

**Notice Inviting Tender (NIT)**  
**document**  
**for**  
**Setting up of 1.0 MW and 0.6MW**  
**Solar photo voltaic project for factory and**  
**township with net metering arrangement**  
**under RESCO model (BOOM basis)**  
**AT**  
**BHARAT HEAVY ELECTRICALS LIMITED,**  
**HEAVY PLATES AND VESSELS PLANT,**  
**VISAKHAPATNAM**

**Ref: BHEL Enquiry No: OS/WC/2024-25/27/28**  
**Date:21.06.2024**

**ISSUED BY**  
**BHARAT HEAVY ELECTRICALS LIMITED,**  
**HPVP, VISAKHAPATNAM**

**Tel No. 0891-2881375; 2881806**  
**Email : [ravikumardl@bhel.in](mailto:ravikumardl@bhel.in); [mundha@bhel.in](mailto:mundha@bhel.in)**

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## DISCLAIMER:

1. Though adequate care has been taken while preparing the NIT document, the Bidders shall satisfy themselves that the document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any Bidder within **Twent one (21) days from the date of notification of NIT/ Issue of the NIT document**, it shall be considered that the NIT document is complete in all respects and has been received by the Bidder.
2. BHEL reserves the right to modify, amend or supplement this NIT document including Power Purchase Agreement (PPA).
3. While this NIT has been prepared in good faith, neither BHEL nor their employees or advisors make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of information, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this NIT, even if any loss or damage is caused by any act or omission on their part.

Place: Visakhapatnam

Date: 21-06-2024

## Bid Information Sheet

Document Description	Request for Selection of Solar Project Developer for Setting up of Grid Connected Solar Photo Voltaic (PV) Project of 1.0MW and 0.6MW capacity at Bharat Heavy Electricals Limited, Visakhapatnam
NIT No.& Date	
Broad Scope	Setting up of Solar PV Project including Power Evacuation network up to the designated point in BHEL, HPVP, Visakhapatnam campus and selling the Solar Power to BHEL
Last date & Time for	
a) Online Submission of Response to NIT and	
All documents as per Clause 3.23a of Section-3 physically at 02 Annexe GF, Bharat Heavy Electricals Limited,	
Bid Opening (techno commercial)	
Cost of NIT document (nonrefundable)	
EMD	
Type of tender and bidding system	
PBG	
E reverse auction	
Name Designation, Address and other details (For any clarification, submission of EMD/cost of tender etc and other response to RFS)	
Details of persons to be contacted in case of any assistance required from BHEL	<ol style="list-style-type: none"> <li>1. Nirakar Mundha, AGM (Production, P&amp;T,WE), 0891-2881806 mundha@bhel.in</li> <li>2. D.L.Ravi Kumar, Manager (WE-EM), 0891-2881375, Mob:9542141244 ravikumardl@bhel.in</li> </ol>

## 1. INTRODUCTION, BACKGROUND & SCHEME DETAILS

### 1.1 INTRODUCTION

1. Bharat Heavy Electricals Limited, HPVP, Visakhapatnam (hereinafter called “BHEL”) is a Public Sector Undertaking company under the Ministry of Heavy Industries.
2. BHEL wishes to invite proposals for setting up the grid connected Solar Photo Voltaic Project on “Build Own Operate and Maintain” 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

1. As part of its initiatives towards transformation into a ‘Green’ Company, BHEL, HPVP, Visakhapatnam has proposed to set up a **1MW and 0.6MW** solar PV Projects.

### 1.3 PROJECT DETAILS

1. The Solar PV project is proposed to be located at BHEL, HPVP, Visakhapatnam. The location earmarked for the Solar PV power plant is uploaded in the e-procurement portal. (This drawing can be viewed only after logging in to the e-procurement website).
2. The scope of work for setting up 1 MW and 0.6MW Solar PV power plants under Developer model shall include but not limited to the following:
  - Develop, construct, synchronize, commission, operate and maintain the 1 MW and 0.6MW Solar PV power plants and selling the power to BHEL for period of 25 years in accordance with the terms of the PPA.
  - The Solar Power Developer (SPD) shall construct a boundary with 8 feet high fence all around the Solar PV power plants with suitable gates for access. The SPD shall also provide sufficient CCTV cameras in consultation with BHEL to monitor the movement of personnel including integrating with the existing network of CCTV cameras.
  - The SPD shall be responsible for all associated works such as permissions from APEPDCL for setting up 1MW and 0.6MW capacities to Factory and township with net metering arrangement, feasibility report from APEPDCL and necessary payments to APEDPCL (feasibility study charges and any other miscellaneous charges to be borne by vendor only), clearing of vegetation, levelling, civil works etc.

### 1.4 SELECTION OF TECHNOLOGY & ELIGIBLE PROJECT UNDER THIS SCHEME

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

## 1.5 MNRE GUIDELINES FOR IMPLEMENTATION OF THE SCHEME

This NIT document has been prepared based on the guidelines issued by MNRE vide OM No. 30/69/2013-14/NSM(Pt.) dated 7th January 2015 which is uploaded on the web site of MNRE, [www.mnre.gov.in](http://www.mnre.gov.in). In case of any difference in interpretation between this NIT document and said guidelines issued by MNRE. The same shall be referred to BHEL and the decision of BHEL shall be final and binding on Bidder/SPD

## 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,

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

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 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;
  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;
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;
35. **“BHEL”** shall mean Bharat Heavy Electricals Limited, **“HPVP”** shall mean Heavy Plates and Vessels Plant.
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.

### 3. INSTRUCTIONS TO BIDDERS (ITB)

#### 3.1 Overview of NIT

- a) Solar Power Developers (hereinafter referred to as SPD) selected by M/s BHEL, HPVP, Visakhapatnam based on this NIT, shall set up 1MW and

0.6MW capacities to Factory and township with net metering arrangement to Factory and township feeding stations on Build Own Operate and Maintain (BOOM) basis in accordance with the provisions of this NIT document and standard Power Purchase Agreement (PPA).

- b) M/s BHEL, HPVP, Visakhapatnam 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.
- c) 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.
- d) However, Change in Law shall not include:
- 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, HPVP, Visakhapatnam 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

- 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.
- 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.
- 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.
- Bidders shall submit their bid by offering a single tariff for the above project, which shall be applicable for all the 25 years.
- If the Project is Maintained 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 honor all the obligations and terms & conditions of the PPA.

### 3.3 Obtaining NIT Document

- a) The NIT document can be downloaded free of cost from the website of BHEL (Bharat Heavy Electricals Limited, HPVP, Visakhapatnam) <https://eprocurebhel.co.in/nicgep/app>. Bidders shall have to submit the cost of NIT document as mentioned in the Bid Information Sheet along with the bids.

**Note: - Interested bidders have to download the NIT & other documents after logging into the BHEL website <https://eprocurebhel.co.in/nicgep/app> by using the Login ID & Password provided during registration (Refer Annexure – E). The bidder shall be eligible to submit/ upload the bid document only after registration and logging into the BHEL portal.**

- b) The bids submitted without cost of the NIT document and 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

- (i) 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.
- (ii) 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.
- (iii) 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**

1. The SPD shall set up a Solar PV Power Projects of 1MW and 0.6MW capacities for Factory and Township with net metering arrangement including setting up of the evacuation network up to the BHEL- HPVP Substation. The geographical co-ordinates of BHEL, HPVP, Visakhapatnam are 17.703251°N 83.200258°E. (Note: The existing net metering in our state is allowed up to 1MW as per APERC regulations). Existing contracted maximum demand (MD) of our factory (Category IIIA) is 1400KVA at 33KV actual Voltage and for Township (Category 1B) 600KVA at 11KV actual voltage.
2. The land identified for the project shall be made available to the SPD by BHEL, HPVP, Visakhapatnam, given under "Right-to-Use based on free of cost" to the SPD. The SPD shall set up a Solar PV Power Projects of 1MW and 0.6MW capacities to Factory and Township with net metering arrangement including setting up of the evacuation network up to the nearest substation/electrical network owned by BHEL, on Build Own Operate & Maintain (BOOM) basis, at SPD's own cost. Approximate distance from proposed solar plants location to incoming feeders of Factory (33KV) and Township (11KV) is 1.5KM. The scope of SPD also includes setting up of power evacuation systems including step up transformer, overhead lines/UG cables etc. and connecting to grid with ABT meters under net metering scheme. The SPD shall also provide metering arrangement at/near the Delivery point as per the CEA Metering Regulations, 2006 and its latest amendments. SPD shall construct suitable accommodation for maintaining the inverter and SCADA room.
3. The land shall not be used for any other purpose other than the purpose mentioned at sub-clause 2 of 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 land 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".
5. 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 Visakhapatnam (GVMC).
6. All feasibility tests, 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.

### 3.6 Capacity of the Project

- a) Solar power Project shall be of Solar PV Power Projects of 1MW and 0.6MW capacities to Factory and Township with net metering arrangement at delivery point i.e. at the interconnection point of 33kV system at Factory Switch yard and 11KV system at Township switchyard which are located at appx. 1.5 KMS distance from proposed solar PV plants.
- b) 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 1MW and 0.6MW capacities to Factory and Township with net metering arrangement 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, if required and the interested bidders shall be required to register themselves on a web-based portal <https://eprocurebhel.co.in/nicgep/app> of BHEL for the process. After bid opening, Techno-commercial bids submitted by those Bidders who have furnished the cost of NIT document and EMD shall be evaluated by BHEL based on Qualifying Criteria stipulated in section 4. The evaluation of bids and methodology of allocation of Project is as described in Section 5.

***It may be noted that BHEL reserves the sole discretion to conduct/not conduct e-reverse auction***

### 3.8 Connectivity with the Grid

- a) The plants should be designed for the interconnection points of 33kV system at Factory Switch yard and 11KV system at Township switchyard which are located at appx. 1.5 KMS distance appx. from proposed solar PV plants in BHEL Factory area. Tentative layout of the proposed connectivity plan uploaded in the e-procurement site. (Annexure- G)
- b) The maintenance of Transmission system up to the Inter-Connection Point shall be the responsibility of the SPD.
- c) As the proposed interconnection point is not feasible for establishment of metering as per CEA metering regulations, 2006 and its latest amendments, SPD shall create a separate infrastructure (for e.g., a four-pole structure or any structure which is suitable for meeting the requirements of meeting CEA metering regulations) for metering point and connect the metering point to the delivery point through an underground HT cable whose procurement, laying as per the IS 1255-1983 and its latest amendments and termination at the delivery point shall be in the scope of the SPD..
- d) The scheduling of the power from the project as per the applicable regulation, if required, shall be the responsibility of the SPD and any financial implication on



account of scheduling and forecasting such as UI charges etc. shall be on the account of SPD.

- e) Reactive power charges, if required, as per CERC/ SERC regulations shall be payable by SPD as per provisions of PPA
- f) 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

#### (i) Criteria for generation

- 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.
- 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.

#### (ii) Shortfall in generation

- 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.
- The amount of compensation shall be equal to the difference in per unit rate payable by BHEL to Discom and the PPA tariff.
- 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.
- 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.**
- 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.

- 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.

### **(iii) Excess generation**

- Any excess generation should be sold directly to BHEL and BHEL reserves the right to sell the surplus power to the DISCOM at its end.
- 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 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.

### **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 as required for setting up the Solar PV Power Projects. However, BHEL will facilitate for getting the feasibility/connectivity Letter from STU/DISCOM to the SPD before signing of PPA

### **3.11 Earnest Money Deposit (EMD) and Performance Bank Guarantees (PBG)**

- Earnest Money Deposit (EMD) of Rs. 20 Lakh** in the form of DD 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.
- Performance Bank Guarantee (PBG):** Bidder selected based on this NIT shall submit Performance Guarantee for a value of Rs. 48 lakhs before signing of PPA or 21 days from the date of issue of letter of Intent (LOI) whichever is earlier. It may be noted that successful Bidders shall submit the Performance Guarantee according to the Format 6.4 from the date of signing of PPA. **The Performance Bank Guarantee shall be submitted in two parts: 1<sup>st</sup> part for an amount of Rs. 9.6 Lakh and 2nd part for an amount of Rs. 38.4 lakhs.** On submission and successful verification of Performance Bank Guarantee, the DD submitted towards EMD shall be returned by BHEL to the successful Bidder.
- The PBG shall be valid for the tenure of PPA on full/renewal basis.
- The Bidder shall furnish the DD against EMD from any of the nationalized / scheduled banks listed at Annexure-D of the NIT document. The SPD shall furnish the PBG from any of the Banks listed at Schedule-2 of the PPA, to BHEL.
- The format of the PBG 6.4 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.
- 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 Section- 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, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

- vii. 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.
- viii. All expenditure towards execution of Bank Guarantees such as stamp duty etc. shall be borne by the Bidders.
- ix. 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.
- x. After the bidding process is over, BHEL shall release the DD of the unsuccessful Bidders within 15 days after e-Reverse auction. 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.
- xi. MSMEs (Micro, Small and Medium Enterprises) registered under NSIC/ Udyog Aadhar Only are exempted from cost of Tender document and EMD. In order to avail such exemption, bidder shall submit a copy of the MSME registered document.

### **3.11 (a) FORFEITURE OF EMD**

The DD towards 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 Lol, 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**

- i. BHEL shall enter into Power purchase agreement (PPA) with the Bidder selected based on this NIT. A copy of standard Power Purchase Agreement to be executed between BHEL and the selected SPD shall be uploaded on the website <https://eprocurebhel.co.in/nicgep/app>. The PPA shall be signed within **30 days** of the date of issue of Letter of Intent (Lol). The PPA shall be valid for a period of 25 years from the date of signing as per the provisions of PPA.
- ii. The Performance Bank Guarantee as per Clause 3.11 of Section-3 above, 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 a Section-4 of the 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.

- iii. Any extension of the PPA period beyond 25 years shall be through mutual Agreement between the Solar Project Developer and BHEL. Successful bidders will have to submit the required documents to BHEL within 21 days from the issue of Lol. 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.
- iv. 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.
- v. 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.

### **3.13 Financial Closure or Project Financing Arrangements**

- i. 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 01-06-2024, then scheduled Financial Closure date shall be 01-09-2024). At this stage, the SPD shall report 100% 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.
- ii. 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.

- iii. Interest on account of delay in deposition of the above-mentioned charges or on any subsequent extension sought, shall be levied @ one year SBI MCLR 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.
- iv. 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, HPVP, Visakhapatnam shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.
- v. 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**

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 6 months from the effective date of PPA. In this regard, a duly constituted committee 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. 12.00 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. 48.00 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 cited at 3.14(ii) (a) and 3.14(ii) (b), the PBG shall be replenished to the full amount as per clause 3.11(ii) of this 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 9 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.

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

- i. The Bidder shall provide complete information in their bid in reference to this NIT about the Promoters and upon issuance of Lol, the SPD shall indicate its shareholding in the company indicating the controlling shareholding before signing of PPA with BHEL.
- ii. 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.
- iii. 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.
  - 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 or existing shareholders.
  - d. Maintain of shares within the members of Promoter Group.
  - e. Maintain of shares to IEPF.
  - f. Issue of Bonus Shares
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. Any change in the shareholding after the expiry of 1 year from COD can be undertaken under intimation to BHEL. Maintain 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.
- ix. 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 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) in the form of DD.
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.
  - 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-A.**

**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 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 2018-19, 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**

- a. 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.

- b. 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.
- c. 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 DD/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.
- d. If the event specified at **Clause 3.17(c)** is discovered after the Effective Date of PPA, consequences specified in PPA shall apply.
- e. 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**.
- f. 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**.
- g. 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.
- h. 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.
- i. All the information should be submitted in English language only.
- j. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.
- k. Responses to NIT that are incomplete, which do not substantially meet the requirements prescribed in this NIT, will be liable for rejection by BHEL.
- l. Response to NIT not submitted in the specified formats will be liable for rejection by BHEL.
- m. Bidders delaying in submission of additional information or clarifications sought shall be liable for rejection.
- n. 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.
- o. Courts situated at Visakhapatnam only 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 along with the documents submitted offline to BHEL shall be scrutinized to establish "Responsiveness of the bid". Each bidder's response to NIT shall be checked for compliance with the



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

- a. Non-submission of Cost of tender documents of NIT and 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 mentioned at **clause 3.23 (A)** 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 (*Electronic Form*).
- 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.** The bidder has to submit the following document in offline in an envelope as mentioned below before due date of tender.

**B. Cost of tender document (Non-Refundable):** The cost of Tender is Rs 5600/- which is to be submitted in the form of DD drawn in favor of “M/s. BHEL, HPVP, Visakhapatnam” payable at Visakhapatnam to be submitted to the address mentioned below so as to reach by post / courier/ by hand latest by 1400 Hrs of the “due date of online submission of tenders”. However, the details of DD No. date etc., to be provided in the prequalification profile along with scanned image of the same to be uploaded.

**C. Earnest Money Deposit:** Earnest Money Deposit of Rs 20,00,000/- should be furnished in the form of

- i) Demand Draft drawn in favor of “M/s. BHEL, HPVP, Visakhapatnam” payable at Visakhapatnam, from a Nationalized Bank / Scheduled Bank
- ii) Electronic Fund Transfer credited in BHEL account (before due date of online submission of tenders).

Deposit through any other form will not be accepted. EMD deposited by the bidder shall not bear any interest to the contractor. The scanned image of earnest money deposit to be uploaded online along with the tenders and the original one to be submitted to the address mentioned below so as to reach by post / courier / by hand latest by 1400 Hrs of the “due date of online submission of tenders”. However, the details of DD no date etc. to be provided in the prequalification profile.

The cost of tender document and EMD to reach the following address by post / courier / by hand up to 1400 Hrs on the “due date of online submission of tenders” as mentioned in the tender notice failing which tender will not be considered/opened and any postal delay or any other reasons what so ever will not be considered. The EMD will be refunded to the un-successful bidders, unless the same is forfeited for any breach on the part of bidder. If the cost of tender document and EMD paid is less than the prescribed amount, the tender will be rejected.

**Agencies who are registered with MSE / NSIC/ Udyam Certificate signed by a Chartered Accountant having proper validity are exempted from cost of tender documents and EMD.**

However, Agency shall submit the MSE / NSIC/ Udyam Certificate signed by a Chartered Accountant to the address mentioned below so as to reach by post / courier / by hand before 1400 Hrs of the “due date of online submission of tenders” and same shall be uploaded in BHEL e-procurement portal, failing which due to any postal delay or any other reasons what so ever, bid will not be considered/opened. The envelope shall contain the following sticker:

Response to NIT for Setting Up of Solar PV Power Projects of 1MW and 0.6MW capacities to Factory and township with net metering arrangement at BHEL, HPVP, Visakhapatnam	
NIT Reference No.	
Submitted by	(Enter Full name and address of the Bidder)
Authorized Signatory	(Signature of the Authorized Signatory) (Name of the Authorized Signatory) (Stamp of the Bidder)
Bid Submitted to	Bharat Heavy Electricals Limited, HPVP, Visakhapatnam - 530012 Phone: 0891-2881345

## **B. 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. In case the bidder submits the documents offline as required in **Clause 3.19A of Section-3** and fails to submit the online bid, then Cost of NIT document submitted shall be forfeited and the EMD(s) shall be returned to the person at the address mentioned in the Covering Letter.
3. All documents in response to NIT submitted online must be digitally signed on <https://eprocurebhel.co.in/nicgep/app> 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, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, Annexure-A 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.

### **Financial Bid (Second Envelope):**

Bidders shall submit the single Financial Bid containing the scanned copy of following document(s):

- i. Covering letter as per Format-6.9 of this NIT document;
- ii. PRELIMINARY ESTIMATE OF COST OF SOLAR PV PROJECT as per Annexure A.

**The discounted tariff bid shall have to be filled online in the Price Bid Format provided at the BHEL portal.**

### **Important Note:**

- i. The Bidders shall not deviate from the naming and the numbering formats mentioned above, in any manner.
- ii. Enclosed documents shall be indexed with the index list at the first page of the scanned document.
- iii. Envelope shall be properly sealed with the signature of the Authorized Signatory running across the sealing of the envelope.
- iv. The envelopes which are found to be improperly sealed at the time of receipt shall be rejected.
- v. In case the Bidder submits the online documents on BHEL e-procurement portal within the bid submission deadlines and fails to submit the offline documents in the office of BHEL Visakhapatnam within the bid submission deadlines, the online bid of the Bidder shall not be opened and shall be 'archived' on the BHEL e-procurement portal. Similarly, bids submitted offline but without any online submission on BHEL e-procurement portal shall not be opened and the EMD shall be returned to the respective bidder.

### **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.

Solar PV Power Projects of 1MW and 0.6MW capacities to Factory and township with net metering arrangement at BHEL, HPVP, Visakhapatnam

**1 MW Solar PV Project with net metering arrangement for supply of power to BHEL Factory, Visakhapatnam.**

**0.6MW Solar PV Project with net metering arrangement for supply of power to BHEL Township, Visakhapatnam.**

**Owned and operated by**

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

**LOCATION:**

BHEL, HPVP, Visakhapatnam.

**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 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**

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.
2. Clarifications/ Doubts, if any, on NIT document may be emailed and/ or through BHEL e-procurement portal.
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/nicgep/app>. If necessary, amendments, clarifications, elaborations shall be issued by BHEL which will be notified on BHEL/ BHEL e-procurement portal. No separate reply/ intimation will be given for the above, elsewhere.
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
5. A Pre-Bid Meeting shall be held as mentioned in the Bid Information Sheet. Enquiries/ Clarifications may be sought by the Bidder from:

Name of the Authorized Person of BHEL	Contact details
D.L.Ravi Kumar	0891 288 1375, ravikumardl@bhel.in

Nirakar mundha	0891 288 1806, mundha@bhel.in
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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.
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.
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.

## 4. PRE-QUALIFICATION CRITERIA FOR BIDDERS

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

### 4.1 GENERAL ELIGIBILITY CRITERIA:

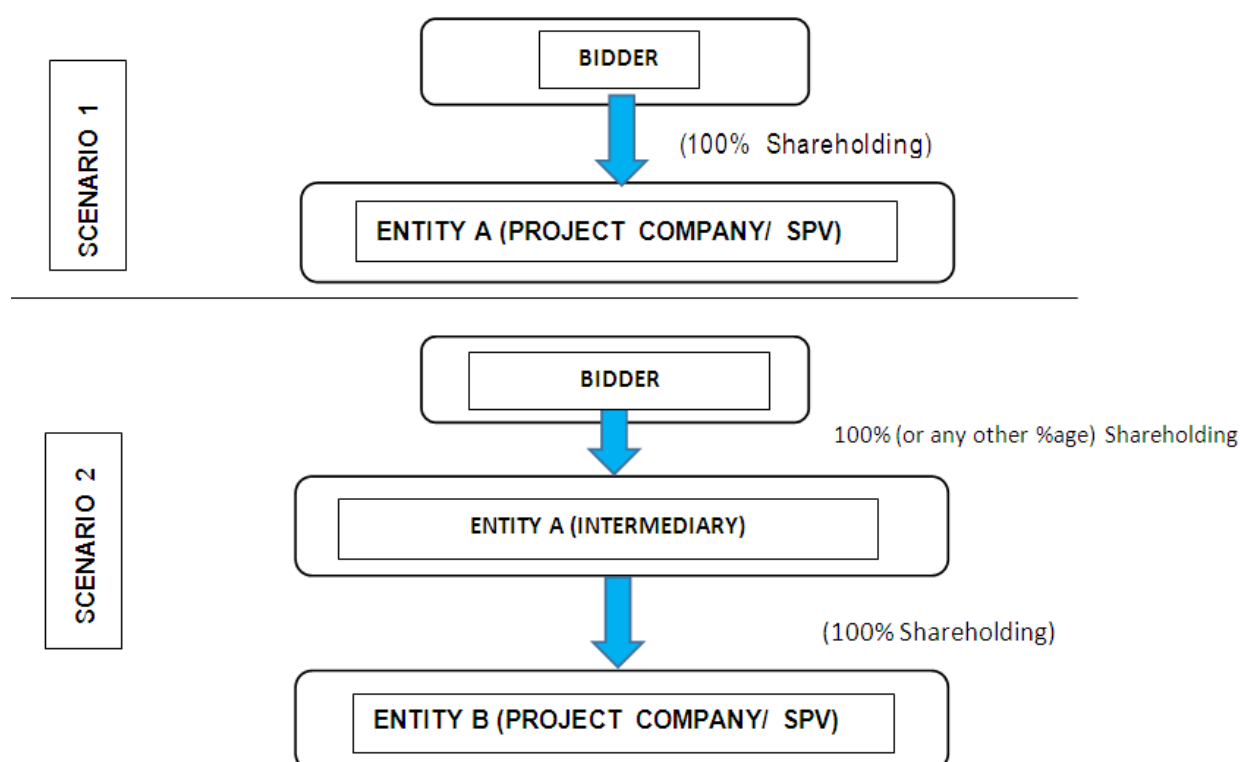
1. Companies incorporated in India under the Companies Act 1956 or Companies Act, 2013 including subsequent amendments as applicable.
2. Bidding Consortium with one of the Companies as Lead member. Consortium shortlisted and selected based on this NIT has to necessarily form a Project Company and get 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 6.5**).
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 76% 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. 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.***

5. Limited Liability Partnership (LLPs) are not eligible for participation.
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 76% 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 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 76% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of PPA.
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. Maintain 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.

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.
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 100% subsidiary of the bidder, without any intermediaries involved. The following illustrations are provided to clarify the same:



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

## 4.2 TECHNICAL ELIGIBILITY CRITERIA

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.

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.*

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. The Projects shall also comply with the criteria for power generation detailed in **Clause No. 3.9**.
5. The bidder should have established Ground Mounted Solar Power Plants of Capacity not less than 2MWp and should have operated and maintained the same solar power plant or any other solar power plant of capacity not less than 2MWp.
6. The bidder shall furnish work completion certificate as proof of document for the establishment and experience certificate for Operation & Maintenance as mentioned at clause 4.2 (5).
7. 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)
8. Failure to provide the documents mentioned at Clause 4.2 (6) 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. 250 lakhs**, as on the last date of previous Financial Year, i.e. FY 2021-22/FY 2022-23 or on the 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.



### 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 turnover of **Rs. 100 lakhs** during the previous financial year, i.e. FY 2022-23/FY 2023-24. 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. Internal resource generation capability, in the form of Profit Before Depreciation Interest and Taxes (PBDIT) for a minimum amount of **Rs. 20 Lakhs**, as on the last date of previous financial year, i.e. FY 2022-23/FY 2023-24.
- c. In-principle sanction letter from the lending institutions/ banks of the Bidder, committing a Line of Credit for a minimum amount of **Rs. 25 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/ 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/FY 2023-24, along with net worth, annual turnover and PBDIT certificate (as applicable) from a practicing Chartered Accountant/ Statutory Auditor to demonstrate fulfillment 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** For meeting the above financial eligibility criteria, if the data is provided by the Bidder in a foreign currency, equivalent Indian Rupees of Net Worth and other financial parameters will be calculated by the Bidder using Reserve Bank of India's reference rates prevailing on the date of closing of the accounts for the respective financial year.

**4.3.7** In case of any currency for which RBI reference rate is not available, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion. After such conversion, Bidder shall follow the procedure/ submit document as elaborated in Clause 4.3.6 above.

**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 2MW, then, total Net-Worth to be met by the Consortium is Rs. 250 Lakhs. Minimum requirement of Net-Worth to be met by Lead Member A would be minimum Rs. 75 Lakhs and to be met by Consortium Member B would be Rs. 75 Lakhs. Similar methodology shall be followed for computation of turnover and other liquidity requirement.

## 5. BID EVALUATION AND SELECTION OF PROJECT DEVELOPER

### 5.1 BID EVALUATION

1 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(a)**, of this NIT are received at the office of BHEL 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 and returned unopened, if super-scribed properly with address, to the bidder.
- 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 in the covering letter. 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 Bid(Online Sealed 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. On completion of Techno-Commercial bid evaluation, if it is found that only one or two Bidder(s) is/are eligible for the project for the next stage, opening of the financial bid of the bidder will be at the discretion of BHEL. Thereafter, BHEL will take appropriate action as deemed fit.
- vi. 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.
- vii. All Bidders with same tariff shall be eligible for reverse auction round (provided their rank is equal to or less than nth Bidder as mentioned in Clause No. 3.7 of this Section-5).
- viii. Ranking of bidders after Financial Bid Evaluation: Following illustrates an example of ranking of bidders after financial bid opening and evaluation.

#### **Bidder Submitted Financial Bid Ranking**

B1	₹ 2.10 (Tariff in ₹/ kWh)	L1
B2	₹ 2.20 (Tariff in ₹/ kWh)	L2
B3	₹ 2.30 (Tariff in ₹/ kWh)	L3
B4	₹ 2.30 (Tariff in ₹/ kWh)	L3
B5	₹ 2.43 (Tariff in ₹/ kWh)	L4
B6	₹ 2.60 (Tariff in ₹/ kWh)	L5
B7	₹ 2.70 (Tariff in ₹/ kWh)	L6
B8	₹ 2.80 (Tariff in ₹/ kWh)	L7
B9	₹ 2.93 (Tariff in ₹/ kWh)	L8

### 5.3 REVERSE AUCTION (STEP - 3)

- a. The guidelines for Reverse Auction have been separately uploaded and can be downloaded along with the NIT.

### 5.4 SELECTION OF SUCCESSFUL BIDDERS

1. The Lowest **quoted tariff** bidder in reverse auction shall be L1.
2. 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.

### 5.5 LIMITATION OF LIABILITY:

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.
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.
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:

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.

2. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof
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 by head of the BHEL unit issuing the contract.
4. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.
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 Visakhapatnam.
6. The cost of arbitration shall be borne as per the award of the Arbitrator.
7. Subject to the arbitration in terms of above clause, the courts at Visakhapatnam, Andhra Pradesh State shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.
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.

## 5.7 INTEGRITY PACT:

**5.7.1** 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.

A panel of Independent External Monitors (IEMs) have been appointed to oversee implementation of IP in BHEL.

The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory who signs in the offer) along with techno-commercial 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.

Details of IEM for this tender is furnished below:

Details of IEM for this tender is furnished below:

<u>Sl. No.</u>	<u>IEM</u>	<u>Email</u>
1	Shri Otem Dai, IAS (Retd.)	e-mail : iem1@bhel.in
2	Shri Bishwamitra Pandey, IRAS (Retd.)	e-mail : iem2@bhel.in
3	Shri Mukesh Mittal, IRS (Retd.)	e-mail : <a href="mailto:iem3@bhel.in">iem3@bhel.in</a>

**5.7.2** 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 IEMs.

## **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 (Format 6.4)
- v. Format for Board Resolutions (Format 6.5)
- vi. Format for the Consortium Agreement (Format 6.6)
- vii. Format for Technology break-up (Format 6.7)
- viii. Format for Disclosure (Format 6.8)
- ix. Format for financial proposal 6.9
- x. Format for technical criteria 6.10
- xi. No deviation 6.11
- xii. Format for Preliminary estimate of cost of Solar PV Power Project (Annexure-A)

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)      Date: \_\_\_\_\_  
Reference No: \_\_\_\_\_

Tel. #:

Fax #:

E-mail address#

To

Bharat Heavy Electricals Limited,  
HPVP,  
VISAKHAPATNAM – 530012

Sub: Response to NIT No-----dated ----- for development of Solar 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 1MW AND 0.6MW Grid Connected Solar PV Project with net metering arrangement at BHEL, HPVP, Visakhapatnam:

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 of DD no.....*[Insert DD no]* dated ..... *[Insert date of DD]* as per Format 6.2A from ..... *[Insert name of bank providing DD]* and valid up to.....in terms of Clause 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. Fax Nos. : .....
  8. 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.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2024

Thanking you,

Yours faithfully,

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

\*\*\*

**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 of .....and having its Registered /Head Office at .....as our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the 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 of .....under 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:)

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 Section 2 of the NIT.

**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.#:  
 Fax#:  
 E-mail address#

To  
 Bharat Heavy Electricals Limited  
 HPVP, Visakhapatnam.

Sub: Response to NIT No. .... dated ..... for Selection of Solar Power Developers for Setting up of 1MW AND 0.6MW Grid Connected Solar PV Project with net metering arrangement at BHEL,HPVP,Visakhapatnam.

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 2022-23/2023-24**. 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 Affiliate(s) whose PBDIT is to be considered	Relationship with Bidding Company	PBDIT (in Rs. Crore)
Company 1			
TOTAL			

**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]**

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					

#### 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 2022-23/2023-24**

(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	Relationship with Bidding Company	PBDIT (in Rs. Crore)
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]

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 Affiliate(s) whose Annual Turnover is to be considered	Relationship with Bidding Company* (If Any)	Annual Turnover (in Rs. Crore)	Equity Commitment (in %age) in Bidding Consortium	Proportionate Annual Turnover (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 a Profit Before Depreciation Interest and Taxes (PBDIT) of INR \_\_\_\_\_(in words) as on **the end of Financial Year 2022-23/2023-24**. (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 Affiliate(s) whose PBDIT is to be considered	Relationship with Bidding Company	PBDIT (in Rs. Crore)
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]**

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:*

**(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.

**FORMAT 6.4      FORMAT FOR PERFORMANCE BANK GUARANTEE FOR SOLAR PV PROJECT**

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

- a) In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected 'Solar Project Developer') submitting the response to NIT inter alia for selection of the Project of the capacity of 2 MW, at BHEL, HPVP, Visakhapatnam for supply of power there from on long term basis, in response to the NIT dated..... issued by Bharat Heavy Electricals Limited, Visakhapatnam (hereinafter referred to as BHEL) and BHEL considering such response to the NIT of .....[insert the name of the selected Solar Project Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar PV Project of the Solar Project Developer and issuing Letter of Intent No. ----- (insert LOI No.) to .....(Insert Name of selected Solar Project 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 Project Developer].
- b) As per the terms of the NIT, the \_\_\_\_\_ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to BHEL at BHEL,HPVP, Visakhapatnam forthwith on demand in writing from BHEL or any Officer authorized 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 Project Developer].
- c) 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.
- d) Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only). Our Guarantee shall remain in force until..... BHEL shall be entitled to invoke this Guarantee till .....
- e) The Guarantor Bank hereby agrees and acknowledges that BHEL 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, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to BHEL.
- f) 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 Project Developer] and/or any other person.
- g) The Guarantor Bank shall not require BHEL to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against BHEL in respect of any payment made hereunder. This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Visakhapatnam 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.
- h) 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.
- i) This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly BHEL shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Solar Project Developer / Project Company , to make any claim against or any demand on the selected Solar Project Developer / Project Company or to give any notice to the selected Solar Project Developer / Project Company or to enforce any security held by BHEL or to exercise, levy or enforce any distress, diligence or other process against the selected Solar Project Developer / Project Company . Notwithstanding anything contained herein above, 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 serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For

\_\_\_\_\_ [Insert Name of the Bank] \_\_\_\_\_

Banker's Stamp and Full Address.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks enclosed.



## **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 1.6 MW Grid Connected Solar PV Project at BHEL, HPVP, Visakhapatnam, 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:**

- 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.

### 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, Visakhapatnam (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, HPVP, Visakhapatnam 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.

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:

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.
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:

a)	Name	b)	Percentage
c)	Member -1	d)	
e)	Member -2	f)	
g)	Member - n	h)	
i)	Total	j)	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.
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 )

Witnesses:

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 )

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

**FORMAT 6.7 Declaration by the Bidder for the proposed technology break-up**  
 (to be submitted on the letterhead of the Bidding Company/Lead Member of the Consortium)

S. No	Description	
1	Name of Bidding Company	
2	Estimated Capacity Utilization Factor	%
3	Estimated Annual Generation of Electrical Energy	KWH
	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**

**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:*

**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,

**Bharat Heavy Electricals Limited,  
Visakhapatnam - 530012**

**Sub: Response to NIT for Selection of developer for 1 MW and 0.6MW Solar PV Project at BHEL, HPVP, Visakhapatnam vide NIT No.-----**

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 1 MW and 0.6MW solar PV project at BHEL, HPVP, Visakhapatnam 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)



**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      Date: \_\_\_\_\_  
and address of Bidding Company)      Reference No: \_\_\_\_\_  
Tel.#:  
Fax#:  
E-mail address#

To  
Bharat Heavy Electricals Limited,  
HPVP, Visakhapatnam - 530012

Sub: Response to NIT No. .... dated ..... For Selection of Solar Power Developers  
for Setting up of 1MW AND 0.6MW Grid Connected Solar PV Project with net metering arrangement  
at BHEL,HPVP, Visakhapatnam.

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.

**FORMAT 6.11      "NO DEVIATION" CONFIRMATION**

To,  
M/s Bharat Heavy Electricals Limited, Visakhapatnam

---

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:

## **7. STATUTORY REQUIREMENTS**

- 7.1 The bidder will be required to comply with all the statutory provisions such as Bonus, if applicable any, (% as prevailing in BHEL Visakhapatnam) 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, Andhra Pradesh State Fair Wages prevailing at the time of payment or arrears thereof, declared Holidays, leave, Andhra Pradesh Labour Welfare Fund etc. The bidder 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.
- 7.2 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
- 7.3 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.
- 7.4 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
- 7.5 The bidder shall produce to the Company, the documentary proof of payment of the said statutory dues. Non-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
- 7.6 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. BHEL will not reimburse any bonus payment to the vendor.
- 7.7 The bidder will have to extend paid National Holidays and Festival Holidays to their workmen as per BHEL Visakhapatnam 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.
- 7.8 Price Variation Clauses (PVC) are not applicable vis-à-vis payments to labour are concerned.
- 7.9 Over-run Compensation Clauses are not applicable.

## 8. GST CLAUSES

### 8.1 Taxes & Duties- GST Clauses:

- a. Only valid GST registered bidders will be considered for the tender. The GSTIN of the bidder should be clearly mentioned in the offer.
- b. If bidder is exempted from GST registration under any provision of the GST Law, a declaration with due supporting documents should be furnished for considering the offer.
- c. Bidder to quote the applicable taxes in the following manner:
  - i. Harmonized System of Nomenclature (HSN) of Goods
  - ii. Services Accounting Code (SAC) of Services.
  - iii. IGST/CGST/SGST/UTGST: Rate of Tax to be quoted as extra in % against the space provided.
- d. Bidders to ensure correct applicability of IGST/CGST/SGST/UTGST based on the Inter / Intra state movement of goods/services.
- e. In case Bidder has opted for GST Composition Scheme, the same may be stated explicitly both in their technical and price bids. An undertaking to the effect that any change in the status of the bidder will be intimated.
- f. Any other taxes & duties not covered anywhere above may be indicated separately.

### 8.2 Taxes deducted at source:

- a. TDS as per the extant statutes shall be deducted.
- b. In case bidder does not provide PAN details, higher rate of tax shall be deducted as per the Act.
- c. Concessional certificates, if any, should be provided well in time for lower deduction of tax.

### 8.3 Terms & Conditions to be complied in GST:

- a. All invoices (incl. Credit Notes, Debit Notes) to contain BHEL HPVP GSTIN ie :37AAACB4146P7Z8. Invoices submitted should be in the format as specified under GST Law. All details as mentioned in Invoice Rules including Dealer GST registration number (GSTIN), invoice number with date of issue, quantity, rate, value, taxes with nomenclature – CGST, SGST, UGST, IGST mentioned separately, HSN Code / SAC Code etc.
- b. Reimbursement of GST amount will be made only upon completion of the following:
- c. Bidder declaring such invoice in their GSTR-1 Return/ IFF
- d. Receipt of Goods or Services and Submission of Tax invoice by BHEL

- e. The tax invoice is reflected in the GSTR2B of BHEL, HPVP (buyer). Payment of GST will be made only if it is matching with data uploaded by the Bidder in GST portal.
- f. In case of discrepancy in the data uploaded by the bidder in the GSTN portal vis-a-vis the tax invoice or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit.. Bidder has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details also to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims for processing of such invoices.
- g. In cases where invoice details have been uploaded by the bidder but failed to remit the GST amount to GST Department within stipulated time, then GST on the invoices in default will be recovered from the bidder along with the applicable interest.
- h. In case GST credit is delayed/denied to BHEL due to non/delayed receipt of goods and/or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, such GST amount will be recoverable from bidder along with interest levied/leviable on BHEL.
- i. Under GST regime, BHEL has to discharge GST liability on LD recovered from bidders. Hence applicable GST shall also be recoverable from bidders on LD amount. For this Tax Invoice digitally signed will be issued by BHEL indicating the respective supply invoice number.
- j. GST TDS deducted as per GST Act, is uploaded in GSTN portal along with GSTR7. Bidders can directly download the GST TDS Certificate from the GSTN Portal.
- k. Bidders to note that Rules & Regulations pertaining to E-way bill & E-Invoicing system are to be strictly adhered to, as and when notified by Govt. authorities

**Annexure-A****Preliminary Estimate of Cost of Solar PV Power Project**

**Project Capacity:** 1MW and 0.6MW capacities to Factory and township with net metering arrangement

**Location:** BHEL-HPVP, VISAKHAPATNAM.

<b>S. No</b>	<b>Particulars</b>	<b>Estimated cost (in lakh rupees) (in figures)</b>	<b>Estimated cost in lakh rupees (in words)</b>
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		
	<b>TOTAL ESTIMATED COST OF PROJECT</b>		

**(Signature)**

**(Name of Authorized Signatory)**

**(Name of the Bidding Company)**

## Annexure- B

### **Technical Parameter of PV Module and various other components for use in Grid Connected 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 Centers**

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 Centers 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**

- i) 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.
- ii) The modules shall be warranted for at least 10 years for failures due to material defects and workmanship.
- iii) The mechanical structures, electrical works and overall workmanship of the grid solar power plants must be warranted for a minimum of 5 years.
- iv) 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):

- i. Name of the manufacturer of PV Module
- ii. Name of the Manufacturer of Solar cells
- iii. Month and year of the manufacture (separately for solar cells and module)
- iv. Country of origin (separately for solar cells and module)
- v. I-V curve for the module at Standard Test Condition (1000 W/m<sup>2</sup>, AM 1.5, 250C)
- vi. Wattage, I<sub>m</sub>, V<sub>m</sub> and FF for the module
- vii. Unique Serial No. and Model No. of the module
- viii. Date and year of obtaining IEC PV module qualification certificate
- ix. Name of the test lab issuing IEC certificate
- x. 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:

- i. The SPD shall maintain the list of Module IDs along with performance characteristic data for each module. This data shall be submitted to BHEL.
- ii. 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.
- iii. The SPD shall provide access to BHEL or their authorized representatives for installing any additional monitoring equipment to facilitate on-line Maintain of data.
- iv. 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:**

- i) 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:
- ii) 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	1MW	1MW	1MW	1MW
2	0.6MW	0.6MW	0.6MW	0.6MW

\*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.

ii) 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 give to the BHEL and APEPDCL/ State Nodal Agency/SLDC/RLDC at least twenty (20) days advance preliminary written notice and at least ten (10) days advance final written notice, of the date on which it intends to synchronize the Power Project to the Grid System under net metering scheme. 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 site 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 STU/DISCOM.
- i. Connectivity report to be submitted as per the Appendix-B-3.
- j. Synchronization Certificate as per prescribed format issued by the STU/DISCOM for ascertaining injection of power into grid as per Appendix-B-4.
- k. 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. Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
- m. 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 (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
1	Technology used (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
2	Rating of the 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	
	Transformers	

**Appendix-B-3****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>	<1> MW	<p>Metering Details at delivery point (&lt;village&gt;)</p> <p>S. No of 33KV CT</p> <p>i) R Phase</p> <p>ii) Y Phase</p> <p>iii) B Phase</p> <p>S. No of 33KV PT</p> <p>i) R Phase</p> <p>ii) Y Phase</p> <p>iii) B Phase</p> <p>S. No of Main &lt;&gt; ABT Meter</p> <p>S. No of Check &lt;&gt; ABT Meter</p> <p>S. No of Stand-by &lt;&gt;ABT Meter</p> <p>Metering equipment installed at receiving end on dated: &lt;&gt;</p>	<p>Transformer &lt;Make/Type&gt; &lt;S no&gt;</p> <p>Inverters &lt;Make/Type&gt;</p> <p>Modules &lt;Make:&gt; &lt;W&gt;, &lt;W&gt;</p> <p>Total: &lt;Nos&gt;</p> <p>Switchgear Panels &lt;Make/Type&gt; &lt;S No&gt;</p> <p>Protection Provided: Under/Over voltage, Over current &amp; earth fault</p>

2	<M/s> <Village> <Tehsil> <District>	<(0.6 to1.0)> 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: <>	Transformer <Make/Type> <S no> 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**

##### **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
- (ii) Copy of duly signed MRI is to be enclosed.

#### **Appendix-B-5**

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

NB: To be issued by State Nodal Agency/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

S. No	Name of the bank	S. No	Name of the bank
<b>A</b>	<b>Nationalised Banks</b>	<b>B</b>	<b>Public Sector Banks</b>
<b>1</b>	Allahabad bank	<b>19</b>	IDBI
<b>2</b>	Andhra bank	<b>C</b>	<b>FOREIGN BANKS</b>
<b>3</b>	Bank of Baroda	<b>20</b>	CITI BANK N.A
<b>4</b>	Canara Bank	<b>21</b>	Deutsche Bank AG
<b>5</b>	Corporation Bank	<b>22</b>	The Hongkong and Shanghai Banking Corporation Limited
<b>6</b>	Central Bank	<b>23</b>	Standard Chartered Bank
<b>7</b>	Indian Bank	<b>24</b>	J P Morgan
<b>8</b>	Indian Overseas Bank	<b>D</b>	<b>Private Banks</b>
<b>9</b>	Oriental Bank of Commerce	<b>25</b>	Axis Bank
<b>10</b>	Punjab National Bank	<b>26</b>	The Federal Bank Limited
<b>11</b>	Punjab & Sind Bank	<b>27</b>	HDFC
<b>12</b>	State Bank of India	<b>28</b>	Kotak Mahindra Bank
<b>13</b>	Syndicate Bank	<b>29</b>	ICICI
<b>14</b>	State Bank of Travancore	<b>30</b>	Indusind Bank
<b>15</b>	UCO Bank	<b>31</b>	Yes Bank
<b>16</b>	Union Bank of India		
<b>17</b>	United Bank of India		
<b>18</b>	Vijaya Bank		

## **Annexure – E**

### **1. PROCEDURE FOR E-TENDERING**

Please Visit the site: <https://eprocurebhel.co.in> for registration and submission of offer.  
Guidelines for registration and tender submission available on the above site.

### **2. TENDER SUBMISSION:**

The Bid shall be submitted in **Two-part Bid through GeP NIC (BHEL e-procurement) portal on or before 12.07.2024, 14.00 Hrs.**

**Part-I Bid: Techno-Commercial Bid**

**Part-II Bid: Price Bid**

Submission of offer by a tenderer implies that all the tender documents were read by the tenderer and the tenderer is aware of the scope and specifications of the work, site condition, local conditions and rates at which stores, tools and plant, free / chargeable materials etc., will be issued to him by BHEL - HPVP and other factors having bearing on the execution of the work.

### **3. OPENING OF TENDERS:**

The Part-I bid will be opened **on 12.07.2024, 15.00** in **GeP NIC (BHEL e-procurement) portal.**

## **Annexure – F**

### **TERMS & CONDITIONS OF REVERSE AUCTION**

- A. BHEL shall be resorting to Reverse Auction (RA) (**Guidelines as available on <https://www.bhel.com/guidelines-reverse-auction-2021>**) for this tender. RA shall be conducted among all the techno-commercially qualified bidders.

Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in 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.” This will be decided after techno-commercial evaluation. Bidders have to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA.

Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit ‘Process compliance form’ (to the designated service provider).

#### **B. PROCEDURE OF REVERSE AUCTIONING:**

- 1) Price bids of all techno-commercially qualified bidders shall be opened.
- 2) Reverse Auction: The ‘bid decrement’ will be decided by BHEL.
- 3) The lowest bidder in sealed envelope price bid shall be shown as current L1 automatically by the system and no acceptance of that price is required. System shall have the provision to indicate this bid as current L1.
- 4) Bidders by offering a minimum bid decrement or the multiples thereof can displace a standing lowest bid and become “L1” and this continues as an iterative process. However, no bidder shall be allowed to lower its bid below the current L1 by more than 5 decrements at one go.
- 5) After the completion of the reverse auction, the Closing Price shall be available for further processing.
- 6) Wherever the evaluation is done on total cost basis, after Reverse Auction, prices of individual line items shall be reduced on pro-rata basis.

#### **C. REVERSE AUCTION PROCESS:**

- 1) Reverse Auction will be conducted if two or more bidders are techno-commercially qualified.
- 2) In case of two or three qualified bidders, there shall be no elimination of H1 bidder (whose quote is highest in sealed envelope price bid).
- 3) In case of four qualified bidders, the H1 bidder shall be eliminated whereas in case of five qualified bidders, H1 & H2 bidders shall be eliminated.
- 4) In case of six or more qualified bidders are available, RA would be conducted amongst first 50% of the bidders arranged in the order of prices from lowest to highest. Number of bidders eligible for participating in RA would be rounded off to next higher integer value if number of qualified bidders is odd (e.g. if 7 bids are qualified, then RA will be conducted amongst lowest four bidders).
- 5) However, there will be no elimination of qualified bidders who are MSE or qualifying under PPP-MII, Order 2017, provided their bids are within their respective margin of

purchase preference {presently 15% for MSEs and 20% for PPP-MII, or as amended from time to time}.

- 6) In case of multiple H1 bidders, all H1 bidders (except MSEs and bidders qualifying under PPP-MII, Order 2017, who are within the margin of purchase preference) shall be removed provided minimum two bidders remain in fray, else no H1 removal.
- 7) The lowest bidder in sealed envelope price bid shall be shown as current L1 automatically by the system. System shall have the provision to indicate this bid as current L1 for further bidding. This price can be displaced by an even lower bid of a competing bidder.
- 8) Start price for RA shall be lowest of sealed envelope price bid. Note: Wherever more than one lowest sealed envelope price bids are identical, RA committee shall declare the start price by reducing the lowest sealed envelope price bid by maximum of one decrement.
- 9) If the start price is lower than the lowest sealed envelope price bid (in line with clause 8), on acceptance of such start price by any bidder this bid would be indicated as current L1 for further

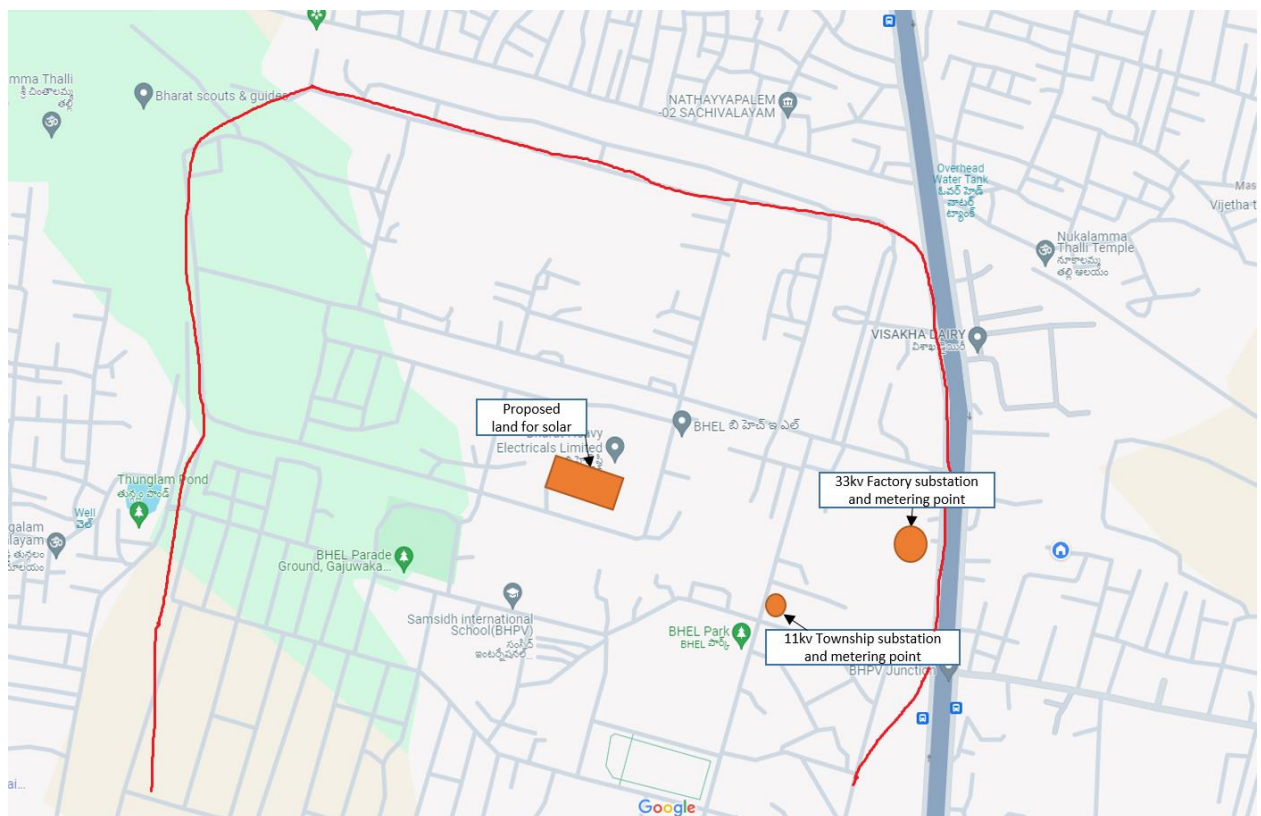
bidding. However, if no bidder accepts the start price, RA shall be treated as cancelled for the respective line item(s) and the tender shall be processed accordingly.

- 10) In case of no further bidding, RA will be deemed to have been successful with current L1 bidder. During RA, all bidders will see their rank and current L1 price on the screen. Once the RA is done, the ranking status would be based on the last quoted price of the bidder(s) irrespective of the quote received in RA or sealed envelope price bid.
- 11) No bidder shall be allowed to lower its bid below the current L1 by more than 5 decrements at one go.

**For detailed Guidelines visit our website:** <https://www.bhel.com/guidelines-reverse-auction-2021>

## Annexure G

Site location added separately in tender documents





## **Annexure-H**

--- Sample Letter ---

(To be submitted along with Technical bid)

Bharat Heavy Electricals Limited,HPVP,  
Visakhapatnam

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 –

## Annexure-I

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

*Buyback price*

$$\begin{aligned} &= (\text{Depreciation rate for the year}) \\ &\times (\% \text{ decrease in plant efficiency up to the year}) \\ &\times (\text{Total cost of establishment as declared by the SPD}) \\ &- [(\text{Total O\&M Cost per year}) \times (\text{No. of years remaining in PPA})] \end{aligned}$$

**Initial Cost:** Total Estimated project cost quoted by the bidder in Annexure A 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	4.00%
2	4.00%
3	4.00%
4	4.00%
5	4.00%
6	4.00%
7	4.00%
8	4.00%
9	4.00%
10	4.00%
11	4.00%
12	4.00%
13	4.00%
14	4.00%
15	4.00%
16	4.00%
17	4.00%
18	4.00%
19	4.00%
20	4.00%
21	4.00%
22	4.00%
23	4.00%
24	4.00%
25	4.00%

### 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 MW 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	25.00%
Year 2	24.75%
Year 3	24.50%
Year 4	24.25%
Year 5	24.00%
Year 6	23.75%
Year 7	23.50%
Year 8	23.25%
Year 9	23.00%
Year 10	22.75%
Year 11	22.50%
Year 12	22.33%
Year 13	22.17%
Year 14	22.00%
Year 15	21.83%
Year 16	21.66%
Year 17	21.50%
Year 18	21.33%
Year 19	21.16%
Year 20	20.99%
Year 21	20.83%
Year 22	20.66%
Year 23	20.49%
Year 24	20.32%
Year 25	20.16%

## 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:

1. 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.
2. 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.
3. 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.

**INTEGRITY PACT (AGREEMENT FORMAT)*****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 " 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

.....

.....

..... 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)/ .

In order to achieve these goals, the Principal will appoint independent External Monitor(s), 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

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)

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

2.1.1 The Bidder(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) 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) will not commit any penal offence under the relevant IPC/ PC Act; further the Bidder(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 The Bidder(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) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## Section 3 - Disqualification from Tender process and exclusion from future Contracts

If the Bidder(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)/ from the tender process or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers " framed by the Principal.

## Section 4 -Compensation for Damages

4.1 If the Principal has disqualified the Bidder from the tender process prior to the award according

to Section 3, the Principal is entitled to demand and recover the damages equivalent Earnest Money Deposit/Bid Security.

4.2 If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Bidder liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/Performance Bank Guarantee, whichever is higher.

## Section 5 - Previous Transgression

5.1 The Bidder declares that no previous transgressions occurred in the last 3 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.

## Section 6 -Equal treatment of all Bidders

6.1 The Bidder(s) undertake(s) to obtain from all Sub Bidders a commitment consistent with this Integrity Pact and report Compliance to the Principal. This commitment shall be taken only from those sub-Bidder whose contract value is more than 20 % of Bidder's contract value with the Principal. The Bidder(s) shall continue to remain responsible for any default by his Sub-Bidders

6.2 The Principal will enter into agreements with identical conditions as this one with all Bidders.

6.3 The Principal will disqualify from the tender process all Bidders who do not sign this pact or violate its provisions.

## Section 7 - Criminal Charges against violating Bidders

If the Principal obtains knowledge of conduct of a Bidder, or of an employee or a representative or an associate of a Bidder, 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 Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

8.2 The Monitor is 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 Bidder(s) accepts that the Monitor has the right to access without restriction to all Contract documentation of the Principal including that provided by the Bidder(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to



his contract documentation. The same is applicable to Sub- Bidder(s). The Monitor is under Contractual obligation to treat the information and documents of the Bidder(s)/ / Sub- Bidder(s) with confidentiality,

8.4 The Principal will provide to the Monitor 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 Bidder. The parties offer to the Monitor the option to participate in such meetings.

8.5 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or heal the situation, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

8.6 The Monitor will submit a written report to the CMD. BHFL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

8.7 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.

8.8 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant IPC / PC 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 Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

8.9 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.

8.10 The word 'Monitor' would include both singular and plural.

## Section 9 - Pact Duration

9.1 This Pact begins and shall be binding on and from the submission of bid(s) by Bidder(s). It expires for the Bidder 12 months after the last payment under the respective contract and for all other Bidders 6 months after the contract has been awarded.

9.2 If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified as above, unless it is discharged/ determined by the CMD, BHEL.

## Section 10 - Other Provisions

10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal,  
i.e. New Delhi.

10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

10.3 If the Bidder is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

10.5 Only those Bidders who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

.....  
For & On behalf of the Principal  
(Office Seal)

.....  
For & On behalf of the Bidder  
(Office Seal)

Place-----

Place-----

Date-----

Date-----

Witness:.....  
(Name & Address).....

Witness:.....  
(Name & Address).....

.....  
.....

.....  
.....

**POWER PURCHASE AGREEMENT**

**FOR PROCUREMENT OF 1.0 MW SOLAR POWER TO FACTORY and 0.6  
MW SOLAR POWER TO TOWNSHIP ON LONG TERM BASIS**

**Between**

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

**And**

**BHARAT HEAVY ELECTRICALS LIMITED, VISAKHAPATNAM**

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## **Commissioning Certificate of Solar PV Power Project..... 137**

This Power Purchase Agreement is made on the XX<sup>th</sup> day of XXXXX of 2023. 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), Visakhapatnam** hereinafter referred to as “**BHEL Visakhapatnam**”, 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 Visakhapatnam on \_\_\_\_\_, for setting up of 2 MW Solar Power Project at BHEL Visakhapatnam.
- 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 Visakhapatnam and will be connected to designated BHEL Visakhapatnam grid at 11 kV voltage level or any other voltage level as consented by the BHEL Visakhapatnam.
- 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 at the outgoing feeder from the project.
- 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 Visakhapatnam and BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Visakhapatnam.
"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 Visakhapatnam.
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 Visakhapatnam 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 <b>1 MW for Factory and 0.6MW for township (AC)</b> contracted with BHEL Visakhapatnam for supply by the SPD to BHEL Visakhapatnam 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/Interconnection	shall mean the point at 33kV switchgear of Factory and 11KV switchgear of Township of the load center of BHEL Visakhapatnam 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 Visakhapatnam 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(45 <sup>th</sup> ) day after a Monthly Bill or a Supplementary Bill is received and duly accepted by BHEL Visakhapatnam, 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 Visakhapatnam.
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 Visakhapatnam.
Force Majeure or Force Majeure Event	Shall have the meaning ascribed thereto in Article 11 of 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 Subsection (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 Andhra Pradesh 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 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.
"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 Period	shall mean the period commencing from the Commercial Operation Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 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 Visakhapatnam 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 1 MW to factory and 0.6MW to township, located at HPVP Factory area, Visakhapatnam, AP 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: <ul style="list-style-type: none"> <li>· operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project.</li> <li>· the requirements of Indian Law. and the physical conditions at the site of the Power Project.</li> </ul>
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 Visakhapatnam and that such extension is obtained at least one hundred eighty (180) days prior to 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam.

### **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 Visakhapatnam:

- 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 Visakhapatnam before Commissioning of the Project;
- b) The SPD shall make Project financing arrangements and provide necessary certificates to BHEL Visakhapatnam within 90 days from the date of signing the PPA.
- c) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- d) As the proposed interconnection point is not feasible for establishment of metering as per CEA metering regulations, 2006 and its latest amendments, SPD shall create a separate infrastructure (for e.g., a four-pole structure or any structure which is suitable for meeting the requirements of meeting CEA metering regulations) for metering point and connect the metering point to the delivery point through an underground HT cable whose procurement, laying as per the IS 1255-1983 and its latest amendments and termination at the delivery point shall be in the scope of the SPD.
- e) The SPD, if required, shall sign a Transmission Agreement with CTU/STU/ Transmission Utilities confirming the evacuation and connectivity of the CTU/STU / Transmission Utilities system up to the delivery point of SPD by the Scheduled Commissioning Date.
- f) The SPD shall make necessary arrangements for conducting soil tests before commencement of works.
- g) The SPD shall ensure levelling and clearing of land from debris / bushes / trees with necessary approvals, provided by BHEL

Visakhapatnam for commissioning the project. Cost to be borne by SPD.

- h) 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.
- i) The SPD shall make necessary arrangement required for water required for power project (water harvesting facility shall be planned). 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 Visakhapatnam Metro Water Supply and Sewerage Board (HMWSSB)
- j) The SPD shall ensure that all the natural drainages/nalas in the site, if any, are not disturbed
- k) SPD shall make necessary pathway for movement, maintenance of solar modules along the fencing and in rows of solar modules. Sufficient lighting arrangements shall be provided along the path way. The SPD shall construct a boundary with 8 feet high chain fence all around the solar power plant with two gates for access. The SPD shall also provide sufficient CCTV cameras (minimum 8 nos.) in consultation with BHEL Visakhapatnam to monitor the movement of personnel etc. in the entire Solar PV plant.
- l) The manpower engaged by SPD shall have access to BHEL Visakhapatnam campus provided they fulfil with BHEL Visakhapatnam security permission & procedures in force from time to time.

The SPD shall submit to BHEL Visakhapatnam 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 Visakhapatnam shall encash the Performance Bank Guarantee submitted by the SPD. BHEL Visakhapatnam 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 7<sup>th</sup> 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. 30 Lakh/MW 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 Visakhapatnam, subject to conditions mentioned in Article 4.5, BHEL Visakhapatnam shall encash the Performance Bank Guarantee without prejudice to the other rights of BHEL Visakhapatnam under this Agreement.

### 3.4 Return of Performance Bank Guarantee

3.4.1 Subject to Article 3.3, BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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, HPVP, Visakhapatnam's staff who are related to 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 Visakhapatnam 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 Visakhapatnam due to negligence or misconduct of the SPD, the same shall be rectified or replaced (as instructed by BHEL Visakhapatnam) by the SPD at its own cost and expenses. The SPD confirms that, in the event of failure to adhere to the above, BHEL Visakhapatnam shall have the right to withhold the payments due to the SPD until the defect is rectified.
- l) The land shall not be used for any other purpose other than the purpose mentioned at sub-clause 2 of 3.5 of 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 Visakhapatnam. 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 to enable delivery of electricity at the Delivery Point.

4.2.2 The transmission of power up to the point of interconnection (that is delivery point which in this case is beyond metering point) shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system up to the inter-connection point shall be the responsibility of the SPD.

4.2.3 The arrangement of connectivity shall be made by the SPD through a dedicated transmission line/UG HT Cable of appropriate size which the SPD may procure and lay themselves or get it procured and laid by STU or any other agency. The entire cost of transmission including cost of construction of line/procurement and laying of HT cable as per IS:1255 – 1983 and its latest amendments, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. 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 and losses up to the interconnect point associated with this arrangement will also be borne by the SPD.

#### 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 Visakhapatnam and BHEL Visakhapatnam 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 Visakhapatnam, 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 Visakhapatnam. This will, however, be relaxable by BHEL Visakhapatnam 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 Visakhapatnam (prevailing tariff determined by the Andhra Pradesh State Electricity Regulatory Commission as applicable to BHEL Visakhapatnam 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 Visakhapatnam affecting supply of solar power by SPD.

**Note:** Energy Limits – E1, E2 shall be governed by the Criterion for Generation (as laid down at para 3.12 (i) of the 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 Visakhapatnam unless refused by BHEL Visakhapatnam. 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 Visakhapatnam (unless refused by BHEL Visakhapatnam). 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 Visakhapatnam 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 and flowing into the grid before COD shall not be at the cost of BHEL Visakhapatnam 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 Visakhapatnam Event of Default; or
  - b) Force Majeure Events affecting BHEL Visakhapatnam, 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 Visakhapatnam through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or BHEL Visakhapatnam, or till such time such Event of Default is rectified by BHEL Visakhapatnam.

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.

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

4.6.1 If the SPD is unable to commence supply of power to BHEL Visakhapatnam by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to BHEL Visakhapatnam, 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. 9.6 Lakhs shall be encashed by BHEL Visakhapatnam, 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 Visakhapatnam shall encash the remaining 38.4 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 9 months from signing of PPA, BHEL Visakhapatnam 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 Andhra Pradesh 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 Visakhapatnam. Any suggestion or recommendations by such test report shall be adhered by



the SPD and shall furnish proof to BHEL Visakhapatnam. 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 Visakhapatnam and a third Party if nominated by BHEL Visakhapatnam 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 Visakhapatnam.

#### 4.9 BHEL, HPVP, Visakhapatnam's Obligations

4.9.1 BHEL Visakhapatnam 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 Visakhapatnam shall make timely payments of Tariff to the SPD as per the procedure set out in Article 10.

4.9.3 BHEL Visakhapatnam shall provide the land free to use basis (10 acres max.) at Factory area, Visakhapatnam for installation of the solar power plant and the access thereto;

The geographical coordinates of the designated land area are 17.703251°N 83.200258°E.

4.9.4 BHEL Visakhapatnam 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 Visakhapatnam 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 RLDC/SLDC, BHEL Visakhapatnam 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 APEPDCL in intimation to BHEL Visakhapatnam or a third party nominated by BHEL Visakhapatnam.

5.1.4 The SPD shall immediately after each synchronization/tripping of generator, inform BHEL Visakhapatnam and all other concerned authorities in accordance with applicable Grid Code under intimation to BHEL Visakhapatnam. 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

6.1.1 The SPD shall be required to Schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the

applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the SPD.

## 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 Visakhapatnam 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 Main & Check meters with common CT, PT and one standby meter with separate CT, PT (different from the CT, PT for main and check meter but having identical specification) at the Delivery Point. All the meters must be ABT compliant.

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

7.1.5 The scope of net metering and the suitable arrangement in accordance with the APEPDCL, if applicable, 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 SLDC/ BHEL Visakhapatnam and the concerned Ministry or concerned agency as per applicable regulation /

directions. Suitable arrangement should be made for SCADA facility. SPD shall build adequate capacity RCC roof building within the premises of SPV power project site for housing the inverters, SCADA, metering units and utility room etc.

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

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 Visakhapatnam.

## 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam.

9.5 The Selected Project Developer will be required to submit all information and documents as desired by BHEL Visakhapatnam 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 Visakhapatnam from energy billing through net off scheme from the delivered energy, as indicated below:

*Net Energy = Delivered Energy by the SPD at Delivery Point –  
Energy draws from Buying Entity Grid for auxiliaries as recorded at the Delivery Point*

**10 ARTICLE 10: BILLING AND PAYMENT**

**10.1 General**

10.1.1 From the commencement of supply of power, BHEL Visakhapatnam 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 Visakhapatnam shall be in Indian Rupees.

**10.2 Delivery and Content of Monthly Bills/Supplementary Bills**

10.2.1 The SPD shall issue to BHEL Visakhapatnam a signed Monthly Bill/Supplementary Bill for the immediately preceding Month. 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 Visakhapatnam shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date 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 Visakhapatnam, 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 Visakhapatnam 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 Visakhapatnam to the SPD, and notify BHEL Visakhapatnam, of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. BHEL Visakhapatnam shall also designate a bank account at ..... (insert place) for payments to be made by the SPD to BHEL Visakhapatnam, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. BHEL Visakhapatnam and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD' Designated Account or BHEL, HPVP, Visakhapatnam'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 Visakhapatnam disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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

10.4.3 If the SPD agrees to the claim 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 claim raised in the Bill Dispute Notice issued pursuant to Article 10.4.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the BHEL Visakhapatnam 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 Visakhapatnam under Article 10.4.4, authorized representative(s) of the BHEL Visakhapatnam 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, BHEL Visakhapatnam shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the Disputed Amount in the Monthly Bill.

#### 10.5 Quarterly and Annual Reconciliation

10.5.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, 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 Visakhapatnam 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.. 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 Visakhapatnam shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. If any claim is being raised pursuant to the Article 4.4.1, BHEL Visakhapatnam 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 Visakhapatnam Substation, for

reasons not attributable to the SPD, leading to offtake constraint, the provision for generation compensation is as follows

<b>: Connectivity Constraint</b>	<b>Provision for Generation Compensation</b>
If the Project is ready but the Necessary power evacuation/connectivity infrastructure is not ready or limitations of the BHEL Visakhapatnam Substation, leading to off-take constraint	a. The CUF as per the NIT Document, for the period of grid/load unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, SPD shall raise bill to BHEL Visakhapatnam and shall be paid by the BHEL, HPVP, Visakhapatnam 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:

<b>Duration of Grid Unavailability</b>	<b>Provision for Generation Compensation</b>
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 Visakhapatnam for such generation loss and shall be paid by BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam:

- (i) BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by BHEL Visakhapatnam within thirty (30) days of receipt of notice in this regard from the SPD to BHEL Visakhapatnam; or if
- (iv) BHEL Visakhapatnam 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 Visakhapatnam, or
- (vi) BHEL Visakhapatnam 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 Visakhapatnam Event of Default, where such dissolution or liquidation of BHEL Visakhapatnam or BHEL Visakhapatnam 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 Visakhapatnam and expressly assumes all obligations of BHEL Visakhapatnam 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 Visakhapatnam.

### 13.3 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam and accepts and honours all the terms and condition of this PPA signed between SPD and BHEL Visakhapatnam.

13.3.4 The lenders in consultation with BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam will also have right to step in along with the lending institution.

#### 13.4 Procedure for cases of BHEL Visakhapatnam Event of Default

13.4.1 Upon the occurrence and continuation of any BHEL Visakhapatnam Event of Default specified in Article 13.2 the SPD shall have the right to deliver to BHEL Visakhapatnam, 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 Visakhapatnam 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 Visakhapatnam harmless against:

- a) any and all third party claims against BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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, HPVP, Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam, or any affiliate of BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam.

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 Visakhapatnam, Andhra Pradesh 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.

## <sup>17</sup> ARTICLE 17: REPRESENTATIONS AND WARRANTIES

### 17.1 Representations and warranties of the SPD

SPD represents and warrants to BHEL Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam, 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 Visakhapatnam 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 Visakhapatnam

### **BHEL Visakhapatnam represents and warrants to the SPD that:**

17.2.1 BHEL Visakhapatnam 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, HPVP, Visakhapatnam'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 Visakhapatnam, 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:	Executive Director (HPVP)
Email:	edsectt@bhel.in
Address:	Bharat Heavy Electricals Limited, Visakhapatnam – 530012
Telephone No.	0891 2881800 / 2881200

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

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

#### 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 as to 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam 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 VISAKHAPATNAM] Name, Designation and Address  (Signature with Seal)	On behalf of  [SPD] Name, Designation and Address  (Signature with Seal)
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Witness: 1.  2.	Witness:
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## SCHEDULE 1: 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 Visakhapatnam) and BHEL Visakhapatnam 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 executers, 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 Visakhapatnam at [Insert Name of the Place from the address of the BHEL Visakhapatnam] forthwith on demand in writing from BHEL Visakhapatnam 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 Visakhapatnam shall be entitled to invoke this Guarantee till .....

The Guarantor Bank hereby agrees and acknowledges that BHEL Visakhapatnam 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 Visakhapatnam, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to BHEL Visakhapatnam.

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 Visakhapatnam to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against BHEL Visakhapatnam in respect of any payment made hereunder

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at VISAKHAPATNAM 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 Visakhapatnam 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 Visakhapatnam 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 Visakhapatnam and may be assigned, in whole or in part, (whether absolutely or by way of security) by BHEL Visakhapatnam to any entity to whom BHEL Visakhapatnam 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 Visakhapatnam serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For

\_\_\_\_\_[Insert Name of the Bank]\_\_\_\_

Banker's Stamp and Full Address.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_

**Witness:**

1.....

Signature

Name and Address

2. ....

Signature

Name and Address

**Notes:**

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks enclosed.

**SCHEDULE 2: List of Banks for Issuance of Performance Bank Guarantee**

<b>S. No</b>	<b>Name of the bank</b>	<b>S. No</b>	<b>Name of the bank</b>
<b>A</b>	<b>Nationalized Banks</b>	<b>B</b>	<b>Public Sector Banks</b>
1	Allahabad bank	19	IDBI
2	Andhra bank	<b>C</b>	<b>FOREIGN BANKS</b>
3	Bank of Baroda	20	CITI BANK N.A
4	Canara Bank	21	Deutsche Bank AG
5	Corporation Bank	22	The Hongkong and Shanghai Banking Corporation Limited
6	Central Bank	23	Standard Chartered Bank
7	Indian Bank	24	J P Morgan
8	Indian Overseas Bank	<b>D</b>	<b>Private Banks</b>
9	Oriental Bank of Commerce	25	Axis Bank
10	Punjab National Bank	26	The Federal Bank Limited
11	Punjab & Sind Bank	27	HDFC
12	State Bank of India	28	Kotak Mahindra Bank
13	Syndicate Bank	29	ICICI
14	State Bank of Travancore	30	Indusind Bank
15	UCO Bank	31	Yes Bank
16	Union Bank of India		
17	United Bank of India		
18	Vijaya Bank		

### SCHEDULE 3: COMMISSIONING PROCEDURE

#### **Capacity of Solar PV Projects:**

(i) Maximum AC Capacity at the delivery point as described below:

Sr. 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	1 MW	1 MW	1 MW	1 MW
2	0.6MW	0.6MW	0.6MW	0.6MW

\* In case the rated inverter capacity is mentioned in kVA, the IEC test certificate declaring the power factor of the Inverter/PCU at rated power 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.

- (ii) 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.
- (iii) For commissioning of the Project, AC Capacity of 1 MW and 0.6MW at the delivery point shall be considered.
- (iv) Provisions of Article 4.6.1 of the PPA with SPD shall apply.
- (v) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period shall not be considered under PPA.

## **Appendix-A-1**

### **Commissioning Procedure**

- (i) At the time of commissioning, the Commissioning Committee shall verify compliance of technical parameter of the Project as per Annexure B of the NIT document.
- (ii) SPDs shall give to the concerned RLDC/SLDC, State Nodal Agency (SNA) and BHEL Visakhapatnam at least twenty (20) days advance preliminary written notice and at least ten (10) days advance final written notice, of the date on which it intends to synchronize the Power Project to the Grid System. 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 and STU/ CTU/ DISCOM has provided inter-connection with the Grid before the Schedule Commissioning Date. The same shall be verified by the Committee during their visit to the Project and documented as per prescribed format.

### **Documents to be submitted to BHEL Visakhapatnam:**

The SPD will have to submit following documents (duly signed and stamped by authorized signatory) well in advance, prior to the scheduled commissioning date:

- (i) Covering Letter
- (ii) Board resolution for authorized signatory.
- (iii) 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 on BHEL Visakhapatnam CPM portal).
- (iv) All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-A.
- (v) Installation report duly signed by the authorized signatory as per Appendix-A-2.
- (vi) Plant Layout clearly mentioning the details of rows and number of modules in each row.
- (vii) Electrical inspector report along with all annexures/attachments. It would be the responsibility of the SPD to collect the certificate. .
- (viii) SPD shall ensure Connectivity to the grid from concerned CTU/STU/Transmission Utility/DISCOM. Connectivity report as per the Appendix-A-3.
- (ix) Synchronization Certificate as per prescribed format issued by respective CTU/STU/Transmission Utility/DISCOM for ascertaining injection of power into grid as per Appendix-A-4.
- (x) Consent to Operate
- (xi) 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.
- (xii) Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.



- (xiii) Relevant document from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/RLDC.
- (xiv) After the submission of the documents by SPD, BHEL Visakhapatnam shall verify the documents and intimate/reply with remarks. In case any additional supporting/revised documents are asked by BHEL Visakhapatnam, the same have to be submitted by the SPD.
- (xv) Only after all the required documents are verified by BHEL Visakhapatnam, the SPD shall have to submit/update on the portal the proposed commissioning date along with commissioning order issued by MEDA, State Nodal Agency or BHEL Visakhapatnam.
- (xvi) After the proposed commissioning date along with commissioning order is submitted, the commissioning committee formed as per MNRE guidelines shall visit the site within 07 working days to verify the technical compliance on site as per the information submitted by the bidder. In case the committee finds discrepancy/deviation from the information submitted by the SPD during on site verification, the committee shall schedule its next visit only on the next available date as per the availability of all the committee members.
- (xvii) SPD shall have to submit the as-built drawing after the commissioning prior to the COD.
- (xviii) SPD shall have to provide the login details/ SCADA login to BHEL Visakhapatnam for online real time data prior to COD.
- (xix) Early Commissioning of a Solar Project prior to the scheduled commissioning date is permitted on acceptance of power by BHEL Visakhapatnam. In order to facilitate this, SPDs shall inform the concerned RLDC/SLDC and BHEL Visakhapatnam 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 60 days prior to the proposed commissioning date.
- (xx) Joint Meter Reading (JMR) shall be taken at Delivery Point and Pooling Substation (if applicable)/plant premise at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at delivery/ interconnection point and pooling substation/plant premises.
- (xxi) Solar power developers would be required to plan commissioning/synchronization with grid at least ten days ahead of the last permissible date for commissioning. 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-A-2**

### Installation Report

*(To be provided by SPD and to be submitted at least 10 days prior to commissioning date which shall be verified by Commissioning Committee)*

S. No	Capacity of the Project (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
1	Technology used (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
2	Rating of the 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	
	Transformers	

## Appendix-A-3

### Sample Connectivity Report

(To be provided by concerned CTU/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 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	<p>Metering Details at delivery point (&lt;village&gt;)</p> <p>S. No of 11KV CT</p> <p>i) R Phase</p> <p>ii) Y Phase</p> <p>iii) B Phase</p> <p>S. No of 11KV PT</p> <p>i) R Phase</p> <p>ii) Y Phase</p> <p>iii) B Phase</p> <p>S. No of Main &lt;&gt; ABT Meter</p> <p>S. No of Check &lt;&gt; ABT Meter</p> <p>S. No of Stand-by &lt;&gt;ABT Meter</p> <p>Metering equipment installed at receiving end on dated: &lt;&gt;</p>	<p>Transformer &lt;Make/Type&gt;</p> <p>&lt;S no&gt;</p> <p>Inverters &lt;Make/Type&gt;</p> <p>Modules &lt;Make:&gt;</p> <p>&lt;W&gt;, &lt;W&gt;</p> <p>Total: &lt;Nos&gt;</p> <p>Switchgear Panels &lt;Make/Type&gt;</p> <p>&lt;S No&gt;</p> <p>Protection Provided: Under/Over voltage, Over current &amp; earth fault</p>

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-A-4**

#### **Sample Synchronization Certificate**

It is certified that -----MW (Capacity) Solar Photovoltaic Power Project of M/s -----  
,Village--  
---- Tehsil/Taluka -----, 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 CTU/ STU/ Transmission Utility/DISCOMS
- (ii) Copy of duly signed MRI is to be enclosed.

#### **Appendix-A-5**

#### **Commissioning Certificate of Solar PV Power 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 Power Generation Project at Village -----, Tehsil/Taluka ----- & Dist. -----

The Commissioning Certificate has been issued on the basis of the following documents enclosed:

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

NB: To be issued by as mentioned in the NIT.

## Annexure-I

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

*Buyback price*

$$\begin{aligned} &= (\text{Depreciation rate for the year}) \\ &\times (\% \text{ decrease in plant efficiency up to the year}) \\ &\times (\text{Total cost of establishment as declared by the SPD}) \\ &- [(\text{Total O\&M Cost per year}) \times (\text{No. of years remaining in PPA})] \end{aligned}$$

**Initial Cost:** Total Estimated project cost quoted by the bidder in Annexure A 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	4.00%
2	4.00%
3	4.00%
4	4.00%
5	4.00%
6	4.00%
7	4.00%
8	4.00%
9	4.00%
10	4.00%
11	4.00%
12	4.00%
13	4.00%
14	4.00%
15	4.00%

16	4.00%
17	4.00%
18	4.00%
19	4.00%
20	4.00%
21	4.00%
22	4.00%
23	4.00%
24	4.00%
25	4.00%

**Important Notes:**

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

## Annexure – J

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

Year	CUF (%)
End of Year 1	25.00%
Year 2	24.75%
Year 3	24.50%
Year 4	24.25%
Year 5	24.00%
Year 6	23.75%
Year 7	23.50%
Year 8	23.25%
Year 9	23.00%
Year 10	22.75%
Year 11	22.50%
Year 12	22.33%
Year 13	22.17%
Year 14	22.00%
Year 15	21.83%
Year 16	21.66%
Year 17	21.50%
Year 18	21.33%
Year 19	21.16%
Year 20	20.99%
Year 21	20.83%
Year 22	20.66%
Year 23	20.49%
Year 24	20.32%
Year 25	20.16%



## **Annexure – K**

### **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 HPVP, Visakhapatnam) 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, Andhra Pradesh State Fair Wages prevailing at the time of payment or arrears thereof, declared Holidays, leave, Andhra Pradesh 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. Non-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 HPVP, Visakhapatnam 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.