

## Notice

All stakeholders are hereby informed that Secretary, Energy department, Government of Bihar will take a meeting in the Energy Department, Sinchai Bhawan, Patna on 14.02.2013 at 3:30 p.m. to discuss the draft RFP for setting up of grid connected Solar PV projects coupled with Pisci-Culture in Bihar.

The draft RFP for setting up of grid connected Solar PV projects coupled with Pisci-Culture in Bihar is being uploaded on the website of BSEBCL ([www.bseb.bih.nic.in](http://www.bseb.bih.nic.in)) in pdf format.

All stakeholders are requested to participate in the meeting scheduled on 14.02.2013.

*I am 04.02.13*  
(Jitendra Kishore)  
Chief Engineer (Trans O&M)

**Request for Proposal  
Document  
For  
Setting up of Grid Connected Solar PV Projects coupled with  
Pisci-culture in Bihar**



**ISSUED BY**

**Bihar State Power (Holding) Company Limited**  
Vidyut Bhawan, Bailey Road, Patna – 800 021 (Bihar)  
Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Date of Issue of RfP : \_\_\_\_\_**

**Cost: Rs. 10,000/-**

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Request for Proposal by BSPHCL for Setting up of Grid connected Solar PV Projects (total capacity 150 MW) coupled with Pisci-culture to catalyze the growth of rural economy in State of Bihar for supply of power to North Bihar Power Distribution Company Limited and/or South Bihar Power Distribution Company Limited (Procurers).

This Request for Proposal (RfP) Project Documents along with Format & Annexure etc. is issued to -

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

### NOTES:

1. This document is not transferable.
2. Though adequate care has been taken while preparing the RfP Documents, the Bidder shall satisfy himself 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 ten days from the date of issue of the RfP documents, it shall be considered that the RfP document is complete in all respects and has been received by the Bidder.
3. Bihar State Power Holding Company Limited (BSPHCL) reserves the right to modify, amend or supplement this RfP Document including PPA.
4. Authorized Person for Correspondence:

Name : Shri. Rakesh  
Designation : E. Ex. E (Transmission O&M (Inter-state))  
Address : Bihar State Power (Holding) Company Limited  
Tel :  
Fax :  
E-mail : rakesh.bseb@gmail.com

## DISCLAIMER

1. This Request for Proposal document is not an agreement or offer by the BSPHCL to the prospective Bidders or any other party. The purpose of this RfP is to provide interested parties with information to assist the formulation of their Bid.
2. While this RfP has been prepared in good faith, neither BSPHCL 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 RfP, even if any loss or damage is caused by any act or omission on their part.
3. The assumptions, assessments, statements and information contained in this RfP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RfP and obtain independent advice from appropriate sources.
4. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RfP.
5. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RfP.
6. The issue of this RfP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Developer, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.
7. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## **SECTION 1**

### **INTRODUCTION & BACKGROUND**

DRAFT FOR STAKEHOLDER'S COMMENTS

## **Section 1**

### **1.0 INTRODUCTION & BACKGROUND**

- 1.1 India is a tropical country, where sunshine is available for longer hours per day and in great intensity. About 5,000 trillion kWh per year energy is incident over India's land area with most parts receiving 4-7 kWh per sq. m per day which is far more than the total energy consumption of the country today. But, India produces a very negligible amount of solar energy i.e. a merely 0.2 percent compared to other energy resources. Solar energy, therefore, has great potential as future energy source.
- 1.2 Solar energy is environmentally friendly as it has zero emissions while generating electricity or heat. From an energy security perspective, solar is the most secure of all sources, since it is abundantly available. It is also clear that given the large proportion of poor and energy unserved population in the country, every effort needs to be made to exploit the relatively abundant sources of energy available to the country. The Govt. of India, in all its recent policies relating to power sector has given due importance to harness the sun's energy in various ways.
- 1.3 Bihar receives an average annual global solar radiation in the range of 4.83 kWh/sq.m. and has about 280 - 300 sunny days in a year. Efforts are ongoing to harness this potential with the State Govt. initiating the process for establishment of 50 MW capacity of the Solar PV projects within the State. Further, initiatives have been taken to implement the Decentralized Distributed Generation (DDG) scheme under Accelerated Rural Electrification Programme using solar/solar hybrid technologies in the un-electrified villages of Gopalganj and Kaimur districts.
- 1.4 One of the major constraints on scalability of the solar projects in India as well as Bihar is the availability of land, since all current applications of solar power are very land intensive. Due to the scarcity of large land area required at a single location for establishing medium to large size projects as well as land being mostly fertile and predominantly used for agricultural activities especially in Bihar, making land available for the solar power projects is one of the major barriers in establishment of cost effective grid connected projects.
- 1.5 On the other hand, the Fisheries sector has been playing an important role in the overall development of Bihar by contributing to underlying growth processes in a substantive manner. Being a nutritious food and easily available to all people, the sector provides a sustainable avenue of self employment and opportunities for a large number of people living in rural areas of the State.

- 1.6 Despite abundant aquatic resources in terms of rivers, *chaurs*, floodplain wetlands, oxbow lakes or *mauns*, reservoirs, ponds and tanks, fish supply is short of demand in the State of Bihar. In order to enhance the fish production in the State, two of the resources i.e. Ponds and Mauns has been identified as the focus areas and various Central as well as State Sponsored schemes like development of inland fresh water aquaculture, maun/chaur development scheme etc are being implemented by the Animal & Fisheries Resources Department, Govt. of Bihar.
- 1.7 In this context, Govt. of Bihar has proposed to pioneer a movement towards adoption and promotion of establishment of Solar PV projects on the lands identified for the development of inland fresh water aquaculture including maun/ chaur/ ponds as a potential solution for the inclusive development of rural areas. Providing sustainable livelihood to the usually poor, backward and unorganized fisher communities through the development of Ponds/ Mauns in different districts and integrating it with the development of solar energy projects on such lands will not only reduce the burden on the fertile land for such projects, but shall also empower people at the grassroots level by sharing of benefits of the project between the project developer & the fisher community. There are inherent benefits from the co-existence of Solar PV projects with aquaculture as the project provides required shading from high temperature and helps to improve the productivity of fisheries and at the same time the required foot-print area for the solar power projects is made available to these projects.
- 1.8 Energy Dept., Govt. of Bihar has decided to develop upto 150 MW of Solar Photovoltaic based projects which are to be set-up on the maun/chaur/pond where pisciculture is being undertaken. Bihar State Power (Holding) Company Limited (BSPHCL), a company engaged in planning, promoting and developing the power sector in the state of Bihar, has been designated by Energy Department, Govt. of Bihar for undertaking the bid process management for selection of the private developers.
- 1.9 The selected Solar Power developers shall enter into a Power Purchase Agreement (PPA) with North Bihar Power Distribution Company Limited/South Bihar Power Distribution Company limited as intimated by BSPHCL. The term of PPA will be for a period of 25 years.

**SECTION 2**

**DEFINITIONS**

DRAFT FOR STAKEHOLDER'S COMMENTS

## 2.0 DEFINITIONS

**“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;

**“Bid or “Proposal” or “Response to RfP”** shall mean the Non-financial Bid and Financial Bid submitted by the Bidder, in response to this RfP, in accordance with the terms and conditions hereof.

**“Bidder”** shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ 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”;

**“Bidding Company”** shall refer to such single company that has submitted the response in accordance with the provisions of this RfP;

**“Bidding Consortium” or “Consortium”** shall refer to a group of companies that has collectively submitted the response in accordance with the provisions of this RfP;

**“BERC”** shall mean the Bihar Electricity Regulatory Commission constituted under sub – section (1) of Section-82 of the Electricity Act, 2003 or its successors;

**“BERC Approved Applicable Tariff”** shall mean the Tariff as approved by Bihar Electricity Regulatory Commission (BERC) for Solar PV Project based on the year of signing of PPA and the year of commissioning of the Project;

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

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

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

**“Consents, Clearances and Permits”** shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the Project;

**“Contracted Capacity”** shall mean the power (AC) in MW contracted between the Seller and the Procurer at Solar Power generating end switchyard bus bar (outgoing feeder).

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**“Discom”** shall mean North Bihar Power Distribution Company Limited and/or South Bihar Power Distribution Company Limited;

**“Delivery Point”** shall be the grid sub-station/system of Discom or Bihar State Power Transmission Company Limited;

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

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

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

**“Financially Evaluated Company”** shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth herein in the RfP.

**“Force Majeure conditions”** means any event or circumstance which is beyond the reasonable direct or indirect control and without the fault or negligence of the Solar Power Producer and which results in Solar Power Producers inability, notwithstanding its reasonable best efforts, to perform its obligations in whole or in part and may include rebellion, mutiny, civil unrest, riot, strike, fire, explosion, flood, cyclone, lightening, earthquake, act of foreign enemy, war or other forces, theft, burglary, ionizing radiation or contamination, inaction or restrictions, accidents or an act of God or other similar causes.

**“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.

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 or a Member of the Consortium developing the Project.

**“Grid Code” / “IEGC” or “State Grid Code”** shall mean the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the

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State Grid Code as specified by BERC referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

**“Grid System”** means State power transmission / Distribution system through which Delivered Energy shall be evacuated and distributed.

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

**“Lead Member of the Bidding Consortium” or “Lead Member”**: There shall be only one Lead Member, having the shareholding of more than 50% in the Bidding Consortium and cannot be changed till the completions of 1 year of the Commercial Operation Date (COD) of the Project;

**“Letter of Intent” or “LOI”** shall mean the letter to be issued by Procurer to the Successful Bidder(s) for Setting up of Solar power plant to supply of solar power to procurer;

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

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

**“Member in a Bidding Consortium” or “Member”** shall mean each Company in a Bidding Consortium. In case of a Technology Partner being a member in the Consortium, it has to be a Company;

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

**“Power Purchase Agreement or” “PPA”** shall mean the agreement to be entered into between the Procurer and the Seller pursuant to which the Seller shall supply power to the Procurer as per the terms and conditions specified therein and a draft of which is attached as Format 6.14 to this RfP, including all its schedules, annexure, and all amendments or modifications;

**“Procurer”** shall mean North Bihar Power Distribution Company Limited and/or South Bihar Power Distribution Company Limited who will directly purchase generated power from the Solar PV Projects to be selected through this RfP;

**“Project”** shall mean solar PV project with single point of injection in to the Discom substation/State Transmission Utility's grid substation;

**“Project Company”** shall mean the Company incorporated by the Bidder as per the Companies Act, 1956 in accordance with **Clause 3.5**;

**“RfP”** shall mean this Request for Proposal along with all formats and RfP Project Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

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

- a) PPA
- b) Default Escrow Agreement;

- c) Agreement to Hypothecate-cum-deed of Hypothecation; and
- d) any other agreements designated as such, from time to time by BSPHCL;

**"Scheduled Commercial Operation Date"** or **"Scheduled COD"** for allocated capacity Solar Power Project shall be 12 (Twelve) months from the date of signing of PPA;

**"Selected Bidder(s) or Successful Bidder(s)"** shall mean the Bidder(s) selected pursuant to this RfP to set up the Project and supply of power as per the terms of PPA;

**"Seller"** shall mean the Successful Bidder who submit the Contract Performance Guarantee and executes the PPA and other Project related Documents specified in RfP with the Procurer and who shall be responsible for supplying power to the Procurer at the Delivery Point.

**"Solar PV Project"** or **"Project"** or **"SPV"** shall mean the Solar Photo Voltaic power project that uses sunlight for direct conversion into electricity through Photo Voltaic technology;

**"Statutory Auditor"** shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or under the provisions of any other applicable governing law;

**"STU" or "State Transmission Utility"** shall mean Bihar Power Transmission Company Limited as specified as such by the State Government under sub-section (1) of Section 39 of the Act;

**"Technology Partner"** shall mean any entity from which the Bidder proposes to take technology support. However if Technology Partner has an equity participation in Bidding Consortium than it has to be a Company with equity participation less than 10%;

**"Ultimate Parent Company"** shall mean a Company, which owns at least twenty six percent (26%) equity either directly or indirectly in the Parent and Affiliates.

## **SECTION 3**

### **INFORMATION AND INSTRUCTION TO BIDDERS**

DRAFT FOR STAKEHOLDERS' COMMENTS

### **3.0 INFORMATION & INSTRUCTIONS TO BIDDERS**

#### **3.1 Total Capacity to be Procured**

Bids are invited for the procurement of 150 MW power at the Delivery Point, from the Grid connected solar PV projects located in Bihar, to be developed on the maun/chaur/pond where pisci-culture is being practiced, for a period of 25 years from the Scheduled Commissioning Date in accordance with the terms of the Power Purchase Agreement (PPA).

#### **3.2 Size of each project to be Considered**

The bidders shall note that the minimum and maximum size of project which can be considered for evaluation and from which the solar power may be procured are as follows:

Minimum capacity of any individual Project	- 2 MW (with a tolerance of +5%)
Maximum capacity of any individual Project	- 10 MW (with a tolerance of +5%).

Note: - The Capacity of the Project in MW is the installed Capacity of the Project/Maximum Power Output (AC) from the Solar Power Plant which can be scheduled at the point of injection to the Grid during any time block of the day.

#### **3.3 Number of Response to RfP by a Company**

The total capacity of Solar PV Projects to be allocated to any Bidder including its Parent, Affiliate or Ultimate Parent-or any Group Company shall be limited to 30 MW. A Bidder, including its Parent, Affiliate or Ultimate Parent-or any Group Company may submit application for a maximum of three projects at different locations subject to a maximum aggregate capacity of 30 MW. In such cases, the Bidder shall submit one single application in the prescribed format detailing all projects at multiple locations for which the developer is submitting the application.

Statement for the same is to be submitted as per the Format for Disclosure (Format - 6.9).

#### **3.4 Obtaining RfP document & Bid Processing Fees**

- Prospective bidders interested to participate in the bidding process can download the RfP document from our website [www.bseb.bih.nic.in](http://www.bseb.bih.nic.in) and submit the RfP document along with a non-refundable cost of document of Rs. 10,000/- . The cost of document should be paid in the form of Demand Draft/ banker's cheque/ pay order drawn in favor of \_\_\_\_\_" Payable at "Patna". However, RfP document can also be obtained from BSPHCL office at the address mentioned in the cover page, on all working days i.e. from Monday to Friday from \_\_\_\_\_ to \_\_\_\_\_ between 10:30 hours to

16:30 hours, on submission of an application by the Bidding Company along with a payment of Rs. 10,000/- in the form of Demand Draft/ banker's cheque/ pay order drawn in favor of \_\_\_\_\_" Payable at "Patna". The document has to be purchased in the name of the Bidding Company / Lead Member of the Bidding Consortium Only.

b) Prospective bidders interested to participate in the bidding process are required to submit their Response to the RfP document along with a non-refundable processing fee of \_\_\_\_\_ in the form of Demand Draft /Banker's Cheque/ Pay Order in favour of "Bihar Power Infrastructure Company Private Limited" payable at Patna. The Bids which are not accompanied with the bid processing fee as mentioned above will be out rightly rejected as Non-responsive. A bidding company/consortium will be eligible to participate in the bidding process only on submission of RfP along with the processing fee.

### 3.5 Qualification Requirements

For determining the eligibility of Bidders for their qualification hereunder, the following shall apply:

#### A. Eligibility Conditions

- i) A bidder may be a single entity (the "**Bidding Company**") or group of entities (the "**Bidding Consortium**"), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium. No Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder.
- ii) The Bidding Company/Bidding Consortium can be a private entity, government owned entity or any combination of them with the legal status as a Private / Public Limited Company incorporated as per the relevant/ applicable laws of any country having audited financial statements for at least one (1) complete financial year from the date of its incorporation. With respect to the entities from India, they have to be incorporated as per Company Law 1956 and for the entities from outside India, they have to be incorporated as per the relevant law of their land duly certified by the legal counsel of such foreign entity.
- iii) A foreign entity and a Consortium of bidders shall be eligible for consideration subject to the conditions set out in Sl. No. (v) below.
- iv) A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest that affects the Bidding Process, if:
  - o The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not

apply in cases where the direct or indirect shareholding of an Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than five percent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, as the case may be, is less than one per cent of the paid up and subscribed share capital thereof; provided further that this disqualification shall not apply to a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956; or

- o A constituent of such Bidder is also a constituent of another Bidder except the technology partner who owns less than 10% ; or
- o Such Bidder receives or has received any direct or indirect subsidy from any other Bidder, its Member or Associate or has provided any such subsidy to any other Bidder; or
- o Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- o Such Bidder has a relationship with another Bidder, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- o Such Bidder has participated as a consultant to the BSPHCL in the preparation of any documents, design or technical specifications of the Project.
- o A Bidder shall be liable for disqualification if any legal, financial or technical adviser of BSPHCL in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this Bid document. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used above, shall include each Member of such Consortium.

v) **Additional conditions to be met by Consortium of bidders / foreign entities:** :

A consortium of bidders and foreign entities, if emerged as successful bidders, has to incorporate a Company in India under the Company Act, 1956, with the same shareholding mentioned in their bid prior to signing of PPA with the Procurer.

## B. Financial Criteria

### i) Net Worth

The “Net Worth” of the Company should be equal to or greater than Rs 3 crore per MW or equivalent US\$ per MW of the project capacity upto 20 MW. For every MW additional capacity, beyond 20 MW, additional net worth of Rs. 2 crore per MW would need to be demonstrated.

In case of application by one company for multiple projects total cumulative capacity applied by the Company shall be considered for the purpose of Net Worth. (Example:- Company 'A' applying for say 3 project of 10 MW each, the Net Worth requirement shall be computed as  $20 \times 3 + 10 \times 2 = \text{Rs.} 80$  Crores).

However, in case the application is made by two Companies of the Group, the Net Worth required shall be calculated separately for each Company. (Example:- Company 'B' applying for 2 project of 10 MW and Company 'C' applying for 1 project of 10 MW then Net Worth requirement for Company 'B' shall be  $20 \times 3 = \text{Rs.} 60$  Crores and for Company 'C' shall be  $10 \times 3 = \text{Rs.} 30$  Crores).

Note: For the Qualification Requirements, if data is provided by the Bidder in foreign currency, equivalent rupees of Net Worth will be calculated using the corresponding TT buying rate for USD / INR as specified by the State Bank of India seven days before the last date of submission of Bid as stated in the RfP document.

For currency other than USD, Bidder shall convert such currency into USD as per the exchange rates certified by their banker that is prevailing seven days before the last date of submission of Bid as stated in the RfP document. (If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account)

#### **Net Worth**

= Paid up Equity Share capital.

Add : Free Reserves

Subtract : Share premium (except in case of listed companies)

Subtract : Revaluation Reserves

Subtract : Intangible Assets

Subtract : Miscellaneous Expenditures to the extent not written off and carry forward losses.

ii) For the purposes of meeting financial requirements, only 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 and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for purpose of evaluation of any other Bid.

- iii) For the purpose of the computation of Net Worth, the last four financial years shall be considered. The Bidder would thus be required to submit annual audited accounts for the last four financial years (or if the period of existence of the Company is less than four years, then starting from the year of incorporation) 2008-09, 2009-10, 2010-11 and 2011-12 (or calendar year 2008, 2009, 2010 and 2011 or the accounting years as adopted by the Company and acceptable as per the laws of the respective Country) while indicating the year which should be considered for evaluation along with a Net Worth certificate from a Chartered Accountant to demonstrate the fulfillment of the criteria as on last day of the concerned Financial Year.
- iv) If the response to RfP is submitted by a Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium in proportion to the equity commitment made by each of them in the Project Company. For computation of Net Worth of members methodology as provided in para (i) above shall be followed. Any Consortium, if selected, shall, for the purpose of supply of power to Procurer, incorporate a Project Company, before signing the PPA with Procurer, with equity participation by the Members in line with consortium agreement (to be submitted along with RfP) i.e. the Project Company incorporated shall have the same Shareholding Pattern as given at the time of RfP. This shall not change till the signing of PPA and the percentage of Controlling Shareholding (held by the Lead Member holding more than 50% of voting rights) shall not change from the RfP up to One Year after the COD of the Project. However, in case of any change in the shareholding of the other shareholders (other than the Controlling Shareholder including Lead Member) after signing of PPA, the arrangement should not change the status of the Controlling Shareholder and the lead member in the Project Company at least up to one year after the COD of the Project. Further, such change in shareholding would be subject to continued fulfillment of the financial criteria, by the project company.

The Bidder may seek qualification on the basis of financial capability of its Parent and/or its Affiliate(s) for the purpose of meeting the Qualification Requirements.

**Note:**

- a) A single Bidding Company shortlisted in RfP can also execute the project through a Special Purpose Vehicle (SPV). However the SPV has to be formed before signing of PPA keeping the original shareholding unchanged. In case applications for multiple projects have been made, separate project company can be formed for each project.

- b) It is not necessary to have the Technology partner at RfP stage. Further it is also not necessary for the Technology partner to have an equity stake in the Bidding Company/Consortium. However if Technology Partner has an equity participation in Bidding Consortium then it has to be a Company with equity participation less than 10%.
- c) The Bidder may seek qualification on the basis of financial capability of its Parent and / or its Affiliate(s) for the purpose of meeting the Qualification Requirements.
- d) Net Worth of individuals, whether Director or otherwise, shall not be considered.
- e) Where the financially evaluated company is not the Bidding Company or a member of a bidding consortium, as the case may be, the Bidding company or a member shall continue to be an affiliate of the financially evaluated company till execution of PPA.
- f) It is further clarified that a Parent Company can be a foreign company and it can hold 100% equity in the bidding company.
- g) In case of a single Company bidding for the Project without forming a project specific SPV, the financial strength of the parent / ultimate parent/ an affiliate can be taken for calculation of net worth for qualifying at the time of submission of RfP.
- h) In case the strength is drawn from parent / ultimate parent / affiliate, copy of Board resolution authorizing to invest the committed equity for the project company / consortium is to be submitted with RfP along with an unqualified opinion from a legal counsel of such foreign entity stating that the Board resolution are in compliance with applicable laws of the countries' respective jurisdiction of the issuing company and the authorization granted therein are true and valid.
- i) Only Assets forming part of the balance sheet shall be considered for arriving at the net worth of the company. No intangible assets will be considered for arriving at the net worth.
- j) In case of land / any other asset, only the book value will be considered.

#### **C. Technical Criteria**

The Bidder shall deploy commercially established technology wherein there is at least one project, successfully operational based on the proposed technology of at least One MW, for at least one year, anywhere in the world. The bidder is required to furnish evidence of meeting the above eligibility criteria as per enclosed Format – 6.7.

Detailed technical parameters for Solar PV Projects are at Annexure -D.

#### **D. Freedom to choose Technology**

The Bidder is free to choose any Solar PV power generation technology viz Crystalline Silicon Solar Cell Modules / Thin Film Modules / Concentrated PV Modules/any Other Technology manufactured in India or Imported that is approved by the Ministry of New & Renewable Energy (MNRE) prior to Bid due date.

#### **E. Blacklisted Company**

Any entity which has been barred by the Central/ any State Government, or any entity controlled by them, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA.

#### **3.6 Power Purchase Agreement**

A copy of Draft Power Purchase Agreement to be executed between Procurer and the Selected Bidder(s) is enclosed at Format-6.14 .The PPA shall be executed within 15 days of the date of issue of Letter of Intent.

#### **3.7 Submission of Response to RfP by the bidder**

The response to the RfP shall be submitted by the Bidders in the manner as specified in Clause 3.13 of the RfP. The Bid shall comprise of the following:

##### **Envelope I**

The Envelope I shall contain the following:

- i) Bid cost Receipt/Bid cost DD/Pay order for Rs 10,000/-
- ii) DD/Pay order of @ Rs.2,00,000/- towards Processing Fee of BPIC;
- iii) Summary Data Sheet (Format 6.10); and
- iv) Bank Guarantee towards EMD @ Rs. 20 Lacs/MW.

##### **Envelope II – Non financial bid**

The Envelope II shall contain the following:

1. Covering Letter as per Format 6.1;

2. Power of Attorney to be provided by the Bidding Company/Lead Member in favour of its representative as per Format 6.2A.

3. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium shall be provided in original as per format attached hereto as Format 6.2B.

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.

4. Draft of Performance Guarantee (to be submitted at the time of signing of PPA) in the form as per Format 6.3 C; duly signed as acceptance.

5. Board Resolutions, as per prescribed formats enclosed as Format 6.4 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 RfP,

b. Board Resolution from the Bidding Company committing one hundred percent (100%) of the equity requirement for the Project / Board Resolution from each of the consortium Member 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 Parent and /or Affiliate (whose credentials were used in the response to RfP), of the Bidding Company / any Member of the Bidding Consortium, undertaking to invest the entire amount as committed by Bidding Company / Member of the Bidding Consortium, in event of failure of the same to make such investment.

6. In case of a Consortium, the Consortium Agreement between the Members in the Consortium as per Format 6.5 along with Board resolution from each Member of the Consortium for participating in consortium;

7. Format for Financial Requirements as per Format 6.6 as applicable;

8. Format for Technical Criteria wherein Bidder shall provide the details of the technology proposed to be adopted for the project including the evidence regarding

its successful operation in any of the projects for at least one year as per Format 6.7;

9. A letter from the STU/Discom (as applicable) confirming “in-principle” connectivity of the Project as per Format 6.8;
10. A disclosure statement as per Format 6.9 regarding participation of any related companies in this bidding process;
11. Details of the Proposed Technology as per Format 6.11.
12. Submission of financial bid (blank) as per Format 6.13
13. Initialed RfP documents including PPA duly signed as acceptance.

### **Envelope III – Financial bid**

The Envelope III shall contain the following:

- i) Financial Bid as per Format 6.13;
- ii) Bid Bond as per the Format 6.3B;

The Bidder shall submit the discount on the Net Levelised tariff as declare by BERC at the Delivery Point. The Net Quoted tariff shall be firm for the entire term of the PPA and should take into account all costs including capital & operating costs, statutory taxes, levies, duties, etc. and no escalations or reimbursements or exclusions shall be allowed in this regard.

The Bidder's can submit more than one Bid for different Projects, provided that no two Projects are located at single location.

- 3.8 Wherever information has been sought in specified formats, the Bidders shall fill in the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.
- 3.9 The Bidder should note that:
  - a. The bidder may be shortlisted based on the declaration made by them in the relevant Schedules/Annexure/Format(s) of RfP. The documents submitted along with may be verified before signing of PPA.
  - b. If the Bidder/Member in a Bidding Consortium conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its response to RfP, in any manner whatsoever, the BSPHCL reserves the right to reject such response

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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to RfP and/or cancel the Letter of Intent, if issued and the Bank Guarantee provided up to that stage shall be encashed.

- c. If the event specified at (b) is discovered after the Effective Date, consequences specified in PPA shall apply.
- d. Response submitted by the Bidder shall become the property of the BSPHCL and the BSPHCL shall have no obligation to return the same to the Bidder.
- e. All pages of the response to RfP submitted must be initialed by the person authorized by the board as per Format 6.4, on behalf of the Bidder.
- f. The response to RfP shall be submitted as mentioned in Clause 3.13. No change or supplemental information to a response to RfP will be accepted after the scheduled date and time of submission of response to RfP. BSPHCL reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the response to RfP.
- g. All the information should be submitted in English language only.
- h. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.
- i. Response to RfP that are incomplete, which do not substantially meet the requirements prescribed in this RfP, will be liable for rejection by BSPHCL.
- j. Bidders delaying in submission of additional information or clarifications sought will be liable for rejection.
- k. Response to RfP not submitted in the specified formats will be liable for rejection by BSPHCL.
- l. Non submission and/or submission of incomplete data/ information required under the provisions of RfP shall not be construed as waiver, on the part of Procurer's obligation. The Bidder to furnish the said data/information unless the waiver is in writing.
- m. Only Patna Courts shall have exclusive jurisdiction in all matters pertaining to RfP, PPA etc.

### 3.10 Proposal Due Date/ Bid Submission Date and Other Timeline Schedule

- i) The Bidders should submit their Bids so as to reach the following address by \_\_\_\_\_ (IST) on \_\_\_\_\_

**Chief Engineer (Transmission)**  
**Bihar State Power (Holding) Company Limited**  
Vidyut Bhawan, Bailey Road,  
Patna – 800 021, Bihar  
Phone:

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Fax:

E-mail: [rakesh.bseb@gmail.com](mailto:rakesh.bseb@gmail.com)

ii) Selection of Solar PV and Project commissioning shall be carried out according to the timeline given below:-

Sl. No.	Event	Date
1	Notice for Request for Proposal (RfP)	Zero Date
2	Response/Clarification on RfP	15 days from issue of RfP (zero date + 15 days)
3	Pre-bid Meeting	17 days from issue of RfP (zero date + 17 days)
4	Clarifications to be issued on RfP and issue of revised RfP (if req.)	21 days from issue of RfP (zero date + 21 days)
5	Submission of Response to RfP with documents	45 days from issue of RfP (zero date + 45 days)
6	Technical Evaluation of Bids received in response to RfP	Within 7 days from receipt of response to RfP (zero date + 52 days)
7	Approval of Bid Evaluation Committee for opening of Financial Part of RfP	Within 10 days from receipt of response to RfP (zero date + 55 days)
8	Opening of Financial Part of RfP	Within 15 days from receipt of response to RfP (zero date + 60 days)
9	Issue of letter of Intent	Within 15 days from opening of the price part of proposals (zero date + 75 days)
10	PPA Signing	Within 15 days from the date of issue of Letter of intent (LoI date + 90 days)
11	Financial closure of the project	Within 180 days from the date of signing of PPA (LoI date + 195 days)
13	Commissioning of Solar PV Plant	12 months from the date of signing of the PPA

iii) BSPHCL may, in exceptional circumstances and at its sole discretion, extend the bid submission date by issuing an Addendum in accordance with Clause 3.21 uniformly for all Bidders.

### 3.11 Late Proposals

Any Proposal received by BSPHCL after the Due Date mentioned at Clause 3.10(i) above will not accepted by BSPHCL.

### 3.12 Modifications / Substitution / Withdrawal of Proposals

- i) A Bidder may modify, substitute, or withdraw its Bid after submission, provided that written notice of the modification, substitution, or withdrawal is received by BSPHCL, before or by the Proposal Due Date and Time. No Proposal shall be modified, substituted or withdrawn by the Bidder after the Proposal Due Date and Time.
- ii) The modification, substitution, or withdrawal notice shall be prepared in Original only and each page of the notice shall be stamped. The copy of the notice shall be sealed, marked, and delivered in accordance with Clause 3.13, with the envelope being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**” as appropriate.

### 3.13 Method of Submission

- i) The response to RfP is to be submitted in a sealed cover/ envelope (4 nos.) in the following manner;

- a) **1st Cover/Envelop** – Super scribed as:

“**1st Envelop containing Bid cost Receipt/Bid cost DD, Processing Fee of BPIC, Summary Data Sheet and Bank Guarantee towards EMD** at the top of the Cover/Envelope; and

“**Name & Address of the Bidder**” on the left hand side bottom;

and addressed to BSPHCL

- b) **2nd Cover/Envelope** – Superscribed as

“**2nd Envelop containing RfP for supply of Solar PV Power**” at the top of the Envelope;

“**Name & Address of the Bidder**” on the left hand side bottom;

And addressed to BSPHCL shall contain covering letter & all other documents and Formats as specified in Clause 3.7 of this RfP document.

- c) **3rd Cover/Envelope** – Superscribed as

**“Financial bid as per Format 6.13 along with requisite Bid bond”**

**“Name & Address of the Bidder”** on the left hand side bottom;

And shall contain Quoted tariff in Format – 6.13 and **Bid bond**

d) **4th Cover/Envelope** - Superscribed as

**“Proposal against RfP document to be opened on \_\_\_\_\_ at \_\_\_\_\_.”**

**“Name & Address of the Bidder”** on the left hand side bottom;

This Cover/Envelope shall contain 1st, 2nd & 3rd Cover/Envelopes and should be address to:

To,

**Chief Engineer (Transmission)  
Bihar State Power (Holding) Company Limited**  
Vidyut Bhawan, Bailey Road,  
Patna – 800 021, Bihar

- ii) The Bidder shall prepare and submit one original Bid plus 4 copies, duly signed by the authorized signatory of the Bidder in the separate envelopes as mentioned above. . The Original Bid shall be clearly marked “ORIGINAL” and all other copies as to be clearly marked as “COPY OF BID NO. \_\_\_\_”. In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.
- iii) The pages and volumes of each part of the Bid shall be clearly numbered and signed & stamped and the contents of the Bid shall be duly indexed.
- iv) All documents should be submitted in a **hard bound form**. The Bid should not include any loose papers.
- v) The Bid shall be typed or printed. The Bid shall be signed and each page of the Bid shall be initialled by a person or persons duly authorized to sign on behalf of the Bidder and holding the Power of Attorney as per the format provided in Format 6.2A of this RfP.
- vi) The number(s) contained in the financial Bid should be covered with a clear/transparent adhesive tape. Any signs of tampering will lead to the rejection of the financial Bid.

- vii) The Bid shall contain no alterations or additions, except those to comply with instructions issued by BSPHCL or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.
- viii) BSPHCL reserves the right to reject any Bid which is not sealed and marked as instructed above and BSPHCL will assume no responsibility for the misplacement or premature opening of the Bid.

### **3.14 Validity of the Response to RfP**

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

### **3.15 Extension of Bid Validity period**

In exceptional circumstances, prior to expiry of the original Bid Validity Period, BSPHCL may request the Bidders to extend the period of validity of the Bid and the EMD/Bid Bond for a specified additional period. The request and the Bidders' responses shall be made in writing. BSPHCL reserves the right to reject the Bid submitted by any Bidder who fails to extend the period of validity of its Bid in line with the provisions of this clause.

### **3.16 Opening of Bids**

- i) Envelope I, Envelope II (Non-Financial Bid) and Envelope III (Financial Bid) shall be opened as per the following time schedule and at the venue where the Bids are required to be submitted, as specified in Clause 3.10, in the presence of one representative from each of such Bidders who wish to be present:

a) Opening of Envelope I and Envelope II (Non-Financial Bid): 1500 hours (IST) on \_\_\_\_\_

b) Opening of Envelope III (Financial Bid): 11.00 hours (IST) on \_\_\_\_\_ or such other dates as may be intimated by the Procurer to the Bidders.

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

- ii) The Financial Proposals received by BSPHCL will remain sealed and unopened in BSPHCL's possession until the Non - Financial Proposal has been evaluated for their responsiveness to RfP as per the Clause 4.2 & 4.3 of this RfP.

- iii) Proposals for which an acceptable notice of withdrawal has been submitted in accordance with Clause 3.12 shall not be opened.
- iv) Part 1 & 2 of Proposal shall be opened in the presence of Bidders' representatives, who choose to attend. Bidders' representatives attending the Proposal Opening shall register to evidence their presence.
- v) The following information will be announced at the Proposal Opening and recorded:
  - Bidder's names
  - Names of Consortium Members
  - Capacity Proposed
- vi) BSPHCL would subsequently examine responsiveness of Proposals in accordance with the criteria set out in Clause 4.2.
- vii) After the Proposal Opening, information relating to the examination, clarification and evaluation of Bids and recommendations concerning the Bid Award shall not be disclosed except as underlined in this RFP.

### **3.17 Clarifications**

To facilitate evaluation of Proposals, BSPHCL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Proposal. Notwithstanding anything contained in the RfP, BSPHCL reserves the right not to take into consideration any such clarifications sought by it for evaluation of the Proposal.

### **3.18 Bidders' Responsibilities**

- i) The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of RfP will be at the Bidders' own risk.
- ii) It would be deemed that prior to the submission of the Proposal, the Bidder has:
  - a) Made a complete and careful examination of requirements and other information set forth in this RfP;
  - b) Received all such relevant information as it has requested from BSPHCL; and
  - c) Made a complete and careful examination of the various aspects of the Project
- iii) BSPHCL shall not be liable for any mistake or error or neglect by the Bidder in respect of the above.

### 3.19 Preparation cost

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

### 3.20 Enquiries/Clarifications:

#### (i) Pre Bid Meeting

Clarifications/ Doubts, if any, on RfP document may be submitted to BSPHCL at the address mentioned below on or before \_\_\_\_\_ upto \_\_\_\_\_ as per Format 6.12 of RfP. BSPHCL will make all efforts to respond to the same in the Pre Bid Meeting to be held on \_\_\_\_\_ at \_\_\_\_\_ at **Patna**. A compiled list of such questionnaire and BSPHCL's response will be uploaded on the website of BSPHCL for information of all concerned in [www.bseb.nic.in](http://www.bseb.nic.in). All are requested to remain updated with the website. No separate reply/ intimation will be given elsewhere.

#### (ii) Enquiries/clarifications may be sought by the Bidder from:

**Chief Engineer (Transmission)**  
**Bihar State Power (Holding) Company Limited**  
Vidyut Bhawan, Bailey Road,  
Patna – 800 021, Bihar  
Phone:  
Fax:  
E-mail: [rakesh.bseb@gmail.com](mailto:rakesh.bseb@gmail.com)

(iii) For the avoidance of any doubt, it is clarified that there shall be no extension in the Bid deadline on account of clarification sought in accordance with this clause 3.20. Further, BSPHCL is not under any obligation to entertain/respond to suggestions made or to incorporate modifications sought for.

### 3.21 Amendment of RfP

- i) BSPHCL may modify the RfP by issuing an Addendum before bid submission date.
- ii) Any Addendum thus issued shall be part of the RfP and shall be communicated in writing to all the purchasers of the RfP and will also be hosted on the BSPHCL's website. Bidders shall acknowledge receipt of each Addendum in writing to BSPHCL. BSPHCL will assume no responsibility for postal delays.

iii) To give prospective Bidders reasonable time in which to take Addendum into account in preparing their bids, BSPHCL may, at its sole discretion, extend the bid submission date.

### 3.22 Right to reject a Bid

BSPHCL reserves the right to reject all or any of the response to RfP or cancel the RfP without assigning any reasons whatsoever and without any liability.

### 3.23 Bank Guarantees

3.21.1 The Bidder shall provide the following Bank Guarantees from any of the Banks listed at Annexure - B to BSPHCL in a phased manner as detailed hereunder:

- Earnest Money Deposit (EMD) @ Rs. 20 Lacs / MW for each project in the form of Bank Guarantee along with Bid as per Format - 6.3A. (valid for a period of 210 days from the last date of submission of the Bid)
- Bid Bond for the amount calculated as per Clause 3.21.2 for each project in the form of Bank Guarantee along with Bid as per Format 6.3B (valid for a period of 210 days from last date of submission of Bid)
- Performance Guarantee @ Rs. 50 Lacs/ MW plus amount equivalent to Bid Bond / MW for each project in the form of 03 Nos. of Bank Guarantee in the ratio of 20%, 40% & 40% at the time of signing of PPA as per Format – 6.3 C. (valid for a period of 16 months from the date of signing of PPA) (Example - If Performance Guarantee value is Rs.4.00 Cr. then 03 BGs of value Rs.0.80Cr, Rs.1.60 Cr & Rs.1.60 Cr are to be submitted)

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

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 –A has been attached. Bidders are advised to take note of the above checklist while submitting the Bank Guarantees.

3.21.2 The Bidders will be required to furnish Bid Bond (Bank Guarantee) on graded scale along with the RfP bid as provided hereunder:

Sl. No.	Discount offered on present BERC Bench Mark Tariff	Amount of Bid Bond (BG) applicable for every paisa of discount on present BERC Bench Mark Tariff (per MW)
1.	Upto 10%	Rs. 10,000/-
2.	More than 10% & Upto 15%	Rs. 20,000/-
3.	More than 15% & Upto 20%	Rs. 30,000/-
4.	More than 20% & Upto 25%	Rs. 40,000/-

5.	More than 25%	Rs. 50,000/-
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A Sample Bid Bond calculation is illustrated as under:

Sl. No.	Bench Mark Tariff (in Paisa)	% of Discount	Total value of discount (in paisa)	Amount of applicable bid bond (Rs.) per paisa per MW	Bid Bound value (Rs.) /MW
1	985	10%	98.5	10,000	9,85,000
2	985	15%	147.75	20,000	19,70,000
3	985	20%	197	30,000	34,47,500
4	985	25%	246.25	40,000	54,17,500
5	985	27%	265.95	50,000	64,02,500

3.21.3 Bank Guarantees issued by foreign Banks from the bank list given in Annexure - B is to be endorsed by the Indian Branch of the same bank or State Bank of India.

3.21.4 On receipt and after verification of the Performance Bank Guarantee in acceptable form, the earlier Bank Guarantees towards EMD & Bid Bond of the Successful Bidder(s) would be returned to the respective Bidder(s).

3.21.5 BSPHCL may invoke the EMD and Bid Bond, without any notice, demure, or any other legal process upon occurrence of any of the following:

- i) In case, BSPHCL offers to execute the PPA with the Selected Bidder and if the Selected Bidder refuses to execute the PPA or is unable to execute the PPA within the stipulated time period; or
- ii) Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 3.9; or
- iii) In case the Successful Bidder is a Foreign Company and/or a Bidding Consortium, failure to incorporate the Project Company as a legal entity within fifteen(15) days of issue of Letter of Intent.

3.21.6 The Bank Guarantees towards EMD and Bid Bond of all unsuccessful Bidders will be released within sixty days of the signing of the PPA with the Selected Bidder(s).

#### 3.24 Minimum equity to be held by the Promoter

The Company developing the project shall provide the information about the Promoters and their shareholding in the Company to BSPHCL indicating the controlling shareholding at the stage of submission of Bid to BSPHCL.

No change in the percentage of controlling shareholding of the Bidding Company or Lead Member in a Bidding Consortium developing the Project shall be permitted from the date of response to RfP till the execution of the PPA. However, in case the Project is being developed by a listed company, this condition will not be applicable.

The controlling shareholding shall mean more than 50% of the voting rights in the Company/Consortium.

After execution of PPA, the controlling shareholding of the Bidding Company or Lead Member (in case of Bidding Consortium) in the Project Company developing the Project shall be maintained for a period of (1) one year after Commercial Operation Date (COD). Thereafter, any change can be undertaken under intimation to BSPHCL.

**Note:** In case Bidding Company or Bidding Consortium is selected for more than one project, then separate project company can be formed of each project; however the equity commitment (in case of Bidding Consortium) as informed at the stage of RfP shall be maintained in all the project companies to be formed before signing of PPA with Procurer(s). Similarly for the Bidding Company, forming a project company with no change in Shareholding shall be permitted from the RfP stage upto PPA, but the controlling shareholding as informed at the stage of RfP shall not change upto one year after COD of the Project.

### 3.25 Financial Closure or Project Financing Arrangements:

The Project Developer shall report tie-up of Financial Arrangements for the projects within 180 days from the date of signing Power Purchase Agreement (PPA). Further, the project developer should adhere to the following milestone schedule before the achievement of the Financial Closure for the Project.

Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
Engagement with the local fisher communities through the development of Ponds/ Mauns on the identified land and integration with the development of solar energy projects. The	Two Months	Confirmation of the arrangement between the project developer and the fisher community from the concerned local panchayat / revenue official
No-Objection Certificate from State Pollution Control Board (If required)	Three Months	Copy of the Approval Letter from SPCB
Placement of Order/Agreement signing for purchase of plant and machinery for the project	Three Months	Order/Agreement Copy
Payment of requisite advance or opening of irrevocable letter of credit with suppliers/contractors	Four Months	Receipt of payment from the Supplier/Contractor

Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
Clear Possession of the required land for project development @ 2.5 Hectares/MW (minimum)	Five Months	<ul style="list-style-type: none"> <li>○ Ownership or lease hold rights from State agency only (for at least 30 years) in the name of the Project Developer and possession of 100% of the area of land required for the allotted project. Land can be taken on lease from State agency only.</li> <li>○ Certificate by the concerned and competent revenue / registration authority for the acquisition / ownership / vesting of the land in the name of the Project Developer.</li> <li>○ Certificate by the concerned and competent revenue / registration authority regarding the classification of the land as maun/ chaur/ ponds.</li> <li>○ Sworn affidavit from the Authorized person of the developer listing the details of the land and certifying total land required for the project under clear possession of the Project Developer.</li> <li>○ In case of Bidding Consortium, the possession of land or lease hold right of land from State / Central agencies is in the name of non lead member, the same will be accepted against application and would be required to be transferred to the Project Company before signing of PPA.</li> </ul>
Financial Closure	Six Months	Copy of the Sanction Letter

Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
		received from the Financial Institutes/ Banks

In case of delay in achieving above condition, as may be applicable, BSPHCL shall encash performance Bank Guarantees and shall remove the project from the list of the selected projects.

### 3.26 Commissioning

#### Commissioning Schedule and Penalty for Delay in Commissioning

The Project shall be commissioned within 12 (Twelve) months from the date of signing of PPA between Successful Bidder and Procurer. Commissioning period is subject to Force Measure Conditions detailed in “Definitions”, section-2. In case of failure to achieve this milestone, BSPHCL/Procurer(s) shall encash the Performance Guarantee in the following manner:

- Delay up to one month – Procurer will encash 20% of the total Performance bank guarantee proportionate to the Capacity not commissioned.
- Delay of more than one month and up to two months - Procurer will encash 40% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned in addition to BG in clause-a above.
- Delay of more than two months and up to three months - Procurer will encash the remaining Performance Bank Guarantees proportionate to the Capacity not commissioned in addition to BG in clause-a and b above

In case the commissioning of project is delayed beyond 3 (three) months, the Project Developer shall pay to Procurer the Liquidated Damages (LD) at the rate of Rs.1,00,000 per MW per day of delay for the delay in such remaining Capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages shall be limited to 18 months from the date of signing of PPA. The amount of liquidated damages worked out as above shall be recovered by Procurer from the payments due to the Project Developer on account of sale of solar power to Procurer. In case, the Commissioning of the Project is delayed beyond 18 months from the date of signing of the PPA, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.

#### Part Commissioning

Part commissioning of the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of part commissioning shall be 2 MW and in multiples

thereof. The PPA will remain in force for a period of 25 years from the date of acceptance of respective part commissioning of the project.

### **3.27 Technical Parameters**

The Selected Bidder shall be required to adhere to the technical parameters specified in Annexure-D.

### **3.28 Non-Discriminatory and Transparent Bidding Proceedings**

BSPHCL shall ensure that the rules for the bidding proceedings for the Project are applied in a non-discriminatory, transparent and objective manner. BSPHCL shall not provide to any Applicant information with regard to the Project or the bidding proceedings, which may have the effect of restricting competition

### **3.29 Fraud and Corrupt Practices**

- i) The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOI and during the subsistence of the Power Purchase Agreement. Notwithstanding anything to the contrary contained herein, or in the LOI or the Power Purchase Agreement, BSPHCL shall reject a Bid or withdraw the LOI, as the case may be, without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, BSPHCL shall forfeit and appropriate the Bid Security as mutually agreed genuine compensation and damages payable to the BSPHCL towards, *inter alia*, time, cost and effort of the BSPHCL, without prejudice to any other right or remedy that may be available to the BSPHCL hereunder or otherwise.
- ii) Without prejudice to the right of BSPHCL under Clause 3.29 (i) hereinabove and the right and remedies which BSPHCL may have under the LOI, if a Bidder is found by BSPHCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOI or the execution of the Power Purchase Agreement, such Bidder or Developer shall not be eligible to participate in any tender or RfP issued by BSPHCL during a period of 2 (two) years from the date such Bidder or Developer, as the case may be, is found by BSPHCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- iii) For the purposes of this Clause 3.29, the following terms shall have the meaning hereinafter respectively assigned to them:

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

### 3.30 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person not officially concerned with the process. BSPHCL will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to treat the same in confidence. BSPHCL will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure.

### 3.31 Miscellaneous

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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- i) The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Patna shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- ii) BSPHCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
  - a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b) consult with any Bidder in order to receive clarification or further information;
  - c) retain any information and/ or evidence submitted to BSPHCL by, on behalf of, and/ or in relation to any Bidder; and/ or
  - d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- iii) It shall be deemed that by submitting the Bid, the Bidder agrees and releases BSPHCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any right and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all right and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

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## **SECTION 4**

## **EVALUATION CRITERIA**

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#### 4.0 Evaluation Criteria

##### 4.1 The evaluation process comprises of the following two steps

- i) Step I – Responsiveness check
- ii) Step II – Evaluation of fulfillment of Qualifications Requirements as per Clause 3.5
- iii) Step II – Financial Bid evaluation
- iv) Step IV– Selection of Successful bidder(s)

##### 4.2 Step I - Responsiveness check

- i) The Bid submitted by the Bidder shall be scrutinized to establish “Responsiveness”. Each Bidder’s Bid shall be checked for compliance with the submission requirements set forth in this RfP at Clause 3.7. Any of the following conditions shall cause the Bid to be considered “Non-responsive” at the sole discretion of BSPHCL:
  - a) Response to RfP not received by the due date and time.
  - b) Response to RfP submitted by a Bidding Consortium not including the Consortium Agreement.
  - c) Response to RfP having Conflict of Interest.
  - d) Technology Partner holding more than 10% in a Consortium and participating as a Bidding Company/ Member in another Consortium.
  - e) Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by the board resolution as per Format 6.4, applicable board resolutions, undertakings, disclosures, cost of bid document, bid processing fee, bid bond, etc.
  - f) Validity of bid being less than that required as per Clause 3.14 of this RfP or validity of bid bond being less than as required as per Clause 3.21.1 of this RfP.
  - g) Submission of the information not as per the formats as specified in the RfP
  - h) Delay in submission of additional information or clarification sought by BSPHCL as applicable
  - i) Bid being conditional in nature
  - j) Bids not signed by the authorized signatory and/ or not stamped and/ or not numbered by the Bidder in the manner as indicated in this RfP.
- ii) A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one
  - a) Which affects in any substantial way the scope, quality, or performance of the Project, or
  - b) Which limits in any substantial way, inconsistent with the RfP, rights of BSPHCL or the obligations of the Bidder under the PPA or
  - c) Which would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.
- iii) BSPHCL reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by BSPHCL in respect of such Proposals.

#### **4.3 Step II - Evaluation of fulfillment of Qualifications Requirements**

Evaluation of fulfillment of Qualifications Requirements will be carried out considering the information furnished by Bidders as prescribed under Section 6 – Formats and related documentary evidence in support of meeting the Qualification Requirements as specified in Clause 3.5. This step would involve evaluation of the Bid of the Bidding Company/ Bidding Consortium as per the provisions specified in Section 3 of this RfP. Non – availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

#### **4.4 Step III – Financial Bid evaluation**

4.4.1 Financial bids (Envelope III) of the Non-financially Qualified Bidders shall be opened in the presence of the representatives of such Qualified Bidders, who wish to be present, as per the timelines indicated in Clause 3.16, or such other date as may be intimated by BSPHCL to the Bidders. The financial bid evaluation shall be carried out based on the information furnished in Envelope III (Financial bid).

Provided however, in case Envelope III of only one Bidder remains after the responsiveness check (Step I) under Clause 3.2.1, the Envelope III of such Bidder shall not be opened and the matter shall be referred to the Bihar Electricity Regulatory Commission (BERC) and the selection of the Successful Bidder shall then be at the sole discretion of the BERC.

4.4.2 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 3.7 of this RfP. Any Bid not meeting any of the requirements as per Clause 3.7 of this RfP may cause the Bid to be considered “Non-responsive” at the sole discretion of BSPHCL.

4.4.3 The Bidders are required to submit their Financial Quotes as the discount in Paisa/ kWh on the Net Levelised Tariff i.e. on 985 Paisa/ kWh declared by BERC after considering accelerated rate of depreciation for Solar PV projects, for delivery of power at the Delivery Point. The above mentioned net Levelised tariff (Bench Mark Tariff) shall be acting as ceiling price and any financial bid quoting price higher than the bench mark tariff shall be summarily rejected.

4.4.4 The net quoted tariff for the delivery of power at the Delivery Point shall be computed by subtracting the discount offered in Paisa/ kWh from the Net Levelised Tariff of BERC i.e. 985 Paisa/ kWh.

#### **4.5 Step IV – Selection of Successful bidder(s)**

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

4.5.2 All the qualified bidders shall be arranged in ascending order (i.e. lowest to highest) of their net quoted tariff, as L1, L2, L3 ..... . In case two or more bidders have quoted same tariff at any stage, their position in ascending order list will be fixed by draw of lot(s).

4.5.3 From the ascending order list of the Qualified Bidders prepared as indicated at 4.5.2, list of bidders for 150 MW capacity will be prepared as L1, L2, L3.....Ln (Ln is the position of

that bidder in ascending order list where cumulative quoted capacity of L1 to Ln bidder becomes 150 MW). L1 tariff will be offered to L2, L3 and L4 and Ln bidders for giving their consent to match their tariff with L1 quoted tariff and submit revised bid bond as per L1 tariff. In case Ln bidder has offered 10 MW and cumulative capacity upto Ln-1 bidder has reached 146 MW, Ln bidder will be offered 4 MW even though bidder has quoted for 10 MW capacity. In case L2, L3, L4.....LN bidders do not wish to match L1 tariff, they will be allowed to quit the bidding process and their securities (Earnest Money Deposit and Bid Bond, if applicable) shall be refunded. In such circumstances, the capacity so released by these bidders will be offered to LN + 1, LN + 2 and so on at L1 tariff in sequential order till the time entire capacity of 150 MW is allocated to the qualified bidders at L1 quoted tariff. In case some capacity still remains unallocated after exhausting entire ascending order list, the successful bidders (those who have already match L1 quoted tariff and got allocation as per their quoted capacity) will be offered additional capacity sequentially in order of their position in the ascending order list in such a manner that the total allocated capacity to any bidder does not exceed 30 MW and the bidder fulfils qualifying criterion of net worth for total offered capacity.

Provided however in case only one Bidder remains at any step of the selection process and the balance Requisitioned Capacity exceeds the Minimum Bid Capacity, Financial Bid(s) of such Bidder shall be referred to BERC and the selection of the Bidder shall then be at the sole discretion of BERC.

4.5.4 In the eventuality of a tie in the bidding process, the applicant would be ranked by draw of lots.

4.5.5 Based on the Selection Methodology as elaborated in Clause 4.5, Successful Bidder(s) will be selected and the Letter(s) of Intent (LOI) shall be issued to all such Successful Bidder(s).

#### **4.6 Acceptance of Letter of Intent (LOI)**

- i) Within seven (7) days from the date of issue of the LOI, the Successful Bidders shall accept the LOI and return the same to BSPHCL. The Successful Bidders shall execute the PPA with Procures/ Discoms and also submit a Performance Bank Guarantee in favour of Procurers (of the amount specified in Clause 3.21.1) within Fifteen - (15) days of issuance of LOI.
- ii) In case, the Successful Bidder(s) does not execute the PPA and submit the Performance Bank Guarantee as per Clause 4.6 (i), BSPHCL reserves the right to annul the award of Letter of intent of such Successful Bidder(s) and shall invite any other suitable bidder for discussions/ negotiations or may also decide to annul the bidding process or may invite fresh bids for the Project. In such a case the entire Bid Security submitted by such Successful Bidder shall be forfeited. However, BSPHCL on receiving request from the Successful Bidder may at its absolute discretion, permit extension of the aforesaid period of 15 days for execution of the PPA and submission of Performance bank Guarantee.
- iii) BSPHCL will notify other Bidders that their Proposals have been unsuccessful. The Bid Security of Unsuccessful Bidders shall be returned as promptly possible, in any case not later than 2 months from the date of announcement of the Successful Bidder.

#### 4.7 **BSPHCL's Right to accept or reject Proposal**

- i) BSPHCL reserves the right to accept or reject any or all of the Proposals without assigning any reason and to take any measure as it may deem fit, including annulment of the bidding process, at any time prior to execution of the PPA, without liability or any obligation for such acceptance, rejection or annulment.
- ii) BSPHCL reserves the right to invite fresh bids with or without amendment of the RFP at any stage without liability or any obligation for such invitation and without assigning any reason.
- iii) BSPHCL reserves the right to reject any Proposal if:
  - At any time, a material misrepresentation is made or uncovered for a bidder or any of its members
  - The Bidder does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal

This would lead to disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium would be disqualified/ rejected. If such disqualification/ rejection occurs after the Financial Proposals have been opened and the Successful Bidder gets disqualified/rejected, BSPHCL reserves the right to take any such measure as may be deemed fit in the sole discretion of BSPHCL, including annulment of the bidding process, inviting second preferred bidder for negotiation, inviting all qualified bidders for negotiations etc.. Notwithstanding the above, BSPHCL may debar / blacklist any of the Bidder(s) for their misleading or false representations in the forms, statements etc. for the period to be decided by BSPHCL.

#### 4.8 **Acceptance of Letter of Intent (LOI)**

- iv) Within seven (7) days from the date of issue of the LOI, the Successful Bidders shall accept the LOI and return the same to BSPHCL. The Successful Bidders shall execute the PPA with Procures/Discoms and also submit a Performance Bank Guarantee in favour of Procurers (of the amount specified in Clause 3.21.1) within Fifteen - (15) days of issuance of LOI.
- v) In case, the PPA does not get executed within Fifteen - (15) days of acceptance of LOI and submission of Performance Bank Guarantee, BSPHCL reserves the right to invite any other suitable bidder for discussions/negotiations or may also decide to annul the bidding process or may invite fresh bids for the Project. In such a case the entire Bid security submitted by the Successful Bidder shall be forfeited. However, BSPHCL on receiving request from the Successful Bidder may at its absolute discretion, permit extension of the aforesaid period of 15 days for execution of the PPA.

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- vi) BSPHCL will notify other Bidders that their Proposals have been unsuccessful. The Bid Security of Unsuccessful Bidders shall be returned as promptly possible as, in any case not later than 2 months from the date of announcement of the Successful Bidder.

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## **SECTION 5**

## **OTHER PROVISIONS**

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## 5.0 OTHER PROVISIONS

### 5.1 Role of State Level Agencies

Bihar Renewable Energy Development Agency (BREDA) has been designated as nodal agency for providing necessary support to facilitate the development of the Solar PV Projects in the State of Bihar. This shall include facilitation in the following areas:-

- Access to sites
- Land acquisition for the project
- Expediting Evacuation approval from State Transmission Utility I,e Bihar State Power Transmission Company Limited (BSPTCL)

However, Project Developer will also be required to act in completion of above activities and they shall not be absolved from their responsibility towards timely completion of project.

### 5.2 Land for the Project

The Project Developers are compulsorily required to establish the Solar PV projects on the maun/ chaur/ ponds lands in the State of Bihar where pisci-culture is being practiced.

The Bidders are required to get in touch with the concerned department and identify the site/location for the proposed project before submitting their proposal in response to this RfP. The same shall be specified by the Bidder as per the Format – 6.11.

Based on the ownership status of the identified land, the project developer shall be required to either acquire the private land or lease the Govt. land atleast for a period of 30 years from the private owners or concerned Govt. Department respectively. Further, the Successful Bidder shall be required to engage with the local fisher communities through the development of Ponds/ Mauns on the identified land and integrate it with the development of solar energy projects. The approval of such arrangement between the project developer and the fisher community from the concerned local panchayat/revenue official shall be produced by the Developer before the Financial Closure of the Project.

### 5.3 Grid Connectivity

- i) The Bidder shall be required to obtain an “in-principle” approval from the State Transmission Utility I,e Bihar State Power Transmission Utility Limited regarding the feasibility of grid connectivity of the project site before submitting their bid against the RfP. The same is required to be produced as per Format – 6.8.

- ii) The plant should be designed for interconnection with the distribution/transmission network of Discom or BSPTCL. The responsibility of getting connectivity with the transmission system will lie with the project developer.
- iii) Transmission of power to the point of interconnection at substation of Discom/BSPTCL where the metering will be done shall be the responsibility of the project developer at its own cost. The installation of equipments for metering will be the responsibility of the bidder.
- iv) The arrangement of the connectivity can be made by the selected project developer through a dedicated transmission line which, the developer may construct himself or get constructed by Discom /BSPTCL. The entire cost of transmission including cost of construction of lines, metering equipment, losses etc. from the project up to the interconnection point will be borne by the project developer and will not be reimbursed by Discom/BSPTCL. Right of way for setting up the transmission lines has to be obtained from the concerned land owners by the developer only. Discom/BSPTCL will not be responsible for it even if the work is taken up through them.
- v) The project developer may, however, shift interconnection point closer to his project if 33 KV or above substation comes closer to the project during the tenure of the PPA. Provided that the interconnection shall be maintained at 33 KV or above and energy at the solar project is clearly demarcated for the power generated at the solar project and energy accounts are issued by the State Utility/ SLDC. The cost associate with this arrangement will also be borne by the project developer including the wheeling charges and losses up to the interconnection point.
- vi) A list of existing substations of NBPDC, SBPDCL and BSPTCL is enclosed at Annexure - C

#### 5.4 Project Monitoring

- i) After the signing of the PPA, all the selected project developers shall be required to submit to BREDA/BSPHCL/NBPDC/SPDCL, the quarterly reports incorporating the copies of the permits/clearances/consents received from various departments/authorities, as applicable and documentary evidence for the achievement of the various milestones associated with the project as defined in Clause 3.25. The report shall also include any other relevant information which may affect the date of commissioning for project.
- ii) Further, the project developer should adhere to the following milestone schedule after the achievement of the Financial Closure for the Project.

Milestone	Time Period from the Achievement of Financial Closure	Documentary Evidence to be produced to BREDA / NBPDC / SBPDCL
Receiving of plant and machinery for the project at site	Two Months	Actual Site Photographs
Completion of Civil Infrastructure	Four Months	Actual Site Photographs
Construction & Commissioning of the Power Evacuation Arrangement	Five Months	Letter from BSPTCL
Commissioning and commercial operation	Six Months	Letter from NBPDC / SBPDCL

iii) Throughout the term of PPA, the Project Developer shall ensure that the land for the project is being used for the “Dual Purpose” of pisci-culture as well as solar power production. Since the waterlogged land will have different geotechnical properties as compared to normal arid barren land on which generally the solar projects are established, proper care needs to be taken both at the design as well as the construction stages to protect the structure from collapsing at a later date. Projects need to be designed to cause least invasion to the fish farming as well as surrounding wetlands both at the construction as well as the operation stage.

## 5.5 Role of Carbon Financing

Project Developers are encouraged to identify the potential role of carbon finance in their investment analysis including:

- i) The expected revenues from emission reductions; and
- ii) The cost of power with and without carbon revenues

The proceeds of carbon credit from approved CDM project shall be shared between generating company and concerned beneficiary (ies) in the manner as specified in Clause 21 (1) (a) (b) of BERC (Terms and Conditions for Tariff determination from Solar Energy Sources) Regulation, 2010 notified in Bihar Gazette on 04.08.2010 or as amended time to time by BERC.

## **SECTION 6**

### **FORMATS FOR BID SUBMISSION**

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## 6.0 FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the RfP. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 3.5 of Section 3 and other submission requirements specified in the RfP.

- i. Format of Covering Letter (**Format 6.1**)
- ii. Format for Power of Attorney to authorized representative (**Format 6.2A**)
- iii. Format for Power of Attorney to Lead Member in case of Consortium (**Format 6.2B**)
- iv. Format for Earnest Money Deposit (EMD) (**Format 6.3 A**)
- v. Format for Bid Bond (**Format 6.3 B**)
- vi. Format for Performance Bank Guarantee (**Format 6.3 C**)
- vii. Check List for Bank Guarantee (**Annexure-A**)
- viii. List of Banks for issuance of BGs/ Bid Bond/ Performance Bank Guarantee (**Annexure-B**)
- ix. Format for Board Resolutions (**Format 6.4**)
- x. Format for the Consortium Agreement (**Format 6.5**)
- xi. Format for Financial Requirement (**Format 6.6**)
- xii. Format for Technical Criteria (**Format 6.7**)
- xiii. Format for Connectivity of Project with BSTCL Substation (**Format 6.8**)
- xiv. List of Power sub-stations/Grid sub-stations of NBPDCL/SBPDCL/BSPTCL (**Annexure-C**)
- xv. Format for Disclosure (**Format 6.9**)
- xvi. Summary Data Sheet (**Format 6.10**)
- xvii. Details of the Proposed Technology (**Format 6.11**)
- xviii. Technical Parameters of PV Module for use in Grid Connected Solar Power Plants (**Annexure-D**)
- xix. Format for Clarification on RfP Document (**Format 6.12**)
- xx. Format for Discount on BERC Approved Tariff (**Format 6.13**)
- xxi. Draft of Power Purchase Agreement to be executed between Procurer and the Selected Bidder(s) (**Format 6.14**)
- xxii. Draft of Default Escrow Agreement to be executed between Procurer and the Selected Bidder(s) (**Format 6.15**)
- xxiii. Draft of Agreement to Hypothecate cum Deed of Hypothecation to be executed between Procurer and the Selected Bidder(s) (**Format 6.16**)

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

### Format 6.1 Covering Letter

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

**Date:** \_\_\_\_\_

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

**Tel. #:**

**Fax #:**

**E-mail address#**

**To**

**Chairman-cum-Managing Director,  
Bihar State Power (Holding) Company Limited  
Vid�ut Bhawan, Bailey Road,  
Patna – 800 021 (Bihar)**

**Sub: Response to RfP dated \_\_\_\_\_ for development of Solar PV Projects coupled with pisci-culture in the State of Bihar**

**Dear Sir,**

We, the undersigned ..... [insert name of the 'Bidder'] having read, examined and understood in detail the RfP including Qualification Requirements in particular and PPA for supply of solar power for 25 years to Procurer(s), hereby submit our response to RfP. We confirm that neither we nor any of our Parent Company/Affiliate/Group Company has submitted response to RfP other than this response to RfP, directly or indirectly, in response to the aforesaid RfP. We are submitting application for the development of following Solar PV Project (s):-

Project No.	Capacity (MW)	Location of Project	Details of EMD	All formats along with relevant documents for each project are enclosed at following Annexures
I				Flag X
II				Flag Y
III				Flag Z

**Note:** - All formats as per Section 6 are to be filled separately for each project along with separate EMD for each project.

1. We give our unconditional acceptance to the RfP dated \_\_\_\_\_ [Insert date in dd/mm/yyyy] and PPA attached thereto, issued by BSPHCL. In token of our acceptance to the RfP & PPA, the same have been initialed by us and enclosed with the response to RfP. We shall ensure that the PPA is executed as per the provisions of the RfP and provisions of PPA shall be binding on us. Further, we confirm that the Project shall be commissioned within -12 months of the date of signing of PPA.
2. **Earnest Money Deposit (EMD):-** (Strike out whichever is not applicable)

- a) **For Project No. I:-** We have enclosed EMD of Rs..... (Insert Amount), in the form of bank guarantee no.....[Insert bank guarantee number] dated ..... [Insert date of bank guarantee] as per Format 6.3A from ..... [Insert name of bank providing bank guarantee] and valid up to.....in terms of Clause 3.21.1 of this RfP. The capacity of the Solar PV Project offered by us is .....MW [Insert installed capacity]
- b) **For Project No. II:-** We have enclosed EMD of Rs..... (Insert Amount), in the form of bank guarantee no.....[Insert bank guarantee number] dated ..... [Insert date of bank guarantee] as per Format 6.3A from ..... [Insert name of bank providing bank guarantee] and valid up to.....in terms of Clause 3.21.1 of this RfP. The capacity of the Solar PV Project offered by us is .....MW [Insert installed capacity]
- c) **For Project No. III:-** We have enclosed EMD of Rs..... (Insert Amount), in the form of bank guarantee no.....[Insert bank guarantee number] dated ..... [Insert date of bank guarantee] as per Format 6.3A from ..... [Insert name of bank providing bank guarantee] and valid up to.....in terms of Clause 3.21.1 of this RfP. The capacity of the Solar PV Project offered by us is .....MW [Insert installed capacity]

3. We have submitted our response to RfP strictly as per Section – 6 (Formats) of this RfP, 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 BSPHCL in respect of any matter regarding or arising out of the RfP shall be binding on us. We hereby expressly waive any and all claims in respect of this process.

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

We confirm that we have studied the provisions of the relevant Indian as well as State laws and regulations as required to enable us to submit this response to RfP and execute the PPA, in the event of our selection as Successful Bidder.

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

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

8. The information submitted in our response to the RfP 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 RfP.

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

10. Contact Person

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Details of the contact person are furnished as under:

Name : .....  
Designation : .....  
Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
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, and consequent provisions of PPA shall apply.

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

Thanking you,

Yours faithfully,

(Name, Designation and Signature of Person Authorized by the board as per Clause 3.7

**Format 6.2A Format for Power of Attorney to be provided by the Bidding Company/Lead Member in favor of its representative**

**Power Of Attorney**

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

KNOW ALL MEN BY THESE PRESENTS, We .....[Name of the bidding company] having its registered office at ..... do hereby constitute, appoint and authorize Mr. / Ms.....(name and residential address) as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for the Project in response to the Request for Proposal dated ..... issued by BSPHMCL, including signing and submission of the Bid and all documents specified in the RfP, including, undertakings, letters, certificates, acceptances, clarifications, guarantees, etc, making representations to the BSPHCL, and providing information / responses to the Authorized Representative of the BSPHCL, representing us in all matters before the Authorized Representative of BSPHCL, and generally dealing with the BSPHCL/Authorized Representative in all matters in connection with our Bid for the said Project.

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

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

Signed by the within named  
[Insert the name of the executants]  
through the hand of  
Mr. \_\_\_\_\_  
duly authorized signatory  
Dated this \_\_\_\_ day of 2013

Accepted  
Signature of Attorney  
(Name, designation and address of the Attorney)

Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Attested

(Signature of Executant)  
(Name, designation and Address of the Executant)

Signature and stamp of  
Notary of the place of execution

Note: The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and the same should be under common seal of the executants affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the Power of Attorney shall be duly authorized by the executants(s) in this regard.

DRAFT FOR STAKEHOLDER'S COMMENTS

**Format 6.2B Format for Power of Attorney to be provided by each of the other members of the Consortium in favor of the Lead Member**

**Power Of Attorney**

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

KNOW ALL MEN BY THESE PRESENTS THAT M/s.....[Name of the Consortium member company] having its registered office at ..... , .....and M/s .....[Name of the Consortium member company] 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.....(copy enclosed) and having agreed to appoint M/s.....[Name & Address of the Lead Member Company] 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 RfP and if required, submission of Bid against RfP (in the event of short listing as a qualified Bidder). We also authorize the said Lead Member to undertake the following acts:

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

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 .....[Name of the Consortium member company], as the Member of the Consortium have executed these presents on this..... day of .....under the Common Seal of our company.

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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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 executants)

---

(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  
having more than 50% of voting rights in the company.

**Format 6.3 A – Format for Earnest Money Deposit**

**(Note:** Separate EMDs in the form of BG to be submitted for each project)

(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] (hereinafter referred to as 'Bidder') submitting the response to RfP inter alia for selection of the project of the capacity of ..... MW, at .....[ *Insert Capacity of Plant and name of the place*] for supply of power there from on long term basis, in response to the RfP dated \_\_\_\_\_ issued by Bihar State Power (Holding) Company Limited (hereinafter referred to as 'BSPHCL') and BSPHCL considering such response to the RfP of .....[*Insert the name of the Bidder*] as per the terms of the RfP, the \_\_\_\_\_ [Insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to BSPHCL having registered office at Vidyut Bhawan, Bailey Road at Patna (Bihar) forthwith on demand in writing from BSPHCL or any Officer authorized by it in this behalf, any amount upto and not exceeding Rupees -----[*Insert amount not less than that derived on the basis of Rs. 20 Lacs per MW of capacity proposed*] only, on behalf of M/s. \_\_\_\_\_ [Insert name of the Bidder].

This guarantee shall be valid and binding on this Bank up to and including \_\_\_\_\_[*insert date of validity in accordance with Clause 3.21.1 of this RfP*] 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 \_\_\_\_\_ [*insert date of validity in accordance with Clause 3.21.1 of this RfP*]. BSPHCL shall be entitled to invoke this Guarantee till \_\_\_\_\_ [*insert date of validity in accordance with Clause 3.21.1 of this RfP*].

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

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Patna 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.

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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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 BSPHCL shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to enforce any security held by BSPHCL or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to BSPHCL and may be assigned, in whole or in part, (whether absolutely or by way of security) by BSPHCL to any entity to whom BSPHCL 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 \_\_\_\_\_ [Date to be inserted on the basis of Clause 3.21.1 of this RfP]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if BSPHCL 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\_\_\_\_

**Format 6.3 B – Format for Bid Bond**

**(Note:** Separate Bid Bond's in the form of BG to be submitted for each project)

(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/lead member (in case of consortium)] (hereinafter referred to as 'Bidder') submitting the response to RfP inter alia for selection of the project of the capacity of ..... MW, at .....[ *Insert Capacity of Plant and name of the place*] for supply of power there from on long term basis, in response to the RfP dated \_\_\_\_\_ issued by Bihar State Power (Holding) Company Limited (hereinafter referred to as 'BSPHCL') and BSPHCL considering such response to the RfP of .....[*Insert the name of the Bidder*] as per the terms of the RfP, the \_\_\_\_\_ [Insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to BSPHCL having registered office at Vidyut Bhawan, Bailey Road at Patna forthwith on demand in writing from BSPHCL or any Officer authorized by it in this behalf, any amount upto and not exceeding Rupees ----[*Insert amount not less than that derived on the basis of Bid Bond Calculation Sheet*] only, on behalf of M/s. \_\_\_\_\_ [Insert name of the Bidder].

This guarantee shall be valid and binding on this Bank up to and including \_\_\_\_\_[*insert date of validity in accordance with Clause 3.21.1 of this RfP*] 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 \_\_\_\_\_ [*insert date of validity in accordance with Clause 3.21.1 of this RfP*]. BSPHCL shall be entitled to invoke this Guarantee till \_\_\_\_\_ [*insert date of validity in accordance with Clause 3.21.1 of this RfP*].

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

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Patna 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.

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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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 BSPHCL shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to enforce any security held by BSPHCL or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to BSPHCL and may be assigned, in whole or in part, (whether absolutely or by way of security) by BSPHCL to any entity to whom BSPHCL 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 \_\_\_\_\_ [Date to be inserted on the basis of Clause 3.21.1 of this RfP]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if BSPHCL 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\_\_\_\_

### Format 6.3 C – Format for Performance Guarantee

**Note:**

1. Separate BG to be submitted for each project
2. Performance Guarantee of @ Rs.50 Lakh/MW plus amount equivalent to Bid Bond /MW is to be submitted in 3 Nos. of Bank Guarantee in the ratio of 20%, 40% & 40% value.
3. The Procurer may be NBPCL or SBPDCL depending upon the location of the project.

(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] (hereinafter referred to as 'Selected Solar Power Developer') submitting the response to RfP inter alia for selection of the project of the capacity of ..... MW, at ..... [ *Insert Capacity of Plant and name of the place*] for supply of power there from on long term basis to North/South Bihar Power Distribution Company Limited (hereinafter referred to as 'Procurer' or 'NBPCL/SBPDCL'), in response to the RfP dated \_\_\_\_\_ issued by Bihar State Power (Holding) Company Limited (hereinafter referred to as 'BSPHCL') and BSPHCL considering such response to the RfP of ..... [ *Insert the name of the Selected Power Developer*] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the developer and issuing Letter of Intent No ----- dated ----- to (Insert Name of selected Solar Power Developer) as per terms of RfP 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 RfP, the \_\_\_\_\_ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to NBPCL/SBPDCL at Patna forthwith on demand in writing from NBPCL/SBPDCL 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 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 alterations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. only). Our Guarantee shall remain in force until \_\_\_\_\_ [insert date of validity in accordance with Clause 3.21.1 of this RfP]. NBPCL/SBPDCL shall be entitled to invoke this Guarantee till \_\_\_\_\_ [insert date of validity in accordance with Clause 3.21.1 of this RfP]].

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

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

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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*Power Developer]* and/or any other person. The Guarantor Bank shall not require NBPDCL/SBPDCL to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against NBPDCL/SBPDCL in respect of any payment made hereunder

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Patna 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 NBPDCL/SBPDCL 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 NBPDCL/SBPDCL 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 NBPDCL/SBPDCL and may be assigned, in whole or in part, (whether absolutely or by way of security) by NBPDCL/SBPDCL to any entity to whom NBPDCL/SBPDCL 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 \_\_\_\_\_ [Date to be inserted on the basis of Clause 3.21.1 of this RfP]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if NBPDCL/SBPDCL 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\_\_\_\_

**Annexure-A**

**Check List for Bank Guarantees**

<b>Sl. No.</b>	<b>Details of Checks</b>	<b>Yes/No</b>
a)	Is the BG on non-judicial Stamp paper of appropriate value, as per applicable Stamp Act of the place of execution	
b)	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. Also the Stamp Paper should not be older than six months from the date of execution of BG).	
c)	In case of BGs from Banks abroad, has the BG been executed on Letter Head of the Bank.	
d)	Has the executing Officer of BG indicated his name, designation and Power of Attorney No./Signing Power no. on the BG?	
e)	Is each page of BG duly signed / initialed by executants 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?	
f)	Does the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents?	
g)	Are the factual details such as Bid Document No. / Specification No./ Amount of BG and Validity of BG correctly mentioned in the BG	
h)	Whether overwriting/cutting if any on the BG have been properly authenticated under signature & seal of executants?	
i)	Whether the BG has been issued by a Bank in line with the provisions of Bidding documents?	
j)	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 - B**

**List of Banks for issuance of BGs/ Bid Bond/ Performance Bank Guarantee**

**SCHEDULED COMMERCIAL BANKS**

**A SBI AND ASSOCIATES**

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

**B NATIONALISED BANKS**

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Canara Bank
6. Central Bank of India
7. Corporation Bank
8. Dena Bank
9. Indian Bank
10. Indian Overseas Bank
11. Oriental Bank of Commerce
12. Punjab National Bank
13. Punjab & Sind Bank
14. Syndicate Bank
15. Union Bank of India
16. United Bank of India
17. UCO Bank
18. Vijaya Bank
19. Bank of Baroda

**C. SCHEDULED FOREIGN BANKS**

1. Bank of America NA
2. Bank of Tokyo Mitsubishi UFJ Ltd.
3. BNP Paribas
4. Calyon Bank
5. Citi Bank N.A.
6. Deutsche Bank A.G
7. The Hongkong and Shanghai Banking Corp. Ltd.
8. Standard Chartered Bank
9. Societe Generale
10. Barclays Bank
11. ABN Amro Bank N.V.
12. Bank of Nova Scotia

13. Development Bank of Singapore (DBS, Bank Ltd.)

**D Scheduled Private Bank List**

1. Federal Bank Ltd.
2. ING Vysya Bank Ltd.
3. Axis Bank Ltd.
4. ICICI Bank Ltd.
5. HDFC Bank Ltd.
6. Yes Bank Ltd.
7. Indusland Bank Ltd.
8. IDBI Bank Ltd.
9. Kotak Mahindra Bank

DRAFT FOR STAKEHOLDER'S COMMENTS

#### **Format 6.4 -Format for Board Resolutions**

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, 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 RfP for the Project, 'Selection of Grid Connected Solar Photo Voltaic Project coupled with Pisci-culture in Bihar', including signing and submission of all documents and providing information / response to RfP to BSPHCL, representing us in all matters before BSPHCL, and generally dealing with BSPHCL 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 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 SI. No. 2, the following resolutions are to be provided]**

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

- 3. FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to M/s. ..... (Insert name of Bidding Company/ Consortium Member(s)) to use our financial capability for meeting the Qualification Requirements for the Project 'Selection of Grid Connected Solar Photo Voltaic Project coupled with Pisci-culture in Bihar' against RfP and confirm that all the equity investment obligations of M/s.....(Insert Name of Bidding Company/ Consortium Member(s)), shall be deemed to be our equity investment obligations

and in the event of any default the same shall be met by us. **[To be passed by the entity(s) whose financial credentials have been used]**

**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. Memorandum and Articles of Association of the Bidder and its parent / affiliate) whose credentials have been used should be submitted.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

DRAFT FOR STAKEHOLDER COMMENTS

### Format 6.5 – 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 RfP, and execution of Power Purchase Agreement(in case of award), against RfP dated \_\_\_\_\_ issued by BSPHCL a Company incorporated under the [Company's Act, 1956, 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 the BSPHCL desires setting up of Grid Connected Solar PV Projects coupled with Pisci-culture in Bihar;

WHEREAS, the BSPHCL had invited response to RfP vide its Request for Proposal (RfP) dated \_\_\_\_\_

WHEREAS the RfP stipulates that in case response to RfP 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 BSPHCL 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 RfP for self and agent for and on behalf of Member-2, ----, Member-n.
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 (as well as total financing if committed to be met from internal

financing) 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:

Name	Percentage
Member 1	----
Member 2	----
Member n	----
Total	100%

We acknowledge that after execution of PPA, the controlling shareholding (more than 50% of the voting rights) in the Project Company developing the Project shall be maintained for a period of (1) one year after the Commercial Operation Date (COD).

6. 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.
7. In case of any breach of any equity investment as well as other financing requirements commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences there of.
8. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
9. It is further specifically agreed that the financial liability for equity contribution of 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.
10. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Patna alone shall have the exclusive jurisdiction in all matters relating thereto and arising there-under.
11. 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 Procurer(s) in terms of the RfP.
12. 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

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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expiration or early termination of the PPA in terms thereof, unless expressly agreed to the contrary by Procurer.

13. 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 the RfP Bid.

14. 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 Procurer.

15. This Agreement

(b) 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;

(c) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and

(d) may not be amended or modified except in writing signed by each of the Members and with prior written consent of Procurer.

16. All the terms used in capitals in this Agreement but not defined herein shall have the meaning as per the RfP & 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:

1) Signature\_\_\_\_\_

Name:

Address:

2) Signature\_\_\_\_\_

Name:

Address:

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

-----  
(signature, Name & Designation of the person authorized vide Board Resolution Dated [●])

Witnesses:

1) Signature\_\_\_\_\_

2) Signature\_\_\_\_\_

Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Name:  
Address:

Name:  
Address:

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

(signature, Name & Designation of the person authorized vide Board Resolution Dated [●])

Witnesses:

1) Signature \_\_\_\_\_  
Name:  
Address:

2) Signature \_\_\_\_\_  
Name:  
Address:

Signature and stamp of Notary of the place of execution

**Note:** -Technology Partner in a Consortium shall be a company with equity participation less than 10%.

DRAFT FOR STAKEHOLDERS' COMMENTS

**Format 6.6- Format for Financial Requirement – Net Worth**  
(to be filled separately for individual projects)

**[On the letter head of Bidder]**

To,

**Chairman-cum- Managing Director,  
Bihar State Power (Holding) Company Limited,  
Vidyut Bhawan, Bailey Road  
Patna – 800 021, Bihar**

**Dear Sir,**

**Sub: Response to RfP dated \_\_\_\_\_ for development of Solar PV Projects coupled with  
pisci-culture in the State of Bihar**

We certify that the Bidding Company/Member in a Bidding Consortium \_\_\_\_\_ [Name of Bidding Company or Bidding Consortium] has a minimum Net Worth of Rs. .... (Rupees ..... Crore) or equivalent US\$ based on

<b>Description</b>	<b>Select any one financial year applicable</b>
Audited annual accounts of any of the last four (4) financial years, 2008-09, 2009-10, 2010-11 and 2011-12 [Strike out the financial years not applicable]	

Net Worth has been calculated in accordance with instructions provided in Clause 3.5 B of the RfP.

**Exhibit (i): Applicable in case of Bidding Company**

For the above calculations, we have considered the Net Worth by Bidding Company and/ or its Parent / Affiliates as per following details:

Name of Company / Parent/ Affiliate	Name of Company / Parent/ Ultimate Parent/ Affiliate whose Net worth is to be considered	Relationship with Bidding Company*	Either Financial Year to be considered for Net Worth or Net worth of the respective Company not more than seven days prior to submission of RfP	Net Worth (in Rs. Crore) of the Member Company

**Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar**

<b>Company 1</b>				
---				
---				
<b>Total</b>				

*The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Parent/Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by the 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]**

Net Worth Requirement to be met by Member in Proportion to the Equity Commitment: Rs.-----  
---Crore (Equity Commitment (%)) \* Rs. [ ] Crore)

For the above calculations, we have considered Net Worth by Member in Bidding Consortium and/ or Parent/ Affiliate as per following details:

Name of Company / Parent/ Affiliate	Name of Company / Parent/ Ultimate Parent/ Affiliate whose Net worth is to be considered	Relationship with Bidding Company*	Either Financial Year to be considered for Net Worth or Net worth of the respective Company not more than seven days prior to submission of RfP	Net Worth (in Rs. Crore) of the Member Company	Equity Commitment (in %age) in Bidding Consortium	Committed Net Worth (in Rs. Crore)
<b>Company 1</b>						
---						
---						

Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Total			
-------	--	--	--

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

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

**(Signature and Stamp of  
Statutory Auditor or  
Chartered Accountant)**

Date:

Note:

- (i) Along with the above format, in a separate sheet, provide details of computation of Net Worth duly certified by Statutory Auditor (preferable) or CA.
- (ii) Certified Copies of Balance Sheet, Profit & Loss Account, Schedules and Cash Flow Statements and Bank statements by bank are to be enclosed in support thereof for confirmation of balance in cash & bank

DRAFT FOR STAKEHOLDERS/COMMITTEES

**Format 6.7- Format For Technical Criteria**  
(to be filled separately for individual projects)

**[On the letter head of Bidder]**

To,

**Chairman-cum- Managing Director,  
Bihar State Power (Holding) Company Limited,  
Vidyut Bhawan, Bailey Road  
Patna – 800 021, Bihar**

**Dear Sir,**

**Sub: Response to RfP dated \_\_\_\_\_ for development of Solar PV Projects coupled with  
pisci-culture in the State of Bihar**

We hereby certify that the \_\_\_\_\_ [*Insert Name of the technology*] proposed by us for Solar PV project is commercially established technology and following project(s) based on this technology is successfully operational since \_\_\_\_\_ years:

Sl. No.	Name of the Project	Capacity of the Project	Location	Operational Period	Documentary Evidence
1					
2					
3					

Further, We hereby undertake to certify in line with Clause 3.25 under the title "Financial Closure" that the following milestone schedule shall be adhered by us after signing of PPA: -

Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDC / SBPDCL
Engagement with the local fisher communities through the development of Ponds/ Mauns on the identified land and integration with the development of solar energy projects. The	Two Months	Confirmation of the arrangement between the project developer and the fisher community from the concerned local panchayat / revenue official
No-Objection Certificate from State Pollution Control Board (If required)	Three Months	Copy of the Approval Letter from SPCB
Placement of Order/Agreement signing for purchase of plant and machinery for the project	Three Months	Order/Agreement Copy
Payment of requisite advance or opening of irrevocable letter of credit with suppliers/contractors	Four Months	Receipt of payment from the Supplier/Contractor

Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
Clear Possession of the required land for project development @ 2.5 Hectares/MW (minimum)	Five Months	<ul style="list-style-type: none"> <li>○ Ownership or lease hold rights from State agency only (for at least 30 years) in the name of the Project Developer and possession of 100% of the area of land required for the allotted project. Land can be taken on lease from State agency only.</li> <li>○ Certificate by the concerned and competent revenue / registration authority for the acquisition / ownership / vesting of the land in the name of the Project Developer.</li> <li>○ Certificate by the concerned and competent revenue / registration authority regarding the classification of the land as maun/ chaur/ ponds.</li> <li>○ Sworn affidavit from the Authorized person of the developer listing the details of the land and certifying total land required for the project under clear possession of the Project Developer.</li> <li>○ In case of Bidding Consortium, the possession of land or lease hold right of land from State / Central agencies is in the name of non lead member, the same will be accepted against application and would be required to be transferred to the Project Company before signing of PPA.</li> </ul>
Financial Closure	Six Months	Copy of the Sanction Letter

Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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Milestone	Time Period from the Signing of the PPA	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
		received from the Financial Institutes/ Banks

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

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

DRAFT FOR STAKEHOLDER'S COMMENTS

**Format 6.8: Format for Letter for connectivity for the project to STU Substation**

(On the letter head of the State Transmission Utility)

To,

[Insert name and address of BSPHCL/Nodal Agency of State/Bidding Company or Member of the Consortium]

Dear Sir,

**Sub: Response to RfP dated \_\_\_\_\_ for development of Solar PV Projects coupled with pisci-culture in the State of Bihar**

1. M/s \_\_\_\_\_ [Insert name of the Bidding Company/Lead Member of the Bidding Consortium] has approached us for providing connectivity for a Solar PV Project of \_\_\_\_\_ MW, proposed to be located at \_\_\_\_\_ [Insert location of the Project], with the State Grid/Central/other transmission utility at a voltage level of \_\_\_\_\_ kV.
2. We confirm the Technical feasibility of the connectivity of the plant with the State/Central/other transmission utility grid from \_\_\_\_\_ [Insert name & location of the sub-station]

For and on behalf of \_\_\_\_\_

[Insert name of CTU/STU/any other Transmission Utility]

\_\_\_\_\_  
(Signature, Name and Designation of the Authorized signatory of STU)

**Annexure-C**

**List of Power sub-stations/Grid sub-stations of NBPDC/ SBPDCL/BSPTCL**

DRAFT FOR STAKEHOLDER'S COMMENTS

**Format 6.9 - Format for Disclosure**

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

**Disclosure**

We hereby declare 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.

**OR**

That we are participating in the RfP selection process and that in addition to our Proposal, the following companies are also separately participating in this selection process with which we have direct or indirect relationship as our Parent / Affiliate / Ultimate Parent / Group Company. The names of such other companies are given below: -

<b>Sl. No.</b>	<b>Name of the Company</b>	<b>Relationship with bidding Company</b>	<b>Capacity (MW)</b>	<b>Location including</b>
1				
2				
----				

We further declare that we have not been barred by the Central/ any State Government, or any entity controlled by them, from participating in any project (BOT or otherwise), and no such bar is subsisting as on the date of Bid.

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 RfP bid will be rejected and if LoI has been issued or PPA has been signed, the same will be cancelled and the bank guarantees will be encashed.

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

**Format 6.10 Summary Data Sheet**  
 (to be filled separately for individual projects)

1	<b>Name &amp; Address of Bidding Company / Lead Member of Bidding Consortium</b>	
2	<b>In case of Consortium, Name &amp; Address of Member Companies</b>	
3	<b>Project Wise Capacity proposed</b>	Project 1: _____ MW Project 2: _____ MW Project 3: _____ MW
4	<b>EMD Details</b>	
a)	Amount	
b)	Banker	
c)	DD/Banker's Cheque No. & Date	
5	<b>Processing Fee Details</b>	
a)	Amount	
b)	Banker	
c)	DD/Banker's Cheque No. & Date	
6	Name & Contact Details of Person Authorized by the Company/Consortium to sign the RfS	
a)	Name & Contact Address	
b)	Telephone, Fax & Mobile Numbers	
c)	E-mail id	

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

**Format 6.11 Details of the Proposed Technology**  
(to be filled separately for individual projects)

1	<b>Name of Bidding Company / Lead Member of Bidding Consortium</b>	
2	<b>Project proposed</b>	
3	<b>Capacity proposed</b>	
4	<b>Location of the Project</b>	
5	<b>Technology proposed to be used for the project</b>	(Indian/Imported) (PI Indicate)
a)	<b>Crystalline Silicon Solar Cell Modules</b>	
b)	<b>Thin Film Modules</b>	
c)	<b>Concentrated PV Modules</b>	
d)	<b>Any Other Technology</b>	
6	<b>Confirmation of Technical Parameter of PV Module for use in our Grid Connected Solar Power Plants</b>	As per Annexure - D
7	<b>Estimated Capacity Utilisation Factor</b>	
8	<b>Estimated Annual Generation</b>	
9	<b>Give Brief about the proposed Technology</b>	

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

**Annexure - D**

**Technical Parameter of PV Module for use in Grid Connected Solar Power Plants**

The following are some of the technical measures required to ensure quality of the PV modules used in grid connected solar power projects.

**1. PV Module Qualification**

1.1 The PV modules used in the grid connected solar power projects 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	IEC 61646
Concentrator PV modules	IEC 62108

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

**2. Authorized Test Centres**

The PV modules must be tested and approved by one of the IEC authorized test centres. In addition a PV module qualification test certificate as per IEC standard, issued by ETDC, Bangalore or Solar Energy Centre will also be valid. Ministry will review the list of authorized testing laboratories/centres from time to time.

**3. Warranty**

- The mechanical structures, electrical works and overall workmanship of the grid solar power plants must be warranted for a minimum of 5 years.
- PV modules used in grid connected solar power plants must be warranted for output wattage, which should not be less than 90% at the end of 10 years and 80% at the end of 25 years.

**4. 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
- (vi) Wattage,  $I_m$ ,  $V_m$  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

## Request for Proposal of Grid Connected Solar PV Projects coupled with Pisci culture in Bihar

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5. All grid solar PV power plants must install necessary equipment to continuously measure solar radiation, 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 the Ministry on line and/ or through a report on regular basis for the entire duration of PPA.

DRAFT FOR STAKEHOLDER'S COMMENTS

**FORMAT - 6.12 Format for Clarification on RfP Document**

Sl. No.	Clause No. & existing Provision	Clarification Required	Suggested text for the amendment	Rationale for the Clarification or Amendment

This format shall be used for submission of request for clarification / amendments on the RfP Document.

Signature of Authorized Signatory of the Bidder:

Date:

(Please also affix Bidder's Stamp.)

DRAFT FOR STAKEHOLDER'S COMMENTS

**FORMAT – 6.13 Format for Discount on BERC Approved Tariff**  
(to be filled in separately for each Project)

OFFER OF M/s. \_\_\_\_\_

Location: \_\_\_\_\_

Capacity: \_\_\_\_\_

Sl. No.	Capacity (MW)	Bench Mark Tariff (paisa/kWh)	Discount Offered (paisa/kWh)	Offered Tariff After Discount (paisa/kWh)	Bid-Bond Value (in Rs)
		985			
		985			
		985			

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

Date \_\_\_\_\_

**(Please also affix Bidder's Stamp.)**

DRAFT FOR STAKEHOLDER'S COMMITMENTS

**Format 6.14**

**Draft of Power Purchase Agreement to be executed between Procurer and the Selected Bidder(s)**

DRAFT FOR STAKEHOLDER'S COMMENTS

**Format 6.15**

**Draft of Default Escrow Agreement to be executed between Procurer and the Selected Bidder(s)**

DRAFT FOR STAKEHOLDER'S COMMENTS

**Format 6.16**

**Draft of Agreement to Hypothecate cum Deed of Hypothecation to be executed between  
Procurer and the Selected Bidder(s)**

DRAFT FOR STAKEHOLDER'S COMMENTS

NIT No. : \_\_\_\_\_, Dated: \_\_\_\_\_

**Draft**

**POWER PURCHASE AGREEMENT**

**FOR**

**PROCUREMENT**

**ON**

**LONG TERM (25 YEARS) BASIS**

**Between**

**[Insert the name of the successful bidder]**

**and**

**North/ South Bihar Power Distribution Company Ltd.**

**Issued by:**

**Bihar State Power (Holding) Company Ltd.**

**Vidyut Bhawan, Bailey Road  
Patna – 800 021**

**Tel. No.: 0612 \_\_\_\_\_  
Fax No.: 0612 \_\_\_\_\_**

**Email: \_\_\_\_\_**

**This Power Purchase Agreement is made on the .....[Insert date] day of .....  
[Insert month] of Two thousand thirteen (\_\_\_\_-2013) at Patna:**

**Between**

..... [Insert name of the Solar Power Developer], a company incorporated under the Companies Act 1956, having its registered office at ..... [Insert address of the registered office of Solar Power Developer] (hereinafter referred to as "Seller" or "Solar Power Producer" or "SPP", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

**and**

**North/ South Bihar Distribution Company Ltd.**, a company incorporated under the Companies Act 1956, having its registered office at Vidyut Bhawan, Bailey Road, Patna, Bihar – 800 021 (hereinafter referred to as "Discom", or "Procurer" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **Second Part**.

"Seller" or "Solar Power Producers (SPP)" and "Procurer" are individually referred to as 'Party' and collectively referred to as 'Parties'.

**Whereas:**

- a) Energy Dept., Govt. of Bihar has proposed the setting up of Grid connected Solar Photovoltaic Projects on the lands identified for the development of inland fresh water aquaculture including maun/chaur/ponds within the State of Bihar for the inclusive development of rural areas. As per the directives, Projects totaling to a capacity of about 150 MW based on Solar Photovoltaic Technology are proposed to be established on the said lands by the private project developers who are required to be selected through a competitive bidding basis
- b) Bihar State Power (Holding) Company Limited (BSPHCL), a company engaged in planning, promoting and developing the power sector in the state of Bihar, had initiated a competitive bidding process through issue of RfP (Request for Proposal) Document dated \_\_\_\_\_ for selecting SPP for setting up of Solar PV Project (total aggregate capacity of 150 MW) for supply of solar energy for 25 years to North Bihar Power Distribution Company Limited/South Bihar Power Distribution Company limited (Procurer).
- c) The ----- (SPP), after meeting the eligibility requirements has been selected by BSPHCL for the construction, operation & maintenance and supply of power from the

Solar PV project of capacity \_\_\_\_ MW at Location \_\_\_\_ [to be filled in on the basis of bid of the Selected Bidder] to the Procurer in accordance with the terms of this Agreement.

- d) The ..... [SPP or "Seller"] has provided to the Procurer, Contract Performance Guarantee(s) as per format specified in Annexure ----- of RfP.
- e) The SPP has agreed to sign this Power Purchase Agreement with Procurer for sale of Solar Photovoltaic Power by the SPP to the Procurer for 25 years as per the terms and conditions of this Agreement.
- f) Procurer agrees to procure Solar Photovoltaic Power up to the Contracted Capacity from the SPP as per the terms of this Agreement.
- g) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the procurement sale of power by SPP to Procurer.
- h) All the other RfS Project Documents will be executed by the Procurer and the Seller simultaneously with the signing of this Agreement.

**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:**

## **SECTION 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 or regulations framed there under, including those issued/ framed by the Appropriate Commission (as defined hereunder), as amended or re- enacted from time to time.

"Act" or "Electricity Act, 2003"	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Government"	shall mean Govt. of Bihar or Central Government;

"Auxiliary Consumption"	shall be as defined in Clause 32 (1) of the BERC (Terms and Conditions for Tariff determination from Solar Energy Sources) Regulation, 2010 issued vide Gazette Notification dated 04.08.2010 or as amended time to time.
"Bihar State Power Transmission Company Ltd." or "BSPTCL"	Shall mean the State Transmission Utility as specified by the State Government under Sub-section (1) of Section 39 of the Act;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute
"Business Day"	shall mean with respect to the Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the state of Bihar.
"BREDA"	shall means Bihar Renewable Energy Development Agency.
"Capacity Utilisation Factor" or CUF"	shall mean 19 % availability of the Solar PV Project at the Metering point of the solar plant on Contract Year basis;
"Change in Law"	shall have the meaning ascribed thereto in Article 12.1 of this Agreement;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in Bihar that has jurisdiction to adjudicate upon issues relating to this Agreement;
"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 Seller Preliminary Default Notice or Procurer 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 the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
"Contracted Capacity"	shall mean ----MW(AC)of Solar PV power contracted with Procurer for sale of such power by the Seller (Viz. 2 MW AC capacity means 2 MW AC output at Inverter.);
"Commission"	shall mean Bihar Electricity Regulatory Commission (BERC);
"CERC"	shall mean Central Electricity Regulatory Commission
"Day"	shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
"Delivery Date"	shall mean the date on which the Seller commences supply of the aggregate Contracted Capacity to the Procurer;
"Delivery Point"	shall be the grid sub-station/system of Discom or BSPTCL

"Delivered Energy"	means the kilowatt Hours of electricity actually fed into the Grid system and measured by energy meters at Delivery Point in a Billing Period
"Dispute"	shall mean any dispute or difference of any kind between the Seller and the Procurer 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 last day of the month provided the bill is received and acknowledged by the Procurer up to 4th day of the month. For the bills received and acknowledged by the Procurer after 4 <sup>th</sup> , it shall be 30 <sup>th</sup> day from such date;
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement"
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Emergency"	means a condition or situation affecting either Procurer's electrical system or the Grid System, including without limitation, frequency variations beyond the Technical Limits, which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric supply by Procurer or the Grid System or could endanger life or property.
" Energy Accounts"	shall mean the regional energy accounts/ state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twenty five (25) years from the date of commercial operation of the Solar PV Project;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 7 of this Agreement"
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Grid System"	means State power transmission / Distribution system through which Delivered Energy is evacuated and distributed.

"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 of Bihar and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice / Supplementary Bill by any of the Parties;
"KV"	shall mean kilo Volt;
"kWh"	shall mean Kilowatt-hour
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Metering Point"	for purposes of recording of Delivered Energy will be the Delivery Point
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"PSS"	shall mean Power Sub-station
"RBI"	shall mean the Reserve Bank of India;

"Rebate"	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs." or "	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commercial Operation Date" or "Scheduled COD"	shall be a date, -----(to be filled as per bid documents ) months from the Effective Date, when the Solar PV Project is required to be commissioned as per the terms and conditions of the PPA;
"SLDC"	shall mean the State Load Dispatch centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs on the Procurer;
"Solar Photovoltaic" or "Solar PV"	shall mean the solar power project that uses sunlight for direct conversion into electricity and that is being set up by the Seller(s) to provide Solar Power to the Procurer;
"Solar Power"	shall mean power generated from the Solar PV Project;
"State Transmission Utility" or "STU"	shall mean "BSPTCL" or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 10;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 8 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Voltage of Delivery"	shall mean the voltage at which the electricity generated by the project will be delivered to Procurer at the Delivery point

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

- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

## **ARTICLE 2: TERM OF AGREEMENT**

### **2.1 Effective Date**

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

### **2.2 Term of Agreement**

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

### **2.3 Early Termination**

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either Seller or all the Procurer terminates this Agreement, pursuant to Article 13 (Events of Default and Termination), of this Agreement; or
- ii. in such other circumstances as the Seller or the Procurer may agree, in writing;

### **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 liquidated 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 any expiry or termination of this Agreement.

### **ARTICLE 3: CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/ PROCURER**

#### **3.1 Satisfaction of conditions subsequent by the SPP/ Seller**

3.1.1 The SPP agrees and undertakes to duly perform and complete all of the following activities at the SPP's own cost and risk as per below mentioned time schedule 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 Procurer:

<b>Milestone</b>	<b>Time Period from the Effective Date</b>	<b>Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL</b>
Engagement with the local fisher communities through the development of Ponds/ Mauns on the identified land and integration with the development of solar energy projects. The	Two Months	Confirmation of the arrangement between the project developer and the fisher community from the concerned local panchayat / revenue official
No-Objection Certificate from State Pollution Control Board (If applicable)	Three Months	Copy of the Approval Letter from SPCB
Placement of Order/Agreement signing for purchase of plant and machinery for the project	Three Months	Order/Agreement Copy
Payment of requisite advance or opening of irrevocable letter of credit with suppliers/contractors	Four Months	Receipt of payment from the Supplier/Contractor
Clear Possession of the required land for project development @ 2.5 Hectares/MW (minimum)	Five Months	<ul style="list-style-type: none"> <li>○ Ownership or lease hold rights from State agency only (for at least 30 years) in the name of the Project Developer and possession of 100% of the area of land required for the allotted project. Land can be taken on lease from State agency only.</li> <li>○ Certificate by the concerned and competent revenue / registration authority for the acquisition / ownership / vesting of the land in the name of the Project Developer.</li> <li>○ Certificate by the concerned and</li> </ul>

Milestone	Time Period from the Effective Date	Documentary Evidence to be produced to BREDA / NPDCL / SBPDCL
		<p>competent revenue / registration authority regarding the classification of the land as maun/ chaur/ ponds.</p> <ul style="list-style-type: none"> <li>○ Sworn affidavit from the Authorized person of the developer listing the details of the land and certifying total land required for the project under clear possession of the Project Developer.</li> <li>○ In case of Bidding Consortium, the possession of land or lease hold right of land from State / Central agencies is in the name of non lead member, the same will be accepted against application and would be required to be transferred to the Project Company before signing of PPA.</li> </ul>
Financial Closure	Six Months	Copy of the Sanction Letter received from the Financial Institutes/ Banks

3.1.2 The SPP/ Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer as per the terms of this Agreement. In case a Project Company is incorporated and the Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company, all such Consents, Clearances and Permits shall have been transferred in the name of such Project Company;

3.1.3 Transmission Agreement between BSPTCL/ Procurer and SPP confirming the evacuation and connectivity of STU system with their Power Project switchyard.

3.1.4 Failure or delay on the part of seller in achieving the above conditions shall constitute sufficient grounds for encashment of the Performance Bank Guarantee

### **3.1A Satisfaction of conditions subsequent by the Procurer**

3.1A.1 The Procurer agrees and undertakes to duly perform and complete the following activities at the Procurer's own cost and risk within six months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their obligations under Article 3.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- The Procurer shall have obtained the order of the Bihar Electricity Regulatory Commission for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.

### **3.2 Consequences of non-fulfillment of conditions subsequent under Article 3.1**

3.2.1 In case of failure to submit the documents as above Procurer shall have the right to terminate this Agreement by giving a Termination Notice to the SPP in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the 7th day of the notice.

3.2.2 Procurer shall be entitled to encash all the Performance Bank Guarantees submitted by SPP.

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

3.2.4 In case of inability of the SPP to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

3.2.5 Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

### **3.3 Performance Bank Guarantee**

3.3.1 The Performance Bank Guarantee to be furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.

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

3.3.3 If the SPP fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.6.1,

Procurer shall have the right to encash the Performance Bank Guarantee in accordance with Article 4.7 without prejudice to the other rights of Procurer under this Agreement.

**3.4      Return of Performance Bank Guarantee**

- 3.4.1      Subject to Article 3.3, Procurer shall return/ release the Performance Bank Guarantee four (4) months after the Scheduled COD.
- 3.4.2      The return/ release of the Performance Bank Guarantee shall be without prejudice to other rights of Procurer under this Agreement.

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## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 4.1 SPP's Obligations

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

- a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
- b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the State Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices;
- c) the commencement of supply of power up to the Contracted Capacity to Procurer not later than the Scheduled Commissioning Date; and continuance of supply of Power throughout the term of agreement ;
- d) connecting the Power Project switchyard with the STU/ Discom(s) switchyard (Delivery Point) for supply of contracted power to the Procurer, not later than the Scheduled COD;
- 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 (having the shareholding of more than 50%) prevalent at the time of signing of PPA up to a period of one (1) year after Commercial operational Date; and
- g) fulfilling all obligations undertaken by the SPP under this Agreement.

4.1.2 Further, the SPP should adhere to the following milestone schedule after the achievement of the financial closure for the project.

Milestone	Time Period from the Achievement of Financial Closure	Documentary Evidence to be produced to BREDA / NBPDCCL / SBPDCL
Receiving of plant and machinery for the project at site	Two Months	Actual Site Photographs
Completion of Civil Infrastructure	Four Months	Actual Site Photographs
Construction & Commissioning of the Power Evacuation Arrangement	Five Months	Letter from BSPTCL
Commissioning and commercial operation	Six Months	Letter from NBPDCCL/SBPDCL

#### **4.1A Construction power and power during maintenance/ shutdown**

The SPP shall apply to the Procurer/ Discom for availing temporary connection for the supply of Power and the Procurer/ Discom shall supply the power in accordance with then prevalent terms and conditions for such consumers.

The SPP shall also be allowed by the Procurer / Discom to draw energy for their consumption during the maintenance/ shut down period of the Project after the commercial operation date. Procurer / Discom shall raise an invoice on the monthly basis as per the prevailing terms and conditions and tariff rates as applicable for such consumers.

#### **4.2 Grid Interfacing and Evacuation Arrangements**

- 4.2.1 The plant should be designed for interconnection with the distribution/transmission network of Discom or BSPTCL. The responsibility of getting connectivity with the transmission system will lie with the SPP.
- 4.2.2 The Procurer shall allow the SPP to interconnect its generating system and operate it in synchronism with Procurer's Power S/s or Grid Sub Station of BSPTCL subject to the terms and provisions of this agreement. The SPP shall run the plant as a part of integrated system to generate power in synchronism with the grid and shall inject three phase 50 Hz (nominal) AC Supply into Procurer's system at \_\_ kV as per provision of Bihar Grid Code-2010 as amended from time to time.
- 4.2.3 Transmission of power to the point of interconnection at substation of Discom/BSPTCL where the metering will be done shall be the responsibility of the SPP at its own cost. The installation of equipments for metering will be the responsibility of the SPP.
- 4.2.4 The arrangement of the connectivity can be made by the SPP through a dedicated transmission line which, the developer may construct himself or get constructed by Discom /BSPTCL. The entire cost of transmission including cost of construction of lines, metering equipment, losses etc. from the project up to the interconnection point will be borne by the SPP and will **not** be reimbursed by Discom/BSPTCL. Right of way for setting up the transmission lines has to be obtained from the concerned land owners by the developer only. Discom/BSPTCL will not be responsible for it even if the work is taken up through them.
- 4.2.5 The SPP may, however, shift interconnection point closer to his project if substation comes closer to the project during the tenure of the PPA, provided that the energy at the solar project is clearly demarcated for the power generated at the solar project and energy accounts are issued by the State Utility/ SLDC. The cost associate with this arrangement will also be borne by the project developer including the wheeling charges and losses up to the interconnection point.

4.2.6 The Company shall also generate matching MVArh corresponding to 0.80 PF & above, so that there is no adverse effect on Procurer's Grid system. Monthly average PF shall be computed from ratio of kWh to kVArh injected into Procurer's Grid system during the month.

#### **4.3 Synchronization & Interconnection Facilities**

4.3.1 The SPP shall be required to obtain all information with regard to the interconnection facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPP's side of the Delivery Point to enable delivery of electricity of delivery Point.

4.3.2 The synchronization equipment will be installed by the SPP at its generation facility at its own cost. The SPP shall synchronize its system with the Procurer's system only after the grant of approval of synchronization scheme by Chief Engineer, Transmission (O&M) and subject to verification and checking made by Electrical Superintending Engineer, CRITL, BSPTCL of the control and protection system of the generation project & switchyard. The SPP shall, immediately after each synchronization / tripping of generator, inform the Grid sub-station / Power S/s to which the plant is electrically connected and SLDC, Patna. The SPP should also inform the concerned connected Grid sub-station / Power S/s / SLDC before any synchronization. The in-charge of the Grid Sub Station or Power Sub-station should also inspect the system of synchronization.

4.3.3 The SPP shall provide step-up transformers, panels, kiosks, protection & metering equipment at the generation facility and fully equipped line bay(s) in its switchyard for termination of interconnecting transmission line(s) at the generation switchyard. The company shall also provide proper & reliable communication between the generation facility & Grid substation / Power S/s of the Procurer where power is to be delivered by the generation facility. The cost of the communication equipments and associated works will be borne by the SPP. The company shall also provide two sets of Import –Export meter for installation at Discom's end for metering purpose.

4.3.4 The SPP will provide at its own cost required transmission line(s) from the Generating Station switchyard up to Grid Sub-station / Power substation of Procurer/BSPTCL including the interconnection facilities at Procurer's end. The SPP will also provide associated equipment(s) at Grid substation / Power substation of Procurer/BSPTCL for accepting energy from the Project. The commissioning of the associated equipments (e.g. breakers, isolators, CT, PT Substation structures, breaker panels, control cables of required capacity, hard ware fittings etc.) to be provided by the SPP at Procurer's end for interconnection of the solar generation plant with Procurer's Grid substation / Power S/s will be done by the SPP under the strict supervision of the Procurer's representative and Procurer will only claim the supervision charges as per Procurer's norms.

- 4.3.5 The SPP and Procurer in mutual consultation with each other shall decide on the scheme for protection of the interconnection line(s) and of the facilities at both ends as well as generation protection facilities in case of reverse power flow due to mal operation of the circuit breakers during tripping of the unit (s). All electrical equipment shall be installed as per Bihar Electricity Grid Code 2010 or as amended time to time by BERC. The installation and operation of meters shall be as per CEA (Installation and Operation of Meters) Regulations, 2010 or BERC Grid Code 2010 as amended time to time.
- 4.3.6 Notwithstanding the provisions of this agreement, the Procurer will not be responsible for any damage that may occur to the SPP's generation system for any reasons what-so-ever.

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

- 4.4.1 Subject to the terms and conditions of this Agreement, the SPP undertakes to sell to Procurer and Procurer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to Contracted Capacity.

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

- 4.5.1 Procurer, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPP beyond ..... Million kWh (MU) [Insert value of energy generated corresponding to a CUF of 19 %].
- 4.5.2 If for any Contract Year, it is found that the SPP has not been able to generate minimum energy of ..... Million kWh (MU) [corresponding to a CUF of 12%], on account of reasons solely attributable to the SPP, the non-compliance by SPP shall make SPP liable to pay the compensation to Procurer. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be computed at the rate equal to the compensation payable by the Discoms towards non meeting of RPOs (imposed by BERC for non meeting of RPOs) subject to a minimum of 25% of the applicable tariff.
- 4.5.3 Notwithstanding Article 4.4.1, the SPP is free to sell such power to any third party prior to the Scheduled Commissioning Date and any capacity, which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date.
- 4.5.4 The sale of power under open access within or outside the state from the Solar Power Generating sources will be in accordance with the provisions of BERC (Terms and Conditions for Open Access) Regulation, 2006 for use of the Intra State transmission, distribution system or associated facilities as amended time to time and CERC (Open Access in Inter State Transmission) (Amendment) Regulation, 2008 or as amended time to time.

#### **4.6 Extensions of Time**

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

- any STU/ Discom(s)/ Procurer Event of Default; or
- Force Majeure Events affecting STU/ Discom(s)/ Procurer, or
- Force Majeure Events affecting the SPP,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the SPP or STU/ Discom(s)/ Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPP or Procurer, or till such time such Event of Default is rectified by STU/ Discom(s)/ Procurer.

4.6.2 Subject to Article 4.6.5, in case of extension occurring due to reasons specified in Article 4.6.1(a), any of the dates specified therein can be extended by Procurer, subject to the condition laid down in RfP. In case of extension due to reasons specified in Article 4.6.1(b) and (c), and if such Force Majeure Event continues even after a maximum period as per article 4.7.2 any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.6.3 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 by, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.6.4 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.

4.6.5 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 \_\_\_\_\_ or date determined pursuant to article 4.7.2 whichever is later.

#### **4.7 Liquidated Damages for delay in commencement of supply of power to Procurer**

4.7.1 If the SPP is unable to commence supply of power to Procurer by the Scheduled Commissioning Date other than for the reasons specified in Article 4.6.1, the SPP shall pay to Procurer, Liquidated 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 following:

- Delay up to one month – Procurer will encash 20% of the total Performance bank guarantee proportionate to the Capacity not commissioned.

- b. Delay of more than one month and up to two months - Procurer will encash 40% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned in addition to BG in clause-a above.
- c. Delay of more than two months and up to three months - Procurer will encash the remaining Performance Bank Guarantees proportionate to the Capacity not commissioned in addition to BG in clause-a and b above

In case the commissioning of project is delayed beyond 3 (three) months, the Project Developer shall pay to Procurer the Liquidated Damages (LD) at the rate of Rs.1,00,000 per MW per day of delay for the delay in such remaining Capacity which is not commissioned.

- 4.7.2 The maximum time period allowed for commissioning of the Project with encashment of Performance Bank Guarantee shall be limited to 18 months from the date of signing of this agreement it shall be considered as an SPP Event of Default and provision of article shall apply and PPA will be terminated and the Project shall be removed from the list of selected projects.
- 4.7.3 The amount of liquidated damages worked out as above shall be recovered by Procurer from the payments due to the Project Developer on account of sale of solar power to Procurer. In case, the Commissioning of the Project is delayed beyond 18 months from the date of signing of the PPA, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.
- 4.7.4 Part commissioning of the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of part commissioning shall be 2 MW and in multiples thereof. The PPA will remain in force for a period of 25 years from the date of acceptance of respective part commissioning of the project.

#### **4.8 Acceptance/ Performance Test**

- 4.8.1 Prior to synchronization of the Power Project, the SPP shall be required to get the Project certified for the requisite acceptance/ performance test as may be laid down by an agency identified by the Procurer to carry out testing and certification for the solar power projects.

#### **4.9 Third Party Verification**

- 4.9.1 The SPP 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 Procurer / STU/ Procurer and a third Party/ committee consisting of officials of MNRE, BERC, CEA, Procurer, BSPHCL, BSPGCL, BSPTCL, Discoms and nominated by state Governmental Instrumentality for inspection and verification of the works being carried out by the SPP at the site of the Power Project.

- 4.9.2 The third party may verify the construction works/ operation of the Power Project being carried out by the SPP 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 SPP or require the works to be stopped or to comply with the instructions of third party.
- 4.9.3 The third party may carry out checks for testing the CUF of the Power Project. During a contract year, if the CUF of the Power Project is found to be below ..... [Insert value i.e. 5% less than CUF] or if it is found that the SPP has not been able to maintain a CUF of ..... [Insert value i.e. 3% less than CUF] for a consecutive/non consecutive period of three (3) months during a Contract Year on account of reasons solely attributable to SPP, the SPP shall be liable for non fulfillment of its obligation.

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## **ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

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

- 5.1.1 The SPP shall give the concerned RLDC / SLDC/ BSPTCL/ Discom(s) at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronise the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPP to the Grid System when it meets all the connection conditions prescribed in Bihar Grid Code then in effect and otherwise meets all other Indian/State legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment shall be installed by the SPP at its generation facility of the Power Project at its own cost. The SPP shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/ Grid System of BSPTCL and checking/verification is made by the concerned BSPTCL and Discoms Authorities of the Grid System.
- 5.1.4 The SPP shall immediately after each synchronization/ tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with State Grid Code.
- 5.1.5 The SPP shall commission the project within 12 months from the date of signing of PPA.

## **ARTICLE 6: DISPATCH**

### **6.1 Dispatch**

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

6.1.2 The Power Project shall be treated as "Must Run" power plants and shall not be subjected to "merit order dispatch" as per provision of Clause 11 of BERC (Terms and Conditions for Tariff determination from Solar Energy Sources) Regulation, 2010 notified in Bihar Gazette on 04.08.2010 or as amended time to time by BERC.

### **6.1.3 Continuity of Service**

6.1.3.1 Procurer may require the SPP to temporarily curtail or interrupt delivery of energy when necessary in the following circumstances:

- For repair, replacement and removal of the Procurer's equipment or any part of its system that is associated with the Company's facility. However, as far as practicable such an event shall be scheduled during the annual shut down period of the generation facilities.
- Load crash in Procurer system due to wide-spread rains, cyclones or typhoons.
- Conditions leading to overloading of interconnecting transformers, transmission lines and switchgears due to outage of some equipment at Procurer's interconnecting grid or power substation.
- If Procurer determines that the continued operation of the facility may endanger the safety of the Procurer's personnel or integrity of the Procurer electric system or have an adverse effect of the electric service to the Procurer other customer(s).
- Under Force-Majeure Conditions of Procurer.
- Instructions for the disconnection of the generation facility from the Procurer system shall be notified by the State Load Despatch Centre, Patna for the period / duration indicated by it. However, Procurer shall take all reasonable steps to minimize the number and duration of such interruptions, curtailments or reductions.

## ARTICLE 7: METERING

- 7.1 Energy meters (Export –Import type) of 0.2 class or better accuracy and having kWh, kVAh & kVArh facility duly inspected and tested by the Procurer shall be installed at Delivery Point (hereinafter called Main Meters) and at the out going feeder of the generating station end (hereinafter called Check Meters) by SPP at its own cost capable of recording and storing fifteen (15) minutes data of the Electrical Parameters for a minimum of 35 days with MRI downloading facility of the datas. Dedicated CTs and PTs of 0.2 or 0.5 class or better accuracy shall also be made available by SPP at the Delivery point (Grid Sub station / Power substation) of Procurer and at the out-going feeder of the generating station end. The Energy meters will be DLMS compliant and with GPRS MODEM and having ABT feature also. The detail specification of Energy Meters will be approved by Procurer prior to placing order for the energy meter by the SPP. The finalization of the metering scheme will be through mutual discussion between Procurer and the SPP at the time of procurement in order to adopt latest developed technology and equipment.
- 7.2 All the meters, CTs and PTs described in Clause 7.1 above shall be jointly inspected and sealed on behalf of both parties and shall not be interfered with except in the presence of the representatives of both parties. For testing and calibration of meters, a notice of at least seven (7) days shall be given by the Party requesting the testing to enable the authorized representatives of both the parties to be present. All energy meters, CT, PT will be tested at laboratory of Procurer at Patna under Director (Metering). Necessary request and requisite testing charges if desired may be obtained from concerned Transmission/Supply Circles/Divisions.
- 7.3 All meters, CT and PT shall be checked for accuracy prior to commissioning & once in every six (6) months by both parties and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for such meters.
- 7.4 Meter readings of the main meter will form the basis of billing.
- 7.5 Where the half yearly check indicates errors in the Main Meters beyond the prescribed limit but no such error is noticed in the Check Meters, billing for the month up to the date & time of such test check will be done on the basis of check meters and the Main Meters will be re-calibrated immediately. Billing for the period after the Main Meters are calibrated shall be as per the calibrated meters.
- 7.6 If during the half yearly checks, both the main meters and the check meters are found to be beyond permissible limits or error, the meters shall be immediately recalibrated and the correction shall be applied to the consumption registered by the Main Meters to arrive at the correct consumption of energy for billing purposes for the period of the month up to the time of such check, billing for the period thereafter till the next monthly meter reading shall be measured by recalibrated Main Meters. In case of meter reading at the generator end is taken for billing purpose then the energy supplied to Procurer will

be taken care of after deducting the Auxiliary consumption and transmission / wheeling loss as determined by BERC from time to time.

7.7 Corrections in billing, wherever necessary, shall be applicable to the period between date & time of the previous test calibration and the date & time of the test calibration in the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at 100, 75, 50, 25 & 10 percent load at unity, 0.85 lag & 0.75 lag power factors. Of these fifteen values, the error at the load and power factor nearest the average monthly load served at the point during the period shall be taken as the error to be applied for correction.

7.8 The billing will be normally done on the basis of readings recorded by the meters installed at the Delivery point (Main Meters) at grid substation of BSPTCL or power substation of Procurer. In case the metering equipment of Delivery point becomes defective, the billing shall be done on the basis of meter readings of the meters installed at generating station switchyard. Under such condition the net power supplied to Procurer system will be calculated as follows:

Net Energy supplied to Procurer (in Kwh) = [Energy recorded at the check meter installed at the out going feeder of the generating station switchyard - Transmission loss - Wheeling loss (at 33 KV or 11 KV)]. Transmission and Wheeling loss will be as determined by BERC time to time. The defective meters shall however be replaced within three (3) months of the detection by either party.

7.9 If both the Energy Meters located at the outgoing feeder of the generation switch yard and State utility Grid Substation / Power substation fail to record the Electricity supplied then the Electricity supplied will be computed from the log sheets maintained at Procurer's Grid substation / Power Substations for that period of defect. The M.R.I of the meter will be considered an authentic document for verification of the meter reading and will be final & binding on both parties.

7.10 For the purpose of test & calibration, the sub standard meter shall be got calibrated and sealed from reputed testing Laboratory. This meter shall be calibrated once in every 2 years.

## **ARTICLE 8: INSURANCES**

### **8.1 Insurance**

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

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

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

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, Procurer shall have no claim on such proceeds of such Insurance.

### **8.3 Effect on liability of Procurer**

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 SPP can claim compensation, under any Insurance shall not be charged to or payable by the Procurer.

## **ARTICLE 9: APPLICABLE TARIFF**

9.1.1 The SPP shall be entitled to receive a Tariff of Rs...../kWh [Insert as applicable] for the energy supplied at the Delivery Point during a Contract Year pertaining to the Contracted Capacity.

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## **SECTION 3:**

### **ARTICLE 10: BILLING AND PAYMENT**

#### **10.1 General**

- 10.1.1 From the commencement of supply of power by the Seller, the Procurer shall pay to the Seller the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in this Article 9. All Tariff Payments by the Procurer shall be in Indian Rupees.
- 10.1.2 The designated representatives of the parties shall record joint readings of the meters of the respective feeders at BSEB (delivery point) end at 1200 Hours on the first day of every calendar month.
- 10.1.3 Monthly energy account depicting energy delivered & wheeled to Procurer, shall be prepared and maintained by SLDC, Patna on behalf of Procurer.

#### **10.2 Delivery and Content of Monthly Bills**

- 10.2.1 The Seller shall issue to Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if, the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

- 10.2.2 The Monthly Bill prepared shall include the following;

- i) Provisional Bill for Solar PV power supplied in the immediately preceding Month;
- ii) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Solar PV power supplied in the Month(s) proceeding to the previous month(s);
- iii) Late Payment Surcharge, if any; and

- iv) Taxes, Duties, Levies etc as applicable.

### **10.3 Payment of Monthly Bills**

- 10.3.1 The Procurer shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified to the Procurer in accordance with Article 10.3.2 below.
- 10.3.2 The Seller shall open a bank account at Patna, Bihar ("Seller's Designated Account") for all Tariff Payments be made by the Procurer to the Seller, and notify the Procurer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurer shall also designate a bank account at Patna (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurer, if any, and notify the Seller of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The Seller and the Procurer shall instruct their respective bankers to make all payments under this Agreement to the Procurer's Designated Account or the Seller's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### **10.3.3 Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by the Procurer sixty (60) days beyond its due date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.

### **10.3.4 Rebate**

For payment of any Bill within due date, the following Rebate shall be paid by the Seller to the Procurer in the following manner.

- a) A Rebate of 2% shall be payable to the Procurer for the payments made in full within one Business Day of receipt of the Bill by the Procurer.
- b) For payment of Bill subsequently but up to the Due Date, a rebate of 1% shall be allowed for the payments made in full.
- c) No Rebate shall be payable on the Bills raised on account of taxes, duties and cess etc.

### **10.3.5 Sharing of CDM Benefits**

The proceeds of carbon credit from approved CDM project shall be shared between generating company and concerned beneficiary (ies) in the manner as specified in

Clause 21 (1) (a) (b) of BERC (Terms and Conditions for Tariff determination from Solar Energy Sources) Regulation, 2010 notified in Bihar Gazette on 04.08.2010 or as amended time to time by BERC.

#### **10.4 Payment Security Mechanism**

##### **Letter of Credit (LC):**

- 10.4.1 The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with this Article. The Procurer shall provide to the Seller draft of the Letter of Credit proposed to be provided to the Seller two (2) months before the Scheduled Commissioning Date.
- 10.4.2 Not later than one (1) Month before the start of supply, the Procurer shall through a scheduled bank at Patna open a Letter of Credit in favour of the Seller, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every year, in the month of January and revised w.e.f. April for an amount equal to:
  - i) for the first Contract Year, equal to the estimated average monthly billing;
  - ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.
- 10.4.3 Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawl in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, the Procurer shall restore such shortfall within seven (7) days.
- 10.4.5 The Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6 The Procurer shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Procurer.
- 10.4.8 If, the Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer,

an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Procurer;
- ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

#### **10.4.9 Collateral Arrangement**

As a further support for the Procurer' obligations, on or prior to the Effective Date, the Procurer and the Seller shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the Procurer shall be routed and used as per the terms of the Default Escrow Agreement. The Procurer and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Procurer shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 10.4.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement".

Provided that the Procurer shall ensure that the Seller shall have first ranking charge on the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation.

10.4.10 The Default Escrow would come into operation if,

- i) The Letter of Credit is not recouped by the Procurer to its required value by the 7th day of its operation;
- ii) The Seller is unable to draw on the Letter of Credit on the Due Date, if the Procurer fails to pay by the Due Date.
- iii) Non-restoration of Escrow Arrangement by the 7th day of the Due Date.

#### **10.5 Disputed Bill**

10.5.1 If the Procurer does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the Procurer disputes the amount payable under a Monthly Bill it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;

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

10.5.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the Seller shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the Procurer and up to and including the date on which such payment has been received as refund.

10.5.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and

10.5.5 All written material in support of its counter-claim. Upon receipt of the Bill Disagreement Notice by the Procurer under Article 10.6.2, authorized representative(s) of the Procurer and the Seller shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.6.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

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

## **10.6 Quarterly and Annual Reconciliation**

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

10.6.2 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 Procurer and the Seller shall jointly sign such reconciliation statement. After signing of a reconciliation statement within 15 days, the Seller shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the

date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

### **10.8 Payment of Supplementary Bill**

10.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 12,

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

10.8.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the SPP to the SPP's Designated Account by the Due Date. Similarly, the SPP shall pay all amounts due under a Supplementary Bill raised by Procurer, if any, by the Due Date to concerned Procurer designated bank account. For such payments by Procurer, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply.

10.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.4.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 Definitions**

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

### **11.2 Affected Party**

11.2.1 An affected Party means the Seller or the Procurer whose performance has been adversely 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 and circumstances as 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 in performing its obligations:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- c) 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 making the performance of obligations as specified herein as impossible; or
- d) 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.
- e) An event of force majeure affecting the concerned STU/ Discom(s), as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Procurer;

### **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) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- b) Strikes at the facilities of the Affected Party;
- c) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- d) 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.

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.

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

### **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 as specified under this Agreement;
- c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event;

## **ARTICLE 12: CHANGE IN LAW**

### **12.1 Definitions**

In this Article 12, the following terms shall have the following meanings:

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

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPP;
- any change in tax or introduction of any tax made applicable for supply of power by the SPP as per the terms of this Agreement.

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

### **12.2 Relief for Change in Law**

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

12.2.2 The decision of the Appropriate (State) Commission to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

## ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

### 13.1 SPP Event of Default

13.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SPP Event of Default:

- i) the failure to commence supply of power to Procurer up to the Contracted Capacity, relevant to the Scheduled Commissioning Date, by the end of 12 months;
- ii) if
  - a) the SPP 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 SPP 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 SPP 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 SPP, or (c) the SPP 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 SPP will not be a SPP Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SPP and expressly assumes all obligations of the SPP under this Agreement and is in a position to perform them; or
- iv) the SPP repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Procurer in this regard; or

- v) (except where due to any Procurer's failure to comply with its material obligations, the SPP is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPP within thirty (30) days of receipt of first notice in this regard given by Procurer .
- vi) Failure to replace the Performance Bank Guarantee, as per the terms of this Agreement; or
- vii) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPP.

### **13.2 Procurer 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 SPP of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting Procurer:
  - (i) Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the SPP is unable to recover the amount outstanding to the SPP through the Letter of Credit for the applicable Month; or
  - (ii) Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SPP in this regard; or
  - (iii) except where due to any SPP's failure to comply with its obligations, Procurer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Procurer within thirty (30) days of receipt of notice in this regard from the SPP to Procurer;
  - (iv) if
    - Procurer 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
    - any winding up or bankruptcy or insolvency order is passed against Procurer , or
    - Procurer 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 Procurer Event of Default, where such dissolution or liquidation of Procurer or Procurer 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 Procurer and expressly assumes all obligations of Procurer and is in a position to perform them; or;
- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of Procurer.

### **13.3 Procedure for cases of SPP Event of Default**

- 13.3.1 Upon the occurrence and continuation of any SPP Event of Default under Article 13.1, Procurer shall have the right to deliver to the SPP a notice stating its intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 13.3.2 Following the issue of Procurer 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 have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 13.3.4 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 SPP Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPP.

### **13.4 Procedure for cases of Procurer Event of Default**

- 13.4.1 Upon the occurrence and continuation of any Procurer Event of Default specified in Article 13.2 the SPP shall have the right to deliver to Procurer, a SPP 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 SPP 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 Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPP shall be free to sell the Contracted Capacity to any third party of the SPP's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPP.

### **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 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

## ARTICLE 14: LIABILITY AND INDEMNIFICATION

### 14.1 Indemnity

14.1.1 The SPP shall indemnify, defend and hold Procurer harmless against:

- a) any and all third party claims against Procurer 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 SPP 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 Procurer from third party claims arising by reason of:
  - breach by the SPP of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPP, for which specific remedies have been provided for under this Agreement), or
  - any of the representations or warranties of the SPP, if any made under this Agreement, being found to be inaccurate or untrue.

14.1.2 Procurer shall indemnify, defend and hold the SPP harmless against:

- a) any and all third party claims against the SPP, 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 Procurer 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 ('Indemnifiable Losses') actually suffered or incurred by the SPP from third party claims arising by reason of:
  - a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 14 shall not apply to such breaches by Procurer, for specific remedies have been provided for under this Agreement), or
  - any of the representations or warranties of Procurer, if any made under this Agreement, being found to be inaccurate or untrue.

### 14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

- a) Wherethe 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 16.3.2; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

The Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 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.

### **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 nonpayment of such losses after a valid notice under this Article 14.3, 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 SPP nor Procurer 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 Procurer , the SPP or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

#### **14.5 Duty to Mitigate**

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

DRAFT FOR STAKEHOLDER'S COMMENTS

## **SECTION 5:**

### **ARTICLE 15: ASSIGNMENTS AND CHARGES**

#### **15.1 Assignments**

- 15.1.1 This Agreement shall be binding upon, and insure 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;
- 15.1.2 Provided that, procurer shall permit assignment of any of SPP's rights and obligations under this Agreement in favour of the lenders to the SPP, if required under the Financing Agreement.
- 15.1.3 Provided that, such consent shall not be withheld by the SPP if procurer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.
- 15.1.4 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 Neither Party shall 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.

## **ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 Governing Law**

16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of court in Patna.

### **16.2 Amicable Settlement and Dispute Resolution**

#### **16.2.1 Amicable Settlement**

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 10.5.2, furnish:
  - (i) Counter-claim and defenses, if any, regarding the Dispute; and
  - (ii) All written material in support of its defenses and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 10.5 if the other Party does not furnish any counter claim or defence under Article 10.5 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 10.5., the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

#### **16.3 Dispute Resolution**

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

16.3.1.1 Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission,

such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

16.3.1.2 The obligations of the Procurer under this Agreement towards The Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurer.

### **16.3.2 Dispute Resolution through Arbitration**

16.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 11.3.1 (i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:

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

### **16.4 Parties to Perform Obligations**

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 11.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 Amendment**

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

### **17.2 Third Party Beneficiaries**

17.2.1 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.

### **17.3 Waiver**

17.3.1 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 authorised representative of such Party:

17.3.2 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.

### **17.4 Confidentiality**

17.4.1 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 Parties.

### **17.5 Severability**

17.5.1 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.

### **17.6 Notices**

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

17.6.2 If to the Procurer, 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:

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

17.6.3 If to the Seller, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

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

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

17.6.5 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.

## 17.7 Language

17.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the

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Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

17.7.2 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.

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

17.8.1 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. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956.

### **17.9 Taxes and Duties**

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

17.9.2 The Seller shall be indemnified and held harmless by the Procurer against any claims that may be made against the Seller in relation to the matters set out in Article 17.9.1.

17.9.3 The Seller shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Procurer by The Seller on behalf of Procurer or its personnel.

### **17.10 No Consequential or Indirect Losses**

17.10.1 The liability of the Procurer and The Seller shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Seller or the Procurer claim from one another any indirect or consequential losses or damages.

### **17.11 Order of priority in application**

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- i. applicable Law, rules and regulations framed thereunder;
- ii. the state Grid Code; and

iii. the terms and conditions of this Agreement;

### **17.12 Independent Entity**

17.12.1 The Procurer shall be an independent entity performing its obligations pursuant to the Agreement.

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

### **17.13 Compliance with Law**

17.13.1 Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

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

**For and on behalf of**  
[the Procurer]

---

Signature with seal

**WITNESS**

**For and on behalf of**  
[the Seller]

---

Signature with seal

**WITNESS**

**Draft**

## **DEFAULT ESCROW AGREEMENT**

**Between**

**[Insert the name of the successful bidder]**

**and**

**North/ South Bihar Power Distribution Company Ltd.**

**and**

**[Insert Name of Escrow Agent]  
("Escrow Agent")**

**and**

**[Insert name of Bank 1]**

**[Insert name of Bank 2]**

**[Insert name of Bank ..]**

**[Insert name of Bank n]**

**(“Procurer’s Banks”)**

**For**

**Procurement of Solar Power on Long Term basis to North/ South Bihar Power  
Distribution Company Ltd. in the state of Bihar in India**

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This **DEFAULT ESCROW AGREEMENT** made this [Insert date] at ..... by and between:

- 1 **North/ South Bihar Distribution Company Ltd.**, a company incorporated under The Companies Act 1956, having its registered office at Vidyut Bhawan, Bailey Road, Patna, Bihar – 800 021 (hereinafter referred to as “**Procurer**”, which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **FIRST PART**; and
- 2 ..... [Insert name of the Seller], a company incorporated under the Companies Act, 1956, with its registered office at ..... [Insert address], (hereinafter referred to as the ‘**Seller**’ which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **SECOND PART**; and
- 3 [Insert Name of the Default Escrow Agent], a ..... [Insert nature of Default Escrow Agent], with its registered office at ..... [Insert address], (hereinafter referred to as the ‘**Escrow Agent**’ which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **THIRD PART**; and
- 4 The Persons whose names and details are provided in Schedule 1 (hereinafter collectively referred to as the ‘**Procurer’s Banks**’ or ‘**Subsidiary Escrow Agents**’ which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **FOURTH PART**

(Each of the parties of the **FIRST, SECOND, THIRD and FOURTH PART** above are individually referred to as a “**Party**” and collectively as the “**Parties**”).

**WHEREAS:**

- A. Bihar State Power (Holding) Company Ltd. (BSPHCL) had invited the bids for procurement of solar power by the power project developers through a bidding process;
- B. Pursuant to the said bidding process, ..... [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply of power to the Procurer, from the Photo-voltaic technology based Solar Power Project at \_\_\_\_\_ in the state of Bihar, in accordance with the terms of the Power Purchase Agreement, dated \_\_\_\_\_ (PPA) executed between the Seller and the Procurer;
- C. The Procurer has agreed to purchase the Electrical Output up to the Contracted Capacity from the Seller and to pay the Seller, the Tariff (as defined in the PPA) set out in Article 9 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;
- D. In terms of the said PPA, the Procurer is required to duly secure, the Seller by establishing an arrangement for payments of the Secured Obligations (as defined hereinafter) and the Seller and the Procurer have agreed on a mechanism through a Default Escrow Agreement (as defined hereinafter) for securing the Secured Obligations;

- E. The Procurer appointed ..... [Insert name of Default Escrow Agent] as the Default Escrow Agent and each of the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement;
- F. The Procurer has issued standing and irrevocable instructions to the Subsidiary Escrow Agents to ensure the transfer of funds as provided herein.

**NOW THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Default Escrow Agreement and other considerations, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

DRAFT FOR STAKEHOLDER'S COMMENTS

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.1.1 Capitalized terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA.

1.1.2 Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

**“Agreement”** means this Default Escrow Agreement entered into between the Procurer, the Seller and the Default Escrow Agent and the modifications, amendments or alterations thereto from time to time;

**“Business Day”** shall mean any day which is not a bank or a public holiday in Bihar.

**“Charge Creation Date”** shall have the meaning as ascribed thereto in Article 3.2.1 of this Agreement.

**“Default Escrow Account”** shall mean the default Escrow account opened with the Default Escrow Agent pursuant to Article 2.2.2 of this Agreement and for the purposes of this Agreement,

**“Distress Event”** means an event where:

- (a) a liquidator has been appointed by a court of competent jurisdiction in a proceeding for the winding up of the Default Escrow Agent; or
- (b) a court of competent jurisdiction has made an order of winding up of the Default Escrow Agent other than for the purpose of amalgamation or reconstruction acceptable to the Seller, Procurer and the Lenders; or
- (c) an Indian Government Instrumentality, statutory body or a court of competent jurisdiction has issued or adopted any law, rule regulation or order or initiated any proceeding or otherwise taken any action which reasonably may be expected to have a material adverse effect on the ability of the Default Escrow Agent to satisfy its obligations under this Agreement.

**“Dispute”** shall have the meaning attributed thereto in Article 9.9.2 of this Agreement.

**“Default Escrow Agent” or “Escrow Agent”** shall mean the Procurer’s Banks referred to in Article 2.1.1 of this Agreement and who will represent all the Subsidiary Escrow Agents for the purposes of this Agreement and discharge obligations specified in this Agreement;

**“Effective Date”** for the purpose of this Agreement shall mean the date falling on the day which is sixty (60) days prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, as defined in the PPA.

**“Event of Default”** shall have the meaning set out in Article 8.1 of this Agreement;

**“Fortnight”** shall mean each continuous period of not less than fifteen (15) days.

**“Agreement to Hypothecate cum Deed of Hypothecation”** shall mean the Agreement to Hypothecate Cum Deed of Hypothecation dated ..... [Insert Date] entered into between the Procurer and the Seller, a copy of which shall be provided to the Default Escrow Agent and each of the Subsidiary Escrow Agents on execution of this Agreement;

**“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 Procurer’s Financing Parties by way of a legally binding agreement, executed prior to the date of signing of this Agreement, provided such charge of the Procurer’s Financing Parties shall be limited to the extent of their outstanding exposure (including commitments for exposure) as on the Effective Date;

**“Month”** means a period beginning at 00:00 hours midnight on the first (1<sup>st</sup>) day of a calendar month and ending at 24:00 hours midnight on the last day of such calendar month;

**“Power Purchase Agreement”** or **“PPA”** shall mean the agreement titled ‘Power Purchase Agreement’ dated ..... [Insert Date] entered into between the Procurer and the Seller, as it may be amended from time to time;

**“Procurer Account”** shall have the meaning attributed thereto in Article 2.2.3(b) of this Agreement;

**“Procurer’s Financing Parties”** shall mean the banks or financial institutions and/or power producers, which have provided or propose to provide financial assistance and/or facilities to the Procurer including in particular the Procurer’s Banks and/or supply or propose to supply electricity to the Procurer and who have, for the repayment and/or discharge of obligations of the Procurer due to them, by way of a legally binding agreement being provided, as on the Effective Date, *inter alia*, security by way of a charge on the Receivables of the Procurer, the list of such parties and the details of charge on the Receivables as on the Effective Date is annexed as Schedule 2;

**“Procurer’s Banks”** shall mean all the banks who have been appointed by the Procurer as the Subsidiary Escrow Agents and instructed by the Procurer to receive Incremental Receivables deposited therein, and transfer the same, to the Default Escrow Account in accordance with the terms of this Agreement the list of such parties as existing on the Effective Date is provided herein as Schedule 1. Provided that in case of addition or deletion or change in number of Procurer’s Banks and Procurer’s Bank Account as per Article 3.5 of this Agreement, the Procurer’s Banks shall also be deemed to be modified accordingly;

**“Procurer’s Bank Account”** shall mean the bank accounts established and maintained in the Procurer’s Banks by the Procurer in which the Receivables are deposited;

**“Receivables”** shall mean all of the present and future payments, obligations monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue or be offered or due to the Procurer in respect of the sale by the Procurer of electric capacity, energy and / or services or for any other reason whatsoever to the Consumers and all proceeds thereof;

**“Security”** shall have the meaning ascribed thereto in Article 2.3.1 of this Agreement;

**“Secured Obligations”** shall mean

- (a) the amounts due to the bank which had issued the Letter of Credit encashable by the Seller as per the terms of the PPA; and
- (b) obligation of the Procurer for making payments due under Article 11 and Article 14 of the PPA:

Provided that, the amounts due to the bank, which had issued the Letter of Credit, referred to in (a) above shall always have a priority over the amounts due and payable under (b);

**“Seller Account”** shall have the meaning attributed thereto in Article 2.2.3(a) of this Agreement;

**“Subsidiary Escrow Accounts”** shall mean the escrow accounts referred to in Article 2.2.2 hereof;

**“Subsidiary Escrow Agents”** shall mean the Procurer’s Banks;

## 1.2 **Interpretation**

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA shall be deemed to be incorporated herein and shall apply for the purpose of this Agreement.

## **ARTICLE 2 APPOINTMENT OF DEFAULT ESCROW AGENT AND ESTABLISHMENT OF ACCOUNTS**

### **2.1 Default Escrow Agent**

#### **2.1.1 Appointment as agent**

The Procurer has appointed ..... [Insert name of Escrow Agent] as the Default Escrow Agent for the purposes of this Agreement. The Seller hereby accepts the appointment of the ..... [Insert name of Escrow Agent], through its ..... [Insert location] branch, as the Escrow Agent and who shall act as agent of the Procurer and the Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein. The Subsidiary Escrow Agent accepts the appointment of the Default Escrow Agent and agrees to take instructions from him for the purposes of meeting their respective obligations under this Agreement.

#### **2.1.1A Appointment as Subsidiary Escrow Agent**

The Procurer has appointed the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement. The Seller hereby accepts such appointment. Subsidiary Escrow Agents shall act as agents of the Procurer and the Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein.

#### **2.1.2 Acceptance of Appointment**

Each of the Escrow Agent and the Subsidiary Escrow Agents hereby accept their appointment and agree to act as a Default Escrow Agent and Subsidiary Escrow Agents respectively.

#### **2.1.3 Primary Obligation of the Default Escrow Agent**

Except as otherwise provided in this Agreement, the Default Escrow Agent shall hold and safeguard, the Default Escrow Account and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Default Escrow Agent, to be held in trust by the Default Escrow Agent for the commitments to the Seller and the Procurer and shall, in performing its functions and duties under this Agreement act as an agent for the Seller and the Procurer.

#### **2.1.4 Primary Obligation of the Subsidiary Escrow Agents**

Except as otherwise provided in this Agreement, each of the Subsidiary Escrow Agents shall hold and safeguard, the Subsidiary Escrow Accounts and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Subsidiary Escrow Agents, to be held in

trust by the Subsidiary Escrow Agents for performing their functions and duties under this Agreement.

## **2.2 Establishment of Accounts**

### **2.2.1 Establishment of the Default Escrow Account**

The Procurer shall, within 30 days of the Effective Date establish in his name a special, segregated and irrevocable cash collateral account at the specified branch of the Default Escrow Agent which account shall be maintained at all times until the termination of this Agreement (hereinafter referred to as the "Default Escrow Account").

### **2.2.2 Establishment of the Subsidiary Escrow Accounts**

On the Effective Date, all bank accounts of the Procurer which have been opened with the Procurer's Banks for depositing incremental receivables shall be deemed to have been designated by the Procurer as subsidiary escrow accounts (hereinafter referred to as the "**Subsidiary Escrow Account/s**") for the purposes of this Agreement.

### **2.2.3 Seller and Procurer Accounts**

Not later than seven (7) days after the Effective Date:

- (a) the Seller shall establish and maintain in its name an account at the branch of the Default Escrow Agent (hereinafter referred to as the "**Seller Account**"); and
- (b) the Procurer shall establish and maintain in its name an account at the branch of the Default Escrow Agent or designate any of its then existing current account with the Default Escrow Agent (hereinafter referred to as the "**Procurer Account**") until the termination of this Agreement.

## **2.3 Subsidiary Escrow Agents and Default Escrow Agent's obligations**

- 2.3.1 The Procurer has, pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation agreed to grant a pari passu charge/security interest in favour of the Seller on the Incremental Receivables (the "Security"). Upon the occurrence of an Event of Default mentioned in Article 8 (b), (d), (e) and (f) in accordance with the terms of this Agreement, the Subsidiary Escrow Agents shall ensure that all the Incremental Receivables available in their respective Subsidiary Escrow Accounts are transferred to the Default Escrow Account. On the occurrence of an Event of Default mentioned in Article 8 (b), (d), (e) and (f), the Default Escrow Agent shall ensure that all Incremental Receivables transferred by the Subsidiary Escrow Agents to the Default Escrow Account are transferred to the LC Account (as defined hereinafter) or the Seller Account or to the Procurer Account, in accordance with the terms of this Agreement. Immediately upon the occurrence of an Event of Default mentioned in Article 8 (b), (d), (e) and (f), all Subsidiary Escrow Agents shall prepare a statement listing out the amount of Incremental Receivables available with them and shall send such statement to Default Escrow Agent. For such calculation of Incremental Receivables, each Subsidiary Escrow Agent shall assume that only the amounts available in their

respective accounts are available for meeting their outstanding claims which have become due (but are unpaid). Provided such outstanding claims shall only relate to the legally binding commitments which had been made prior to the Effective Date. The Procurers shall also immediately send to the Default Escrow Agent, a list of the amounts due but unpaid to any other Procurer Financing Parties provided such amounts shall only relate to the legally binding commitments which had been made prior to the Effective Date. On the basis of the information received, the Default Escrow Agent shall determine the total amount of Incremental Receivables available and shall thereafter send instructions to the Subsidiary Escrow Agents to release an amount equal to the Incremental Receivables in accordance with the provisions of Article 5.3. The above process shall be repeated on a daily basis till the continuance of the Event of Default under Article 8 (b), (d), (e) and (f).

- 2.3.2 The Default Escrow Agent and the Subsidiary Escrow Agents shall provide to the Procurer and the Seller, no later than the fifteen (15) Business Days from the end of each Quarter, a statement of accounts detailing all deposits, transfers, disbursements or payments into and from the Default Escrow Account and the Subsidiary Escrow Accounts, respectively, during the previous Financial Year. During any period, following the delivery of a notice of the occurrence of an Event of Default and until delivery of notice that the Event of Default has been cured and is no longer continuing, the Default Escrow Agent and the Subsidiary Escrow Agent shall provide such statement of accounts to the Seller and the Procurer on a daily basis.
- 2.3.3 The Default Escrow Agent and the Subsidiary Escrow Agents shall, at all times, act and discharge its/their functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Seller hereunder and the Security afforded to it herein for the full and timely performance by the Procurer of the Secured Obligations, in the manner contemplated herein.
- 2.3.4 The Subsidiary Escrow Agents shall ensure,
  - (a) till the occurrence of any event mentioned in Article 8 (b), (d), (e) and (f), the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in any manner as required by the Procurer and in accordance with the provisions of this Agreement; and (b) upon the occurrence of any event mentioned in Article 8 (b), (d), (e) and (f), the transfer of Incremental Receivables from the Subsidiary Escrow Account strictly in accordance with Article 5 of this Agreement.
- 2.3.4 The Default Escrow Agent's duties and responsibilities shall be limited to those expressly set forth herein. Without affecting the rights and obligations of the Procurer or the Seller, the Default Escrow Agent shall not be subject to nor obligated to recognise, except as expressly provided herein, any other agreement or arrangement between the Procurer and the Seller, nor shall any such agreement or arrangement be deemed to be incorporated herein by reference thereto.
- 2.3.5 As soon as practicable but in no event later than fifteen (15) days from the Effective Date, the Procurer and the Seller shall deliver to each other and to the Default Escrow Agent and Subsidiary Escrow Agent, specimen signatures of their respective

authorised officers duly attested by their banks. The Procurer and the Seller shall have the right to change their respective authorised officers by delivering specimen signatures of their respective new authorised officers.

2.3.6 Notwithstanding anything contained in Section 171 and Section 221 of the Indian Contract Act, 1872 the Default Escrow Agent and Subsidiary Escrow Agents shall not have any lien or be entitled to assert a general claim on or against the monies in the Default Escrow Account or the Subsidiary Escrow Accounts respectively.

Provided that the Procurer's Financing parties confirm to limit their charge on the Receivables to the extent of their outstanding exposure (including commitments for exposure) as on the date of this agreement and cede their existing pari passu charge, if any, on the Incremental Receivables, such ceding to be effective as of the Charge Creation Date.

#### **2.4 Continuation**

Any corporation or association into which the Default Escrow Agent or the Subsidiary Escrow Agent/s may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Agent or the successor Subsidiary Escrow Agent/s hereunder, without the execution or filing of any agreement, document or instrument or any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding:

Provided, however, the Seller shall be entitled, if it deems proper, not to accept any such successor Default Escrow Agent and take further steps for replacement thereof in accordance with Article 9.8 of this Agreement.

#### **2.5 Income Attribution**

All interest and other amounts in the Default Escrow Account or the Subsidiary Escrow Accounts shall be the income of the Procurer as per the provisions of the relevant tax laws of India.

## ARTICLE 3 OBLIGATIONS OF THE PROCURER

### 3.1 Reaffirmation of Procurer obligations

The Procurer covenants with the Seller that it will pay or discharge each of the Secured Obligations in accordance with the provisions of the PPA, and this Agreement.

### 3.2 Creation of Charge

3.2.1 The Procurer shall, at least forty five (45) days prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date ("Charge Creation Date"), as the case may be, create pari passu charge over the Incremental Receivables in favour of the Seller and confirm that effective as of the Charge Creation Date and until satisfaction of the Secured Obligations and the termination of this Agreement, the Procurer's Financing Parties shall not have any charge over the Incremental Receivables or any part of the Security, and that such charge, if created in future, in favour of the Procurer's Financing Parties or any other entity would be secondary and subordinate to the charge created in favour of the Sellers pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation. The Subsidiary Escrow Agents also agree to the provisions of this Article.

3.2.2 The Procurer shall also provide such other documents, certificates and agreements as the Seller may reasonably request in respect of creating a pari passu charge over the Incremental Receivables and/or the Security, in favour of the Seller in accordance with Article 3.2.1 above.

### 3.3 Creation of further security interest

The Procurer may create any other security interest subordinate and secondary to (i) the charge created in favour of the Seller over Incremental Receivables or (ii) any part thereof, in favour of any person other than the Seller for any reason whatsoever strictly in accordance with the provisions of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation.

### 3.4 Changes in coverage

3.4.1 No change shall be made or permitted by the Procurer in its business operations or collections policies which would result in the flow of Incremental Receivables being reduced from what they would have been, had such change not been made or permitted as the case may be.

### 3.5 Changes in number of Procurer's Banks and Procurer's Bank Accounts

3.4.1 If any changes occur in the Procurer's Bank Accounts, this Agreement shall be deemed to include all of such additional Incremental Receivables received from such modified Procurer's Bank Accounts and such change in the Procurer's Bank Accounts shall be included in Schedule 1 accordingly.

Similarly, if there is any addition to the number of Procurer's Banks as provided in

Schedule 1 hereof, such additional Procurer's Banks shall also be deemed to be appointed as the Subsidiary Escrow Agents of the Procurer for the purpose of this Agreement and the Procurers bank accounts with such banks shall be deemed as Subsidiary Escrow Accounts for the purposes of this Agreement and such change in Procurer's Banks shall be included in Schedule 1 accordingly.

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## ARTICLE 4 DEPOSITS

### 4.1 Procurer covenants

4.1.1 The Procurer agrees and confirms that it has irrevocably instructed, or shall irrevocably instruct any additional Procurer's Banks (appointed under Article 3.5) immediately on its appointment as Procurer's Bank, and shall cause and direct each of the Subsidiary Escrow Agents to transfer on the occurrence of an Event of Default mentioned in Article 8 (b), (d), (e) and (f) all Incremental Receivables received by them directly into the Default Escrow Account.

4.1.2 The Procurer agrees and confirms that it shall not take any actions inconsistent with instructions given under clause 4.1.1 or interfere in any way with the transfer of Incremental Receivables by the Subsidiary Escrow Agents directly into the Default Escrow Account as per the terms of this Agreement or deliver or cause to be delivered to the Subsidiary Escrow Agents any amendment, modification or supplement to such instructions or any additional or new instructions regarding payment of Incremental Receivables by them without the express written approval of the Seller, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Seller.

### 4.2 Routing of amounts into the accounts

4.2.1 Any and all credits made into Subsidiary Escrow Accounts, the Default Escrow Account and the Procurer's Bank Accounts under this Agreement shall be irrevocable and all income or gain earned or realised on amounts on such credit in the Subsidiary Escrow Accounts, Default Escrow Account shall be treated for all purposes of this Agreement as part of the Default Escrow Account or Subsidiary Escrow Accounts, as the case may be.

4.3.2 The Procurer irrevocably directs the Default Escrow Agent and the Default Escrow Agent agrees to deposit immediately upon receipt of all Incremental Receivables from the Subsidiary Escrow Agents directly into the Default Escrow Account, notwithstanding any instructions or directions to the contrary by any Subsidiary Escrow Agent, on and from the date of the occurrence of an Event of Default mentioned in Article 8 (b), (d), (e), (f) to be dealt with in the manner as specified in Article 5.

## **ARTICLE 5 OPERATION AND MANAGEMENT OF THE DEFAULT ESCROW ACCOUNT**

### **5.1 General**

All amounts deposited in the Default Escrow Account shall be applied by the Default Escrow Agent as provided for in this Article 5. All such amounts to the extent of the Incremental Receivables shall, among others, constitute a part of the Security and shall not constitute payment of any Secured Obligations until applied to the payment thereof as hereinafter provided.

### **5.2 Disbursements**

So long as any Event of Default mentioned in Article 8 (b), (d), (e) and (f) has not occurred or is remedied, the Subsidiary Escrow Agents shall ensure the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in to the Procurer Account or in any manner as required by the Procurer.

In case of occurrence of any event as provided in Article 8 (b), (d), (e) and (f) and in case it is continuing, the Incremental Receivables shall be transferred from the Subsidiary Escrow Account and the Default Escrow Account in the manner specified in Article 5.3.

### **5.3 Procedures after occurrence of an event under Article 8.4.5 of PPA**

#### **5.3.1**

(i) Upon the drawal by the Seller of the Letter of Credit as per Article 8.4.5 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent, all disbursements, transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts pursuant to Article 5.2 above shall cease and all transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts and the Default Escrow Account shall be governed and carried out by the Default Escrow Agent strictly and only in accordance with Article 5.3.2

Provided that, if, after the Seller has exercised its right to make the drawal of the Letter of Credit in accordance with Article 8.4.5 of the PPA, the Procurer is able to reinstate the Letter of Credit within a period of seven (7) days thereafter, the Subsidiary Escrow Agent shall not be liable to transfer Incremental Receivables to the Default Escrow Account and the Default Escrow Agent shall not be liable to transfer any funds from the Default Escrow Account into the LC Account or the Sellers Account, as relevant.

(ii) In the event, the Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8.4.2 and Article 8.4.3 of the PPA, the Seller shall instruct the

Subsidiary Escrow Agents and the Default Escrow Agent by giving a notice in writing with a copy to the Procurer to transfer the Incremental Receivables from the Subsidiary Escrow Accounts and thereon from the Default Escrow Account to the Seller Account to the extent of maximum of the amounts due to the Seller under Article 8.4.5 of the PPA, along with copies of the documents as required to be submitted by the Seller as per Article 8.4.5 of the PPA and the Subsidiary Escrow Agents and the Default Escrow Agent shall so transfer the funds, subject to the provisions of Article 5.3.5 hereof.

- 5.3.2 The Subsidiary Escrow Agents shall immediately after a period of seven (7) days from the drawal of the Letter of Credit by the Seller subject to Clause 5.3.1(i) above, transfer the Incremental Receivables from the Subsidiary Escrow Account to the Default Escrow Account. The Default Escrow Agent shall immediately, transfer the Incremental Receivables from the Default Escrow Account to an account specified by the bank which has issued the Letter of Credit ("LC Banker") for the purpose of reinstating the Letter of credit ("LC Account") and shall continue to transfer Incremental Receivables in to such account for such period until the amount so transferred is adequate to reinstate the Letter of Credit as per the terms of the PPA.
- 5.3.3 During the transfer of Incremental Receivables to the Default Escrow Account and from the Default Escrow Account to the LC Account or the Seller's Account, the Subsidiary Escrow Agent and the Default Escrow Agent shall not transfer money being part of such Incremental Receivables from the Subsidiary Escrow Account and the Default Escrow Account to the Procurer Account, or its nominee except upon receiving written instructions from the Seller in this regard.
- 5.3.4 The above provisions of Article 5.3.3 shall be subject to the provisions of this Article. Immediately upon transfer of adequate funds to cover the amounts due to the Seller under Article 8.4.5 of the PPA as per Article 5.3.1(ii) or to meet the requirements of reinstatement of Letter of Credit as per Article 5.3.2, as the case may be, the transfer of amounts from the Subsidiary Escrow Account and the surplus monies in the Default Escrow Account to the Procurer Account shall recommence in accordance with Article 5.2 above.
- 5.3.5 In the event of any Dispute between the Procurer and the Seller arising out of this Agreement, the Procurer shall have recourse to the dispute resolution in accordance with the provisions mentioned in Article 9.9.2 of this Agreement:

Provided that, pending the full and final resolution of such Dispute, the Subsidiary Escrow Agent and the Default Escrow Agent shall retain Incremental Receivables in the Subsidiary Escrow Account and the Default Escrow Account respectively and shall not allow transfer of Incremental Receivables to the extent of the unpaid amount under dispute, from the Subsidiary Escrow Account and the Default Escrow Account to the LC Account or the Procurer Account or the Seller Account.

Upon the full and final conclusion of a dispute, either Party may bring the decision of the adjudicator to the notice of the Subsidiary Escrow Agents and the Default Escrow Agent who shall be bound by such decision and shall carry out such actions as are specified in the decision.

## ARTICLE 6 REPRESENTATION AND WARRANTIES

### 6.1 Representations and Warranties of the Procurer

The Procurer hereby represents and warrants to the Seller and the Default Escrow Agent as of the date of this Agreement and at all times that:

- a. The Procurer is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- b. This Agreement constitutes valid legal and binding obligations of the Procurer, enforceable in accordance with the terms of this Agreement;
- c. To the best of the knowledge of the Procurer, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- d. The execution, delivery and performance of this Agreement by the Procurer have been duly authorised by all requisite actions and will not constitute a violation of:
  - i. any statute, judgment, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - ii. the Procurer's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- e. No hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Incremental Receivables after the Charge Creation Date or otherwise than as permitted under the Hypothecation Agreement;
- f. After the Charge Creation Date, the Procurer's Financing Parties do not and shall not have any pari passu charge, security interest or other encumbrance over the Incremental Receivables, except a second/subordinate charge which may be created in their favour over the Receivables in accordance with Article 3.2.1 and 3.3 above;
- g. The schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- h. All filings and other actions necessary to create, perfect and protect a pari passu charge with respect to the Security have been duly made or taken or shall be duly made and taken before Scheduled Delivery Date or Revised Scheduled Delivery Date and as of the said date, all such filings and actions shall be in full force and effect; and
- i. The information relating to the Procurer's Financing Parties and Procurer's Banks given in the Schedules 1 and 2 of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith.

## 6.2 Representations and Warranties of the Default Escrow Agent

The Default Escrow Agent shall represent and warrant to the Seller and the Procurer as of the Effective Date and at all times that:

- a. The Default Escrow Agent is a scheduled commercial bank and duly constituted under the ..... [Insert statute] having its head office at ..... [Insert address] and its branch among others, at ..... [insert address] and validly existing under the laws of India and has all requisite legal power, authority and resources to enter into this Agreement and to perform its duties and obligations hereunder;
- b. This Agreement constitutes the valid legal and binding obligations of the Default Escrow Agent enforceable in accordance with the terms of this Agreement;
- c. There are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Agent to perform its duties and obligations under this Agreement;
- d. The execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
  - i. Any statute, judgment, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Agent, its assets or its business; or
  - ii. The Default Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- e. The Default Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Sectional Default Escrow Accounts, Default Escrow Account or the Receivables in favour of any other person other than the Seller.

## 6.3 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Default Escrow Agent and the Procurer that:

- a. It has been duly constituted under the Indian Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power, authority and resources to enter into this Agreement and to perform its duties and obligations hereunder;
- b. This Agreement constitutes the valid, legal and binding obligations of the Seller enforceable in accordance with the terms of this Agreement; and
- c. The execution, delivery and performance of this Agreement by the Seller has been duly authorised by all requisite action, and will not constitute a violation of:
  - i. Any statute, judgment, order, decree or regulation of any court, Indian

Government Instrumentality or arbitration tribunal applicable or relating to the Seller, its assets or its business; or

- ii. The Seller's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

#### **6.4 Representations and Warranties of the Subsidiary Escrow Agents**

Each of the Subsidiary Escrow Agents shall represent and warrant to the Seller and the Procurer as of the Effective Date and at all times that:

- a. The Subsidiary Escrow Agent is a commercial bank and duly constituted under the [insert statute] having its head office at [insert address] and its branch among others, at [insert address] and validly existing under the laws of India and has all requisite legal power, authority and resources to enter into this Agreement and to perform its duties and obligations hereunder;
- b. This Agreement constitutes the valid legal and binding obligations of the Subsidiary Escrow Agent enforceable in accordance with the terms of this Agreement;
- c. There are no actions, suits or proceedings pending or threatened, Against or affecting the Subsidiary Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Subsidiary Escrow Agent to perform its duties and obligations under this Agreement;
- d. The execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
  - i. Any statute, judgment, order, decree or regulation of any court, Indian Government Instrumentality or arbitration tribunal applicable or relating to the Subsidiary Escrow Agent, its assets or its business; or
  - ii. The Subsidiary Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- e. The Subsidiary Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Incremental Receivables in favour of any other person other than the Seller.

## ARTICLE 7 COVENANTS

### 7.1 Procurer Covenants

The Procurer covenants that:

- a. It shall create and maintain valid, perfected and enforceable pari passu charge over all of the Security pursuant to the Agreement to Hypothecate cum Deed of Hypothecation;
- b. It shall procure all amendments, approvals, consents or waivers as may be required from the Procurer Financing Parties and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Agreement to Hypothecate cum Deed of Hypothecation in favour of the Seller;

It shall not after the Charge Creation Date grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Incremental Receivables, throughout the term of this Agreement other than the Security created hereunder and the security interest created under the Agreement to Hypothecate cum Deed of Hypothecation in favour of the Seller except in compliance with the provisions of this Agreement or Agreement to Hypothecate cum Deed of Hypothecation;

- c. It shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Procurer, in connection with:
  - i. The execution, delivery, performance and observance by the Procurer of this Agreement; and
  - ii. The validity, binding effect and enforceability of this Agreement;
- d. It shall effect all registrations, recordings, filings, and notarisations, which are or may become necessary to enable the performance by the Procurer of its obligations under this Agreement and the Agreement to Hypothecate cum Deed of Hypothecation;
- e. It shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement; and
- f. It shall inform the Seller of any receipt of notice, claim, legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

## ARTICLE 8 EVENTS OF DEFAULT

### 8.1 Events of Default

For the purposes of this Agreement, the term "**Event of Default**" shall mean the occurrence or existence of any one or more of the following:

- a. The Procurer being in breach of its material obligations under this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- b. The Procurer committing a Procurer Event of Default as mentioned in Article 11.2.1(ii) of the PPA;
- c. Any representation or warranty made by the Procurer in this Agreement shall be or shall have been incorrect in any material respect;
- d. Upon the drawal by the Seller of the Letter of Credit as per Article 8 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent;
- e. The Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8 of the PPA and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent.
- f. Default by the Procurer for the repayment and/or discharge of obligations of the Procurer to any person under a legally binding agreement providing inter alia, security by way of a charge on the Incremental Receivables of the Procurer, provided such charge to such person enjoys a lower priority and ranking security interest to the Seller.

## ARTICLE 9 MISCELLANEOUS

### 9.1 Expenses

Except in cases specified in Articles 9.8.2 and 9.8.6 of this Agreement, the Seller and Procurer shall bear, in equal proportion, all the expenses of the Default Escrow Agent and each Subsidiary Escrow Agent regarding opening and maintaining the Default Escrow Account and the Subsidiary Account respectively and the expenses (including reasonable expenses for legal services of every kind) relating to the execution and enforcement of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation including, without limitation, any stamp tax or duty, required to be paid under this Agreement and with respect to any variation, waiver or modification or any consent required in connection with this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agent shall not be entitled to deduct any amount due and payable by the Seller to the Default Escrow Agent from monies deposited in the Default Escrow Account and the Procurer Account established pursuant to this Agreement. The Default Escrow Agent shall however be entitled to deduct any amount due and payable by the Procurer to the Default Escrow Agent from monies deposited in the Procurer Account established pursuant to this Agreement.

### 9.2 Variation, Waivers and Modifications

No variation, waiver or modification of the terms of this Agreement shall be valid unless reduced in an agreement in writing signed by the Parties hereto.

### 9.3 Notices

9.3.1 Any notice, direction, instruction, certificate and any other communication required or permitted to be given hereunder shall be in writing and shall be:

- (a) Personally delivered; or
- (b) Transmitted by postage prepaid registered mail; or
- (c) Delivered through courier.

as elected by the Party giving such notice, direction, instruction, certificate or other communication to the addressee as set-forth below.

9.3.2 Except as otherwise specified herein, the date of any notice, direction, instruction, certificate or other communication hereunder shall be deemed to be:

- (a) The date of receipt if delivered personally or through courier;
- (b) The date seven (7) days after posting if sent by mail;

9.3.3 Except as otherwise expressly provided herein, all notices, directions, instructions, certificates or other communications hereunder and all documents or instruments delivered in connection with this transaction shall be in the English language.

9.3.4 Notices shall be sent:

In case of the Seller

[insert details]

In case of the Procurer

[insert details]

In case of the Default Escrow Agent	[insert details]
In case of the Procurer Banks	[insert details]

#### **9.4 No Third Party Beneficiaries**

This Agreement is solely for the benefit of the Procurer, the Default Escrow Agent, Procurer's Banks and the Seller and their respective permitted assigns and successors (including the Lenders in the case of the Seller) and no other person shall have any rights under this Agreement.

#### **9.5 No Waiver**

The failure of a Party to insist in one or more instances upon the strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or relinquishment of any rights hereunder but the same shall continue in full force and effect.

#### **9.6 Severability**

The invalidity or unenforceability, for any reason, of any provision of this Agreement shall not prejudice or affect the validity or enforceability of the other provisions of this Agreement. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply.

#### **9.7 Assignments**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party shall assign any of its rights or obligations under this Agreement, to any third party without the prior written consent of the other Parties to this Agreement. Provided, however, that such consent shall not be required for any assignment, (and transfer) by the Seller of any or all of its rights hereunder to or in favour of the Selectee appointed in accordance with the terms of the PPA.

#### **9.8 Term and Termination**

##### **9.8.1 Term and Termination or Expiry of the PPA**

This Agreement shall be effective from the Effective Date. Subject to the provisions of Article 9.8.2 of this Agreement, the Agreement shall be coterminous with the PPA and shall terminate on the Expiry Date or if the PPA is terminated earlier in accordance with the terms therein, if at such time, all of the Secured Obligations towards the Seller, under the PPA, have been paid in full. The Procurer shall notify the Default Escrow Agent of such Expiry Date occurring or termination together with the Seller's confirmation that all of the Secured Obligations towards the Seller, under the PPA, have been paid in full and then the Procurer shall instruct the Default Escrow Agent to transfer all funds in the Default Escrow Account to the Procurer Account, and Default

Escrow Agent shall cease to act as the Default Escrow Agent and cease to implement any other fund transfer provided for in this Agreement.

#### **9.8.2 End of the Default Escrow Account**

Notwithstanding anything contained to the contrary in this Agreement, this Agreement shall automatically and without any need for further action, if all of the following events (a), (b) and (c) have occurred:

- a. A period of not less than two (2) years, from the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, has elapsed; and
- b. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and
- c. Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 11 of the PPA by such Procurer.

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to terminate this Agreement. If the Seller desires to continue with this Agreement, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs and expenses of continuation of this Agreement, including costs of the Escrow Agent, with effect from such date. In case the Seller fails to respond or agrees to terminate this Agreement, this Agreement shall stand terminated.

#### **9.8.3 Resignation**

The Default Escrow Agent may, after giving at least one hundred eighty (180) days notice in writing to both Parties resign from acting as Default Escrow Agent for the purposes of this Agreement.

Provided however that, no such resignation of the Default Escrow Agent shall be effective until the Parties jointly find a successor bank and such successor bank assumes its responsibilities after execution of an Default Escrow agreement (substantially in the form and content of this Agreement).within the period prescribed by this Agreement.

Provided further that, if a successor bank acceptable to the Seller is found within a shorter period, the Parties (with the consent of the Lenders) may waive the notice period of one hundred eighty (180) days.

#### **9.8.4 Termination of Appointment**

If, in the reasonable judgment of the Seller, the Default Escrow Agent commits any material breach of the terms of this Agreement, the Seller shall have the right to require the Procurer to terminate the appointment of the Default Escrow Agent after giving to

the Procurer and the Default Escrow Agent a written notice of ninety (90) days or of such shorter period (not shorter than thirty (30) days) as the Seller may decide. Such termination of the appointment of the Default Escrow Agent shall not be effective until a successor bank assumes responsibility.

#### **9.8.5 Termination for a Distress Event**

Upon the occurrence of a Distress Event, the Seller or Procurer the shall serve a written notice of termination on the Default Escrow Agent with copies to either party and appointment of the Default Escrow Agent shall immediately terminate on receipt of such notice by the Default Escrow Agent.

#### **9.8.6 Procedure**

- a. In the event of notice of resignation by the Default Escrow Agent or a notice of termination of the Default Escrow Agent by the Seller in accordance with Article 9.8.4 or 9.8.5 above, the Procurer and the Seller shall forthwith take steps to appoint a successor bank as Default Escrow Agent and shall, not later than thirty (30) days before the effectiveness of such resignation or termination, execute and cause such successor bank to execute an agreement with the Procurer and the Seller, on terms substantially similar to those contained in this Agreement. All expenses arising due to termination or appointment request of the Default Escrow Agent by the Seller shall be borne by the Seller.
- b. The Default Escrow Agent shall:
  - i. Cease therewith accepting any payments or deposits to the Default Escrow Account;
  - ii. Transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the replacement Default Escrow Agent;
  - iii. When all such amounts have been transferred, close the Default Escrow Account; and
  - iv. Within thirty (30) days of such closing, provide to the Procurer and the Seller a written report which shall fully reconcile all deposits to, and withdrawals from the Default Default Escrow Account.

- c. In the event of the resignation or termination of the Default Escrow Agent and the appointment of a successor to the Default Escrow Agent pursuant to this Article 9.8, new default Escrow Accounts shall be opened at the main branch of the successor Default Escrow and the relevant provisions of this Agreement shall be applicable to such account.

#### **9.9 Governing Law and Jurisdiction and Dispute Resolution**

- 9.9.1 This Agreement shall be governed by and construed in accordance with the laws of India.
- 9.9.2 If any dispute arises between the Parties hereto during the subsistence, in connection

with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate ('Dispute'), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 9.9.2 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- i. The Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with Rule 23 of the Indian Council of Arbitration Rules;
- ii. The place of arbitration shall be Patna, Bihar, India. The language of the arbitration shall be English;
- iii. The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- iv. The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and
- v. The provisions of this Article shall survive the termination of the PPA for any reason whatsoever.

#### **9.10 Entire Agreement**

The Agreement, including the Schedules, contains all of the understandings and agreements of whatsoever kind and nature existing between all the Parties hereto with respect to the subject matter of this Agreement and the rights, interests, understandings, agreements and obligations of the Parties relating thereto.

#### **9.11 Confidentiality**

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

- a. To their professional advisors;
- b. To their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;
- c. Without the prior written consent of the other Parties.

Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.

### **9.12 Counterparts**

This Agreement may be executed by the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective as of the date first above written.

SIGNED AND DELIVERED

BY THE WITHINNAMED "PROCURER"

BY THE HAND OF Mr. .....

(AUTORISED SIGNATORY) PURSUANT TO THE

RESOLUTION PASSED BY THE BOARD

ON THE DAY OF 2013

IN THE PRESENCE OF:

WITNESS:

NAME AND ADDRESS:

SIGNED AND DELIVERED

BY THE WITHINNAMED "SELLER"

BY THE HAND OF Mr. .....

(AUTORISED SIGNATORY) PURSUANT TO THE

RESOLUTION PASSED BY THE BOARD

ON THE DAY OF 2013

IN THE PRESENCE OF:

WITNESS:

NAME AND ADDRESS:

SIGNED AND DELIVERED

BY THE WITHINNAMED "DEFAULT ESCROW  
AGENT"

BY THE HAND OF Mr. .....

(AUTORISED SIGNATORY)

ON THE DAY OF 2013

IN THE PRESENCE OF:

WITNESS:

NAME AND ADDRESS:

SIGNED AND DELIVERED

BY THE WITHINNAMED "PROCURER BANKS"

1  
2  
3  
4

BY THE HAND OF THEIR RESPECTIVE AUTHORISED SIGNATORIES

ON THE DAY OF 2013

IN THE PRESENCE OF: WITNESS:

NAME AND ADDRESS:

*[to be inserted]*

DRAFT FOR STAKEHOLDER'S COMMENTS

**SCHEDULE 2 PROCURERS FINANCING PARTIES**

*[to be inserted]*

DRAFT FOR STAKEHOLDER'S COMMENTS

NIT No. : \_\_\_\_\_, Dated: \_\_\_\_\_

**Draft**

**AGREEMENT TO HYPOTHECATE**

**cum**

**DEED OF HYPOTHECATION**

**FOR**

**PROCUREMENT OF SOLAR POWER**

**ON**

**LONG TERM (25 YEARS) BASIS**

**Between**

**[Insert the name of the successful bidder]**

**and**

**North/ South Bihar Power Distribution Company Ltd.**

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DRAFT FOR STAKEHOLDER'S COMMENTS

This **AGREEMENT TO HYPOTHECATE cum DEED OF HYPOTHECATION** is made this .....[Insert date] day of ..... [Insert month] of Two thousand thirteen (\_\_\_\_-\_\_-2013) at Patna, by and between:

- 1 [Insert Name of the Seller], a company incorporated under The Companies Act 1956 and having its registered office at ..... [insert address], (hereinafter referred to as "**Seller**" which expression shall unless it be repugnant to or inconsistent with the context or meaning thereof be deemed to include its successors and permitted assigns) of the **FIRST PART**;
- and
- 2 **North/ South Bihar Distribution Company** Ltd., a company incorporated under The Companies Act 1956, having its registered office at Vidyut Bhawan, Bailey Road, Patna, Bihar – 800 021 (hereinafter referred to as "**Procurer**", which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **SECOND PART**;

(Each of the parties of the **FIRST** and **SECOND PART** above are individually referred to as a "**Party**" and collectively as the "**Parties**").

**WHEREAS:**

- A. Bihar State Power (Holding) Company Ltd. (BSPHCL) had invited the bids for procurement of solar power by the power project developers through a bidding process;
- B. Pursuant to the said bidding process, ..... [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply of power to the Procurer, from the Photo-voltaic technology based Solar Power Project at \_\_\_\_\_ in the state of Bihar, in accordance with the terms of the Power Purchase Agreement, dated \_\_\_\_\_ (PPA) executed between the Seller and the Procurer;
- C. The Procurer has agreed to purchase the Electrical Output up to the Contracted Capacity from the Seller and to pay the Seller, the Tariff (as defined in the PPA) set out in Article 9 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;
- D. In terms of the said PPA, the Procurer is required to duly secure, the Seller by establishing an arrangement for payments of the Secured Obligations becoming due to the Seller from the Procurer under the PPA and the Seller and the Procurer have agreed on a mechanism through a Default Escrow Agreement (as defined hereinafter) for securing the Secured Obligations;
- E. In furtherance of its obligations under the PPA, the Procurer has agreed to create and grant a charge and security interest in favour of the Seller on the Procurer's right, title and interest on and in the Incremental Receivables in accordance with the terms hereof; and

F. Accordingly, the Parties wish to enter into this Agreement to formally record their respective understanding, representations and covenants in respect of the aforesaid.

**NOW THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other considerations, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

DRAFT FOR STAKEHOLDER'S COMMENTS

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.1.1 Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA and the Default Escrow Agreement.

1.1.2 Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

**“Agreement”** means this Agreement to Hypothecate Cum Deed of Hypothecation entered into between the Procurer and the Seller and the modifications, amendments or alterations thereto from time to time;

**“Business Day”** shall mean any day which is not a bank or a public holiday in Bihar.

**“Default Escrow Agreement”** means the agreement titled ‘Default Escrow Agreement’ dated ..... entered into between the Parties and the Escrow Agent;

**“Hypothecated Interest”** shall have the meaning as ascribed thereto in Article 2.2.1 of this Agreement;

**“Power Purchase Agreement”** or **“PPA”** means the agreement titled ‘Power Purchase Agreement’ dated ..... entered into between the Procurer and the Seller and as may be amended from time to time;

### 1.2 Interpretation

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA is incorporated herein by reference and shall apply for the purposes of this Agreement.

## ARTICLE 2 THE SECURITY INTEREST

### 2.1 Covenant to pay

In consideration of the Seller having entered into the PPA and agreeing to supply electricity to the Procurer, subject to the terms and conditions set out in the PPA, the Procurer does hereby covenant with the Seller that it shall pay to the Seller all the Secured Obligations as stipulated in the manner set out in the PPA.

### 2.2 The Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the PPA, the Procurer as the legal and/ or beneficial owner of the Hypothecated Interest does hereby agree to hypothecate on the Charge Creation Date by way of pari passu charge in favour of the Seller:

- (a) All right, title, interest, benefit, claims and demands whatsoever of the Procurer in respect of the Incremental Receivables (collectively, the “**Hypothecated Interest**”); and
- (b) The charge created pursuant to this Article by the Procurer over the Hypothecated Interest in favour of the Seller shall be a floating charge and subject to Article 3.1.1 of this Agreement, shall not hinder the Procurer from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof.

Provided that the floating charge created pursuant to this Article shall immediately and automatically be converted into a fixed charge upon the occurrence of any Event of Default as defined in the Default Escrow Agreement.

2.2.1A On the date of the creation of the pari passu charge in accordance with Article 2.2.1, this Agreement to Hypothecate cum Deed of Hypothecation shall be deemed to continue as the Deed of Hypothecation between the Parties in accordance with the terms contained herein.

2.2.1B At any time after an Event of Default as defined in the Default Escrow Agreement occurs and is continuing, the Seller shall have the authority to act upon and enforce the provisions of this Agreement in accordance with the provisions hereof and the PPA.

2.2.1C Following the occurrence of an Event of Default as defined in the Default Escrow Agreement, except as may be required under the PPA, the Seller shall not be obliged before taking steps to enforce the Security constituted by or pursuant to this Agreement to:

- (a) Take action or obtain judgment or any arbitration award against the Procurer in any court or before any arbitrator;
- (b) Make or file any claim or proof in a winding up or dissolution of the

Procurer; and

- (c) Exercise any legal remedies, which may be available to it under or in respect of the PPA.

### **2.3 Release of Charge**

2.3.1 The pari passu charge created under Article 2.2.1 shall be immediately released and vacated on the earlier of:

- (a) The date on which the PPA has terminated, in accordance with the terms thereof, and all the Secured Obligations have been paid in full;
- (b) The occurrence of all of the following events mentioned in sub-articles (i), (ii) and (iii) below, subject to the proviso to this sub-clause:
  - i. A period of not less than two (2) years from the Scheduled Delivery Date or Revised Scheduled Delivery Date has elapsed; and
  - ii. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under the PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and
  - iii. Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 11 of the PPA by such Procurer.

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to release the pari passu charge created under this Agreement. If the Seller desires to continue with said pari passu charge, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of such pari passu charge, with effect from such date. In case the Seller fails to respond or agrees to release the pari passu charge, the said charge shall forthwith cease and this Agreement shall stand terminated.

2.3.2 In the case of the occurrence of the events described in Article 2.3.1 (a) or (b), and in the event the Seller fails to respond or agrees to release the pari passu charge as mentioned above, the Seller shall at its own costs and expenses forthwith:

- (a) Cede the benefit of the pari passu charge on and security interest in the Hypothecated Interest; and
- (b) Re-assign, retransfer or re-convey to the Procurer, or as it may direct, the Hypothecated Interest or such part thereof as may remain, freed from the Security created hereunder; and
- (c) Execute all such documents and do all such other acts as may be required by the Procurer in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

DRAFT FOR STAKEHOLDER'S COMMENTS

## **ARTICLE 3 FURTHER ENCUMBRANCES**

### **3.1 Further Encumbrances**

3.1.1 Except for the charge created under this Agreement and permitted under Clause 3.1.2 hereof, the Procurer shall not, without the prior written consent of the Seller, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Procurer, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

3.1.2 The Procurer shall be entitled to create a pari passu charge in favour of the Procurer Financing Parties over the Hypothecated Interest, provided however the Procurer shall ensure that the rights of the Seller under this Agreement are not prejudiced in any manner.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties of the Procurer

The Procurer acknowledges that the Seller has entered into this Agreement in reliance on the representations and warranties made by the Procurer in this Agreement. The Procurer hereby represents and warrants to the Seller that:

- (a) The Procurer is a duly constituted entity validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Procurer and constitute the valid, legal and binding obligations of the Procurer enforceable in accordance with the terms hereof and thereof respectively;
- (c) The charge and security interest created hereunder constitute a pari passu security interest in favour of the Seller;
- (d) To the best of its knowledge, there are no actions, suits or proceedings pending against the Procurer before any court or administrative body or arbitral tribunal that would adversely and materially affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its duties and obligations under this Agreement;
- (e) The execution, delivery and performance of this Agreement by the Procurer have been duly authorized by all requisite actions, and will not constitute a violation of:
  - i. Any statute, judgment, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - ii. The Procurer's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (f) Based on available records, the Receivables are believed by the Procurer to be true and bonafide and fully collectible Receivables generated in the ordinary course of business of the Procurer and the Procurer has full right and interest in the Receivables;
- (g) No charge, security interest or other encumbrance presently exists over the Hypothecated Interest other than the charge created in favour of the Procurer Financing Parties and created under this Agreement.

### 4.2 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Procurer that:

- (a) The Seller is a company duly constituted under the Companies Act, 1956,

as amended, and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

- (b) This Agreement has been duly executed by a duly authorized officer of the Seller and constitute the valid, legal and binding obligations of the Seller enforceable in accordance with the terms hereof; and
- (c) The execution, delivery and performance of this Agreement by the Seller has been duly authorized by all requisite actions, and will not constitute a violation of:
  - i. Any statute, judgment, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Seller, its assets or its business; or
  - ii. The Seller's constitution or other documents or any indenture, contract or agreement to which it is a Party or by which it or its property may be bound.

## **ARTICLE 5 PROCURER UNDERTAKINGS**

### **5.1 Certain Undertakings**

During the term of this Agreement, the Procurer shall:

- (a) Do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Seller on and in the Hypothecated Interest and to take all steps to maintain such charges and security interest in full force and effect on and in the Hypothecated Interest;
- (b) Obtain and maintain at its own expense any license, permission, consent or authorization and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Agreement and to enable the Seller to have the full benefit of this Agreement;
- (c) Deposit or cause to be deposited immediately upon the receipt of Receivables in the Procurer's Banks; and
- (d) After the occurrence and during the continuance of an Event of Default deliver to the Seller (not later than the second Business Day of each Month) copies of summary statements of the electricity sold during the immediately preceding Month.

### **5.2 Indemnification**

The Seller and every attorney, appointed by it shall be entitled to be indemnified out of the Hypothecated Interest in respect of all liabilities and expenses incurred by it in the execution of the powers of the Seller under this Agreement other than those arising on account of the negligence or default or misconduct on the part of the Seller, or any such attorney and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done by such person pursuant to this Agreement.

### **5.3 Further Actions**

The Procurer shall from time to time upon the request of the Seller, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Seller) as the Seller may reasonably require in order that the Seller may obtain the full benefit of the charge created by this Agreement and of the rights and powers hereby granted.

## ARTICLE 6 MISCELLANEOUS PROVISIONS

### 6.1 Continuing Security

6.1.1 The Security created by this Agreement shall be a continuing security for the performance and discharge of the Secured Obligations.

6.1.2 The Security so created

- (a) shall not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any part of the Secured Obligations.

6.1.3 Neither the charge hereby granted nor the rights, powers and remedies conferred on the Seller by this Agreement or by law shall be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Seller to the Procurer or any other party providing Security for the Secured Obligations;
- (b) any amendment of the PPA or the Default Escrow Agreement not agreed to by the Seller;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the PPA or the Default Escrow Agreement or any document connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Procurer's liability hereunder; and
- (e) any change in the structure or organization of the Procurer as a result of a Change in Law, insolvency of the Procurer or otherwise.

### 6.2 Waiver and Severability

No failure or delay by the Seller in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply.

### **6.3 Assignment and Transfer**

- 6.3.1 This Agreement shall inure to the benefit of the Seller and its successors and permitted assigns and the obligations of the Procurer hereunder shall be binding on its successors and assigns notwithstanding any Change in Law or change in the constitution or status of the Procurer or of any of its successors, to the extent stated therein.
- 6.3.2 The Procurer shall not have the right to assign all or any of its rights or obligations hereunder.
- 6.3.3 The Seller shall have the right to assign all or any of its rights, title and interest hereunder and to the Hypothecated Interest as security only to the Lenders or the Selectee appointed under the terms of the PPA.

### **6.4 Notices**

- 6.4.1 Any notice or other information required or authorised by this Agreement to be given shall be given in writing, in English and by:
  - (a) delivering it by hand (a written acknowledgement in receipt thereof shall be sufficient evidence that the notice or other information has been duly given); or
  - (b) sending it by courier or registered post,;to the relevant Parties at the addresses referred to in Article 6.4.2 below.
- 6.4.2 The address and other details of the Parties for the purpose of communication, unless otherwise notified in writing to the other Parties shall be:  
*[insert addresses of the Procurer and the Seller]*

### **6.5 Governing Law and Dispute Resolution**

#### **6.5.1 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of India.

#### **6.5.2 Dispute Resolution**

If any dispute arises between the Parties hereto during the subsistence, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in this Article 6.5.2, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- i. The Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules;
- ii. The place of arbitration shall be Patna, Bihar, India. The language of the arbitration shall be English;
- iii. The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- iv. The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and
- v. The provisions of this Clause shall survive the termination of the PPA for any reason whatsoever.

#### **6.6 Language**

This Agreement is written in the English language. The English language text of this Agreement shall prevail over any translation.

#### **6.7 Amendments**

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if in writing and signed in person or by an authorised representative of the Parties.

#### **6.8 Counterparts**

This Agreement may be executed in two or more counterparts, but all of such counterparts shall together constitute one and the same instrument.

#### **6.9 Terms of this Agreement to prevail**

The Parties hereto agree that if any provisions of this Agreement shall conflict with any provision of the PPA, then the provisions of this Agreement shall prevail

#### **6.10 Confidentiality**

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

- (a) to their professional advisors;
- (b) to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

without the prior written consent of the other Parties.

Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.

### **6.11 Effectiveness**

This Agreement shall become effective on the date of signing of this Agreement by the Parties.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement through their authorised representatives on the day, month and year first above mentioned

SIGNED AND DELIVERED  
BY THE WITHINNAMED "PROCURER"  
BY THE HAND OF Mr. ....  
(AUTHERISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD

ON THE \_\_\_\_ DAY OF \_\_\_\_\_ (MONTH), \_\_\_\_ (YEAR)

IN THE PRESENCE OF:  
WITNESS:  
NAME AND ADDRESS:

SIGNED AND DELIVERED BY THE WITHINNAMED "SELLER" BY THE HAND OF Mr. ....  
(UTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD ON THE DAY OF 2012

IN THE PRESENCE OF: WITNESS:  
NAME AND ADDRESS: