Technical Parameter of PV Module and various other components for use in Grid Connected Roof Top Solar Power Plant:

All components of the PV plant shall be in accordance with technical specifications given in relevant IS/IEC Standards. The design and commissioning also shall be as per latest IEC/IS standards. The following are some of the technical measures required to ensure quality of the major components used in grid connected solar power Projects:

B.1 PV Module Qualification

The PV modules used in the grid connected solar power Project must qualify to the latest edition of any of the following IEC PV module qualification test or equivalent BIS standards:

| | |
|--|-----------|
| Crystalline Silicon Solar Cell Modules | IEC 61215 |
| Thin Film Modules Thin Film Modules | IEC 61646 |
| Concentrator PV modules | IEC 62108 |

In addition, PV modules must qualify to IEC 61730 for safety qualification testing @1000 V DC or higher. For the PV modules to be used in a highly corrosive atmosphere throughout their lifetime, they must qualify to IEC 61701.

B.2 Power Conditioners/ Inverters

The Power Conditioners/Inverters of the SPV power plant must conform to the latest edition of IEC/ equivalent BIS Standards as specified below:

| | |
|--------------------------------------|--|
| Efficiency Measurements | IEC 61683 |
| Environmental Testing | IEC 60068-2/ IEC 62093 |
| Electromagnetic Compatibility (EMC) | IEC 61000-6-2, IEC 61000-6-4 |
| Electrical Safety | IEC 62103/ 62109-1&2 |
| Protection against Islanding of Grid | IEEE1547/IEC 62116/ UL1741 or equivalent EN/BIS Standards |
| Grid Connectivity | Relevant CERC Regulations and Grid Code as amended and revised from time to time |
| Rated capacity | Nominal/Rated output power of the inverter (if different power ratings are mentioned at different temperatures, then power rating at 50° C shall be considered) in kW will be considered as inverter rated capacity. |

B.3 Cables and connectors:

All cables and connectors for used for installation of solar field must be of solar grade which can withstand harsh environment conditions for 25 years and voltages as per latest IEC standards. (Note: IEC Standard for DC cables for PV systems is under development. It is recommended that in the interim, the Cables of 600-1800 Volts DC for outdoor installations should comply with the EN 50618/ TUV 2pfG 1169/08/07 or equivalent IS for service life expectancy of 25 years)

B.4 Other Sub-systems/Components

Other subsystems/components used in the SPV power plants (Cables, Connectors, Junction Boxes, Surge Protection Devices, etc.) must also conform to the relevant international/national Standards for Electrical Safety besides that for Quality required for ensuring Expected Service Life and Weather Resistance.

B.5 Authorized Test Centres

The PV modules / Power Conditioners deployed in the power plants must have valid test certificates for their qualification as per above specified IEC/ BIS Standards by one of the NABL Accredited Test Centres in India. In case of module types/ equipment for which such Test facilities may not exist in India at present, test certificates from reputed ILAC Member body accredited Labs abroad will be acceptable.

B.6 Warranty

- a) PV modules used in grid connected solar power plants must be warranted for peak output wattage, which should not be less than 90% at the end of 10 years and 80% at the end of 25 years.
- b) The modules shall be warranted for at least 10 years for failures due to material defects and workmanship.
- c) The mechanical structures, electrical works and overall workmanship of the grid solar power plants must be warranted for a minimum of 5 years.
- d) The Inverters/PCUs installed in the solar power plant must have a warranty for 5 years.

B.7 Identification and Traceability

Each PV module used in any solar power Project must use a RF identification tag. The following information must be mentioned in the RFID used on each module (This can be inside or outside the laminate, but must be able to withstand harsh environmental conditions):

- a) Name of the manufacturer of PV Module
- b) Name of the Manufacturer of Solar cells
- c) Month and year of the manufacture (separately for solar cells and module)
- d) Country of origin (separately for solar cells and module)
- e) I-V curve for the module at Standard Test Condition (1000 W/m², AM 1.5, 250C)
- f) Wattage, Im, Vm and FF for the module
- g) Unique Serial No. and Model No. of the module
- h) Date and year of obtaining IEC PV module qualification certificate
- i) Name of the test lab issuing IEC certificate
- j) Other relevant information on traceability of solar cells and module as per ISO 9000

Site owners would be required to maintain accessibility to the list of Module IDs along with the above parametric data for each module.

B.8 Performance Monitoring

As part of the performance monitoring, the following shall be carried out:

- a) The SPD shall maintain the list of Module IDs along with performance characteristic data for each module. This data shall be submitted to BHEL.
- b) The SPD must install necessary equipment to continuously measure solar radiation on module plane, ambient temperature, wind speed and other weather parameters and simultaneously measure the generation of DC power as well as AC power generated from the plant. They will be required to submit this data to BHEL on line and/or through a report on regular basis every month for the entire duration of PPA.
- c) The SPD shall provide access to BHEL or their authorized representatives for installing any additional monitoring equipment to facilitate on-line transfer of data.

- d) All data shall be made available as mentioned above for the entire duration of the PPA. e. The plant SCADA should be Open Platform Communications (OPC) compliant for providing real time online data (including but not limited to irradiance, plant generation (instantaneous/daily/monthly/yearly), daily peak generation, temperature, wind speed etc.) to BHEL.

B.9 Safe Disposal of Solar PV Modules:

The SPD will ensure that all Solar PV modules from their plant after their 'end of life' (when they become defective/ non-operational/ non-repairable) are disposed out of BHEL premises in accordance with the "e-waste (Management and Handling) Rules, 2011" notified by the Government and as revised and amended from time to time.

B.10 Capacity of Solar PV Projects:

- a) The rated capacity to be installed shall be considered as minimum DC Arrays Capacity and maximum AC Capacity at the delivery point as described below:
b) Solar PV Minimum Maximum

| S. No | Solar PV Project Capacity Bid | Minimum DC Arrays Capacity to be installed | Minimum rated inverter capacity | Maximum AC capacity limit at delivery point |
|-------|-------------------------------|--|---------------------------------|---|
| 1 | 900KWp | 900KWp | 750KW | 750KW |

*Rated capacity shall mean as mentioned in clause 2 above. In case the rated capacity is mentioned in kVA, the certificate from OEM declaring the power factor of the Inverter/PCU at 50° C has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW.

- c) Higher DC capacity arrays so as to achieve AC capacity limit as mentioned above for scheduling at the delivery point in compliance to Article 4.4 "Right to Contracted Capacity & Energy" of the PPA is allowed.

Appendix-B-1

Commissioning Procedure

(liable to change as per provisions of the scheme)

- i) At the time of commissioning, BHEL shall verify compliance of technical parameter of the Project as per Annexure B of the NIT document.
- ii) The SPD shall intimate the planned date of synchronisation of the plant to the Grid System to BHEL and BESCOM/ State Nodal Agency/SLDC/RLDC at least twenty (20) days advance preliminary written notice and at least ten (10) days advance final written notice. The SPD shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the Commissioning Schedule of the Project.
- iii) A Solar PV Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.
- iv) SPD shall ensure that the equipment up to the rated Capacity has been installed and completed in all respects before the Schedule Commissioning Date. The same shall be verified by BHEL during the visit to the Project sites and documented as per prescribed format.
- v) The SPD will have to submit to BHEL for verification/cross check.
 - a. Covering Letter
 - b. Board resolution for authorized signatory.
 - c. Invoice of the major equipment (including but not limited to modules, Inverters/PCUs, Weather Monitoring Stations/ DC Cables and for all the equipment as available).
 - d. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-B
 - e. Installation report as per Appendix-B-2.
 - f. Plant Layout clearly mentioning the details of rows and number of modules in each row.
 - g. Electrical inspector report along with all annexures/attachments. It would be the responsibility of the SPD to collect the certificate.
 - h. SPD shall ensure Connectivity to the grid from concerned BESCOM/STU/DISCOM.
 - i. Connectivity report to be submitted as per the Appendix-B-3.
 - j. If applicable: Synchronization Certificate as per prescribed format issued by the STU/DISCOM for ascertaining injection of power into grid as per Appendix-B-4.
 - k. If applicable: Snap shots of the plant from various angles shall be taken for covering installation of important components of the solar power plant and made part of Installation Report.
 - l. If applicable: Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
 - m. If applicable: Relevant document from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/RLDC.
 - n. After the submission of the documents by SPD, BHEL shall verify the documents and intimate/reply with remarks. In case any additional supporting/revised documents are asked by BHEL, the same have to be submitted by the SPD.
 - o. Only after all the required documents are verified by BHEL, the SPD shall have to submit/update on the portal the proposed commissioning date.
 - p. After the proposed commissioning date along with commissioning order is submitted, the BHEL shall visit the site within 05 working days to verify the technical compliance on site as per the information submitted by the bidder. In case BHEL finds discrepancy/deviation from the information submitted by the SPD during on site verification, the committee (set up by BHEL) shall schedule its next visit only on the next available date as per the availability of all the committee members.
 - q. SPD shall have to submit the as-built drawing after the commissioning prior to the COD.

- r. Early Commissioning of a Solar Project prior to the scheduled commissioning date is permitted on acceptance of power by BHEL. In order to facilitate this, SPD shall inform the concerned RLDC/SLDC and BHEL well in advance the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be required to give an advance notice of at least 20 days prior to the proposed commissioning date.
- s. Joint Meter Reading (JMR) shall be taken at Delivery Point at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at delivery/ interconnection point and plant premises.
- t. SPD shall schedule the Commissioning of the Project as per the commissioning procedure elaborated in clause 3.14.

Solar Project Developers would be required to plan commissioning/synchronization with grid at least ten days ahead of the last permissible date for commissioning in accordance with MNRE guidelines. If not done so, whole responsibility for not meeting the deadline for commissioning on account of inability of the Committee to visit the project site for commissioning rests solely on the developer.

Appendix-B-2

Installation Report

| | | |
|-------|--|--|
| S. No | Capacity of the Project (KW) | |
| | Capacity already commissioned (KW) | |
| | Capacity proposed to be commissioned (KW) | |
| 1 | Technology used (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type) | |
| 2 | Rating of each module (Wp) | |
| 3 | Angle from horizontal at which array is installed | |
| 4 | Number of modules installed of each type | |
| 5 | Source(s) of the cells installed of each type | |
| 6 | Source(s) of the Modules installed of each type | |
| 7 | Number of PCUs / Inverters installed | |
| 8 | Source of the PCUs / Inverters (Name of supplier with address) | |
| 9 | Rating of PCUs / Inverters | |
| 10 | Date of installation of full capacity (as per capacity proposed to be commissioned) | |
| | PV arrays | |
| | PCUs / Inverters | |

Appendix-B-3 (If applicable)

Sample Connectivity Report

(To be provided by concerned STU/Transmission Utility/Discom)

This is in compliance to the office order of the -----,----- Discom, <Place> issued vide office order <No.><dated>, the committee constituted vide said order has completed the work for commissioning of <kV> Bay & Metering Equipment to interconnect the <MW> Solar Power Generation Plant (having <technology>) with Grid under JNNSM scheme installed at <Village>, <Tehsil>, <District> in the <State> on <date>. The details of Solar Power Plant are as under: -

| S. No | Name of Solar Project Developer & Location | Capacity mentioned in agreement | Connectivity | Details of Solar Power Plant (Transformer, Inverter, Modules, switchgear) |
|-------|--|---------------------------------|--|---|
| 1 | <M/s> <Village> <Tehsil> <District> | <> MW | Metering Details at delivery point (<village>) S. No of 11KV CT i) R Phase ii) Y Phase iii) B Phase S. No of 11KV PT i) R Phase ii) Y Phase iii) B Phase S. No of Main <> ABT Meter S. No of Check <> ABT Meter S. No of Stand-by <>ABT Meter Metering equipment installed at receiving end on dated: <> | Inverters <Make/Type> Modules <Make:> <W>, <W> Total: <Nos> Switchgear Panels <Make/Type> <S No> Protection Provided: Under/Over voltage, Over current & earth fault |

The Commissioning date of various equipment is as under:

<kV> line from --- to -----, completed on date ----- . Line Bay at < kV > GSS, ----- charged for ---- on ----- . <kV> line charged from ----- to----- on date----- . Main & check metering commissioned on (initial record of main/Check meters at the time of Commissioning is to be taken and enclosed) Complete system commissioned on date----- The Joint Inspection Report of metering arrangement & copy of permission of Electrical Inspector is enclosed herewith.

Appendix-B-4 (If applicable)

Sample Synchronization Certificate

It is certified that ----- MW (Capacity) Solar Photovoltaic Power Project of M/s. -----, Village - ----- Tehsil -----, District ----- was Grid connected on (Date) at----- Hrs. It is further certified that the Project was synchronized and supply of power into the grid from the Project connected on (Date) at ----- Hrs.

The above certificate is issued on the basis of MRI record.

NB:

(i) The above certificate shall be issued by concerned STU/Discom

Appendix-B-5 (If applicable)

Sample Commissioning Certificate of Solar PV Project

This is to certify that <M/s> having its registered office at ----- has successfully commissioned Capacity < MW > out of total <MW> installed Capacity on (Date) of their Solar PV Generation Project at The Commissioning Certificate has been issued on the basis of the following documents enclosed:

- i (i) Installation Report including Snap shots of the Project from various angles
- ii (ii) Electrical Inspector Report
- iii (iii) Connectivity Report
- iv (iv) Synchronization Certificate

NB: To be issued by BHEL.

Annexure-C

Check list for Bank Guarantees

| S. No | Details of Checks | Yes/No |
|--------------|---|---------------|
| 1 | Is the BG on non-judicial Stamp paper of appropriate value, as per applicable Stamp Act of the place of execution | |
| 2 | Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor? (The date of purchase of stamp paper should be not later than the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued | |
| 3 | In case of BGs from Banks abroad, has the BG been executed on Letter Head of the Bank endorsed by the Indian branch of the same bank or SBI, India? | |
| 4 | Has the executing Officer of BG indicated his name, designation and Power of Attorney No./Signing Power no. on the BG? | |
| 5 | Is each page of BG duly signed / initialed by executant and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed proforma? | |
| 6 | Do the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents? | |
| 7 | Are the factual details such as Bid Document No./Specification No./LOI No.(if applicable)/Amount of BG and Validity of BG correctly mentioned in the BG | |
| 8 | Whether overwriting/cutting, if any, on the BG have been properly authenticated under signature & seal of executant? | |
| 9 | Whether the BG has been issued by a Bank in line with the provisions of Bidding documents? | |
| 10 | In case BG has been issued by a Bank other than those specified in Bidding Document, is the BG confirmed by a Bank in India acceptable as per Bidding documents? | |

Annexure-D
LIST OF CONSORTIUM BANKS

| Sl. No. | Name of the bank |
|---------|---|
| 1 | State Bank of India |
| 2 | Canara Bank |
| 3 | IDBI Bank Limited |
| 4 | ICICI Bank Limited |
| 5 | HDFC Bank Limited |
| 6 | Axis Bank |
| 7 | IndusInd Bank Limited |
| 8 | Bank of Baroda |
| 9 | Exim Bank |
| 10 | Indian Bank |
| 11 | Punjab National Bank |
| 12 | Union Bank of India |
| 13 | Yes Bank Limited |
| 14 | RBL Bank Ltd. |
| 15 | Standard Chartered Bank |
| 16 | Indian Overseas Bank |
| 17 | Kotak Mahindra Bank Limited |
| 18 | Federal Bank Limited |
| 19 | Hongkong and Shanghai Banking Corporation Ltd |

Name of Work - Selection of Solar Project Developer for Setting up of Grid Connected Roof Top Solar Photo Voltaic (PV) Project of 900KWp capacity under BOOT mode at BHEL SBD, Bengaluru

Annexure – E

Procedure for e-tendering

Procedure for e-tendering is as per the document “E-tendering procedure”

Name of Work - Selection of Solar Project Developer for Setting up of Grid Connected Roof Top Solar Photo Voltaic (PV) Project of 900KWp capacity under BOOT mode at BHEL SBD, Bengaluru

Annexure – F
TERMS & CONDITIONS OF REVERSE AUCTION

Terms and Conditions as per the Guidelines of Reverse Auction document uploaded along with the
NIT

Name of Work - Selection of Solar Project Developer for Setting up of Grid Connected Roof Top Solar Photo Voltaic (PV) Project of 900KWp capacity under BOOT mode at BHEL SBD, Bengaluru

Annexure G

Site location added separately in tender documents

Annexure-H

--- Sample Letter ---

(To be submitted along with Technical bid)

AGM – WCC

SBD-Bharat Heavy Electricals Limited,

Malleswaram,

Bengaluru

Sub: Agreement to the Process related Terms & Conditions for e-Reverse Auction

Dear Sir,

This has reference to the Terms & Conditions for e-Reverse Auction mentioned in the Tender document for

Tender No. , Dtd: xx-xx-xxxx.

This letter is to confirm that:

- The undersigned is authorized representative of the company.
- We have studied the Commercial Terms and the Business rules governing the Reverse Auction as mentioned in your letter and confirm our agreement to them.
- We also confirm that we have taken the training on the auction tool and have understood the functionality of the same thoroughly.
- We, hereby, confirm that we will honour the Bids placed by us during the tendering/ e-Reverse auction process as called as eRA.
- We also confirm that we will accept our Rank / Position that will be displayed when the Bidding Time is over of the Online Reverse Auction.

With regards,

Signature with company seal

Name –

Company / Organization –

Designation within Company / Organization –

Address of Company / Organization –

327284/2024/SBD-PVE

Name of Work - Selection of Solar Project Developer for Setting up of Grid Connected Roof Top Solar Photo Voltaic (PV) Project of 900KWp capacity under BOOT mode at BHEL SBD, Bengaluru

Annexure-I

Preliminary Estimate of Cost of Solar PV Power Project

Project Capacity: 900 KWp

Location: BHEL- Solar Business Division (SBD), Prof. C.N.R. Rao Circle, Opp IISc, Malleswaram, Bengaluru-560 012

| S. No | Particulars | Estimated cost (in lakh rupees) (in figures) | Estimated cost in lakh rupees (in words) |
|-------|--|--|--|
| 1 | SPV Modules | | |
| 2 | Power Conditioning Units | | |
| 3 | Civil and General Works / Mounting Structures | | |
| 4 | Balance of the Plant including interconnection arrangement | | |
| 5 | Other Costs | | |
| | TOTAL ESTIMATED COST OF PROJECT | | |

(Signature)

(Name of Authorized Signatory)
(Name of the Bidding Company)

The Buyback Price with respect to the Solar PV power plant shall be calculated as follows:

Buyback price = [(Depreciation rate for the year) × (Percentage decrease in plant efficiency up to the year) X (Total cost of establishment as declared by the SPD)] – [(Total O&M Cost per year) × (No. of years remaining in PPA)]

Total cost of establishment: Total Preliminary Estimate of Cost of Solar PV Power Project by the bidder in Annexure I above or the Completed Project cost duly certified by a Chartered Accountant whichever is lower. The Depreciation rate is taken as 4.00 % Per Year.

| Year of term (end of the term) | % of the initial cost |
|--------------------------------|-----------------------|
| 1 | 96% |
| 2 | 92% |
| 3 | 88% |
| 4 | 84% |
| 5 | 80% |
| 6 | 76% |
| 7 | 72% |
| 8 | 68% |
| 9 | 64% |
| 10 | 60% |
| 11 | 56% |
| 12 | 52% |
| 13 | 48% |
| 14 | 44% |
| 15 | 40% |
| 16 | 36% |
| 17 | 32% |
| 18 | 28% |
| 19 | 24% |
| 20 | 20% |
| 21 | 16% |
| 22 | 12% |
| 23 | 8% |
| 24 | 4% |
| 25 | 0% |

Important Notes:

1. The Buyback Price payable shall be the Buyback Price specified in this Annexure that falls on such date before the proposed Purchase Date.
2. If the proposed purchase date falls on the first date of a Financial Year, then the depreciation shall include the corresponding financial year
3. The Annual O&M Cost is taken as Rs. 5 lakhs per MWp for arriving at O&M cost.
4. % decrease in plant efficiency is taken as 1% every year

Annexure – J

YEAR WISE MINIMUM CUF TO BE MAINTAINED

Year-wise minimum CUF to be maintained by the SPD for each year:

| Year | CUF (%) |
|----------------|---------|
| End of year 1 | 22.84% |
| End of year 2 | 22.61% |
| End of year 3 | 22.38% |
| End of year 4 | 22.15% |
| End of year 5 | 21.92% |
| End of year 6 | 21.70% |
| End of year 7 | 21.47% |
| End of year 8 | 21.24% |
| End of year 9 | 21.01% |
| End of year 10 | 20.78% |
| End of year 11 | 20.55% |
| End of year 12 | 20.40% |
| End of year 13 | 20.25% |
| End of year 14 | 20.09% |
| End of year 15 | 19.94% |
| End of year 16 | 19.79% |
| End of year 17 | 19.64% |
| End of year 18 | 19.48% |
| End of year 19 | 19.33% |
| End of year 20 | 19.18% |
| End of year 21 | 19.02% |
| End of year 22 | 18.87% |
| End of year 23 | 18.72% |
| End of year 24 | 18.56% |
| End of year 25 | 18.41% |

Annexure – K

Certificate by Chartered Accountant on letter head for MSME bidder

This is to Certify that M/S (hereinafter referred to as 'company') having its registered office at is registered under Micro, Small and Medium Enterprises Development Act , 2006 (MSMED Act, 2006) having

Udyam Registration Number
 No:.....Category:.....,
 (Micro/Small/Medium)(Copy enclosed).

Further Verified from the Books of Accounts, the investment and turnover of enterprise for the latest audited financial year is as follows:

- i) Investment in plant and machinery or equipment (i.e. all tangible assets other than land and building, furniture and fittings) calculated as specified by the Ministry of Micro Small and Medium Enterprises vide its notification No. S.O.2119 (E) Dated: 26.06.2020 is Rs.....Lakhs.
- ii) Turnover of the enterprise calculated as specified by the Ministry of Micro Small and Medium Enterprises vide its notification No. S.O.2119 (E) Dated: 26.06.2020 is Rs.....Lakhs.
- iii) The above investment in plant and machinery or equipment is within the permissible limit of Rs..... Lakhs and Turnover is within the permissible limit of Rs..... Lakhs applicable for..... Micro / Small / Medium (Strike off which is not applicable) Category under MSMED Act 2006.

Date:

(Signature)

Name –

Membership Number –

Seal of Chartered Accountant.

KARNATAKA ELECTRICITY REGULATORY COMMISSION
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated: 18.07.2022

Present:

| | | |
|----------------------|----|----------|
| Shri P. Ravi Kumar | .. | Chairman |
| Shri H.M. Manjunatha | .. | Member |
| Shri. M.D. Ravi | .. | Member |

In the matter of

**"Net Metering Arrangements for eligible consumers of Solar Rooftop
Photovoltaic (SRTPV) plant"**

Preamble:

The Commission has been receiving the Power Purchase Agreements (PPAs) executed between ESCOMs and the eligible consumers for approval for availing Net Metering arrangements in respect of SRTPV plants, as per KERC (Implementation of Solar Rooftop Photovoltaic Power Plants) Regulations, 2016, from the eligible consumers who are also availing power through Open Access as per KERC (Terms and Conditions for Open Access) Regulations 2006 and its amendments.

The Commission notes that Net Metering arrangement and wheeling of energy from the other sources/ captive sources through Open Access are different sets of arrangements for different eligible consumers. Also, the Commission has already informed the ESCOMs on case-to-case basis not to execute the PPAs with these types of arrangements.

Hence, the following Order:

ORDERS

The facility of Net Metering in respect of SRTPV plants shall not be available to the consumers availing power from the other sources/ captive sources through Open Access Mechanism. The consumers may opt for Gross Metering arrangements or may opt for establishing Captive Plant for self-consumption.

This Order is signed and issued by the Karnataka Electricity Regulatory Commission on this 18th day of July, 2022.

(P.RAVI KUMAR)
CHAIRMAN

(H.M.MANJUNATHA)
MEMBER

(M.D.RAVI)
MEMBER

POWER PURCHASE AGREEMENT

FOR PROCUREMENT OF 900 KW_p SOLAR POWER ON LONG TERM BASIS

Between

M/s.

And

**BHARAT HEAVY ELECTRICALS
LIMITED- SOLAR BUSINESS
DIVISION, BENGALURU**

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PPA FORMAT

This Power Purchase Agreement is made on the XXth day of XXXXX of 20XX. Between **Solar Power Developer (Name)**, a company incorporated under the Companies Act 1956, having its registered office at _____ (hereinafter referred to as “**SPD**”, which expression shall, unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assignees) as a Party of the **First part**. And **M/s Bharat Heavy Electricals Limited (BHEL), Solar Business Division, Bengaluru** hereinafter referred to as “**BHEL SBD**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the **Second part**. SPD and User are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

- A. Whereas a PPA has been executed between SPD and BHEL SBD on _____, for setting up of 900 KWp Roof Top Solar Power Project at BHEL SBD.
- B. Whereas, SPD shall Build, Own & Operate the Project(s) and will also make all required investments for the Projects.
- C. Whereas, the proposed Project being setup at BHEL SBD and will be connected to designated BHEL SBD building switchgear panels at 415V voltage level.
- D. Whereas, SPD shall also complete all other assignments required for setting up, commissioning and successful operation of the Project, considering point of sale of power at the delivery point(s) at the individual switchgear of respective building Rooftops.
- E. Whereas, SPD shall operate and maintain the Project(s) for the period of minimum TWENTY-FIVE (25) years (or extended period as mutually agreed) from the date of Commercial Operation Date (COD) of the project(s);
- F. Whereas, SPD has agreed to sell entire energy generated from project to BHEL SBD and BHEL SBD has agreed to purchase such Power from the Projects as per terms and conditions contained herein and at a tariff as per **Article 9**.
- G. Whereas, BHEL SBD has agreed to pay for the energy purchased from SPD at a tariff to be determined as per provisions contained herein;
- H. Tariff shall be as per the Article 9.
- I. Whereas any implication of Change in Law as per Article 12 which shall result in a revision of the tariff accordingly, applicable from the month subsequent to such change.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

| | |
|--|--|
| Accounting Year | Means the Financial Year commencing from 1st April of a calendar year and ending on 31st March of the next calendar year. The 1st accounting year for the unit shall start from the date of commissioning of the unit and shall end on the 31st March of the next calendar year; |
| Act or Electricity Act, 2003 | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time. |
| “Affiliates” | shall mean a Company that, directly or indirectly, i. controls, or ii. is controlled by, or is under common control with, a Company developing a Project or a Member in a Consortium developing the Project and control means ownership by one Company of at least 26% (twenty-six percent) of the voting rights of the other Company; |
| Agreement or Power Purchase Agreement or PPA | shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof. |
| Appropriate Commission | shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be. |
| Bill Dispute Notice | shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party. |
| Bulk Consumer | Shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time. |
| Business Day | shall mean with respect to SPD and BHEL SBD, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Bengaluru. |
| “Buying Entity” | shall mean USER who have signed the PPA with SPD for purchase of Power; |
| Capacity Utilisation Factor or CUF | shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time. However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity. |
| CERC | shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors. |

| | |
|---------------------------------|--|
| Change in Law | Shall have the meaning ascribed thereto in Article 12 of this Agreement. |
| “Check Meter” | Any meter and/or metering device of accuracy class equivalent to the Main Meter, which shall be connected to the same core of the Current Transformer & Voltage Transformer to which Main meter is connected and shall be used for accounting and billing of electricity in the case of failure of Main meter; |
| Commissioning | Shall have the meaning ascribed thereto in Article 5 of this Agreement. |
| Commercial Operation Date (COD) | shall be the actual date of commissioning of full capacity (i.e. the full capacity of the Power Project has been commissioned and the SPD starts scheduling and injecting power from the Power Project to the Delivery Point) of the Project as declared by SNA / BHEL SBD. |
| Competent Court of Law | shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement. |
| Consents, Clearance and Permits | Shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and / or supply of power. |
| Consultation Period | shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or BHEL SBD Preliminary Default 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. |
| Contract Year | shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the COD would occur, the Contract Year shall end on the date immediately before the COD and a new Contract Year shall commence once again from the COD and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement. |
| Contracted Capacity | shall mean 900 KWp contracted with BHEL SBD for supply by the SPD to BHEL SBD at the Delivery Point from the Solar Power Project. |
| Day | shall mean a day, if not a Business Day, the immediately succeeding Business Day. |
| Delivery/Inter connection | shall mean the point at 415V local switchgear of respective building of BHEL SBD where the power from the solar power project is injected (including the dedicated transmission line connecting the power project with the interconnection point). For interconnection with grid and metering, the SPDs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended |

| | |
|---|---|
| | and revised from time to time. All charges and losses related to Transmission of power from project up to delivery point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power etc.) as notified by the competent authority/ regulator up to the Delivery Point shall be borne by the SPD. |
| DISCOMS | shall mean the distribution utility or the distribution utilities. |
| Dispute | shall mean any dispute or difference of any kind between BHEL SBD and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement. |
| Due Date | Shall mean the forty-fifth(45th) day after a Monthly Bill or a Supplementary Bill is received and duly accepted by BHEL SBD, if such day is not a Business day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by BHEL SBD. |
| Effective Date | Shall have the meaning ascribed there to in Article 2.1 of this Agreement. |
| Electricity Laws | shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments there to and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission. |
| Energy Accounts/Joint meter reading | shall mean Joint Meter Reading including the revisions and amendments thereof recorded by USER & SPD; For the energy accounting purpose including billing such JMRs shall be binding on both Parties |
| Event of Default | shall mean the events as defined in Article 13 of this Agreement. |
| Expiry Date | Shall mean the date occurring twenty-five (25) years from the Commercial Operation Date of the Project subject to that the supply of power shall be limited for a period of 25 years from the Unit Commercial Operation Date of respective Unit(s) unless extended by the Parties as per this Agreement. |
| Financing Agreements | Shall mean the agreements pursuant to which the SPD has got financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of BHEL SBD. |
| Force Majeure or Force Majeure Event | Shall have the meaning ascribed thereto in Article 11of this Agreement. |
| Grid Code / IEGC or State Grid Code | shall mean the Grid Code specified by the CERC under Clause (h)of Subsection (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable. |

| | |
|-------------------------------------|---|
| “Incremental Receivables” | shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date; |
| Indian Governmental Instrumentality | shall mean the Government of India, Governments of state(s) of Karnataka and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political subdivision of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India. |
| Insurances | shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement. |
| Interconnection Facilities | shall mean the facilities on SPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement. |
| Invoice or Bill | shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties. |
| Law | shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions. |
| “Letter of Credit” or “L/C” | shall have the meaning ascribed thereto in Article 6.4 of this Agreement; |
| Month | shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month. |
| “Metering date” | means the first working day of each calendar month for a scheduled time mutually agreed between the parties. However, the metering date of the financial year ends at 23:59 hrs on 31st March of subsequent year and so on; |
| Metering Point | The location at which the energy meters are connected to the local switchgear through instrument transformers (voltage transformers and current transformers) and energy injected or drawn is measured. |
| “MUST RUN” | means this power plant which is not subjected to Merit Order dispatch principles; USER shall also ensure deployment of efficient energy management system so as to ensure entire energy generation capability of the Project; |
| Operating | shall mean the period commencing from the Commercial Operation |

| | |
|---|--|
| Period | Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2of this Agreement. |
| Open Access Charges | shall mean the charges levied by the CTU/ RLDC / STU/ SLDC of the State wherein the Solar Power Project is located for the grant of Open Access as defined in Electricity Act 2003 and amended time to time. |
| Payment Security Mechanism” | shall have the meaning ascribed thereto in Article 6.4 of this Agreement; |
| Party and Parties | Shall have the meaning ascribed there to in the recital to this Agreement. |
| Performance Bank Guarantee | Shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to BHEL SBD from a bank mentioned in Schedule 2 of this Agreement in the form attached hereto as Schedule1. |
| Power Project or Project | Shall mean the solar power generation facility of Contracted Capacity of 900 KWp , BHEL SBD, Bengaluru, Karnataka State having a separate boundary, control system, metering and separate points of injection into the grid at Delivery/Interconnection/metering point at STU/CTU substation or in case of sharing of transmission lines, by separate Injection at pooling point. This includes all units and auxiliaries such as water supply, treatment or storage facilities. bay/s for transmission system in the switch yard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement. |
| Preliminary Default Notice | Shall have the meaning ascribed there to in Article13 of this Agreement. |
| Project Financing /Arrangements for Financial Closure | Shall mean arrangement of necessary funds by the Project Developer either by way of commitment of funds by the company from its internal resources and/or tie up of funds through a bank /financial institution by way of sanction of a loan or letter agreeing to finance. |
| Prudent Utility Practices | shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: · operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project. · the requirements of Indian Law. and the physical conditions at the site of the Power Project. |
| NIT | Notice Inviting Tender for which the current PPA is a part and through which the SPD has been selected |

1.2 Interpretation

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

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

supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;

1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

2 ARTICLE 2: TERM OF AGREEMENT

2.1. Effective Date

2.1.1 This Agreement shall come into effect from Date. _____.

2.2 Term of Agreement

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period provided such an extension is agreed in writing on agreed terms and conditions between SPD and BHEL SBD and that such extension is obtained at least one hundred eighty (180) days prior to the expiry date at least one hundred eighty (180) days prior to the Expiry Date.

2.2.2 On extension of the PPA, the SPD is free to operate their plants beyond the Expiry Date if other conditions like land lease, permits, approvals and clearances etc., allow.

2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date if either BHEL SBD or SPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.3.2 Obligation on Expiry of the Agreement

Subject to Article 2.2 above, at the end of the Term of the Agreement, the SPD shall transfer the solar power plant to BHEL SBD without any cost, in full working condition along with all the related documents. The SPD undertakes to execute all the required documents for transferring the power plant to effectuate such transfer without any encumbrance to BHEL SBD.

2.4 Survival

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

3 ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the SPD

The SPD agrees and undertakes to duly perform and complete all of the following activities at SPD's own risk and cost within six (6) months from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by BHEL SBD:

- a) The SPD shall obtain or apply (as applicable) for all Consents, Clearances and Permits required for construction of the Project as per the terms of this Agreement. The SPD shall also obtain all Consents, Clearances and Permits required for operation and supply of power to BHEL SBD before Commissioning of the Project;
- b) The SPD shall make Project financing arrangements and provide necessary certificates to BHEL SBD within 90 days from the date of signing the PPA.
- c) The SPD shall fulfil the technical requirements according to criteria mentioned under Annexure-B of the NIT document and produce the documentary evidence of the same.
- d) The SPD shall make necessary arrangement required for water required for power project. The SPD shall make necessary arrangements for tapping water from the nearest water source. Water shall be provided on chargeable basis. The tariff for water consumption shall be same as the prevailing rates of Bengaluru Water Supply and Sewerage Board (BWSSB)
- e) The SPD shall ensure that all the natural drainages/nalas on the roofs, if any, should not disturbed. However, additional drainage if any required shall be in the scope SPD.
- f) SPD shall make necessary pathway for movement, maintenance of solar modules along and in rows of solar modules. Sufficient lighting arrangements shall be provided around the respective roof areas. The SPD shall also provide sufficient CCTV cameras on each roof in consultation with BHEL SBD to monitor the movement of personnel etc. in the entire Solar PV plant.

- g) The manpower engaged by SPD shall have access to BHEL SBD campus provided they fulfil with BHEL SBD security permission & procedures in force from time to time.

The SPD shall submit to BHEL SBD the relevant documents as stated above, complying with the Conditions Subsequent, within three (3) months from the Effective Date.

3.2 Consequences of non-fulfilment of conditions subsequent

3.2.1 In case of a non-fulfilment of condition subsequent as enumerated in Article 3.1 above, BHEL SBD shall encash the Performance Bank Guarantee submitted by the SPD. BHEL SBD shall have the right to terminate this Agreement by giving a notice to the SPD in writing of at least seven (7) days unless the delay is on account of delay by Government or Force Majeure. The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.

3.2.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.2.3 In case of inability of the SPD to fulfil any one or more of the conditions specified in Article 3.1 due to any Force Majeure event (Article 4.5.2), the time period for fulfilment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

3.2.4 Provided that due to the provisions of this Article 3.2.3, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

3.3 Performance Bank Guarantee

3.3.1 The Performance Bank Guarantee having validity of tenure of PPA from the date of signing this Agreement and of **Rs. 25.70 Lakh/MWp** to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule1.

3.3.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the SPD.

3.3.3 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by BHEL SBD, subject to conditions mentioned in Article 4.5, BHEL SBD shall encash the Performance Bank Guarantee without prejudice to the other rights of BHEL SBD under this Agreement.

3.4 Return of Performance Bank Guarantee

3.4.1 Subject to Article 3.3, BHEL SBD shall return / release the Performance Bank Guarantee within 15 days after the completion of the tenure of the PPA as per

provisions stipulated in this Agreement.

3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of BHEL SBD under this Agreement.

4 ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 SPD's Obligations

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

- a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
- b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices; and
- c) the commencement of supply of power up to the Contracted Capacity to BHEL SBD not later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; and
- e) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- f) maintaining its controlling shareholding (controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital) prevalent at the time of signing of PPA in the Company/Consortium developing the project up to a period of one (1) year after Commercial Operation Date. However, transfer of controlling shareholding within the same Group Companies will be allowed with the written permission of BHEL SBD even before one-year period from COD subject to the condition that the management control remains within the same Group Companies; and
- g) Performance and fulfilment of all the obligations of the SPD in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the SPD under this Agreement.
- h) SPD warrants that it will comply with all the warranty conditions of the original equipment manufacturer from the date of acceptance of the equipment by the SPD, conform to the specifications and shall maintain the solar power plant as per the recommendations of the original equipment manufacturer.
- i) SPD warrants and confirms that, at all time during the currency of the Agreement, it shall maintain the solar power plant in accordance with the recommendation of OEM.
- j) SPD undertakes and confirms that, it shall impart training to BHEL, SBD's staff

who are supervising the day-to-day operation and maintenance of solar power plant without any additional cost.

- k) The SPD shall not cause any damages to the property of BHEL SBD during the installation of the solar power plant and also during the operation and maintenance of the same. In the event of any damage caused to property of BHEL SBD due to negligence or misconduct of the SPD, the same shall be rectified or replaced (as instructed by BHEL SBD) by the SPD at its own cost and expenses. The SPD confirms that, in the event of failure to adhere to the above, BHEL SBD shall have the right to withhold the payments due to the SPD until the defect is rectified.
- l) The roofs shall not be used for any other purpose other than the purpose mentioned in NIT.
- m) Operation and maintenance of the Power Project in accordance with the provisions of this Agreement.
- n) Unless otherwise agreed between the Parties, the SPD shall not carry out any modification of the Premises without the written consent of BHEL SBD, except the modifications mentioned in NIT. The SPD shall maintain general cleanliness of the area around the Power Project during the term of the Agreement.

4.1.2 The SPD shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- a) make, or cause to be made, necessary applications to the relevant government agencies with such particulars and details, as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Power Project;
- c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- d) ensure and procure that the SPD and its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the SPD's obligations under this Agreement;
- e) take all necessary and reasonable safety precautions with respect to providing the installation work, solar power and operations during the term of the Agreement that shall comply with all applicable Laws pertaining to the health and safety of persons and real and personal property; and

- f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement.

4.2 Information regarding Interconnection Facilities

4.2.1 The SPD shall be required to obtain all information with regard to the Interconnection Facilities necessary to enable it to design, install and operate Plant and all interconnecting apparatus/ equipment on the SPD's side of the Delivery Point(s) to enable delivery of electricity at the Delivery Point(s).

4.2.2 The transmission of power up to the point of interconnection (upto respective building LT switchgear) shall be the responsibility of the SPD at his own cost.

4.2.3 The SPD shall not be entitled to any deemed generation in case of any delay in connectivity to the Project.

4.2.4 All costs and charges including but not limited to the wheeling charges (if applicable in future) and losses up to the interconnect point associated with this arrangement will also be borne by the SPD on mutual agreement.

4.3 Purchase and sale of Contracted Capacity

4.3.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell only to BHEL SBD and BHEL SBD subjected to clause 4.4 below, undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.4 Right to Contracted Capacity & Energy

4.4.1 BHEL SBD, at any time during a Contract Year, shall not be obliged to Purchase any additional energy from the SPD beyond <E1>Million kWh (MU). The declared annual CUF shall in no case be less than the CUF mentioned for each year in the table at Annexure – J. If for any Contract Year, it is found that the SPD has not been able to generate minimum energy of <E2>Million kWh (MU) till the end of 25 years from the COD for each corresponding year as per Annexure – J, on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make SPD liable to pay the compensation and shall duly pay such compensation to BHEL SBD. This will, however, be relaxable by BHEL SBD to the extent of grid non-availability for evacuation, which is beyond the control of the developer. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The compensation shall be equal to the excess tariff payable by BHEL SBD (prevailing tariff determined by the BESCOM as applicable to BHEL SBD including all taxes) over and above the agreed tariff as per Article 9 of this Agreement. If the SPD is not able to generate minimum energy corresponding to any three years consecutively as per Annexure – J on account of reasons solely attributable to the SPD, then the amount of compensation payable shall be ***doubled over the actual compensation payable for the third year***. If the SPD is not able to generate minimum energy corresponding to any five years consecutively as per Annexure – J on account of reasons solely attributable to the SPD

then BHEL reserves the right to terminate PPA without notice and SPD shall cease to have rights over the solar power plant and shall immediately vacate the premises without any cost liability to BHEL. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with BHEL SBD affecting supply of solar power by SPD.

Note: Energy Limits – E1, E2 shall be governed by the Criterion for Generation (as laid down in NIT document)

4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF as per Annexure – J may be purchased by BHEL SBD unless refused by BHEL SBD. While the SPD should install DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than BHEL SBD (unless refused by BHEL SBD). However, in case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency.

However, this compensation shall not be applicable in events of Force Majeure identified under PPA with BHEL SBD affecting supply of solar power by SPD. However, the amount of shortfall in generation shall be adjusted, on account of non-availability of grid for power evacuation which is beyond the control of the SPD and/or occurrence of abnormally low Global Horizontal Irradiance (GHI) year (i.e. if the actual global solar irradiance in the year under consideration is less than 50% of average values of two (2) years of annual GHI as available from the nearest IMD/SRRA stations). For avoidance of any doubt, it is clarified that the extent of adjustment in CUF in case of non-availability of grid for evacuation which is beyond the control of SPD and / or abnormally low annual Global Horizontal Irradiance year and /or force majeure shall not qualify for revenue billing. Moreover, in case annual GHI is equal to or more than 50% of average value of two (2) years of annual GHI as available from the nearest IMD/SRRA stations, no adjustment shall be made in the annual CUF on account of abnormally low annual GHI year. Any energy produced before COD shall not be at the cost of BHEL SBD under this scheme.

4.5 Extensions of Time

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

- a) any BHEL SBD Event of Default; or
- b) Force Majeure Events affecting BHEL SBD, or
- c) Force Majeure Events affecting the SPD,

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

4.5.2 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

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

4.5.5 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date determined pursuant to Article.

4.6 Liquidated Damages for delay in commencement of supply of power to BHEL SBD

4.6.1 If the SPD is unable to commence supply of power to BHEL SBD by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to BHEL SBD, damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

- a) Delay up to one (1) months – 1st part of the PBG amounting to Rs. 6 Lakhs shall be encashed by BHEL SBD, proportionally calculated on per day basis for delay up to 1 month from the Scheduled Commissioning Date.
- b) Delay of more than one (1) month and up to three (3) months: BHEL SBD shall encash the remaining 17.13 lakhs of PBG, proportionally calculated on per day basis for delay up to another two months.
- c) In case of part or full encashment of PBG as cited at 4.6 (a) and 4.6 (b), the PBG shall be replenished to the full amount as per clause 3.11(ii) of the NIT. All the charges for the replenishment/renewal shall be borne by the SPD.
- d) In case the commissioning of the Project is delayed by more than 3 months after scheduled commissioning date, i.e. beyond 6 months from signing of PPA, BHEL SBD reserves the right to terminate the PPA and cancel the Project.

- e) For the purpose of calculations for penalty, the month shall be considered consisting of 30 days

4.7 Acceptance/Performance Test

4.7.1 Prior to synchronization of the Power Project, the SPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or Chief Electrical Inspectorate, Govt. of Karnataka or agency identified by the central government to carry out testing and certification for the solar power projects. All the results of the performance test shall be made available to BHEL SBD. Any suggestion or recommendations by such test report shall be adhered by the SPD and shall furnish proof to BHEL SBD. The cost incurred in pursuance to such acceptance/performance test shall be borne by SPD.

4.8 Third Party Verification

4.8.1 The SPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to BHEL SBD and a third Party if nominated by BHEL SBD or any Govt. agency for inspection and verification of the works being carried out by the SPD at the site of the Power Project. The SPD shall bear the all the costs of Third Party verification.

4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the SPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.

4.8.3 The third party may carry out checks for testing the CUF of the Power Project in accordance with Clause 4.4.1.

4.8.4 During the Term of this Agreement, the SPD shall undertake to conduct performance test or the third-party verification on a yearly basis at its own cost and expenses and shall comply with the recommendation of such test. The SPD shall share the copies of such report, if any, with BHEL SBD.

4.9 BHEL, SBD's Obligations

4.9.1 BHEL SBD shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

4.9.2 BHEL SBD shall ensure timely payments of Tariff to the SPD as per the procedure set out in Article 10.

4.9.3 BHEL SBD agrees to provide support to the SPD and undertake to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a) upon written request from the SPD, and subject to the SPD complying with Applicable Laws, provide reasonable support and assistance to the SPD in procuring

Applicable Permits required from any government agencies for implementation and operation of the Project;

- b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- c) act reasonably, while exercising its discretionary power under this Agreement;
- d) support, cooperate with and facilitate the SPD in the implementation and operation of the project in accordance with the provisions of this Agreement. However, BHEL SBD is not obligatory for the safety, security and wages for the employees/ labours working under SPD and executing this project.

5. ARTICLE 5: SYNCHRONISATION, COMMISSIONING & COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

5.1.1 The SPD shall give the concerned BESCO/RLDC/SLDC, BHEL SBD at least twenty (20) days advanced preliminary written notice and at least ten (10) days advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.

5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.

5.1.3 The synchronization equipment shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by BESCO in intimation to BHEL SBD or a third party nominated by BHEL SBD.

5.1.4 The SPD shall immediately after each synchronization/tripping of PCUs, inform BHEL SBD and all other concerned authorities in accordance with applicable Grid Code under intimation to BHEL SBD. In-Addition the SPD will inject infirm power to grid time to time to carry out operational/ functional test prior to commercial operation.

5.1.5 The SPD shall commission the Project as detailed in "Schedule 3: Commissioning Procedure" within six (6) Months of the date of signing of PPA.

6. ARTICLE 6: DISPATCH AND SCHEDULING

6.1 Dispatch and Scheduling

Deleted

7 ARTICLE 7: METERING

7.1 Meters

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

7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.

7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install necessary energy meters. All the meters must be ABT compliant.

7.1.4 Measurement of Electrical Energy shall be done at the metering points jointly by the parties.

7.1.5 The scope of net metering and the suitable arrangement in accordance with the BESCO, if applicable in future, shall be under the scope of SPD.

7.1.6 Energy Scheduling

It is understood and agreed by and between the parties that SPD shall operate the Project as per applicable grid operating standards and relevant statutory provisions/guidelines and codes, as applicable from time to time.

It is agreed between the Parties that the Project shall be treated as 'MUST RUN' and shall not be subject to merit order dispatch.

7.2 Reporting of Metered Data and Parameters

7.2.1 The grid connected solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.

7.2.2 Online arrangement would have to be made by the SPD at its own cost for submission of above data regularly for the entire period of this Power Purchase Agreement to the BHEL SBD/BESCO and the concerned Ministry or concerned agency as per applicable regulation / directions. Suitable arrangement should be made for SCADA facility.

7.2.3 Reports on above parameters on monthly basis shall be submitted by the SPD to

BHEL SBD for entire period of PPA.

8 ARTICLE 8: INSURANCES

8.1 Insurance

8.1.1 The SPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements and under applicable laws.

8.2 Application of Insurance Proceeds

8.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

8.3 Effect on liability of BHEL SBD

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable by BHEL SBD.

9 ARTICLE 9: APPLICABLE TARIFF

9.1 The tariff for sale of power is determined as per the tariff discovered through the Competitive bidding process. This tariff is valid for entire duration of this agreement. Any implication of Change in Law as per Article 12 which shall result in a revision of the tariff accordingly, applicable from the month subsequent to such change.

9.2 Subsequent to the commissioning of the Project, if there is any de-commissioning / dismantling activity is taken by SPD for the reasons not attributable to the SPD, BHEL SBD shall make good of such expenses incurred by SPD for carrying out activities and loss in generation. Loss in generation shall be calculated as per methodology given in Article 10.7.

9.3 The SPD shall be entitled to receive the Tariff of Rs. ____ / kWh, fixed for the entire Term of the PPA with effect from the COD.

9.4 Any energy produced and flowing into the grid before COD shall not be at the cost of BHEL SBD under this scheme and in case of excess generation over and above 10% of declared CUF, the first right of refusal for purchase of such power shall be with BHEL SBD.

9.5 The Selected Project Developer will be required to submit all information and documents as desired by BHEL SBD from time to time.

9.6 Auxiliary Power Consumption by the SPD

SPD shall be entitled to draw the power for its auxiliary consumption from the grid. Auxiliary power shall be adjusted by BHEL SBD from energy billing through net off scheme from the delivered energy, as indicated below:

10 ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1 From the commencement of supply of power, BHEL SBD shall pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with this Article and Article 9. All Tariff Payments by BHEL SBD shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1 The SPD shall issue to BHEL SBD a signed Monthly Bill/Supplementary Bill for the immediately preceding Month along with necessary supporting documents (if any) complete in all respects. Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Joint Meter reading. The Monthly Bill amount shall be the product of the energy supplied and the applicable Tariff.

10.3 Payment of Monthly Bills

10.3.1 BHEL SBD shall pay the amount payable under the Monthly Bill/Supplementary Bill if the same is found satisfactory and complete in all respects to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.2 (iii) below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

(i) deductions required by the Law; and

(ii) Income tax as applicable shall be deducted at source by BHEL from the Monthly Bills and TDS certificate will be issued.

(iii) amounts claimed by BHEL SBD, if any, from the SPD, through an invoice to be payable by the SPD, and not disputed by the SPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that BHEL SBD shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

iv) The SPD shall open a bank account at [Insert name of place] (the "SPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by BHEL SBD to the SPD, and notify BHEL SBD, of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. BHEL SBD shall also designate a bank account at (insert place) for payments to be

made by the SPD to BHEL SBD, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. BHEL SBD and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD' Designated Account or BHEL, SBD's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.4 In the event of early Commissioning of the Project the payment for the power fed to the grid will be accounted from the date of COD, but SPD would be allowed to raise Bills against such power only from the date not earlier than two months prior to Scheduled Commissioning Date.

10.4 Disputed Bill

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

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

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

10.4.3 If the SPD agrees to the issues raised in the Bill Dispute Notice issued pursuant to Article 10.4.2, the SPD shall revise such Bill and present along with the next Monthly Bill. In such a case, the excess amount shall be refunded back to the disputing party or shall be adjusted in the next monthly bill

10.4.4 If the SPD does not agree to the issue raised in the Bill Dispute Notice issued pursuant to Article 10.4.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the BHEL SBD providing:

- (i) reasons for its disagreement;
- (ii) its estimate of what the correct amount should be; and
- (iii) all written material in support of its counter-claim.

10.4.5 Upon receipt of the Bill Disagreement Notice by the BHEL SBD under Article 10.4.4, authorized representative(s) of the BHEL SBD and SPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.4.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.4.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an

Invoice, SPD shall be continue to give its services to BHEL SBD and no case services should be stopped by SPD.

10.5 Quarterly and Annual Reconciliation

10.5.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, or any other reasonable circumstance provided under this Agreement.

10.5.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the SPD and BHEL SBD shall jointly sign such reconciliation statement. Within fifteen

(15) days of signing of a reconciliation statement, the SPD shall make appropriate adjustments in the next Monthly Bill. No interest shall be payable on any of the Invoice of the parties. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.6 Payment of Supplementary Bill

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

- (i) Adjustments required by Joint Meter Reading (if applicable); or
- (ii) Change in Law as provided in Article 12, or and such Supplementary Bill shall be paid by the other Party.

10.6.2 BHEL SBD shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the reasonable Due Date. If any claim is being raised pursuant to the Article 4.4.1, BHEL SBD shall make adjustment in the payment made to the SPD.

10.7 Off take constraints due to Connectivity Infrastructure /Grid/ load Unavailability & Back down

10.7.1 Generation Compensation in offtake constraint (Connectivity constraint): After the Scheduled Commissioning Date, if the plant is ready but the necessary power evacuation/ connectivity infrastructure is not ready or limitations of the BHEL SBD Substation, for reasons not attributable to the SPD, leading to offtake constraint, the provision for generation compensation is as follows

| : Connectivity Constraint | Provision for Generation Compensation |
|---|--|
| If the Project is ready but the Necessary | a. The CUF as per the NIT Document, for the period of grid/load unavailability, shall be taken |

| | |
|---|--|
| power evacuation/connectivity infrastructure is not ready or limitations of the BHEL SBD Substation, leading to off-take constraint | for the purpose of calculation of generation loss. Corresponding to this generation loss, SPD shall raise bill to BHEL SBD and shall be paid by the BHEL, SBD at the PPA tariff so as to offset this loss. |
|---|--|

10.7.2 Generation Compensation in offtake constraints due to Load Unavailability:

During the operation of the Project, there can be some periods where the Project can generate power but due to temporary transmission/ distribution unavailability/ low load availability, the power is not evacuated, for reasons not attributable to the SPD. In such cases the generation compensation shall addressed in following manner:

| Duration of Grid Unavailability | Provision for Generation Compensation |
|--|---|
| Hours of load unavailability during a monthly bill cycle | Minimum Generation Compensation = 50% of Estimated generation based on radiation of the month measured – Actual generation) x PPA Tariff. Any outage hours of plant will not be considered for this calculation SPD shall raise bill to BHEL SBD for such generation loss and shall be paid by BHEL SBD at the PPA tariff so as to offset this loss. In case if there is no generation in a contract year, generation in the previous contract year shall be considered for the purpose of calculation. |

11 ARTICLE 11: FORCE MAJEURE

11.1 Definitions

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

11.2 Affected Party

11.2.1 An affected Party means BHEL SBD or the SPD whose performance has been affected by an event of Force Majeure.

11.3 Force Majeure

11.3.1 A ‘Force Majeure’ means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- b) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

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 plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b) Delay in the performance of any contractor, sub-contractor or their agents;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d) Strikes at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or, connected with the Affected Party's:
 - (i) Negligent or intentional acts, errors or omissions;
 - (ii) Failure to comply with an Indian Law; or
 - (iii) Breach of, or default under this Agreement.

11.5 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 reinstatement of communications, but not later than one

(1) day after such reinstatement.

11.5.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6 Duty to Perform and Duty to Mitigate

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 Available Relief for a Force Majeure Event

11.7.1 Subject to this Article 11:

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

12 ARTICLE 12: CHANGE IN LAW

Definitions

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

"Change in Law" means the occurrence of any of the following events after the last date of Bid submission resulting into any additional recurring/ non-recurring expenditure

by SPD or any income to SPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Buying Entity;
- any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax, duties and cess made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project. However, Change in Law shall not include
 - I. any change in taxes on corporate income or
 - II. any change in any withholding tax on income or dividends distributed to the shareholders of the SPD (if applicable), or
 - III. any change on account of regulatory measures by the Appropriate Commission

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

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

Relief for Change in Law

The aggrieved Party shall be required to approach the Appropriate Commission for

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

13 ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPD Event of Default

13.1.1 The occurrence and / or continuation of any of the events, unless any such event occurs as a result of a Force Majeure Event or a breach by SPD of its obligations under this Agreement, shall constitute a SPD Event of Default:

- (ii) The failure to commence supply of power to BHEL SBD up to the Contracted Capacity, by the end of the period specified in Article 4, or
if
 - a) the SPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement or
 - b) the SPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement except where such transfer
 - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (iii) if (a) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPD, or (c) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPD will not be a SPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains credit-worthiness similar to the SPD and expressly assumes all obligations of the SPD under this Agreement and is in a position to perform them; or
- (iv) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from BHEL SBD in this regard; or
- (v) if SPD fails to fulfil any obligation or discharge any duty imposed on it, under this Agreement or
- (vi) change in controlling shareholding before the specified time frame as mentioned in

Article 4.1.1 of this Agreement; or

- (vii) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.

13.2 BHEL SBD Event of Default

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the SPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting BHEL SBD:

- (i) BHEL SBD fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.4, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD.
- (ii) BHEL SBD repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, BHEL SBD is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by BHEL SBD within thirty (30) days of receipt of notice in this regard from the SPD to BHEL SBD; or if
- (iv) BHEL SBD 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
- (v) any winding up or bankruptcy or insolvency order is passed against BHEL SBD, or
- (vi) BHEL SBD goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a BHEL SBD Event of Default, where such dissolution or liquidation of BHEL SBD or BHEL SBD is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to BHEL SBD and expressly assumes all obligations of BHEL SBD and is in a position to perform them; or;
- (vii) Occurrence of any other event which is specified in this Agreement to be a material breach or default of BHEL SBD.

13.2 Procedure for cases of SPD Event of Default

13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, BHEL SBD shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement

(BHEL SBD Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, BHEL SBD may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD.

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

Provided that any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Notice Inviting Tender (NIT) issued by BHEL SBD and accepts and honours all the terms and condition of this PPA signed between SPD and BHEL SBD.

13.3.4 The lenders in consultation with BHEL SBD may seek to exercise right of substitution under Article 13.3.3 by an amendment or novation of the PPA in favour of the selectee.

The SPD shall cooperate with BHEL SBD to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized.

13.3.5 In case the lending institution exercises the right to step in or take over the Project. BHEL SBD will also have right to step in along with the lending institution.

13.4 Procedure for cases of BHEL SBD Event of Default

13.4.1 Upon the occurrence and continuation of any BHEL SBD Event of Default specified in Article 13.2 the SPD shall have the right to deliver to BHEL SBD, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a SPD Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

13.4.4 After a period of seven (7) days following the expiry of the Consultation Period

and unless the Parties shall have otherwise agreed to the contrary or BHEL SBD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, this Agreement may be terminated by the SPD.

13.5 Termination due to Force Majeure

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

14 ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

14.1.1 The SPD shall indemnify, defend and hold BHEL SBD harmless against:

- a) any and all third party claims against BHEL SBD 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 SPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by BHEL SBD from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPD, for which specific remedies have been provided for under this Agreement)
- c) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by BHEL SBD arising out of the claims by contract labourers employed by SPD. SPD shall be the Principal Employer in respect to such contract labourers and SPD shall comply with all applicable labour laws; and
- d) all claims for (i) bodily injuries, including death, or damages to property, as well as any indirect or incidental cost, losses or damages, caused by the SPD or its employees in connection with the performance of this Agreement or by his Power Plant, or (ii) any consequential damages and/or any economic loss caused directly or indirectly by SPD, its employees or its Power Plant.

14.1.2 BHEL SBD shall indemnify, defend and hold the SPD harmless against:

- a) any and all third party claims against the SPD, 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 BHEL, SBD of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPD from third party claims arising by reason of a breach by BHEL SBD of any of its obligations.

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

(i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3; 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 Indemnifying Party.

b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the 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.

14.3 Indemnifiable Losses

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

14.4 Limitation on Liability

14.4.1 Except as expressly provided in this Agreement, neither the SPD nor BHEL SBD

nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 BHEL SBD shall have no recourse against any officer, director or shareholder of the SPD or any Affiliate of the SPD or any of its officers, directors or shareholders for such Claims excluded under this Article. The SPD shall have no recourse against any officer, director or shareholder of BHEL SBD, or any affiliate of BHEL SBD or any of its officers, directors or shareholders for such claims excluded under this Article.

However, that this limitation shall not apply to the cost of repairing or replacing defective equipment by the bidder, or to any obligation of the bidder to indemnify the BHEL with respect to Intellectual Property Rights or Under any other provisions of the Contract which expressly impose a greater liability or in cases of fraud, willful misconduct or illegal or unlawful acts.

14.5 Duty to Mitigate

14.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

14.6 No interest shall be payable by BHEL on earnest money or security deposit or any money due to the SPD by BHEL.

15 ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing. Provided that BHEL SBD shall permit assignment of any of SPD's rights and obligations under this Agreement in favour of the lenders to the SPD, if required under the Financing Agreements.

Provided that, such consent shall not be withheld by the SPD if BHEL SBD seeks to transfer to any affiliate all of its rights and obligations under this Agreement. Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

15.2 Permitted charges

15.2.1 SPD shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 15.1.

16 ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

In case of contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

"In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No 4(1)/2013-DPE(GM/FTS 1835 dated 22 05-2018".

ARBITRATION & CONCILIATION CLAUSE:

The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof Except as provided elsewhere in this contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the contract; or, the respective rights and liabilities of the parties; or, in relation to interpretation of any provision of the contract; or, in any manner touching upon the contract, then, either party may, by a notice in writing to

the other party refer such dispute or difference to the sole arbitration of an arbitrator appointed by head of the BHEL unit issuing the contract. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause, the seat of arbitration shall be at Bengaluru. The cost of arbitration shall be borne as per the award of the Arbitrator. Subject to the arbitration in terms of

above clause, the courts at Bengaluru, Karnataka State shall have exclusive jurisdiction over any matter arising out of or in connection with this contract. Notwithstanding the existence or any dispute or differences and / or reference for the Appropriate Commission or the Arbitration Tribunal, the contractor shall proceed with and continue without hindrance the performance of its obligations under this contract with due diligence and expedition in a professional manner except where the contract has been terminated by either party in terms of this contract.

17 ARTICLE 17: REPRESENTATIONS AND WARRANTIES

17.1 Representations and warranties of the SPD

SPD represents and warrants to BHEL SBD that:

17.1.1 it is duly organized, validly existing and in good standing under the laws of India;

17.1.2 it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated here-by;

17.1.3 it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

17.1.4 it has the financial standing and capacity to undertake the Project;

17.1.5 this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

17.1.6 the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the SPD's Memorandum and Articles of Association or any Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

17.1.7 there are no actions, suits, proceedings or investigations pending or to the SPD's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute SPD Event of Default or which individually or in the aggregate may result in Material Adverse Effect;

17.1.8 it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;

17.1.9 it has complied with all Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

17.1.10 no representation or warranty by the SPD contained herein or in any other

document furnished by it to BHEL SBD or to any Government Agency in relation to Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

17.1.11 without prejudice to any express provision contained in this Agreement, the SPD acknowledges that prior to the execution of this Agreement, the SPD has after a complete and careful examination made an independent evaluation of the Project, and the information provided by BHEL SBD, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the SPD in the course of performance of its obligations hereunder. The SPD also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that BHEL SBD shall not be liable for the same in any manner whatsoever to the SPD.

17.1.12 the SPD or SPDs' agents or representatives have visited, inspected, familiar with and satisfied with the premises, its physical condition, roads, access rights, utilities, topographical conditions, except for unusual or unknown surface or subsurface conditions, or unusual or unknown conditions, and have performed all reasonable investigations necessary to determine that the project site is suitable for the construction /modification and installation of the solar power plant, and are familiar with the local and other conditions which may be material to SPDs' performance of its obligations under this Agreement.

17.1.13 It has the requisite skill, knowledge, experience, expertise, infrastructure and capability to carry out the scope of services and also has trained and experienced persons having requisite skills, knowledge, experience, and expertise to perform the functions, operation and maintenance service, in terms of this Agreement.

17.1.14 The SPD has taken all necessary measures to comply with the statutory requirements as mentioned in the Annexure – K.

17.2 Representations and Warranties of BHEL SBD

BHEL SBD represents and warrants to the SPD that:

17.2.1 BHEL SBD has full power and authority to enter into this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and

17.2.2 This Agreement constitutes BHEL, SBD's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

17.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same and where reasonably possible, prior consent for such change shall be taken from the other party.

18 ARTICLE 18: MISCELLANEOUS PROVISIONS

18.1 Amendment

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

18.2 Third Party Beneficiaries

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

18.3 Waiver

18.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:

18.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

18.4 Confidentiality

18.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law without the prior written consent of the other Party.

18.5 Severability

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

18.6 Notices

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

18.6.2 If to the SPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

| | |
|---------------|--|
| Attention: | |
| Email: | |
| Address: | |
| Fax No. | |
| Telephone No. | |

18.6.3 If to BHEL SBD, all notices or communications must be delivered personally or by registered post or fax or any other mode duly acknowledged to the address(es) below:

| | |
|---------------|--|
| Attention: | |
| Email: | |
| Address: | |
| Fax No. | |
| Telephone No. | |

18.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the fax Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

18.6.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

18.7 Language

18.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

18.7.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

18.8 Restriction of Shareholders' / Owners' Liability

18.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement.

18.9 Taxes and Duties

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

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

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

18.10 Independent Entity

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

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

18.11 Compliance with Law

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

18.12 Notice of Damage or Emergency

The SPD shall

- (ii) Promptly notify BHEL SBD if it becomes aware of any damage to or loss of the use of the Power Project or that could reasonably be expected to adversely affect the Power Project,
- (iii) Immediately notify BHEL SBD once it becomes aware of any event or circumstances that pose an imminent risk to human health, the environment, the Power Project or Premises.

18.13 Goodwill and Publicity

Neither party shall use any trade name, service mark nor trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party, the parties shall co-ordinate and cooperate with each other when making

public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases and other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such releases or their public statements shall be made by either Party without the prior written consent of the other Party. Without limiting the generality of the foregoing and whether or not the consent of the other Party is required to be obtained, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement.

18.14 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior agreements and undertakings, written or oral, with respect to the subject matter hereof except as otherwise expressly provided herein.

18.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

18.16 Immunity to Government of India

It is understood and agreed that the Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that BHEL SBD is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable Laws of India and General Principles of Contract Law. The SPD shall agree, acknowledge and understand that BHEL SBD is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Agreement. Accordingly, SPD expressly waives, releases and foregoes any and all actions or claims against the Government of India arising out of this Agreement, not to sue the Government of India in any manner, claim, and cause of action or thing whatsoever arising out of or under this Agreement.

18.17 Bribes and Gifts

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the SPD or his parties, agent or servant or any one on his or their behalf to any officer, servant, representative or agent of BHEL SBD or any person on his or their behalf in relation to the obtaining or to the execution of this or any other Agreement with BHEL SBD shall, in addition to any criminal liability which the SPD may incur, subject the SPD to the cancellation of this and all other Agreements with BHEL SBD and also to payment of any loss or damage resulting from any such cancellation. Any question or dispute as to the commission of any offence under the present clause shall be settled by BHEL SBD in such manner and on such evidence or information as they may think

fit and sufficient and their decision shall be final and conclusive.

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

| | |
|--|---|
| For and on behalf of [BHEL SBD] Name, Designation and Address (Signature with Seal) | On behalf of [SPD] Name, Designation and Address (Signature with Seal) |
| Witness: 1. 2. | Witness: 1. 2. |

ANNEXURE-N: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(Note: Total Performance Guarantee is to be submitted in 2 Nos. of Bank Guarantee in the ratio of 20% & 80% Value.)

(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] (here in after referred to as selected Solar Power Developer') submitting the response to NIT inter alia for selection of the project of the capacity of MW, at[Insert name of the place] for supply of power there from on long term basis, in response to the NIT dated..... issued by Bharat Heavy Electricals Limited(herein after referred to as BHEL SBD) and BHEL SBD considering such response to the NIT of[insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Intent No -----to (Insert Name of selected Solar Power Developer) as per terms of NIT and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s - -----{a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the NIT, the _____ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to BHEL SBD at [Insert Name of the Place from the address of the BHEL SBD] forthwith on demand in writing from BHEL SBD or any Officer authorised by it in this behalf, any amount up to and not exceeding Rupees-----[Total Value] only, on behalf of M/s _____ [Insert name of the selected Solar Power Developer / Project Company]

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

Our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only.

Our Guarantee shall remain in force until..... BHEL SBD shall be entitled to invoke this Guarantee till

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

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

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

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and it shall remain in force until We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if BHEL SBD serves upon us a written claim or demand.

ANNEXURE-O: STATUTORY REQUIREMENTS

1 The tenderer will be required to comply with all the statutory provisions such as Bonus, if applicable any, (% as prevailing in BHEL SBD) if applicable, PF (12%), EDLI (Employees' Deposit Linked Insurance Scheme) (0.5%), ESI, Gratuity, GST whichever is applicable as per norms and other applicable taxes, Karnataka State Fair Wages prevailing at the time of payment or arrears thereof, declared Holidays, leave, Karnataka Labour Welfare Fund etc. The contractor shall submit the documentary evidence of payment on account of submission of statutory payments made to the concerned agencies every month and same shall be submitted as and when required to be produced.

2 The bidder shall comply with the provisions of the Factories Act 1948, Contract Labour (Regulation and und and Miscellaneous Provisions Act 1952, Minimum Wages Act 1948, Payment of Gratuity Act 1972, Industrial Disputes Act, 1947, Payment of Bonus Act 1965, if applicable, Employers Liability Act 1938, Inter State Migrants Workmen (Regulation of employment and conditions of Service) Act 1979 State Govt. Labour Welfare Fund Act, and or any other Laws and Rules that may be applicable from time to time to the workers engaged by him. The bidder, when required by the Company shall produce the registers and records for verification and comply with other directions issued by the company for compliance of the Factories Act

3 The bidder shall fully indemnify the loss if any caused to BHEL due to any default or non-observance of any of the laws mentioned in clause 7.2, or any omission or commission or inability on the part of the Bidder or his representative.

4 The bidder shall, keep and produce for inspection at all times, forms, registers and other records required to be maintained under various statutes in order to enable scrutiny by the Company whenever required

5 The bidder shall produce to the Company, the documentary proof of payment of the said statutory dues. No observance of the provisions will be construed as default by the Bidder in making such payment, and payment of his bill will be deferred despite other legal action

6 The bidder shall have to follow the provisions of Payment of Bonus Act 1965, if applicable and Rules 1975, and is liable to pay Bonus to his workers.

7 The bidder will have to extend paid National Holidays and Festival Holidays to their workmen as per BHEL SBD direction or as per the provisions of the relevant Act and the Rules thereof. However, if due to exigencies of work the contractor engages his workmen on National Holidays or Festival Holidays contractor shall pay

additional wages as prescribed under the provisions of the Act

8 Price Variation Clauses (PVC) are not applicable vis-à-vis payments to labour are concerned.

9 Over-run Compensation Clauses are not applicable.

10 Any other statutory requirement of central/state govt not list here to be followed by SPD.

INTEGRITY PACT**Between**

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for _____

_____ (hereinafter referred to as "Contract"). The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint panel of Independent External Monitor(s) (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1- Commitments of the Principal

- 1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - 1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - 1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - 1.1.3 The Principal will exclude from the process all known prejudiced persons.
- 1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

- 2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits himself to observe the following principles during participation in the tender process and during the contract execution.

- 2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- 2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- 2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- 2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and shall await their decision in the matter.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process, terminate the contract, if already awarded, exclude from future business dealings and/ or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

- 4.1 If the Principal has disqualified the Bidder (s) from the tender process before award / order acceptance according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- 4.2 If the Principal is entitled to terminate the Contract according to Section 3, or terminates the Contract in application of Section 3 above, the Bidder(s)/ Contractor (s) transgression through a violation of Section 2 above shall be construed breach of contract and the Principal shall be entitled to demand and recover from the Contractor an amount equal to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee, whichever is higher, as damages, in addition to and without prejudice to its right to demand and recover compensation for any other loss or damages specified elsewhere in the contract.

Section 5 - Previous Transgression

- 5.1 The Bidder declares that no previous transgressions occurred in the last 3 (three) years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason or action can be taken as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 6 - Equal treatment of all Bidder (s)/ Contractor (s) / Sub-contractor (s)

- 6.1 The Principal will enter into Integrity Pacts with identical conditions as this Integrity Pact with all Bidders and Contractors.
- 6.2 In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor(s) and ensure that all Sub-contractors also sign the Integrity Pact.
- 6.3 The Principal will disqualify from the tender process all Bidders who do not sign this Integrity Pact or violate its provisions.

Section 7 - Criminal Charges against violating Bidders/ Contractors /Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 -Independent External Monitor(s)

- 8.1 The Principal appoints competent and credible panel of Independent External Monitor (s) (IEMs) for this Integrity Pact. The task of the IEMs is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Integrity Pact.
- 8.2 The IEMs are not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.
- 8.3 The IEMs shall be provided access to all documents/ records pertaining to the Contract, for which a complaint or issue is raised before them as and when warranted. However, the documents/records/information having National Security implications and those documents which have been classified as Secret/Top Secret are not to be disclosed.
- 8.4 The Principal will provide to the IEMs sufficient information about all meetings among the parties related to the Contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the IEMs the option to participate in such meetings.

- 8.5 The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEMs would not be legally binding and it is restricted to resolving issues raised by a Bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some Bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process or during execution of Contract, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to the CMD, BHEL at the earliest. They may also send their report directly to the CVO, in case of suspicion of serious irregularities requiring legal/ administrative action. Only in case of very serious issue having a specific, verifiable Vigilance angle, the matter should be reported directly to the Commission. IEMs will tender their advice on the complaints within 30 days.
- 8.8 The CMD, BHEL shall decide the compensation to be paid to the IEMs and its terms and conditions.
- 8.9 IEMs should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the Principal should be looked into by the CVO of the Principal.
- 8.10 If the IEMs have reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code / Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the IEMs may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- 8.11 After award of work, the IEMs shall look into any issue relating to execution of Contract, if specifically raised before them. As an illustrative example, if a Contractor who has been awarded the Contract, during the execution of Contract, raises issue of delayed payment etc. before the IEMs, the same shall be examined by the panel of IEMs. Issues like warranty/ guarantee etc. shall be outside the purview of IEMs.
- 8.12 However, the IEMs may suggest systemic improvements to the management of the Principal, if considered necessary, to bring about transparency, equity and fairness in the system of procurement.
- 8.13 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

- 9.1 This Integrity Pact shall be operative from the date this Integrity Pact is signed by both the parties till the final completion of contract for successful Bidder, and for all other Bidders 6 months after the Contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.
- 9.2 If any claim is made/ lodged during currency of this Integrity Pact, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 - Other Provisions

- 10.1 This Integrity Pact is subject to Indian Laws and exclusive jurisdiction shall be of the competent Courts as indicated in the Tender or Contract, as the case may be.
- 10.2 Changes and supplements as well as termination notices need to be made in writing.
- 10.3 If the Bidder(s)/ Contractor(s) is a partnership or a consortium or a joint venture, this Integrity Pact shall be signed by all partners of the partnership or joint venture or all consortium members.
- 10.4 Should one or several provisions of this Integrity Pact turn out to be invalid, the remainder of this Integrity Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 10.5 Only those bidders / contractors who have entered into this Integrity Pact with the Principal would be competent to participate in the bidding. In other words, entering into this Integrity Pact would be a preliminary qualification.
- 10.6 In the event of any dispute between the Principal and Bidder(s)/ Contractor(s) relating to the Contract, in case, both the parties are agreeable, they may try to settle dispute through Mediation before the panel of IEMs in a time bound manner. In case, the dispute remains unresolved even after mediation by the panel of IEMs, either party may take further action as the terms & conditions of the Contract. The fees/expenses on dispute resolution through mediation shall be shared by both the parties. Further, the mediation proceedings shall be confidential in nature and the parties shall keep confidential all matters relating to the mediation proceedings including any settlement agreement arrived at between the parties as outcome of mediation. Any views expressed, suggestions, admissions or proposals etc. made by either party in the course of mediation shall not be relied upon or introduced as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of mediation proceedings. Neither of the parties shall present IEMs as witness in any Alternative Dispute Resolution or judicial proceedings in respect of the dispute that was subject of mediation.

For & On behalf of the Principal
(Office Seal)

Place _____
Date _____

Witness: _____
(Name & Address) _____

For & On behalf of the Bidder/ Contractor
(Office Seal)

Place _____
Date _____

Witness: _____
(Name & Address) _____



GENERAL CONDITIONS OF CONTRACT

**SOLAR BUSINESS DIVISION
BHARAT HEAVY ELECTRICALS LIMITED**
(A Govt. of India Undertaking)
PROF. CNR RAO CIRCLE, IISc POST
MALLESHWARAM
BENGALURU - 560012



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CHAPTER -1

1. GENERAL INSTRUCTION TO TENDERERS

1.1. DESPATCH INSTRUCTION

i) The General Conditions of Contract form part of the Tender specifications. All pages of the tender documents shall be duly signed, stamped and submitted along with the offer in token of complete acceptance thereof. The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages

ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the tenderers have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any aspects, the scope of work etc., he shall contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Tenderer's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The tender specifications and terms and conditions shall be deemed to have been accepted by the tenderer in the offer. Pre requirements and conditions shall be liable for rejection.

iii) Integrity pact (IP): If NIT calls for Integrity Pact, the same shall be duly signed & stamped by the authorised signatory & submitted along with tender document.

1.2. SUBMISSION OF TENDERS

1.2.1 The tenderers must submit their tenders as per instructions in the NIT

1.2.2 BHEL takes no responsibility for delay, loss or non-receipt of tenders sent by post/courier. The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances. Offers received by Fax/Email/Internet shall be considered as per terms of NIT.

1.2.3 Tenders shall be opened by authorised Officer of BHEL at his office at the time and date as specified in the NIT, in the presence of such of those tenderers or their authorised representatives who may be present

1.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bids and such Tenderers may depute their representatives to witness the opening of the price bids. BHEL's decision in this regard shall be final and binding.

1.2.5 Before submission of Offer, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

1.3. **LANGUAGE**

1.3.1 The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.

1.3.2 All entries in the tender shall either be typed or written legibly in ink. Erasing and overwriting is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the tenderer.

1.4 **PRICE DISCREPANCY:**

1.4.1 Conventional (Manual) Price Bid opening:

i) If, in the price structure quoted for the required goods/services/works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of BHEL there is obvious misplacement of decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly

ii) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected;

iii) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (i) and (ii) above.

iv) If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date up to which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of BHEL, the bid is liable to be ignored.

v) In case of lump sum price, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.

vi) *In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers against the respective omission items for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However, the overall price remaining the same as quoted originally, the rates for all the items in the 'Total quoted price (loaded for omissions)' shall be reduced item wise in proportion to the ratio of 'Original' total price and the 'Total quoted price (loaded for omissions)'.*

1.4.2 Reverse Auction: In case of Reverse Auction, the successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. In case of omission of rates, the procedure shall be as per 'Guidelines for Reverse Auction' enclosed.

i) Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered. ii) Offers from tenderers who do not comply with the latest guidelines of Ministry/ Commissions of Govt of India shall not be considered.

1.5. EVALUATION OF BIDS

i) Technical Bids submitted by the tenderer will be opened first and evaluated for fulfilling the Pre-Qualification criteria and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer, BHEL reserves the right to ask for proofs/documents, clarification in relation to Technical/commercial data during tender evaluation

ii) Price Bids of shortlisted bidders shall only be opened either through the conventional price bid opening or through electronic Reverse Auction, at the discretion of BHEL

iii) Price Bids of unqualified bidders shall not be opened. Reasons for rejection shall be intimated to the vendor before the opening of Price bid.

1.6. DATA TO BE ENCLOSED

The following information in full shall be furnished by the tenderer. Non-submission of this information may lead to rejection of the offer.

i) INCOME TAX PERMANENT ACCOUNT NUMBER, GSTIN, SAC, HSN Certified copies of PAN, GSTIN shall be furnished along with tender. The names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.

ii) An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor.



iii) *IN CASE OF INDIVIDUAL TENDERER:*

His / her full name, address, PAN, GSTIN and place & nature of business to be furnished. iv)

IN CASE OF PARTNERSHIP FIRM

The names of all the partners and their addresses, a copy of the partnership deed/instrument of partnership shall be enclosed.

v) *IN CASE OF COMPANIES:*

Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished). Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

1.7. AUTHORISATION AND ATTESTATION

Tenders shall be signed by a person duly authorised/empowered to do so. An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor shall be submitted along with the tenders

1.8. EARNEST MONEY DEPOSIT

1.8.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

The EMD may be accepted only in the following forms:

- (i) Electronic Fund Transfer credited in BHEL account (before tender opening)*
- (ii) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer) In case total EMD amount is more than Rs.20 Lakh, the amount in excess of Rs.20 lakh maybe accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at-least six months.*
- (iii) Through SBI collect/RTGS (before tender opening)*
- (iv) No other form of EMD remittance shall be acceptable to BHEL*

1.8.2 EMD by the bidder will be forfeited as per Tender Documents if

- i) After opening the tender and within the offer validity period, the tenderer revokes his/her tender or makes any modification in his tender which is not acceptable to BHEL.*
- ii) The Contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/ Contract.*
- iii) EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged in derailing the tender process by unlawful means.*

1.8.3 EMD shall not carry any interest.

1.8.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after acceptance of award by successful tenderer.

1.8.5 EMD of successful tenderer will be converted as part of Security Deposit

1.9. **SECURITY DEPOSIT**

"Bidder agrees to submit performance security required for execution of the contract within the time period mentioned. In case of delay in submission of performance security, enhanced performance security which would include interest (SB/ rate + 6%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT I contract, from the bills along with due interest "

The total amount of Security Deposit will be 5% of the contract value (including all applicable taxes) EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.

1.9.1 Modes of Security deposit:

The balance amount to make up the required Security Deposit of 5% of the contract value may be accepted in the following forms:

i) Cash (as permissible under the extant Income Tax Act) ii) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL

iii) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL iv) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)

v) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL) (Note: BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith) vi) 50% of the required Security Deposit, including the EMD, should be paid before start of the work. Balance of the Security Deposit can be collected by deducting 10% of the gross amount progressively from each of the running bills of the Contractor till the total amount of the required Security Deposit is collected. If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or recovered from payment/s due to the Contractor. Security Deposit shall be released to the Contractor upon fulfilment of contractual obligations as per terms of the contract.

1.9.2 The Security Deposit shall not carry any interest.

1.9.3 The validity of Bank Guarantees towards Security Deposit shall be initially up to the completion period as stipulated in the Letter of Intent/Award (plus maintenance period if applicable), and 03 months claim period. The same shall be kept valid by proper renewal till the acceptance of Final Bills of the Contractor, by BHEL

1.9.4 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the Contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.

1.10. **REFUND OF SECURITY DEPOSIT**

50% of the security deposit may be refunded on completion of the work after payment of the final bill and the balance 50% of the security deposit is refunded only after the expiry of the maintenance period from date of completion of work as stipulated in the contract concerned.

1.10.1 DEFECTS LIABILITY PERIOD:

The contractor shall be responsible to make good and remedy at his own expenses within such period as may be stipulated by the Engineer-in-charge, any defect which may develop or may be noticed before the expiry of the maintenance period of six months or as stipulated in NIT hereto from the certified date of completion and intimation of which has been sent to the contractor within seven days of the expiry of the said period by a letter sent by hand delivery or by registered post or Email. If contractor fails to attend to the above, defect will be rectified at contractor's risk & cost and same will be deducted from the security deposit/payable amounts available with BHEL.

1.11. **BANK GUARANTEES**

Where ever Bank Guarantees are to be furnished/submitted by the contractor, the following shall be complied with

i) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. ii) The Bank Guarantees shall be as per prescribed BHEL formats.

iii) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.

iv) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly endorsed by BHEL

- v) *In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.*
- vi) *Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.*
- vii) *The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due).*

1.12. VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of Ninety (90) DAYS from latest due date of offer submission (including extension, if any). In case BHEL calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

1.13 EXECUTION OF CONTRACT AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent by BHEL. The Tenderer shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer shall be required to execute an agreement in the prescribed form, with BHEL, within fifteen days (15 days) after the acceptance of the Letter of Intent/Award, and in any case before releasing the first running bill. The contract agreement shall be signed by a person duly authorized/empowered by the tenderer. The expenses for preparation of agreement document shall be borne by Tenderer.

1.14. REJECTION OF TENDER AND OTHER CONDITIONS

1.14.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever: -

- a. To reject any or all of the tenders.*
- b. To split up the work amongst two or more tenderers as per NIT*
- c. To award the work in part if specified in NIT*
- d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.*

1.14.2 Conditional tenders, unsolicited tenders, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.

1.14.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted) by any unit / region / division of BHEL or tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India. BHEL reserves the right to reject a bidder in case it is observed that they are overloaded and may not be in a position to execute this job. The decision of BHEL will be final in this regard.

1.14.4 If a tenderer who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.

1.14.5 BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognize such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.

1.14.6 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money/Security Deposit/any other money due.

1.14.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.

1.14.8 In case the Proprietor, Partner or Director of the Company/Firm submitting the Tender, has any relative or relation employed in BHEL, the authority inviting the Tender shall be informed, along with the Offer. Failing to do so, BHEL may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.

1.14.9 The successful tenderer should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL's Construction Manager/Site Incharge. The tenderer is solely responsible to BHEL for the work awarded to him.

1.14.10 The Tender submitted by a techno commercially qualified tenderer shall become the property of BHEL who shall be under no obligation to return the same to the bidder. However unopened price bids and late tenders shall be returned to the bidders after finalization of contract.

1.14.11 Unsolicited discount received after the due date and time of Bid Submission shall not be considered for evaluation. However, if the party who has submitted the unsolicited



discount/rebate becomes the L-1 party, then the awarded price i.e contract value shall be worked out after considering the discount so offered.

1.14.12 BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.

1.15 BHEL Fraud Prevention Policy:

The bidder along with its associate/ collaborators/sub-contractors/ Sub-Vendors/ Consultants/service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice. Fraud prevention policy and list of Nodal officers shall be hosted on BHEL website, vendor portals of Units/Regions Internet.

CHAPTER-2

2.1 DEFINITION: The following terms shall have the meaning hereby assigned to them except where the context otherwise requires

- i) BHEL shall mean Bharat Heavy Electricals Limited, a company registered under Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or its Authorised Officers or its Site Engineers or other employees authorised to deal with any matters with which these persons are concerned on its behalf.
- ii) “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in SOLAR BUSINESS DIVISION, Prof. CNR Rao Circle, IISc Post, Malleshwaram, BENGALURU - 560012
- iii) “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General Manager (In-charge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (In-charge) or General Manager of BHEL.
- iv) “ENGINEER” or “ENGINEER IN CHARGE” shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes ‘CONSTRUCTION MANAGER’ or ‘SITE INCHARGE’ as well as Officers

- v) *"SITE" shall mean the places or place at which the plants/equipment are to be erected and services are to be performed as per the specification of this Tender.*
- vi) *"CLIENT OF BHEL" or "CUSTOMER" shall mean the project authorities with whom BHEL has entered into a contract for supply of equipment or provision of services.*
- vii) *"CONTRACTOR" shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the Contractor's successors, heirs, executors, administrators and permitted assigns.*
- viii) *"CONTRACT" or "CONTRACT DOCUMENT" shall mean and include the Work Order, Contract Agreement, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Tenderers, Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/Acceptance issued by BHEL. Any conditions or terms stipulated by the contractor in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement.*
- ix) *"GENERAL CONDITIONS OF CONTRACT" shall mean the 'Instructions to Tenderers' and 'General Conditions of Contract' pertaining to the work for which above tenders have been called for.*
- x) *"TENDER SPECIFICATION" or "TENDER" or "TENDER DOCUMENTS" shall mean General Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexures, Corrigendum's, Amendments, Forms, procedures, Site information, etc and drawings/documents pertaining to the work for which the tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.*
- xi) *"LETTER OF INTENT" shall mean the intimation by a Post/Fax/email to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.*
- xii) *"COMPLETION TIME" shall mean the period by 'date/month' specified in the 'Letter of Intent/Award' or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.*
- xiii) *"PLANT" shall mean and connote the entire assembly of the plant and equipment's covered by the contract.*

- xiv) *"EQUIPMENT"* shall mean equipment, machineries, materials, structural, electrical and other components of the plant covered by the contract.
- xv) *"TESTS"* shall mean and include such test or tests to be carried out on the part of the contractor as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality, workmanship, performance and efficiency of the contractor or part thereof.
- xvi) *"APPROVED", "DIRECTED" or "INSTRUCTED"* shall mean approved, directed or instructed by BHEL.
- xvii) *"WORK or CONTRACT WORK"* shall mean and include supply of all categories of labour, specified consumables, tools and tackles and Plants required for complete and satisfactory site transportation, handling, stacking, storing, erecting, testing and commissioning of the equipment's to the entire satisfaction of BHEL.
- xviii) *"SINGULAR AND PLURALS ETC"* words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
- xix) *"HEADING"* – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.
- xx) *"MONTH"* shall mean calendar month unless otherwise specified in the Tender.
- xxi) *Day' or 'Days'* unless herein otherwise expressly defined shall mean calendar day or days of twenty-four (24) hours each. A week shall mean continuous period of seven (7) days.
- xxii) *"COMMISSIONING"* shall mean the synchronization testing and achieving functional operation of the Equipment with associated system after all initial adjustments, trials, cleaning, re-assembly required at site if any, have been completed and Equipment with associated system is ready for taking into service.
- xxiii) *"WRITING"* shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
- xxiv) *"TEMPORARY WORK"* shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
- xxv) *'CONTRACT PRICE' or 'CONTRACT VALUE'* shall mean the sum including applicable taxes mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained

xxvi) "COMMENCEMENT DATE" or "START DATE" shall mean the commencement/start of work at Site as per terms defined in the Tender

xxvii) "SHORT CLOSING" or "FORE CLOSING" of Contract shall mean the premature closing of Contract, for reasons not attributable to the contractor and mutually agreed between BHEL and the contractor

xxviii) "TERMINATION" of Contract shall mean the premature closing of contract due to reasons as mentioned in the contract

2.2 LAW GOVERNING THE CONTRACT AND COURT JURISDICTION

The contract shall be governed by the Law for the time being in force in the Republic of India. The Civil Court having original Civil Jurisdiction at Bengaluru, shall alone have exclusive jurisdiction in regard to all claims in respect of the Contract. No other Civil Court shall have jurisdiction in case of any dispute, under this contract

2.3 ISSUE OF NOTICE

2.3.1 Service of notice on contractor: Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same by Registered Post / Speed Post/ FAX / Email to or leaving the same at the Contractor's last known address of the principal place of business (or in the event of the contractor being a company, to or at its Registered Office). In case of change of address, the notice shall be served at changed address as notified in writing by the Contractor to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice.

2.3.2 Service of notice on BHEL Any notice to be given to BHEL in-charge under the terms of the Contract shall be served by sending the same by post or Email or leaving the same at BHEL address or changed address as notified in writing by BHEL to the Contractor.

2.4 USE OF LAND

No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL.

2.4.1 STORES AND MATERIALS:

The contractor shall, at his own expense, supply all stores and materials required for the contract, other than those which may be provided by BHEL at the rates detailed therein subject to their availability at the place of issue indicated therein. All stores and materials to be supplied by the Contractor shall be of the best kind as described in the Specifications and the Contractor shall, if required by the Engineer –in- charge furnish him with proof to his satisfaction that the store and materials so comply with the specifications.

The contractor shall, at his own expense and without delay, supply samples of stores and materials proposed to be used in the execution of the work for the approval of the Engineer-in charge, who may reject all stores and materials not corresponding either in quality or character to the approved samples.

In the case of stores provided by BHEL, the Contractor shall bear the cost of loading, transporting to site, unloading, storing under cover as required, assembling & jointing the several parts together as necessary and incorporating & fixing these stores & materials in the work, including all preparatory work of whatever description that may be required, and closing, preparing, loading and returning empty cases or containers to the place of issue without any extra charges.

Contractor is responsible for safe & secure storage of above material.

2.4.2 PATENT RIGHTS:

The contractor shall fully indemnify BHEL, or the agent, servant, or employee of BHEL, against any action, claim or proceeding relating to infringement or the use of any patent or design or any alleged patent or design rights, and shall pay any royalties which may be payable in respect of any article/ or part thereof included in the contract.

In the event of any claims being made or action brought against BHEL, or any agent, or servant or employee of BHEL., in respect of any of the matters aforesaid, the contractor shall not apply when such increment has taken place in complying with the specific directions issued by the BHEL but the contractor shall pay any royalties payable in respect of any such use.

2.4.3 WATER:

The contractor shall allow in his tender and provide at his cost all water required for the work or his employees on the work, together with all pipes and fittings or other means that may be necessary or required to ensure a proper and ample supply of water for all purpose connected with the work.

In the event of a provision existing in the Tender documents for supply of water on payment by BHEL, water will be supplied from the BHEL supply System, or other sources at any points fixed by the Site Engineer/ Engineer-in-charge on the site of work. The contractor shall make necessary arrangement for lifting, pumping, carrying or conveying the water as required at his own cost. The levy of water charges to be borne by the Contractor in such case shall be specifically mentioned in the Tender documents.

2.4.4 TEMPORARY WORKSHOPS, STORES ETC.:

The Contractor shall, during the progress of the work provide, erect and maintain at his own expense all necessary temporary workshops, store, offices, toilets etc., required for the proper and efficient execution of the work. The planning, siting and erection of these building shall have the approval of the Engineer-in-charge and the Contractor shall at all times keep them in a clean and sanitized condition to the entire satisfaction of the Engineer-in-charge.

On completion of the work all such temporary buildings shall be cleared and the site restored to its original state in a clean and tidy condition to the entire satisfaction of the Engineer-incharge.

2.5 COMMENCEMENT OF WORK

2.5.1 Time is essence of contract and is specified in the tender document or in each individual work order.

2.5.2 The contractor shall commence the work within seven (07) days from LOI/work order or as intimated by BHEL and shall proceed with the same with due expedition without delay.

2.5.3 If the contractor fails to start the work within stipulated time as per LOI or as intimated by BHEL, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.

2.5.4 All the work shall be carried out under the direction and to the satisfaction of BHEL.

2.6 MEASUREMENT OF WORK AND MODE OF PAYMENT:

2.6.1 All payments due to the contractors shall be made by electronic mode only, unless otherwise found operationally difficult.

2.6.2 For progress running bill payments: - The Contractor shall present detailed measurement sheets in triplicate, duly indicating all relevant details based on technical documents and connected drawings for work done during the month/period under various categories in line with terms of payment as per contract. The basis of arriving at the quantities, weights shall be relevant documents and drawings released by BHEL. These measurement sheets shall be prepared jointly with BHEL Engineers and signed by both the parties.

2.6.3 These measurement sheets will be checked by BHEL Engineer and quantities and percentage eligible for payment under various groups shall be decided by BHEL Engineer.

The abstract of quantities and percentage so arrived at based on the terms of payment shall be entered in Measurement Book and signed by both the parties.

2.6.4 Based on the above quantities, contractor shall prepare the bills in prescribed format and work out the financial value. These will be entered in Measurement Book and signed by both the parties. Payment shall be made by BHEL after effecting the recoveries due from the contractor.

2.6.5 All recoveries due from the contractor for the month/period shall be effected in full from the corresponding running bills unless specific approval from the competent authorities is obtained to the contrary.

2.6.6 Measurement shall be restricted to that portion of work for which it is required to ascertain the financial liability of BHEL under this contract.

2.6.7 The measurement shall be taken jointly by persons duly authorized on the part of BHEL and by the Contractor.

2.6.8 The Contractor shall bear the expenditure involved if any, in making the measurements and testing of materials to be used/used in the work. The contractor shall, without extra charges, provide all the assistance with appliances and other things necessary for measurement.

2.6.9 If at any time due to any reason whatsoever, it becomes necessary to re-measure the work done in full or in part, the expenses towards such re measurements shall be borne by the contractor unless such re measurements are warranted solely for reasons not attributable to contractor.

2.6.10 Passing of bills covered by such measurements does not amount to acceptance of the completion of the work measured. Any left out work has to be completed, if pointed out at a later date by BHEL.

2.6.11 Final measurement bill shall be prepared in the final bill format prescribed for the purpose based on the certificate issued by BHEL Engineer that entire works as stipulated in tender specification has been completed in all respects to the entire satisfaction of BHEL. Contractor shall give unqualified "No Claim" Certificate. All the tools and tackles loaned to him should be returned in satisfactory condition to BHEL. The abstract of final quantities and financial values shall also be entered in the Measurement Books and signed by both parties to the contract. The Final Bill shall be prepared and paid within a reasonable time after completion of work.



2.7 RIGHTS OF BHEL

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the contractor for any compensation.

2.7.1 To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.

2.7.2 To terminate the contract or get any part of the work done through other agency or deploy BHEL's own/hired/otherwise arranged resources, at the risk and cost of the contractor after due notice of a period of two weeks by BHEL, in the event of: -

i) Contractor's continued poor progress

ii) Withdrawal from or abandonment of the work before completion of the work iii)

Contractor's inability to progress the work for completion as stipulated in the contract

iv) Poor quality of work

v) Corrupt act of Contractor

vi) Insolvency of the Contractor

vii) Persistent disregard to the instructions of BHEL

viii) Assignment, transfer, sub-letting of contract without BHEL's written permission

ix) Non fulfilment of any contractual obligations / non-compliance of statutory requirements

x) In the opinion of BHEL, the contractor is overloaded and is not in a position to execute the job as per required schedule

2.7.3 To meet the expenses including BHEL overheads of 35% & Liquidated damage/penalties arising out of "Risk & Cost" as explained above under SI.No. 2.7.2. BHEL shall recover the amount from any money due from Contractor, from any money due to the Contractor including Security Deposit or by forfeiting any T&P or material of the contractor under this contract or any other contract of BHEL or by any other means or any combination thereof

2.7.4 To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.

2.7.5 To effect recovery from any amounts due to the contractor under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to contractor's failure to fulfil any of his obligations. BHEL shall levy overheads of 35% on all such payments.

2.7.6 While every endeavour will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The Contractor will not be normally entitled for any compensation/extra payment on this account unless otherwise specified elsewhere in the contract.

2.7.7 In case the execution of works comes to a complete halt or reaches a stage wherein worthwhile works cannot be executed and there is no possibility of commencement of work for a period of not less than two months, due to reasons not attributable to the contractor and other than Force Majeure conditions, BHEL may consider permitting the contractor to de mobilize forthwith and re mobilize at an agreed future date. Cost of such demobilization/remobilization shall be mutually agreed. ORC (Over run Charges) in such cases shall not be applicable for the period between the period of demobilization and re mobilisation. The duration of contract/time extension shall accordingly get modified suitably. In case of any conflict, BHEL decision in this regard shall be final and binding on the contractor.

2.7.8 In the unforeseen event of inordinate delay in receipt of materials, drawings, fronts, etc, due to which inordinate discontinuity of work is anticipated, BHEL at its discretion may consider contractor's request to short close the contract, provided that the balance works are minor vis a vis the scope of work envisaged as per the contract. At the point of requesting for short closure, contractor shall establish that he has completed all works possible of completion and he is not able to proceed with the balance works due to constraints beyond his control. In such a case, the estimated value of the unexecuted portion of work as mutually agreed, shall however be reduced from the final contract value.

2.7.9 LIQUIDATED DAMAGES/PENALTY

COMPENSATION FOR DELAY:

If the contractor fails to maintain the required progress in terms of condition 2.10 or to complete the work and clear the site on or before the contracted or extended the period of completion, he shall, without prejudice to any other right or remedy of the BHEL on account of such breach, pay as agreed compensation an amount calculated as stipulated below

For unfinished anticipated value of work where finished portion is fit for use

Rate of compensation as follows:

- Completion period (as originally stipulated) not exceeding 6 months.@ 1 percent per week
- Completion period (as originally stipulated) Exceeding 6 months and not exceeding 2 years...@ 0.5 percent per week
- Completion period (as originally stipulated) exceeding 2 years..... @ 0.25 percent per week

Provided always that the total amount of compensation for delay to be paid under condition shall not exceed the under noted percentage of the anticipated contract value

- Completion period (as originally stipulated) not exceeding 6 months.@ 10 percent of anticipated value of work
- Completion period (as originally stipulated) Exceeding 6 months and not exceeding 2 years...@ 7.5 percent of anticipated value of work
- Completion period (as originally stipulated) Exceeding 2 years.....@ 5 percent of anticipated value of work

The amount of compensation may be adjusted or set off against any sum payable to the Contractor under this or any other contract with the BHEL.

2.7.10 POST TECHNICAL AUDIT OF WORK AND BILLS: BHEL reserve the right to carry out a post-payment audit and technical examination of the work and final bill including all supporting vouchers, abstract etc., and to enforce recovery of any sums becoming due as a result thereof in the manner provided in the proceeding sub-paragraph's provided however that no such recovery shall be enforced after three years of passing the final bill

2.8 RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC.

The following are the responsibilities of the contractor in respect of observance of local laws, employment of personnel, payment of taxes etc. The subcontractor shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the contractor in discharging any of his responsibilities hereunder:

2.8.1 *The contractor at all times during the continuance of this contract shall, in all his dealings with local labour for the time being employed on or in connection with the work, have due regard to all local festivals and religious and other customs.*

2.8.2 *The contractor shall comply with all applicable State and Central Laws, Statutory Rules, Maternity act, Regulations etc. such as contract labour(R&A) Act 1970, Minimum wage Act 1974, Payment of wages Act 1936,ESI Act 1948, EPF Act 1952, Employees' compensation Act 1923, Provision of Companies Act 1948 & rules thereof, The interstate Migrant Workmen 1979, The Karnataka Factories Rules 1969, Payment of Bonus Act 1965, Payment of Gratuity Act 1972. Child labour Prohibition act 1986, Karnataka Minimum Wage Act , Prevention of sexual harassment at work place Act 2013, Guidelines/notification related to Safai Karamchari Act , Equal Remuneration Act 1976, The company's instructions as*

issued from time to time in regard to working hours, wages, leaves, holidays etc. for labour as may be enacted by the Government during the tenure of the Contract and having force or jurisdiction at Site. The Contractor shall also give to the local Governing Body, Police and other relevant Authorities all such notices as may be required by the Law.

The contractor shall produce the following registers and forms:

- Form XIII- Register of work men employed by contractor(Rule 75)
- Form XIV- Employment Card issued by contractor(Rule 76)
- Form XVI- Muster Roll (Rule 78(1) (a)(i))
- Form XVII- Register of Wages (Rule 78(1) (a)(i))
- Form XVIII- Register of wages cum Muster Roll(in case of weekly payment)
- Form XIX- Wage slip (Rule 78(b))
- Form XX- Register of deduction for damages Or Loss Rule 78(1) (a)(ii))
- Form XXI- Register of files Rule 78(1) (a)(ii))
- Form XXII- Register of Advance Rule 78(1) (a)(ii)) x Form XXIII- Register of Overtime Rule 78(1) (a)(iii))
- Form XXIV- Return to be sent by the contractor to the Licensing officer (Rule 82(1))

2.8.3 The contractor shall obtain independent License under the Contract Labour (Regulations and Abolition Act) as required from the concerned Authorities based on the certificate (Form-V) issued by the Principal Employer/Customer

2.8.4 The contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalties, commission or other charges which may be levied on account of his operations in executing the contract.

2.8.5 While BHEL would pay the inspection fees and Registration fees of Boiler & explosive/Electrical Inspectorate, all other arrangements for site visits periodically by the Inspectorate to site, Inspection certificate etc. will have to be made by contractor. However, BHEL will not make any payment to the Inspectorate in connection with contractor's Welders/Electricians qualification tests etc.

2.8.6 Contractor shall be responsible for provision of Health and Sanitary arrangements (more particularly described in Contract Labour Regulation & Abolition Act), Safety precautions etc. as may be required for safe and satisfactory execution of contract.

2.8.7 The contractor shall be responsible for proper accommodation including adequate medical facilities for personnel employed by him.

2.8.8 The contractor shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.

2.8.9 The contractor shall ensure that no damage is caused to any person/property of other parties working at site. If any such damage is caused, it is responsibility of the contractor to make good the losses or compensate for the same.

2.8.10 All the properties/equipment/components of BHEL/their Client loaned with or without deposit to the contractor in connection with the contract shall remain properties of BHEL/their Client.

2.8.11 The contractor shall use such properties for the purpose of execution of this contract. All such properties/equipment/components shall be deemed to be in good condition when received by the contractor unless he notifies within 48 hours to the contrary. The contractor shall return them in good condition as and when required by BHEL/their Client. In case of non-return, loss, damage, repairs etc, the cost thereof as may be fixed by BHEL Engineer will be recovered from the contractor

2.8.12 Any delay in completion of works/or non-achievement of periodical targets due to the reasons attributable to the contractor, the same may have to be compensated by the contractor either by increasing manpower and resources or by working extra hours and/or by working more than one shift. All these are to be carried out by the contractor at no extra cost.

2.8.13 The contractor shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.

2.8.14 All safety rules and codes applied by the Client/BHEL at site shall be observed by the contractor without exception. The contractor shall be responsible for the safety of the equipment/material and works to be performed by him and shall maintain all light, fencing guards, slings etc. or other protection necessary for the purpose. Contractor shall also take such additional precautions as may be indicated from time to time by the Engineer with a view to prevent pilferage, accidents, fire hazards. Due precautions shall be taken against fire hazards and atmospheric conditions. Suitable number of Clerical staff, watch and ward, store keepers to take care of equipment/materials and construction tools and tackles shall be posted at site by the contractor till the completion of work under this contract. The contractor shall arrange for such safety devices as are necessary for such type of work and carry out the requisite site tests of handling equipment, lifting tools, tackles etc. as per prescribed standards and practices. Contractor has to ensure the implementation of Health, Safety and Environment (HSE) requirements as per directions given by BHEL/Customer. The contractor has to assist in HSE audit by BHEL/Customer and submit compliance Report. The contractor has to generate and submit record/reports as per HSE plan/activities as per instruction of BHEL/Customer. All tools, plant and equipment brought to the site shall become the property of BHEL and shall not be removed from the site without the prior written approval from BHEL. When the work is finally completed or the Contractor is determined for reasons other than the defaults of the contract, he shall forthwith remove from the site all tools, plants, equipment etc., (other than those as may have been provided by BHEL) and upon such removal, the same shall revert in, and become the property of the contractor.

2.8.15 The contractor will be directly responsible for payment of wages to his workmen on specified date of respective month declared as per applicable Labour Act. A pay roll sheet giving all the payments given to the workers and duly signed by the contractor's representative should be furnished to BHEL site for record purpose.

2.8.16 In case of any class of work for which there is no such specification as laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.

2.8.17 Also, no idle charges will be admissible in the event of any stoppage caused in the work resulting in contractor's labour and Tools & Plants being rendered idle due to any reason at any time.

2.8.18 The contractor shall take all reasonable care to protect the materials and work till such time the plant/equipment has been taken over by BHEL or their Client whichever is earlier.

2.8.19 The contractor shall not stop the work or abandon the site for whatsoever reason of dispute, excepting force majeure conditions. All such problems/disputes shall be separately discussed and settled without affecting the progress of work. Such stoppage or abandonment shall be treated as breach of contract and dealt with accordingly

2.8.20 The contractor shall keep the area of work clean and shall remove the debris etc. while executing day-to-day work. Upon completion of work, the contractor shall remove from the vicinity of work, all scrap, packing materials, rubbish, unused and other materials and deposit them in places specified by the Engineer. The contractor will also demolish all the hutments, sheds, offices, etc. constructed and used by him and shall clean the debris. In the event of his failure to do so, the same will be arranged to be done by the Engineer and the expenses recovered from the contractor. If the work is executed in Factory premises, no hutment will be allowed.

2.8.21 The contractor shall execute the work in the most substantial and workman like manner in the stipulated time. Accuracy of work and timely execution shall be the essence of this contract. The contractor shall be responsible to ensure that the quality, assembly and workmanship conform to the dimensions and clearance given in the drawings and/ or as per the instructions of the Engineer.

2.8.22 The Contractor to note that some of BHEL's T&Ps/MMDs may not be insured. The Contractor will take necessary precautions and due care to protect the same while in his custody from any damage/ loss till the same is handed over back to BHEL. In case the damage / loss is due to carelessness/ negligence on the part of the contractor, the Contractor is liable to get them repair/ replaced immediately and in case of his failure to do so within a reasonable time, BHEL will reserve the right to recover the loss from the contractor.

2.8.23 The contractor shall provide all watchmen necessary, for the protection of the site, the work, the materials, the tools, plant, equipment and anything else lying on the site during the progress of the work. He shall solely be responsible for and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the work and the site which may be dangerous to any person whom so ever.

2.8.24 SITE DRAINAGE: All water that may accumulate on the site during the process of the work, or in trenches and excavations shall be removed to the entire satisfaction of the Engineering-charge and at Contractors expense.

2.8.25 INSPECTION OF THE WORK: BHEL Officers concerned with the Contract shall have power at any time to inspect and examine any part of the work and the contractor shall give such facilities as may be required to given for such inspection and examination.

2.8.26 In case the contractor is required to undertake any work outside the scope of this contract, the rates payable shall be those mutually agreed upon if the item rates are not mentioned in existing contract

- i. For any item of work required to be carried out after the contract has been awarded and which is not covered by Contractors Schedule but is covered by C.P.W.D. schedule of rates the rate payable for such a fresh item will be derived from updated C.P.W.D. schedule of rates by the method of proportion as follows:
- ii. Rate as per estimated updated C.P.W.D DSR and loading tender excess (plus or minus) on pro-rata basis for nearest analogous items. For other items rate as per estimated C.P.W.D DSR and loading tender excess (plus or minus)
- iii. If rates are not available in C.P.W.D. DSR, deviated item rates will be derived from market rate with 15% profit and overheads.

2.9 PROGRESS MONITORING, MONTHLY/ WEEKLY REVIEW AND PERFORMANCE EVALUATION

2.9.1 A detailed plan/programme for completion of the contractual scope of work as per the time schedule given in the contract shall be jointly agreed between BHEL and Contractor, before commencement of work. The above programme shall be supported by month/ week wise deployment of resources viz Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Daily/Weekly/Monthly) vis a vis this jointly agreed programme. The Contractor shall submit periodical progress reports (Daily/Weekly/Monthly) and other reports/information including manpower, consumables, T&P mobilization etc as desired by BHEL.

2.9.2 Monthly/ weekly progress review between BHEL and Contractor shall be based on the agreed programme as above, availability of inputs/fronts etc, and constraints if any, as per prescribed formats. Manpower, T&P and consumable reports as per prescribed formats shall

be submitted by contractor every month. Release of RA Bills shall be contingent upon certification by BHEL Site Engineer of the availability of the above prescribed formats duly filled in and signed.

2.9.3 The burden of proof that the causes leading to any shortfall is not due to any reasons attributable to the contractor is on the contractor himself. The monthly progress review shall record shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL

2.10 TIME OF COMPLETION

2.10.1 Time is essence of the contract. The time schedule shall be as prescribed in the Contract. The time for completion shall be reckoned from the date of commencement of work at Site as certified by BHEL Engineers

2.10.2 The entire work shall be completed by the contractor within the time schedule or within such extended periods of time as may be allowed by BHEL under clause 2.11

2.11 EXTENSION OF TIME FOR COMPLETION

2.11.1 If the completion of work as detailed in the scope of work gets delayed beyond the contract period, the contractor shall request for an extension of the contract and BHEL at its discretion may extend the Contract.

2.11.2 Based on the monthly reviews jointly signed, the works balance at the end of original contract period less the backlog attributable to the contractor shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the contractor is bound to complete the portion of backlog attributable to the contractor. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.

2.11.3 However if any 'Time extension' is granted to the contractor to facilitate continuation of work and completion of contract, due to backlog attributable to the contractor alone, then it shall be without prejudice to the rights of BHEL to impose penalty/LD for the delays attributable to the contractor, in addition to any other actions BHEL may wish to take at the risk and cost of contractor.

2.11.4 A joint programme shall be drawn for the balance amount of work to be completed during the period of 'Time Extension', along with matching resources (with weightages) to be deployed by the contractor as per specified format. Review of the programme and record of shortfall shall be done every month of the 'Time extension' period in the same manner as is done for the regular contract period.

2.11.5 During the period of 'Time extension', contractor shall maintain their resources as per mutually agreed program

2.11.6 At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) Contractor, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out and shall be considered to be exhausted in the same order. The total period of time extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions attributable to contractor and recoverable from the dues payable to the contractor.

2.12 OVERRUN COMPENSATION (THIS CLAUSE IS NOT APPLICABLE IN BHEL FACTORY & TOWNSHIP PREMISES)

2.12.1 Over Run Compensation (ORC) is payable by way of rate revisions for periods beyond original, contract period subject to the following terms and conditions.

2.12.2 Rates shall be increased by 10% for the first twelve months of one or more extensions beyond original contract period. For the next twelve months of further extensions if any, rates shall be increased as above by 10% over the previous twelve months, and similarly for each subsequent twelve months extension.

2.12.3 Should there be any 'Time extension' for reasons attributable only to the contractor, then the work shall be executed by the contractor at the rates applicable for the period the work was planned

2.12.4 Payment of ORC shall be regulated as follows:

- i) Contractor is entitled to Over Run Compensation (ORC) only for the portion of backlog attributable to BHEL.
- ii) 50% of the compensation is allocated for deployment of resources agreed as per the joint programme drawn vide 2.11.4. Payment shall however be based on the actual deployment of resources for the month as certified by BHEL, as per weightages assigned therein
- iii) 50% of the compensation, is allocated for achieving of planned progress agreed as per the joint programme drawn vide 2.11.4. Payment shall be on pro rata basis for actual achieved quantities
- iv) Total Over Run Compensation shall be limited to 10% of the executed contract value as certified in Final Bill. For this purpose, executed contract value excludes PVC, ORC, Supplementary/Additional Items and Extra Works done on Man-day rate basis

2.12.5 Contractor shall not be entitled for any Over Run Compensation (ORC) for the portion of backlog attributable to the contractor. Such works shall be executed at the rates applicable for the period the work was planned

2.13 QUANTITY VARIATION

2.13.1 *The quoted rates shall remain firm irrespective of any variations in the individual quantities.*

2.14 EXTRA WORKS

2.14.1 All rectifications/modifications, revamping, and reworks required for any reasons not attributable to the contractor, or needed due to any change in deviation from drawings and design of equipment, operation/maintenance requirements, mismatching, or due to damages in transit, storage and erection/commissioning, and other allied works which are not very specifically indicated in the drawings, but are found essential for satisfactory completion of the work, will be considered as extra works.

2.14.2 Extra works arising on account of the contractor's fault, irrespective of time consumed in rectification of the damage/loss, will have to be carried out by the contractor free of cost. Under such circumstances, any material and consumable required for this purpose will also have to be arranged by the contractor at his cost.

2.14.3 All the extra work should be carried out by a separately identifiable gang, without affecting routine activities. Daily log sheets in the pro-forma prescribed by BHEL should be maintained and shall be signed by the contractor's representative and BHEL engineer. No claim for extra work will be considered/entertained in the absence of the said supporting documents i.e. daily log sheets. Signing of log sheets by BHEL engineer does not necessarily mean the acceptance of such works as extra works.

2.14.4 BHEL retains the right to award or not to award any of the major repair/rework/modification/rectification/fabrication works to the contractor, at their discretion without assigning any reason for the same

2.14.5 After eligibility of extra works is established and finally accepted by BHEL engineer/designer, payment will be released on competent authority's approval at the following rate.

MAN-HOUR RATE FOR ELIGIBLE EXTRA WORKS: Single composite average labour manhour rate, including overtime if any, supervision, use of tools and tackles and other site expenses and incidentals, consumables for carrying out any major rework/repairs/rectification/modification/fabrication as certified by site as may arise during the course of erection, testing, commissioning or extra works arising out of transit, storage and erection damages, payment, if found due will be as per applicable minimum wage act

2.14.6 The above composite labour man hour rate towards extra works shall remain firm and not subject to any variation during execution of the work. PVC will not be applicable for extra works. Rate revision, Over Run Charges/compensation etc will not be applicable due to extra works.

2.14.7 Extra Works for Civil Packages shall be regulated as follows

i) Rates for Extra Works arising due to (1) non availability of BOQ (Rate Schedule), OR (2) change in Specifications of materials/works (3) rectification/modification/dismantling & re-erecting etc due to no fault of Contractor, shall be in the order of the following:

a) Item rates are to be derived from similar nature of items in the BOQ (Rate Schedule) with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities.

b) As per applicable updated CPWD-DSR (or latest edition) with applicable escalation derived, Notification issued by the office of CPWD for 'Cost Index' in that Region where the project is being executed,

c) Item rates are to be worked out on the basis of prevailing market rates mutually agreed between BHEL and Contractor, plus 15% towards Contractor's overheads and profit.

ii) PVC and ORC will not applicable be for (i) above.

2.15 **SUPPLEMENTARY ITEMS**

2.15.1 For NON Civil Works

Supplementary items are items/works required for completion of entire work but not specified in the scope of work. Subject to certification of such items/works as supplementary items by BHEL Engineer, rates shall be derived on the basis of any one of the following on mutual agreement:

i) Based on percentage breakup/rates indicated for similar/nearby items

ii) In case (i) above does not exist, then BHEL/site may derive the percentage breakup/rates to suit the type of work

2.15.2 For Civil Works

i) Rates for Supplementary Works/Additional Works arising out due to additions/alterations in the original scope of works as per contract subject to certification of BHEL Engineer shall be worked out as under:

a) Item rates which are available in existing BOQ (Rate Schedule) shall be operated with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities

b) Items of works which are not available in existing BOQ shall be operated as an 'Extra Works' and rate shall be derived as per clause no 2.14

- ii) *Execution of Supplementary Works/Additional Works through the Contractor shall be at the sole discretion of BHEL, and shall be considered as part of executed contract value for the purpose of Quantity Variation as per clause 2.13*
- iii) *BHEL Engineer's decision regarding fixing the rate as above is final and binding on the contractor.*
- iv) *PVC and ORC will not be applicable for (i) above.*

2.16 STRIKES & LOCKOUT

2.16.1 The contractor will be fully responsible for all disputes and other issues connected with his labour/employee. In the event of the contractor's labour/employee resorting to strike or the Contractor resorting to lockout and if the strike or lockout declared is not settled within a period of 15 days, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL along with Overhead charges of 35% shall be deducted from the Contractor's bills along with overhead of 35%

2.16.2 For all purposes whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL

2.17 FORCE MAJEURE

The following shall amount to Force Majeure: -

2.17.1 Acts of God, act of any Government, War, Sabotage, Riots, Strike, Civil commotion, Police action, Revolution, Flood, Fire, Cyclones, Earth quake and Epidemic and other similar causes over which the contractor has no control.

2.17.2 If the contractor suffers delay in the due execution of the contractual obligation due to delays caused by force majeure as defined above, the agreed time of completion of the job covered by this contract or the obligations of the contractor shall be extended by a period of time equal to period of delay, provided that on the occurrence of any such contingency, the contractor immediately reports to BHEL in writing the causes of delay and the contractor shall not be eligible for any compensation.

2.18 ARBITRATION & RECONCILIATION

2.18.1 In case amicable settlement is not reached in the event of any dispute or difference arising out of the execution of the Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Contractor in any manner touching upon the Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the sole arbitration of the arbitrator appointed by BHEL/In charge.

The award of the Arbitrator shall be binding upon the parties to the dispute Subject as aforesaid, the provisions of Arbitration and Reconciliation Act 1996 (India) or statutory

modifications or reenactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine

2.18.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

2.18.3 The cost of arbitration shall be borne equally by the parties.

2.18.4 Work under the contract shall be continued during the arbitration proceedings

2.19 PAYMENTS

Payments to Contractors are made in any one of the following forms

2.19.1 Running Account Bills (RA Bills)

i) These are for interim payments when the contracts are in progress. The bills for such interim payments are to be prepared by Contractor in prescribed formats (RA Bill forms).

ii) Payments shall be made according to the extent of work done as per measurements taken up to the end of the calendar month and in line with the terms of payments described in the Tender documents along with relevant statutory documents applicable for the work.

iii) Recoveries on account of electricity, water, statutory deductions, etc are made as per terms of contract

iv) Full rates for the work done shall be allowed only if the quantum of work has been done as per the specifications stipulated in the contract. If the work is not executed as per the stipulated specifications, BHEL may ask the contractor to re do the work according to the required specifications, without any extra cost. However, where this is not considered necessary 'OR' where the part work is done due to factors like non-availability of material to be supplied by BHEL 'OR' non availability of fronts 'OR' non availability of drawings, fraction payment against full rate, as is considered reasonable, may be allowed with due regard for

the work remaining to be done. BHEL decision in this regard will be final and binding on the contractor.

v) In order to facilitate part payment, BHEL Site Engineer at his discretion may further split the contracted rates/percentages to suit site conditions, cash flow requirements according to the progress of work

2.19.2 Final Bill

Final Bill is used for final payment on closing of Running Account for works or for single payment after completion of works. *Final Bill* shall be submitted as per prescribed format after completion of works as per scope and upon material reconciliation, along with the following.

- i) *'No Claim Certificate'* by contractor
- ii) Clearance certificates where ever applicable viz Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department, etc
- iii) Indemnity bond as per prescribed format BHEL shall settle the final bills after deducting all liabilities of Contractor to BHEL

2.20 PERFORMANCE GUARANTEE FOR WORKMANSHIP

2.20.1 Even though the work will be carried out under the supervision of BHEL Engineers the Contractor will be responsible for the quality of the workmanship and shall guarantee the work done for a period of as mentioned in the contract/NIT from the date of commencement of guarantee period as defined in Technical Conditions of Contract, for good workmanship and shall rectify free of cost all defects due to faulty erection detected during the guarantee period. In the event of the Contractor failing to repair the defective works within the time specified by the Engineer, BHEL may proceed to undertake the repairs of such defective works at the Contractor's risk and cost, without prejudice to any other rights and recover the same from the balance security deposit.

2.20.2 BHEL shall release the balance security deposit subject to the following

- i) Contractor has submitted *'Final Bill'*
- ii) Guarantee period as per contract has expired
- iii) Contractor has furnished *'No Claim Certificate'* in specified format
- iv) BHEL Site Engineer/Construction Manager has furnished the *'No Demand Certificate'* in specified format

v) Contractor has carried out the works required to be carried out by him during the period of Guarantee and all expenses incurred by BHEL on carrying out such works is included for adjustment from the Guarantee money refundable.

2.21 CLOSING OF CONTRACTS

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of Contractor.

2.22 REVERSE AUCTION/PRICE BID OPENING:

- BHEL reserves the right to go for reverse auction at any point of time before opening of Price Bid.
- Bids with non-acceptance of reverse auction will be liable for rejection.
- Opening of Price Bid at discretion of BHEL.
- BHEL shall be at liberty to cancel the tender at any time, before ordering, without assigning any reason.

2.23 SUSPENSION OF BUSINESS DEALINGS

BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.

2.24 OTHER ISSUES

2.24.1 Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 200/- unless otherwise required under relevant statutes.

2.24.2 In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall prevail.

2.24.3 Unless otherwise specified in NIT, offers from consortium/JVs shall not be considered.

2.24.4 BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts