



**Madhya Pradesh Urja Vikas Nigam Limited**

**Invites Request for Proposal (RFP)**

**For**

**Selection of Renewable Power Generators (RPGs)**

**Through**

**Tender process**

**For**

**Setting up of Grid connected Solar PV based Power Plants (SPP)**

**under feeder solarization component of PM KUSUM - C Scheme**

**for sale of power to MPPMCL**

**RFP No: F/UVN/2022/SC/1557**

**Date: 17.06.2022**

**Issued by: -**

**Madhya Pradesh Urja Vikas Nigam Limited (MPUVNL)**

Urja Bhawan Link Road No. 2, Shivaji Nagar, Bhopal – 462016

Telephone No.: +91-755-2575670, 2553595

Fax No: 91-755-2553122

Email – kusumc.mpuvn@gmail.com

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**Madhya Pradesh Urja Vikas Nigam Limited (MPUVNL)**

Urja Bhawan Link Road No. 2, Shivaji Nagar, Bhopal – 462016

Telephone No.: +91-755-2575670, 2556566, 2767270;

website: [http:// www.mprenewable.nic.in](http://www.mprenewable.nic.in), Email: kusumc.mpuvnl@gmail.com

**Notice Inviting Tender**

**RFP No: F/UVN/2022/SC/1557 Dated: 17.06.2022**

Madhya Pradesh Urja Vikas Nigam Limited, invites Bids from the Bidders to participate through this Request for Proposal (RFP) for Selection of Renewable Power Generators (RPGs) for Implementation of approximate 8 MW of Grid Connected Solar PV Systems for Sale of Solar Power to MPPMCL under feeder solarization component of PM KUSUM-C near Sanchi in the state of Madhya Pradesh, India.

For the implementation of above mentioned work, Bidders should submit their bid proposal and all requisite documents complete in all respects on or before **11.07.2022** up to 20:00 Hours online in <https://www.bharat-electronictender.com> and in the office of “Nodal Agency” in prescribed format. Bid proposals received without the prescribed Bid Processing Fee shall be rejected. It may be noted that Bid Security was exempted for all Bidders till 31 December 2021 in line with order of Ministry of Finance, Govt. of India dated 12.11.2020. Hence, every Bidder is required to mandatorily submit Bid Security in prescribed manner. In the event of any date indicated above is a declared Holiday, the next working day shall become operative for the respective purpose mentioned herein. Technical Bid will be opened on **13.07.2022** at 11:00 Hours online in the presence of authorized representatives of Bidders who wish to be present.

Bid documents which include eligibility criteria, technical specifications, various conditions of Agreement, formats, etc. can be viewed from Nodal Agency’s website <http://www.mprenewable.nic.in/> and can be downloaded from <https://www.bharat-electronictender.com> for online submission.

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(MPUVNL)

**DISCLAIMER**

1. Though adequate care has been taken while preparing the RFP documents (inclusive of Formats and Annexures), the Bidder shall satisfy themselves that the documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from prospective Bidder on or before pre-bid meeting date, it shall be considered that the RFP document is complete in all respects and has been received by the Bidder. Bidder shall be responsible to read all clauses in conjunction with PPA (Part of RFP, in the form of Annexure).
2. Nodal Agency reserves the right to modify, amend or supplement RFP documents including all formats and annexure at any time before Bid submission deadline. Interested Bidders are advised to follow and keep track of Nodal Agency's website as well as designated e-tender portal for updated information. Nodal Agency is not obligated to send/ communicate separate notifications for such notices/ amendments/ clarification etc. in the print or electronic media or individually. Nodal Agency shall not be responsible and accountable for any consequences to any party, whatsoever.
3. While this RFP and associated bid process is carried out in good faith and adequate reasonableness, neither Nodal Agency nor their employees or advisors make any representation or warranty, expressed or implied, or accept any responsibility or liability, whatsoever, in respect of any statement or omissions herein, or the accuracy, completeness, procedural inadequacy 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.
4. The capitalized term or any other terms used in this RFP, unless as defined in RFP or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 or Company Act, 1956/ 2013 or Indian Partnership Act, 1932 or Limited Liability Partnership Act, 2008 or Income Tax Act, 1961, Guidelines for implementation of PM KUSUM scheme, 22.07.2019 and applicable rules or regulations framed under these Acts/ Guidelines.

Request for Proposal for Grid Connected SPPs in Madhya Pradesh under feeder solarization component of PM KUSUM - C Scheme

**A. BID INFORMATION SHEET**

<b>Document Description</b>	Request for Proposal (RFP) for Selection of RPGs for Implementation of approximate 8 MW Grid Connected Solar based power plants connected to selected 33/ 11 kV substation(s), near Sanchi, for Sale of Solar Power to MPPMCL in the state of MP under feeder solarization component of PM KUSUM-C
<b>RFP No. &amp; Date</b>	RFP No: F/UVN/2022/SC/1557 Dated: 17.06.2022
<b>RFP Purchase Start Date</b>	20.04.2022 at 23:55 Hrs.
<b>RFP Purchase End Date</b>	11.06.2022 at 18:00
<b>Total Capacity</b>	Approximate 8 MW
<b>Project or Project Size</b>	<p>As per demand assessed for all concerned agricultural feeders emanating from a particular sub-station and nearby urban load centre, subject to maximum available capacity at concerned sub-station. Total Bid capacity (in MW) at one substation shall be considered as one Project.</p> <p>Project size corresponding to a substation = <math>\sum [(E \times 1000) / (24 \times D \times CUF)]</math>, for all agricultural feeders emanating from a substation and nearby urban load centre;</p> <p>Where,</p> <p>E= Average input energy of an agricultural feeders emanating from concerned substation and nearby urban load centre assessed in accordance with methodology prescribed by MNRE under KUSUM-C guidelines for feeder solarization</p> <p>D= number of days in a year</p> <p>CUF= capacity utilization factor of SPP (assumed at 19% or more)</p>
<b>Bid Size</b>	Bidder can place Bid for any number of sub-stations. There is no cap on total bid capacity by a Bidder
<b>Exclusivity</b>	A Bidder shall place only one bid for a substation/ Project i.e. all target feeders emanating from one substation and nearby urban load centre shall be considered as one Project. Total Bid capacity (in MW) at one substation shall be considered as one Project
<b>Selection of substation</b>	Substations to be considered for feeder solarization under

<p><b>for SPPs under component-C of PM KUSUM scheme</b></p>	<p>component-C of PM KUSUM scheme as identified by concerned Discoms shall meet following criteria:</p> <ul style="list-style-type: none"> <li>• It has at least one dedicated agricultural feeder emanating from 33/11 kV substation</li> <li>• It has at least one non-agricultural feeder emanating from 33/11 kV substation</li> <li>• Concern 33/11 kV substation has technically feasible capacity to accommodate proposed capacity of solar project under feeder solarization component of PM KUSUM-C</li> </ul>
<p><b>Duration of PPA</b></p>	<p>25 years from Commercial Operation Date</p>
<p><b>Maximum CUF</b></p>	<p>Procurer, in any Contract Year, shall not be obligated to purchase additional energy above 21% CUF on annual basis during the PPA period from the RPG at the PPA tariff of that year. However, the excess energy generated by RPG above 21% CUF may be procured by Procurer at 75% of the PPA tariff as per Article 4.3 of PPA.</p>
<p><b>Minimum CUF</b></p>	<p>For any Contract Year except for the first year of operation, the renewable power generator, shall be required to achieve a minimum CUF of 15% on annual basis during the period of PPA.</p>
<p><b>Broad Scope</b></p>	<p>Design, Engineering, Supply, construction, erection, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation &amp; Maintenance for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) in accordance with the applicable Law, the Grid Code, the terms and conditions of PPA and prudent utility practices for Sale of Solar Power to MPPMCL at the Delivery Point in concerned substation(s) near Sanchi in the state of Madhya Pradesh, India.</p>
<p><b>Subsidy from Govt. of India i.e. Central Financial Assistance (CFA)</b></p>	<p>Shall be INR 1.05 crore/ MW i.e. 30% of estimated cost of installation of SPP at INR 3.5 crore/ MW. CFA shall be governed by relevant and applicable Subsidy as per Govt. of India guidelines from time to time.</p> <p>CFA up to 100% of the total eligible CFA will be released to the RPG through nodal agency on successful operation and performance of solar plant for 2 months after commissioning, with CUF of at least one month being as per minimum CUF as agreed in PPA.</p>

	<p><b>Important clarification:</b> In cases where Project Size is determined to meet energy requirement of concerned agricultural feeders as well as energy requirement of nearby urban/ rural load centres, the CFA shall be limited to capacity adequate for meeting energy requirements of concerned agricultural feeders only as per KUSUM-C guidelines.</p>
<b>Selection Procedure</b>	<p>Financial Bid of only Qualified Bidders i.e. RFP compliant and meeting Eligibility Criteria (i.e. technically qualified bidders), shall be opened.</p> <p>List of all Financially Qualified Bidders (FQBs) shall be prepared in ascending order of tariffs of respective FQBs to fill required bucket of solar capacities.</p> <p>The detailed procedure is given in the section 4 of this RFP.</p>
<b>Pre-bid Meeting</b>	<p>The pre-bid meeting shall be hosted on an online platform on 27.06.2022 at 13:00 hours. Interested Bidders may nominate their representatives (up to a maximum of 2) to attend the same. The Bidders should share the following participation details by 26.06.2022 at <b>kusumc.mpuvn@gmail.com</b> and <b>mpnred.wind@gmail.com</b></p> <ul style="list-style-type: none"> <li>• Name of the Bidder</li> <li>• Name, Email, Contact No. of the Representative (s)</li> </ul> <p>Joining instructions shall be shared 24 hours before the Pre-Bid Meeting.</p>
<b>Last date &amp; Time of Submission of Bid submission (ONLINE only)</b>	11.07.2022 up to 20:00 hours
<b>Last date &amp; Time of Submission of required Bid documents in HARD copies</b>	12.07.2022 up to 16:00 hours
<b>Bid Opening (Technical)</b>	13.07.2022 at 11:00 hours
<b>Bid Opening (Financial)</b>	18.07.2022 at 16:00 hours
	(Any modification in date, time and venue for Financial Bid

	<p>opening shall be updated on websites. Bidders are advised to keep tracking of the same).</p>
<b>Bid Processing Fee (non- refundable)</b>	<p><b>MPUVNL's Bid Processing Cost:</b> INR 5,000/- (Rupees Five Thousand only) + GST (18%) i.e. INR 5,900/- per MW or a part thereof. The bid processing fees will be paid to MPUVNL in following account (through NEFT/RTGS) and proof of the same shall be mailed to MPUVNL as well as submitted with online bid:</p> <ul style="list-style-type: none"><li>a) Account Holder Name: M. P. Urja Vikas Nigam Ltd.</li><li>b) Bank Name: ICICI Bank Ltd.</li><li>c) Bank Branch Address: Shivaji Nagar, Bhopal</li><li>d) Account No.: 656501700049</li><li>e) IFSC Code: ICIC0006565</li><li>f) MICR Code: 462229012</li></ul> <p>The e-tendering portal charges will be charged by the tendering portal directly as per following:</p> <ol style="list-style-type: none"><li>1. <b>E-Tender Portal Registration Fees:</b> During the registration process each bidder will have to pay the applicable ETS Registration-Fee of INR 3,000 + GST (18%). For already registered bidder on the portal, need not to re-pay registration fees for 1 year from date of their registration.</li><li>2. <b>Bid Participation Fee:</b> Bidder Participation Charges Per - INR 7,000/ per sealed bid + GST (18%)</li></ol> <p>Charges towards the e-tender portal, govern by the portal service provider, and shall be borne by the bidder.</p> <p>No exemption towards bid processing fees and e-tendering fees is allowed to any type of organizations/ agencies including MSMEs or any Govt./ semi Govt./ PSUs.</p>
<b>Bid Security</b>	<p>INR 1 lakh per MW or part thereof as bid security is to be paid by all interested Bidder. It shall be valid for 180 days from the bid deadline. It may be extended further for a period of ninety (90) days with mutual consent of the nodal agency and bidder.</p>



	<p>Interest free Bid Security as indicated in RFP document may be provided either in the form of Bank Guarantee as per prescribed format or submitted to MPUVNL in following account (through NEFT/RTGS) and proof of the same shall be submitted with online bid:</p> <ul style="list-style-type: none"><li>a) Account Holder Name: M. P. Urja Vikas Nigam Ltd.</li><li>b) Bank Name: ICICI Bank Ltd.</li><li>c) Bank Branch Address: Shivaji Nagar, Bhopal</li><li>d) Account No.: 656501700049</li><li>e) IFSC Code: ICIC0006565</li><li>f) MICR Code: 462229012</li></ul> <p>No exemption towards Bid Security is allowed to any type of organizations/ agencies including MSMEs or any Govt./ semi Govt./ PSUs</p>
<b>Performance Bank Guarantee ("PBG")</b>	<p>Successful Bidder/ RPG shall be required to furnish a Performance Bank Guarantee ("PBG") of 5 lakh/ MW for 12 months as per clause 4.17.</p> <p>The PBG will be returned to the power producer immediately after successful commissioning of solar power plant, after taking into account any penalties due to delay in commissioning.</p>
<b>Update on this RFP</b>	<p>Bidders are advised to keep track of the changes/ updates/ corrigendum regarding this RFP on <a href="https://www.bharat-electronictender.com">https:// www.bharat-electronictender.com</a> and <a href="http://www.mprenewable.nic.in">www.mprenewable.nic.in</a> (for reference only)</p>
<b>Address for correspondence with nodal agency</b>	<p>To, Superintending Engineer, Madhya Pradesh Urja Vikas Nigam Limited, "Urja Bhawan" Link Road No. 2, Shivaji Nagar, Bhopal – 462016 Landline No – 0755 2553595</p>

## **B. DEFINITIONS & ABBREVIATIONS**

In this “Bid / RFP Document” the following words and expression will have the meaning as herein defined where the context so admits:

“**Affiliate**” shall mean a Company / Limited Liability Partnership (LLP) Firm/ Partnership Firm/ Sole Proprietor that directly or indirectly

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

a Bidder or Member of a Consortium/ JV. Any bank or financial institution shall not be considered as Affiliate. Also, any organization/ entity/ institution where the President of India or Governor of a State are the ultimate owner but otherwise are separate organization/ entity/ institution from each other shall not be considered as Affiliate;

“**Appropriate Commission**” - Unless otherwise stated, Appropriate Commission shall be the commission of the state where DISCOM is situated; In this case, it shall mean Madhya Pradesh Electricity Regulatory Commission (MPERC);

“**Bid**” shall mean the Technical and Financial Proposal submitted by the Bidder along with all documents/ credentials/ attachments/ annexure etc., in response to this RFP, in accordance with the terms and conditions hereof;

“**Bidder(s)**” shall mean eligible Company/ Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor or Consortium or Joint Venture (JV) of above in any form submitting the Bid in response to this RfP. Any reference to the Bidder includes its successors, executors and permitted assigns as the context may require;

“**Bidding Consortium (or Consortium)/ Joint Venture (or JV)**” shall refer to a group of bidding Company/ Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor that has collectively made a Bid in response to RFP for the project. Consortium/ JV of a maximum of two entities/ members is allowed under this RFP.

“**Bid Deadline**” shall mean the last date and time for submission of Bid in response to this RFP as specified in Bid Information Sheet;

“**Bid Security**” shall mean Bid Security to be submitted by the Bidder along with the Bid as per provision of RfP;

“**B.I.S.**” shall mean specifications of Bureau of Indian Standards (BIS);

“**Bid Validity Period**” shall mean 180 days from the bid deadline. It may be extended

further for a period of up to ninety (90) days with mutual consent of the nodal agency and bidder;

“**CEA**” shall mean Central Electricity Authority;

“**CERC**” shall mean Central Electricity Regulatory Commission

“**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;

“**Competent Authority**” shall mean Managing Director of Nodal Agency, himself and/ or a person or group of persons nominated by him for the mentioned purpose herein of this RFP;

“**Completion**” shall mean supply and erection/installation of the Project and demonstration of CUF as per provisions of the PPA;

“**Commissioning**” shall mean demonstration of successful operation of the Grid Connected Project in accordance with prevailing regulations;

“**Commercial Operation Date**” or “**COD**” shall mean the date on which the commissioning certificate is issued upon successful commissioning (as mentioned in Article 1 of PPA) of the project;

“**Company**” shall mean a body incorporated in India under the Companies Act, 1956 or Companies Act, 2013 including any amendment thereto;

“**Comprehensive Operation and Maintenance**” or “**Comprehensive O&M**” or “**O&M**” shall mean insurance, warranty, spare parts and operation & maintenance of Projects during the term of the PPA;

“**Control**” shall mean with respect to any Entity means more than 51% ownership, directly or indirectly, of such Person or the power to direct the management and policies of such Person by operation of law, contract or otherwise;

“**Day(s)**” shall mean a 24 (twenty-four) hour period beginning at 00:00 hours Indian Standard Time and ending at 23:59:59 hours Indian Standard Time;

“**Delivery point**” shall mean a point where power is injected into grid at 33/11 kV substation and it shall preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bar of 33/11 kV or higher voltage substation with due approval of Procurer(s). Metering shall be done at this interconnection point where the power is injected into the 33/ 11 kV or higher voltage Sub-station. For interconnection with grid and metering, the RPG shall abide by the relevant

and applicable regulations, Grid Code notified by the State Commission and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the Appropriate Commission or CEA and relevant provision of PPA;

All costs and charges including but not limited to line losses and other charges as notified by the appropriate commission up to the point of interconnection (Delivery Point), if applicable, associated with the evacuation arrangement shall be borne by RPG.

“**DISCOM**” shall mean Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd., Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd. and Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Ltd.

“**Effective Date**” shall mean the date as defined in Article 1 of PPA;

“**Eligibility Criteria**” shall mean the Eligibility Criteria as set forth in this RFP;

“**Expiry Period**” Shall mean the date occurring twenty-five (25) years from the Commercial Operation Date subject to that the supply of power shall be limited for a period of 25 years from the COD unless extended by the Parties as per this Agreement;

“**Financial Bid**” shall mean online financial Bid, containing the Bidder’s quoted fixed tariff for the entire term of the PPA, with effect from the COD as per format given in the RFP;

“**Financially Qualified Bidder**” shall mean, for a Project, a Qualified Bidder who has quoted lowest tariff (L-1) for the Project.

“**First Operational Year**” shall mean the period commencing from the Commissioning and expiring at the end of the Calendar Month in which Project completes twelve (12) Months from the COD of PPA Capacity;

“**Government Authority**” means one or more of the GoI, the GoMP, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoMP exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the SPD, the Unit or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of this Agreement.

“**IEC**” shall mean specifications of International Electrotechnical Commission;

“**Inspecting Authority**” shall mean the authority designated by the Competent Authority for the said purpose;

“**kW**” shall mean Kilowatt;

“**kWh**” shall mean Kilowatt Hour;

“**Lead Member**” shall mean the member of Bidding Consortium/ Joint Venture which is designated as leader by other member to represent them as Bidder for this RFP;

“**LOA**” shall mean Letter of Award issued by the MPUVN to the RPG;

“**MPERC**” shall mean Madhya Pradesh Electricity Regulatory Commission

“**MPPMCL / MP DISCOMs**” shall mean Madhya Pradesh Power Management company and Distribution companies

“**MNRE**” shall mean Ministry of New and Renewable Energy, Government of India;

“**Month(s)**” shall mean a period of 30 days from (and excluding) the date of the event, where applicable, else a calendar month;

“**MW**” shall mean Mega Watt;

“**MWp**” shall mean Mega Watt Peak;

“**Nodal Agency**” shall mean the Madhya Pradesh Urja Vikas Nigam Limited, (MPUVNL) Bhopal;

“**Operational Year(s)**” the First Operational Year and thereafter each period of 12 (twelve) Months till the Expiry Date of PPA;

“**Paid-up Share Capital**” means the paid-up share capital as defined in Section 2 of the Company Act, 2013;

“**Power Producer**” shall mean anyone who has accepted the LOA then, enters into a PPA with the Procurer for supply of solar power and has legal ownership of all the equipment of the Project;

“**Power Purchase Agreement or PPA**” shall mean the agreement to be executed between RPG and the Procurer for the supply of Solar Power from the Project commissioned by the RPG to Procurer;

“**Premise**” shall mean any land, building or structure or part thereof or combination thereof including any other vacant / non vacant area which is part of the Procurer’s establishment;

“**Procurer(s)**” shall mean the person or company or organization procuring solar power from the Power Producer at competitively determined tariff under the RFP i.e. MPPMCL;

“**Project(s)**” shall mean the Grid Connected Solar PV Project(s) [SPPs] corresponding to a 33/11 kV substation as envisaged under this RfP;

“**Project Capacity**” means the capacity of the individual Projects mentioned in this RfP;

**“Project Company”** shall mean Company incorporated by the Bidder/ RPG as per Indian Laws;

**“Qualified Bidder(s)”** shall mean Bidder(s) who have submitted Bid(s) in compliance with this RfP and is/are qualified as per the Eligibility Criteria pursuant to this RFP who shall be eligible for opening of Financial Bid;

**“RFP”** shall mean Request for Proposal (RFP) / Bid document / Tender document and shall include formats and annexures in it;

**“Renewable Power Generator” or “RPG”** shall mean Bidder declared successful following due process in accordance with this RfP. Any reference to the RPG shall include its successors, executors and permitted assigns as the context may require;

**“Scheduled Commissioning Date” or “SCD”** shall mean 9 months from the effective date as defined in Article 1 of PPA;

**“Statutory Auditor”** shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or Companies Act, 2013 or under the provisions of any other applicable governing law;

**“Successful Bidder(s)”** shall mean the RPG(s) selected by Nodal Agency pursuant to this RFP for implementation of Project as per the terms and condition of the RFP Documents, and to whom LOA has been issued;

**“Term of PPA”** shall have the meaning ascribed thereto in article 2 of PPA;

**“Year”** shall mean 365 Days or 366 Days in case of leap year when February is of 29 Days;

### **C. INTERPRETATIONS**

1. Words comprising the singular shall include the plural & vice versa.
2. Bidder shall mean sole bidding entity, lead bidding entity or members of consortium/ joint venture.
3. An applicable law shall be construed as reference to such applicable law including its amendments or re-enactments from time to time.
4. A time of day shall save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
5. Different parts of this contract are to be taken as mutually explanatory and supplementary to each other and, if there is any differentiation between or among the parts of this contract, they shall be interpreted in a harmonious manner so as to give effect to each part.
6. MD of MPUVNL will have authority to take appropriate decision in line with guidelines or directions of MNRE from time to time in matters pertaining to implementation of feeder solarization under KUSUM-C scheme.

## **SECTION-I: INTRODUCTION**

### **1. INTRODUCTION:**

As per the vision of Hon'ble Prime Minister, one city in every State has to be developed as net zero solar city, which may be a capital city or any renowned tourist destination. Under this scheme the energy supply will be met preferably by solar energy or a combination of interventions based on renewable energy sources.

Pursuant to above Madhya Pradesh has identified Sanchi, one of the UNESCO world heritage sites in the State, to be developed as net zero solar city under this scheme. Net zero solarized Sanchi will provide the town not only green and clean power during working hours but also improve working condition and productivity of the citizen living in the town.

Towards this, various grid connected and off grid interventions are planned, including setting up of 8 MW ground mounted solar plant near Sanchi. Collectively, these interventions will make Sanchi as first net zero town in Madhya Pradesh. This project shall be taken up under KUSUM-C scheme of Govt. of India.

- 1.1 In reference to the KUSUM-C guidelines, Madhya Pradesh Urja Vikas Nigam Limited (MPUVN) on behalf of MPPMCL, hereby invites the proposals against the RFP from interested bidders for development of solar power plants (SPP) of different capacities to meet requirement of target feeders associated with substations and nearby urban load centre provided in **Annexure 1** and as amended from time to time. Bids received for any substation not included in **Annexure 1** of RfP as amended shall not be considered for technical or financial evaluation. The power should be delivered at delivery point as defined in the RFP. The total capacity to be allotted under this RFP is approximate 8 MW.
- 1.2 Such plants near sub-stations may be primarily developed by utilizing government land or private cultivable land, pastureland, marshland, barren or uncultivable land. It shall be sole responsibility of RPG to identify and arrange revenue or private land necessary for Project and arrange the same at applicable cost. **In case RPG desires to use government land as per prevailing NRE Policy or government land leased out to any government organization, the RPG must submit a letter from either revenue authorities of the concerned district or any competent authority indicating that the selected land can be used for the purpose of the work as enshrined in the bid, does not violate the lease conditions (if any) of lease**



**document signed between the government authority and the owner of the land, and can be transferred to the bidder/ RPG through NRE Department for the works as enumerated in the bid.** Towards this, Bidder shall have to submit certificate as prescribed in the RfP (**FORMAT D12**) at the time of bid submission. On request of RPG and at best endeavour basis, government/ revenue land, identified by RPG, may be provided to RPG as per existing policy provisions. However, government shall not be accountable for any delay or denial of revenue land allocation to RPG.

- 1.3 For avoidance of any doubt, it is re-stated that the RPG shall be solely responsible and make arrangements for land and associated infrastructure for development of the Project and for Connectivity with the 33/11 kV sub-station for confirming the evacuation of power by the Scheduled Commissioning date or COD, whichever is earlier, and all clearances. The RPG will Design, Supply, Construction, Erection, Testing and Commissioning, of Solar Power Project in accordance with the applicable Law, Grid Code, as per regulations and terms & conditions of the Agreement as well as Prudent Utility Practices.
- 1.4 RPG shall have option to get connectivity infrastructure from Project to substation developed by Discom by bearing appropriate expenses towards it.
- 1.5 It may be noted that BoQ estimates and specifications related to evacuation and connectivity infrastructure shall be approved by concerned Discom.
- 1.6 The power generated from such SPP's shall be sold to MPPMCL on the tariff discovered for the RPG through process defined in this RfP and conditions as specified in the PPA document.
- 1.7 The Bidder is advised to read carefully all instructions and conditions of this RFP and understand the scope of work completely. All information and documents required as per the RFP must be furnished with the bid. Nodal Agency reserves the right to seek clarifications or additional submissions on submitted bids. Failure to provide the information and/ or documents as required shall render the Bid(s) unacceptable for further evaluation and may lead to rejection of the bid(s) or award of work. All Bidders qualifying the technical stage shall be treated at par. Financial Bid of the Bidder(s) qualifying at technical stage only shall be opened.
- 1.8 Bidder shall be deemed to have examined the RFP, to have obtained information in all matters whatsoever that might affect carrying out of works in line with the scope of work specified in the RFP at the Bid price and to have satisfied himself of the sufficiency of his Bid. The Bidder shall be deemed to know the scope, nature and magnitude of the works and requirement of materials, equipment, tools and labour

involved, wage structures and as to what all works Power Producer shall have to be complete in accordance with the RFP, irrespective of any defects, omissions or errors that may be found in RFP. It is assumed that Bidder has satisfied himself with the site conditions at the Premises of Procurer and has assessed the quantum of work required to comply with the RFP and PPA conditions.

## **SECTION-II: BID DETAILS**

### **2. BID DETAILS:**

- 2.1 The bidding process is for Implementation of approximate 8 MW capacity of Grid Connected Solar based power projects (SPPs) under feeder solarization component of KUSUM-C for Sale of Solar Power to MPPMCL near Sanchi in the state of Madhya Pradesh (**Annexure-1**), India at the Delivery Point in (each) sub-station bus bar as follows:
- 2.1.1 Connectivity cum Delivery Point shall preferably be 11 kV bus bar of 33/11 kV substation; however,
- 2.1.2 Connectivity cum Delivery Point may be at 33 kV bus bar of 33/11 kV or higher voltage substation as per necessity and technical feasibility only after duly agreed upon by Procurer.
- 2.2 Eligible applicants are the Bidder as defined under this RFP. It shall be sole responsibility of RPG to arrange land for concerned SPP. On best endeavour basis, government/ revenue land may be provided to eligible SPPs in accordance with prevalent policies. However, if government land is not available for development of SPP at desired location, RPG will have to arrange necessary land on their own and the same shall not be allowed as a ground for any relaxation or preferential treatment to concerned RPG.
- 2.3 For setting up of a SPP, concerned RPG can arrange land near substations provided in **Annexure-1** and as amended from time to time.
- 2.4 After registration on ETS portal, to access the link to participate in the bid, bidder has to send an email to MPUVN with the proof of registration, organization id (issued on e-tender portal post registration), email-id of bidder and mobile no. of bidder, to MPUVN. Accordingly, MPUVN will approve downloading of tender documents from ETS portal and participation in subsequent processes.
- 2.5 An applicant will not be allowed to apply for more than one solar power plant for a particular 33/11 kV sub-station. The Bid of an applicant will also be disqualified if it is found that its owner/ proprietor/ partner/ director/ member or any of its affiliate has also filed application for another RPG for the same sub-station.

2.6 Bidder/ RPG should ensure compliance to the MNRE's guidelines pertaining solarization of feeders under KUSUM-C, dated 04.12.2020 and amended till date 18.05.2022.

2.7 A list of substations along with the estimated available capacity has been attached as **Annexure 1** and as amended from time to time. The Bidders are advised to undertake their own due diligence before submitting of the Bid(s) as regards necessary Project Capacity, availability of bay/ space for bay at concerned 33/11 kV substation, RoW issues, if any, pertaining to connectivity and associated 11 kV or 33 kV lines and any other critical aspect that may have implications on implementation as well as O&M of concerned Project(s). MPUVNL or Procurer shall not be responsible or answerable in any manner for any matters related technical feasibility, implementation or O&M arising at any stage from Bid submission through life of concerned Project(s).

## 2.8 Key Dates

S. No.	Nodal Agency Stage	Date	Time (Hrs.)
1.	Date of issue of RFP	18.06.2022	
2.	Purchase of RFP Start Date	20.06.2022	23:55
3.	Pre-Bid Meeting	27.06.2022	13:00
3.	Purchase of RFP End Date	11.07.2022	18:00
4.	Bid Submission End Date	11.07.2022	20:00
5.	Submission hard copy of required Bid documents	12.07.2022	16:00
6.	Technical Bid & Bid Security Opening Date	13.07.2022	11:00
7.	Financial Bid Opening Date	18.07.2022	16:00

## 2.9 Connectivity with the sub-station and delivery point:

a) SPP may be connected preferably at 11 kV bus bar of a 33/ 11 kV substation (Delivery Point). However, as per necessity and technical feasibility, SPP may be connected at 33 kV bus bar of 33/11 kV or higher voltage substation (Delivery Point) with due approval of Procurer(s). The selected RPG will be responsible for laying of dedicated 11 kV line (or 33 kV line, as applicable), getting ROW clearance from SPP to interconnecting sub-station, construction of bay and related switchgear at interconnecting sub-station where the plant is connected to the grid and metering is done at his own cost as per MPERC regulations/ applicable DISCOM utility practices/ CEA standards and relevant provisions of PPA. Alternatively, RPG can get the 11 kV lines (or 33 kV line, as applicable) constructed through DISCOM by paying the applicable cost and other charges. RPG will be responsible for maintaining this dedicated 11 kV line (or 33 kV line,

as applicable).

- b) It may be noted that BoQ estimates and specifications related to evacuation and connectivity infrastructure shall be approved by concerned Discom. Towards this, Discoms shall take applicable supervision charges from RPG for such works.
- c) In the event the bay and related switchgear is already available at the interconnecting substation then the associated cost as communicated by the DISCOM has to be reimbursed by the RPG(s) to the DISCOM.

### **SECTION-III: INSTRUCTIONS TO THE BIDDER**

#### **3. INSTRUCTIONS TO THE BIDDER:**

- 3.1.** MP Discoms have assessed demand on feeders targeted to be solarized under KUSUM-C and those feeders are mapped against respective substations. A Bidder will have to bid substation-wise. Bidder shall bid for total capacity of all target feeders emanating from a substation and nearby urban load centre.
- 3.2.** Substation wise capacities available is listed in **Annexure-1** of in this tender. Bidders can place only one bid for one substation. However, a Bidder may submit bids for multiple substations. Bid submission is to be done by paying necessary Bid processing fee as prescribed in in Bid Information Sheet.
- 3.3.** Substation wise capacities available is listed in **Annexure-1** of in this tender are approximate and indicative, which may be more accurately determined by Successful Bidder/ RPG after placement of LoA. In doing so, Successful Bidder/ RPG shall follow methodology as per MNRE's guidelines for component-C of PM KUSUM scheme.
- 3.4.** The Bidders are allowed to participate in this tender as individual entity (Company/ LLP/ Partnership/ Sole Proprietor) or as Bidding Consortium/ Joint Venture of said entities. The bidding entities should be a body corporate incorporated in India under the Companies Act, 1956 or 2013 including any amendment thereto or a Partnership Firm having executed partnership deed and registered as per sections 58 & 59 of the Partnership Act, 1932, as amended or a Limited Liability Partnership Firm (LLP) registered under section 12 of Limited Liability Partnership Act, 2008, as amended or registered Sole Proprietor.
- 3.5.** A Bidder is required to quote one tariff for total SPP capacity associated with all target agricultural feeders on a sub-station and nearby urban load centre. Bidders bidding for multiple sub-stations shall quote tariff separately for SPP on respective sub-stations, if required.
- 3.6.** Bidder must note that for evaluation of qualification against Financial Eligibility Criteria, following conditions shall be applicable:
  - a) Bidder shall establish net-worth and turnover as required under this RFP.
  - b) In-case members/ Lead Member of Consortium/ JV has referred its Affiliate to

meet the Financial Eligibility criteria, then the same relationship with the Affiliate by the Bidder shall continue at least for the period of First Operational Year (equity lock-in period). Further, affiliate of lead member or member of consortium/ JV shall furnish the details, as sought in FORMAT D1: Covering Letter and FORMAT D6: Financial Eligibility Criteria Requirement.

**3.7.** A Bidder shall not have a conflict of interest. Bidder(s) shall be disqualified in the SPP(s) where it has conflict of interest. In a particular SPP, the Bidder may be considered to have conflict of interest with one or more parties in this bidding process, if:

- a) A Bidder submits more than one Bid for a substation in the bidding process, either individually [including bid submitted as authorised representative on behalf of one or more Bidder(s)] or as Member of consortium/ Joint Venture.
- b) They have a relationship with each other, directly or through common third parties/ Affiliates, that puts them in position to have access to information about or influence on the Bid of another Bidder or influence the decisions of Nodal Agency regarding this bidding process.

**3.8.** Except as required by competent authority, Nodal Agency have rights to annul/ cancel the Bid of Bidders who will take any assistance or support in any form from any of the independent consultant or consulting agency who is directly associated with Nodal Agency during preparation/ submission of RFP, PPA or work execution.

**3.9.** Instruction to Bidders on E-Tendering

- a) For participation in e-tendering module, it is mandatory for Bidders to get registration on website <https://www.bharat-electronictender.com>. Therefore, it is advised to all Bidders to get register at the E-Procurement portal at the earliest.
- b) Tender documents can be downloaded from website <https://www.bharat-electronictender.com>.
- c) Service and gateway charges shall be borne by the Bidders.
- d) Upon enrolment, the Bidders will be required to register their valid Digital Signature Certificate (DSC) of appropriate class as specified for the E-Procurement system (in the name of person who will sign the proposal) in the form of smart card/ e-token, from any of the licensed Certifying Authority recognized by CCA India (e.g. Sify/ nCode/ eMudhra, etc).

- e) For further information regarding issue of Digital Signature Certificate, the Bidders are requested to visit website <https://www.bharat-electronictender.com>. Please note that it may take up to 3 to 5 working Days for issue of Digital Signature Certificate. Nodal Agency will not be responsible for delay in issue of Digital Signature Certificate.
- f) The Browser should be Java enabled. Java Runtime Environment (JRE) should be installed in the client system. This can be downloaded from the download links of the eProcurement System.
- g) If Bidder is participating for the first time in e- tendering, then it is advised to fulfil all formalities, such as registration, obtaining Digital Signature Certificate, etc. well in advance.
- h) Bidders are requested to regularly visit the website of MPUVNL and e-tendering portal for any clarification, amendments and / or extension of due date.
- i) Bidder must positively complete online e-tendering procedure <https://www.bharat-electronictender.com>.
- j) Nodal Agency shall not be responsible in any way for delay / difficulties / inaccessibility of the downloading facility from the website for any reason whatever.
- k) Whosoever on behalf of the Bidder is submitting the tender by his Digital Signature Certificate, shall invariably upload the scanned copy of the authority letter, as well as submit the copy of the same in physical form with the offer of particular Bid.
- l) All Bidders are required to pay bid security as prescribed in this RFP and a copy of the same should be uploaded online by Bidders.
- m) After the final submission of bid, Bidder should ensure that he has received the acknowledgment slip and should keep this slip until opening of the Bid. If acknowledgment slip is not generated, it means the Bid is not submitted.
- n) During submission of bid through e-tender portal, Bidder needs to encrypt their technical and financial bid through two separate pass-phrases. A pass-phrase should be of minimum 11 characters containing at least two spaces. Pass-phrases for financial and technical bid should be different.

Both pass-phrases are to be submitted offline to MPUVNL in two separate envelopes (Writing - Technical Pass Phrase & Financial Pass Phrase on each



envelope) placed in envelope - 2 along with other required offline submissions, before the bid submission deadline. [EXAMPLES OF A PASS PHASE- “abc 375 spd” OR “I love India” OR “God is great”].

- o) It is important to note, same pass-phrase should be submitted offline by the bidder to MPUVNL, as it is required to decrypt the bids. MPUVNL shall not be held liable, in case there is any discrepancy, between the pass-phrases used in encrypting of bids and the submitted in hard copy.

**3.10.** The Bidders shall have to submit their Financial Bid and other required relevant documents/ certificates, if any, online only (duly encrypted bids) as per time schedule (Key dates) as mentioned in Clause 2.8. Only desired Technical Bid documents as prescribed in RfP shall be submitted in hard copies (original copy or print copy, as applicable) to reach to the office undersigned by the Key Dates.

**3.11.** For any type of clarification, Bidders can visit [https:// www.bharat-electronictender.com](https://www.bharat-electronictender.com) and can call at help desk contact no. From Monday to Friday between 10:00 AM and 6:00 PM (except Government Holidays). ETS Support Email Id is [support@isn-ets.com](mailto:support@isn-ets.com). Customer Support Escalation Mobile No. is +91-8287663763. All these contacts are given on the Portal also.

**3.12.** Bidders are advised to contact following for more information related to RFP or e-tendering process:

- a) **For RfP related queries: MP Urja Vikas Nigam Officers:** Superintending Engineer – 0755-2553595; Executive Engineer – 9425107325
- b) **Bharat Electronic Tender for E - Tendering process:** Mr Rakesh Ranjan – 8789029238 / 9717038132

**3.13.** Bidder (s) may opt for training directly from the tendering portal at their own cost.

### **3.14. ELIGIBILITY CRITERIA**

#### **3.14.1. GENERAL**

- a) Bidder should be a body corporate incorporated in India under the Companies Act, 1956 or 2013 including any amendment thereto or a Partnership Firm having executed partnership deed and registered as per sections 58 & 59 of the Partnership Act, 1932, as amended or a Limited Liability Partnership Firm (LLP) registered under section 12 of Limited Liability Partnership Act, 2008, as amended or registered Sole Proprietor. A copy of certificate of incorporation, partnership deed or LLP/ Sole Proprietor registration, as applicable and relevant, shall be enclosed with FORMAT D2: General Particulars of the Bidder;
- b) Bidder can form a Bidding Consortium/ Joint Venture of two (2) Companies or LLPs or Partnership Firms or any combination thereof;
- c) Bidder should meet net-worth and turnover criteria required under the RfP; and

**3.14.2.** Bidder may choose to start the process of forming a special purpose vehicle (SPV) or Project Company at bid stage itself. However, for participation in bid, formation of a SPV is not required. In case a Bidder selected as a Successful Bidder, it can choose to incorporate a Project Company. In case a Bidder is a consortium/ JV, it would be required to incorporate a Project Company to sign the PPA. The said Project Company has to be formed within thirty (30) days from the issuance of LOA. Further, Bidder/ RPG shall be responsible to get all required clearances in the name of the Project Company, and transfer already obtained clearances, if any.

Despite formation of SPV or Project Company, it is categorically stated that share with voting rights of Successful Bidder in SPV or Project Company shall not be less than 51% during 1 year as calculated from Commercial Operation Date of concerned Project.

#### **Special note:**

- 1.** Though Partnership firms are allowed to participate in RfP, it is understood that Partnership firms are not eligible to form SPV or Project Company as per Indian laws. Concerned entities/ firms are advised to take prudent decision after their own due diligence in the matter. MPUVNL or its officers and advisors shall not be responsible for any thing in this matter.

**2.** Notwithstanding any provision of the RFP, in cases where Govt land is proposed/ given to a Bidder/ Project, such Bidders, if declared Successful Bidders, will have to maintain majority shareholding (51% or more) with voting rights in the Project Company all the time.

**3.14.3.** Bidder or any member of Consortium/ Joint Venture and their Affiliates having been blacklisted 5 years prior to bid submission date by Nodal Agency or by any Govt./ PSU, for whatever reasons, shall not be eligible/allowed to participate in this RFP.

**3.14.4.** Bidders may note following:

- a) The Members of the Consortium/ JV shall nominate a Lead Member. Such nomination shall be supported by a power of attorney signed by all the Members of Consortium/ JV (and duly acknowledged by the Lead Member) and shall substantially be in the form set out FORMAT D5: Power of Attorney.
- b) The Lead Member shall have the authority to represent all the Members of the Consortium/ JV during the Bid Process.
- c) In a situation, where a consortium/ JV that is selected as a Successful Bidder, decides not to form a Project Company, the Lead Member would be responsible for all the correspondence and documentation.
- d) Bidder may meet technical Eligibility Criteria either independently or jointly as consortium/ joint venture of maximum two members. In case Bidder is a Consortium/ joint venture, an agreement as per FORMAT D9: Format for Consortium/ JV Agreement for Participation shall be required to be furnished along with the Bid. In addition to this mandatory format, Bidders participating as Consortium/ JV are encouraged to submit any other authentic agreement/ document relevant for them to be considered for their status as Consortium/ JV participating in response to this RfP.
- e) In-case members/ Lead Member of Consortium/ Joint Venture has referred its Affiliate to meet the Financial Eligibility criteria, then the same relationship with the Affiliate by the Bidder shall continue at least for the period of First Operational Year (equity lock-in period).

**3.14.5. FINANCIAL ELIGIBILITY CRITERIA:**

1. Following financial eligibility criteria shall be met by Bidder/ Lead member of Bidder, in case of consortium/ joint venture, based on audited annual financial statements:

- a) Net-Worth of the Bidder should not be less than Rs. 1.00 Crore per MW for the capacity applied based on latest financial statement i.e. FY21 or FY22.

Net-worth will be calculated as follows:

Sr No	Particulars	Amount
1.	Paid Share Capital in case of Companies/ Partnership Capital in case of Partnership Firm /Proprietors' Capital in case of Proprietorship firm	
2.	Add: Reserve created out of profits	
3.	Add: Security Premium Account in case of Companies	
4.	Add: Credit Balance of Profit and Loss Account	
5.	Add: Credit Balance of Deferred Tax Assets in case of Companies	
6.		Total
7.	Less: Aggregate value of accumulated losses	
8.	Less: Debit Balance of Profit and Loss Account	
9.	Less: Deferred Expenditure and Miscellaneous Expenditure not written-off	
10.	Less: Reserves created out of revaluation of assets, write-back of depreciation and amalgamation	
11.	Less: Debit Balance of Deferred Tax Assets in case of Companies	
12.		<b>Net Worth</b>

- b) Enough liquidity to manage the fund requirements for the Project, which shall be assessed through average annual turnover of any of two (2) latest continuous financial years among FY20, FY21 or FY22 to be at least Rs. 2.00 Crore per MW for the capacity applied for each.

Turnover means the gross amount of revenue recognised in the profit and loss account from the sale, supply or distribution of goods or an account of services rendered or both by a company/ partnership firm/ proprietorship firm during a financial year, but it does not include non-operational income.

**Note:** In case an applicant is applying for capacity at multiple substations, the eligibility criteria requirement shall add up. For ex: If a Bidder applies for 1 MW each at 3 different substations, it has to demonstrate net-worth of Rs. 3 crore either in FY21 or FY22 (latest available FY statement), and average annual turnover of Rs. 6 crore for any two latest continuous financial years among FY 20, FY21 or FY22 (average turn over either of FY20 and FY21 or FY21 and FY22).

**3.14.6.** For all types of Bidders (Companies/ LLPs/ Partnership/ sole proprietor),

computation of net worth shall be based on latest consolidated/ unconsolidated audited annual accounts of FY21 or FY22.

**3.14.7.** For all types of Bidders (Companies/ LLPs/ Partnership/ sole proprietor), computation of turnover shall be based on consolidated/ unconsolidated audited annual accounts of any two (2) latest continuous financial years among FY20, FY21 or FY22.

**3.14.8.** In relation to a Partnership Firm/ Limited Liability Partnership Firm, the Net-worth shall be equal to Partner's Capital in case of a Partnership Firm/Limited Liability Partnership Firm and Proprietor's Capital Account in case of Sole Proprietor (including any reserves). The net worth shown should not be earlier than FY20 from the bid submission date.

**Note:**

1. For the purpose of evaluation of Bidder, a certificate from Chartered Accountant (CA) clearly mentioning the UDIN number etc., in support of Bidder's claim for meeting the financial eligibility criteria shall be mandatorily submitted online (FORMAT D6: Financial Eligibility Criteria Requirement). Such certificate shall clearly undertake that calculation of net worth and turnover, as applicable, has been done in accordance with methodology prescribed in this RFP.
2. All necessary documents pertaining the FORMAT D6: Financial Eligibility Criteria Requirement, such as balance sheet, P&L account, schedules etc., will be submitted online and offline, for verification.
3. For the purposes of meeting financial requirements, only latest unconsolidated audited annual accounts shall be used as prescribed in this RfP. 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 accounts.

**3.15. CHECK-LIST:**

To ensure that the online and hard copy submission of RFP is complete in all respects, check-lists are required to be duly tick marked/filled for the enclosures which are attached with the RFP document. The requisite documents required for application, are indicated in the check-list. It is essential for the Bidders to submit check-list duly sealed and signed with Bid. However, check-list given in RfP is

indicative, and Bidder shall be responsible for meeting and submitting all information requirement as per provisions of this RFP.

**3.16. INCORPORATION OF A PROJECT COMPANY BY BIDDERS:**

- a) In case a Bidder is selected as a Successful Bidder, it can choose to incorporate a Project Company. In case a Bidder is a consortium/ JV, it would be mandatory to incorporate a Project Company to sign the PPA. The said Project Company has to be formed within thirty (30) days from the issuance of LOA. Further, Bidder/ RPG shall be responsible to get all required clearances in the name of the Project Company, and transfer already obtained clearances, if any.
- b) The aggregate equity shareholding of the Successful Bidder in the issued and paid up share capital, and the voting rights of the Project Company shall not be less than fifty one percent (51%) up to a period of one (1) Operational Year.
- c) Further, any member of the consortium/ JV or Partner in a Partnership firm or an LLP, shall maintain individual equity in newly formed Company of, at least, 51% of its share in the bidding consortium/ JV or in the partnership deed, as the case may be, submitted along with the Bid, up to a period of one (1) Operational Year.
- d) The Affiliate of a Successful Bidder or in case of a Consortium/ JV, its member, whose financial credentials have been relied upon by the Successful Bidder to demonstrate Financial Eligibility, is also permitted to execute the PPA by itself or by forming an SPV, as the case may be. In such cases, all the obligations and liabilities of the Successful Bidder as set out in the Bid Documents shall apply to the Affiliate.
- e) In the event that the Successful Bidder, which is a single Entity, chooses not to incorporate any Project Company, then the shareholders of the Successful Bidder, as on the date of submission of the Bid, shall not decrease their ownership below 51% until the expiry of a period of 1 (one) year from the COD. If the successful bidder forms a Project Company (SPV), the shareholders of the Successful Bidder, as on the date of submission of the Bid, shall continue to hold up to 51% of the total ownership of the Project Company (SPV), from the date of incorporation of SPV until the expiry of 1 (one) year from Project Commissioning (COD).
- f) Any change in ownership and liabilities shall be in accordance with Article 15 of the PPA.



**3.17. BID SUBMISSION BY THE BIDDER:**

- a) The information and/ or documents shall be submitted by the Bidder as per the formats specified in this document.
- b) Bid(s) that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP or those that do not adhere to formats prescribed herein, wherever specified, may be considered non-responsive. However, Nodal Agency reserves the right to seek additional information/ clarifications from the Bidders, if found necessary, during the course of evaluation/ processing of the Bid(s). Non-submission or delayed submission of such additional information or clarifications sought by Nodal Agency may be a ground for rejecting the Bid(s).
- c) Each format has to be duly signed and stamped by the authorized signatory of the Bidder. In case of a Consortium/ Join Venture, it has to be signed by representative of the Lead Bidder. Strict adherence to the documents required to be submitted in Envelope – I, as per clause 3.17 shall be ensured, failure on this account may lead to rejection of Bid.
- d) The Bidder shall furnish documentary evidence in support of meeting eligibility criteria as indicated in this RFP to the satisfaction of Nodal Agency e.g. unconsolidated/ consolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged annual accounts, profit and loss account, profit appropriation account, auditor's report, etc., as the case may be.
- e) The Bidding Company/ Consortium/ Joint Venture should designate one person to represent the Bidding Company in its dealings with Nodal Agency. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquires, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney in original as per FORMAT D5: Power of Attorney, authorizing the signatory of the Bid.

**3.18. CLARIFICATIONS AND PRE-BID MEETING:**

- a) The Bidder may seek clarifications or request amendments to RFP in writing, through e-mail to reach Nodal Agency on or before date and time mentioned in Bid Information Sheet.
- b) The Bidder(s) or their authorized representative(s) is / are invited to attend (physical or VC as may be applicable) pre-bid meeting(s), which will take place



on date(s) as specified in Bid information Sheet, or any such other date as notified by Nodal Agency.

- c) The purpose of the pre-bid meeting will be to clarify any issues regarding the RfP including in particular, issues raised in writing and submitted by the Bidder.
- d) Nodal Agency is not under any obligation to entertain/ respond to suggestions made or to incorporate modifications sought for.

### **3.19. BID DOCUMENTS:**

Bidder need to mandatorily submit scanned copies of all formats along with necessary support documents ONLY on the e-tendering portal ([https:// www.bharat-electronictender.com](https://www.bharat-electronictender.com)).

However, documents/ formats/ agreements required on stamp paper, Bid Security (if in the form of Bank Guarantee) and such other documents/ formats as may be required under this RFP shall be submitted in original hard copies to MPUVNL as per key dates.

Further, Bidder to note that Financial Bid shall be submitted ONLY through online portal. Any deviation from this shall lead to cancellation of Bid submitted by concerned Bidder.

Bidders shall have to submit following documents:

- i. **ONLINE submission:** Scanned copies or proof thereof of the following documents have to be MANDATORILY uploaded on the e-tendering portal:
  - 1. FORMAT D1: Covering Letter
  - 2. FORMAT D2: General Particulars of the Bidder, General particulars of Bidder, including Certificate of Incorporation of Bidder/ Affiliate as applicable.
  - 3. FORMAT D3: Shareholding certificate for company / partner contribution in a partnership firm (as applicable), bidder's composition and ownership structure as per prescribed in shareholding certificate for a Company/ Partner contribution for an LLP certified by Director/ practicing Chartered Accountant/ Company Secretary and authorised signatory of the Bidder (as applicable).
  - 4. FORMAT D4: Bid Security, if applicable in the form of bank guarantee.

5. FORMAT D5: Power of Attorney, Original power of attorney (on the stamp value of Rs.1,000/ -, as per, as applicable) issued by the Bidder (in case of consortium/ JV then by lead consortium/ JV member) in favour of the authorized person signing the Bid, in the form prescribed in this RFP (Power of Attorney must be supplemented by Board Resolution to above effect for the company incorporated under Company Act 1956 or Company Act-2013 OR Partnership Deed/ Agreement or such other equivalent documents).
  6. FORMAT D6: Financial Eligibility Criteria Requirement, Financial Eligibility Criteria Requirements.
  7. FORMAT D7: Format for certificate of relationship of affiliate with the bidder, Certificate of relationship of affiliate with the bidder, if applicable, supported by Board Resolution of the Affiliate.
  8. FORMAT D8: Undertaking Form, if applicable Undertaking(s) from the member of Consortium or Affiliate of Bidder/ Affiliate of lead member of Consortium, as applicable.
  9. FORMAT D9: Format for Consortium/ JA Agreement for Participation in for Consortium/ JV Agreement, if applicable.
  10. FORMAT D10: Power of attorney in favour of lead member of the consortium/ JV.
  11. FORMAT D11: Declaration (for submission of Bid and acceptance of terms and conditions of RFP).
  12. FORMAT D12: Format for Land Availability Certificate from District Collector.
  13. Proof of bid processing fee submission.
- ii. **OFFLINE submission of original documents:** Original hard copies of the following documents have to be submitted to MPUVNL as per key dates:
1. FORMAT D3: Shareholding certificate for company / partner contribution in a partnership firm (as applicable), bidder's composition and ownership structure as per prescribed in shareholding certificate for a Company/ Partner contribution for an LLP certified by Director/ practicing Chartered Accountant/ Company Secretary and authorised signatory of the Bidder (as applicable).

2. FORMAT D4: Bid Security, if applicable in the form of bank guarantee
  3. FORMAT D5: Power of Attorney, Original power of attorney (on the stamp value of Rs.1,000/ -, as per, as applicable) issued by the Bidder (in case of consortium then by lead consortium member) in favour of the authorized person signing the Bid, in the form prescribed in this RFP (Power of Attorney must be supplemented by Board Resolution to above effect for the company incorporated under Company Act 1956 or Company Act-2013 OR Partnership Deed/ Agreement or such other equivalent documents).
  4. FORMAT D9: Format for Consortium/ JV Agreement for Participation in for Consortium/ JV Agreement, if applicable.
  5. FORMAT D10: Power of attorney in favour of lead member of the consortium/ JV.
  6. Pass-phrases for decrypting Technical Bid and Financial Bid should be submitted offline by the bidder to MPUVNL.
- iii. Hard or scan (soft) copy of RfP document and its amendments and corrigenda are **NOT REQUIRED** to be submitted online or offline.

### **3.20. METHOD OF BID SUBMISSION**

- a) Except for the hard copy submission to MPUVNL as required under the RfP, **bidders are required to mandatorily submit technical bid**, along with all relevant documents as detailed in Clause 3.19 above, **online at e-tendering portal**.
- b) **Financial Bid** shall be submitted **only through online mode** with due encryption through passphrase. ONLINE BID PORTAL SHALL ALERT A BIDDER TWO (2) TIMES TO CHECK IF HE HAS SUBMITTED ONLINE FINANCIAL BID. Failure to submit correct online financial bid shall be sole responsibility of Bidder.
- c) For hard copy submission, the Bidder has the option of sending necessary documents either by registered post or by speed post or by hand delivery, so as to reach Nodal Agency by deadlines as per key dates. Nodal Agency shall not be responsible for any delay in receipt of the required hard copies of documents as prescribed under this RfP. It should be noted that except online Financial Bid, no other envelope/document should contain any information/document relating to Financial Bid. Nodal Agency shall not be responsible for

premature opening of the Financial Bid in case of non-compliance of above. In such non-compliances, competent authority may reject bid of such Bidders at any stage without any liability on Nodal Agency or its advisors.

- d) **In case of hard copy submission (as applicable):** All pages of the Bid and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. In case of a Consortium/ JV, it has to be signed by representative of the Lead Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. Further, any published document submitted with the Bid shall be signed by the authorized signatory.
- e) **In case of online bid submission:** In terms of Section 3 and 3A of chapter-II and Section 4, 5 and 6 of chapter-III of the Information Technology Act, 2000, as amended, digitally signed documents shall be treated equivalent to affixing hand written signature of authorized signatory of the Bidder. Such documents may not require hand-written signature of authorized signatory.

### **3.21. BID DEADLINE:**

- a) The Bidder should submit the online Bid on or before the time schedule mentioned in Bid Information Sheet.

### **3.22. VALIDITY OF BID:**

- a) The bid shall remain valid for a period of one hundred and eighty (180) Days from the date of bid deadline and will be called the Bid Rate Validity Period for this tender. In case, Successful Bidder/ RPG is revoking or cancelling his offer or varying any term & conditions in regard thereof or not accepting Letter of Award ("LOA"), Nodal Agency shall forfeit Bid Security and take other necessary action as specified in the RFP. The date of issuance of LOA shall be intimated by the Nodal Agency to the Successful Bidder. In exceptional circumstances if LOA is not issued to the Successful Bidder(s), the Nodal Agency may solicit the Bidder's consent to an extension of the period of Bid Validity Period by 90 days.

### **3.23. COST OF BIDDING:**

- a) The Bidder shall bear all the costs associated with the preparation and submission of his offer, Nodal Agency in any case will not be responsible or liable for these costs, under any conditions. The Bidder shall not be entitled to claim any costs, charges and expenses of and incidental to or incurred by him through

or in connection with submission of Bid even though Nodal Agency may elect to modify/ withdraw the invitation of Bid.

### **3.24. BID SECURITY:**

**3.24.1.** Pursuant to order of Ministry of Finance, Govt. of India dated 12.11.2020, Bid Security was exempted for all Bidders till 31 December 2021. Hence, Bidder is required to submit Bid Security at a rate of INR 1 lakh per MW or part thereof through NEFT/ RTGS in the account of MPUVNL or in the form of bank guarantee as per prescribed format in this RFP. Scanned copy of bid security shall be uploaded online at e-tendering portal at the time of submission of Bid. Original hard copy of bid security, if in the form of bank guarantee, shall be submitted to MPUVNL along with hard copies of bid documents as required in RFP.

Notwithstanding other rights or actions Nodal Agency in accordance with provisions of this RFP or law, Nodal Agency shall forfeit Bid Security if:

- a) a Bidder withdraws/ revokes or cancels or unilaterally varies his Bid in any manner during the Bid Validity Period specified in the RFP document.
- b) Successful Bidder fails to accept the LOA or submits the PBG of needful value in the stipulated time.
- c) Successful Bidder fails to sign the PPA within the indicated time unless there is default from procurer.

**3.24.2.** Bid Security shall be returned to all other Bidders except Successful Bidder, within fifteen (15) Days from date of opening of Financial Bid. The Bid Security of the Successful Bidder will be returned at the earliest after submission of PBG of required value as per RFP or signing of PPA, whichever is later.

**3.24.3.** Bidders placing Bid for more than one Project may furnish individual Bid Security desired for each Project or single bid security for the combined capacity as they may choose.

### **3.25. OPENING OF BID - Online:**

Technical Bid of the Bidders for evaluation purpose, shall be opened online at the

mentioned date and time in Key Dates as mentioned under Cl. 2.8.

Financial Bids of the Qualified Bidders will be opened online at the mentioned date and time in Key Dates as mentioned under clause no. 2.8.

**3.26. RIGHT TO WITHDRAW THE RFP AND TO REJECT ANY BID:**

- a) This RFP may be withdrawn or cancelled by the Nodal Agency at any time without assigning any reasons thereof. The Nodal Agency further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.
- b) The Nodal Agency reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of the RFP and make its own judgment regarding the interpretation of the same. In this regard the Nodal Agency shall have no liability towards any Bidder and no Bidder shall have any recourse to the Nodal Agency with respect to the selection process.
- c) Bid(s) that are grossly incomplete in any respect or those that are significantly inconsistent with the requirements as specified in this RFP or those that do not adhere to formats prescribed herein, wherever specified, may be considered non-responsive. However, Nodal Agency reserves the right to seek additional information/ clarifications from the Bidders, if found necessary, during the course of evaluation /processing of the Bid(s). Non-submission or delayed submission of such additional information or clarifications sought by Nodal Agency may be a ground for rejecting the Bid(s). Strict adherence to the documents required to be submitted as per Section VI shall be ensured, failure on this account may lead to rejection of Bid.
- d) Nodal Agency reserves its right to vary, modify, revise, amend or change any of the terms and conditions of the RFP before Bid Deadline. The decision regarding acceptance of Bid by Nodal Agency will be full and final.

**3.27. ZERO DEVIATION:**

- a) Bidder is to ensure compliance of all provisions of the RFP and submit their Bid accordingly. Bid with any deviation to the RFP conditions shall be liable for rejection without any explanation.

**3.28. EXAMINATION OF BID DOCUMENT:**

- a) Before submission of Bid, Bidder is required to carefully examine the technical

specification, terms and conditions of RFP/Agreement, and other details relating to envisaged work as per the RFP.

- b) The Bidder shall be deemed to have examined the RFP and Agreement, to have obtained information on all matters whatsoever that might affect the execution of the Project activity and to have satisfied himself as to the adequacy of his Bid. The Bidder shall be deemed to have known the full scope, nature and magnitude of the work and related supplies and the requirements of material and labour involved etc. and as to all supplies he has to complete in accordance with the RFP.
- c) Bidder is advised to submit the Bid on the basis of conditions stipulated in the RFP. Bidder's standard terms and conditions, if any for what-so-ever reasons, will not be considered. The cancellation/ alteration/ amendment/ modification in RFP shall not be accepted by Nodal Agency and shall invite rejection of such Bid(s).
- d) Bid not submitted as per the instructions to Bidder is liable to be rejected. Bid shall confirm in all respects with requirements and conditions referred in this RFP or its amendments, if any.

### **3.29. CHANGE IN LAW**

- a) Change in Law shall have the meaning ascribed thereto in Article 12 of the PPA

### **3.30. TAXES AND DUTIES:**

- a) The Financial Bid should include all taxes and duties etc., if any. Power Producer shall be entirely responsible for all taxes, duties, license fees, etc. All taxes shall be payable by the Power Producer. However, if any new change in tax/ duty and cess is effected in the period after the Financial Bid Submission Deadline the same shall be dealt in accordance with Article 12 of the PPA.

### **3.31. PROGRESS REPORT:**

- a) Power Producer shall have to commission the Project within nine (9) Months from the effective date. The Power Producer shall submit monthly progress report to Nodal Agency in the prescribed proforma to be designed in discussion with Nodal Agency till the COD. Nodal Agency shall have the right to depute his/ their representatives to ascertain the progress at the premises

of work of the Power Producer.

**3.32. FORCE MAJEURE:**

- a) For purpose of this RFP, force majeure shall mean an event beyond the control of the Power Producer and not involving his fault or negligence and not foreseeable, in its contractual capacity. Such events may include but are not restricted to Acts of God, wars or revolutions, fires, floods, epidemics, quarantine restriction, fright embargoes, site clearance etc. Whether a force majeure situation exists or not, shall be decided by Nodal Agency and its decision shall be final and binding on the Power Producer and all other concerned.
- b) In the event that the Power Producer is not able to perform his obligations under this Agreement on account of force majeure, he will be relieved of his obligations during the force majeure period.
- c) If a force majeure situation arises, the Power Producer shall promptly notify Nodal Agency and Power Procurer both in writing, not later than three (3) Days from the date such situation arises (in case, communication is not possible to Nodal Agency, Power Producer shall notify Nodal Agency not later than one (1) Days from the day when communication system will be restored). The Power Producer shall notify Nodal Agency and Power Procurer not later than three (3) Days of cessation of force majeure conditions. After examining the cases and associated facts, Nodal Agency shall decide and grant suitable additional time for the completion of the work, if required.
- d) Failure of such Power Producer in timely intimating Nodal Agency will suspend its right for any relief otherwise eligible under such force majeure conditions.

**3.33. APPLICABLE LAW:**

- a) The Agreement shall be interpreted in accordance with the laws of India.

**3.34. SETTLEMENT OF DISPUTE:**

- a) If any dispute of any kind whatsoever arises between Nodal Agency and the Power Producer in connection with or arising out of the Agreement including without prejudice to the generality of the foregoing, any question regarding the existence, validity or termination, the parties shall seek to resolve any such dispute or difference by mutual consent.



- b) If the parties fail to resolve, such a dispute or difference by mutual consent, within forty five (45) Days of its arising, then the dispute shall be referred by either party by giving notice to the other party in writing of its intention to refer to arbitration conducted under the provisions of the “Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983”. The decision of MP Madhyastha Adhikaran Adhiniyam shall be final and binding up on the parties. The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. All the dispute will be settled in the High Court of MP. No arbitration proceedings will commence unless such notice is given.
- c) Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the Agreement unless they otherwise agree.
- d) Cost of arbitration shall be borne as per the award of the arbitration.

**3.35. LANGUAGE:**

- a) All documents, drawings, instructions, design data, calculations, operation, maintenance and safety manuals, reports, labels and any other data shall be in Hindi/English Language. The Agreement and all correspondence between the Nodal Agency and the Bidder shall be in Hindi/English language.

**3.36. AMENDMENT:**

- a) Nodal Agency reserves the right to modify, amend or supplement RFP documents including all formats and annexures at any time. Bidder are advised to follow and keep track of Nodal Agency website for updated information till the selection of Bidder. No separate notifications will be issued for such notices/amendments/clarification etc. in the print media or individually. Nodal Agency shall not be responsible and accountable for any consequences to any party.

**3.37. SEVERABILITY:**

- a) It is stated that each paragraph, clause, sub-clause, schedule or annexure of this contract shall be deemed severable, and, in the event of the unenforceability of any paragraph, clause sub-clause, schedule or the remaining part of the paragraph, clause, sub-clause, schedule annexure & rest of the contract shall continue to be in full force and effect.

**3.38. PREFERENCE:**

- a) There is no relaxation in terms of any conditions of the RFP or Bid Processing Fee or Bid Security or PBG for any private company or State or Central company/ agency.
- b) The bid processing fees will be paid to MPUVNL in following account (through RTGS/ NEFT) and proof of the same shall be mailed to MPUVNL as well as submitted with online bid:
  - i. Account Holder Name: M. P. Urja Vikas Nigam Ltd.
  - ii. Bank Name: ICICI Bank Ltd.
  - iii. Bank Branch Address: Shivaji Nagar, Bhopal
  - iv. Account No.: 656501700049
  - v. IFSC Code: ICIC0006565
  - vi. MICR Code: 462229012

**3.39. TAX EXEMPTIONS:**

- a) Nodal Agency will extend possible cooperation to Power Producer in availing any tax exemptions. However, the responsibility of availing any such exemptions, if any, would rest with the Power Producer.

**3.40. FRAUD AND CORRUPTION**

The Power Producers, suppliers and contractors and their sub-contractors under the contracts are required to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this, the Nodal Agency:

- a) Defines, for the purpose of this provision, the terms set forth below as follows:
  - i. **“corrupt practice”** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii. **“fraudulent practice”** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - iii. **“collusive practice”** is an arrangement between two or more parties

designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv. **“coercive practice”** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v. **“obstructive practice”** is

aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Nodal Agency’s investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/ or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;

**or**

ab) acts intended to materially impede the exercise of the Nodal Agency’s inspection and audit rights.

b) will reject a proposal for award if it determines that the Successful Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

c) will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract; and

d) will have the right to require that the provision be included in Bidding Documents and in contracts, requiring Bidders, suppliers, and contractors and their sub-contractors to permit the Nodal Agency to inspect their accounts and records and other documents relating to bid submission and contract performance and to have them audited by auditors appointed by the Nodal Agency.

### **3.41. DEBARRED FROM PARTICIPATING IN NODAL AGENCY’S TENDER**

a) Agency reserves the right to carry out the performance review of each Bidder

from the time of submission of Bid onwards. In case it is observed that a Bidder has not fulfilled its obligations in meeting the various timelines envisaged, in addition to the other provisions of the RFP, such Bidder may be debarred/ blacklisted from participating in Nodal Agency's any future tender/ RFP for a period of five (5) years.

## **SECTION IV: BID EVALUATION**

### **4. BID EVALUATION:**

#### **4.1. THE EVALUATION PROCESS COMPRISES THE FOLLOWING FIVE STEPS:**

- a) Step I - Responsiveness check of Technical Bid and Evaluation of Bidder' fulfilment of Eligibility Criteria described in Section-I & III.
- b) Step II - Evaluation of Financial Bid
- c) Step III – Identification of Financially Qualified Bidder and filling required bucket
- d) Step V – Selection of Successful Bidder.

#### **4.2. RESPONSIVENESS CHECK OF TECHNICAL BID:**

The Technical Bid submitted by Bidder (both the hard copies of required documents and the online Bid) shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. However, subject to decision of competent authority, if there is any difference between hard copy and online copy, **the online version of submitted Bid and associated documents will prevail**. Any of the following may cause the Bid to be considered “Non-responsive” and liable to be rejected, at the sole discretion of Nodal Agency, subject to sufficient justification and decision of competent authority:

- a) Bid not submitted in prescribed envelope format.
- b) Bid that are incomplete, i.e. not accompanied by any of the applicable and required formats;
- c) Bid not accompanied by proper contents;
- d) Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP;
- e) Material inconsistencies in the information / documents submitted by the Bidder affecting the Eligibility Criteria;
- f) Information not submitted in the formats specified in this RFP;
- g) Bid being conditional in nature;
- h) Bid not received by the Bid Deadline;
- i) Bid having conflict of interest;
- j) Bidder makes any misrepresentation;

- k) Any other act of Bidder which may be unlawful for the purpose of this RFP.
- l) Bid submitted is not in requisite format(s).

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder's fulfilment of Eligibility Criteria is taken up.

#### **4.3. QUALIFIED BIDDER(S) SELECTION:**

- a) Bid qualifying in as per Eligibility Criteria shall only be evaluated in this stage.
- b) Bidders who have submitted Bid(s) in compliance with this RfP and meet the necessary Eligibility Criteria for a Project(s) as per RFP would be termed as Qualified Bidders and only their online Financial Bid would be considered and evaluated.
- c) All Bidder whose Bid is found in compliance with this RfP and qualifying Eligibility Criteria shall be placed as equal for concerned Project.
- d) Bidder shall quote the fixed tariff for the entire term of the PPA with effect from the COD in the Financial Bid. The Quoted Tariff shall be in (Rupees/ Unit) up to two (2) decimal places.

#### **4.4. EVALUATION OF FINANCIAL BID AND DECLARATION OF SUCCESSFUL BIDDERS**

**4.4.1.** From among Qualified Bidders, bucket filling methodology shall be followed for selection of Successful Bidders up to 8 MW solar projects at the most competitive tariff:

- a) The financial bid of Qualified Bidder(s) shall be opened on <https://www.bharat-electronictender.com> Portal.
- b) A Bidder is required to quote one tariff for a Project i.e. total SPP capacity associated with all target feeders on a sub-station. Bidders bidding for multiple sub-stations shall quote tariff separately for SPPs on respective sub-stations.
- c) Qualified Bidders quoting lowest tariff (L-1) for a substation shall be declared Financially Qualified Bidder (FQB) for the substation. Tariffs of FQBs shall remain valid up to 6 months from date of opening of Financial Bid.
- d) FQBs for respective concerned substations shall be arranged in ascending order. Only those FQBs in ascending order of tariff, which fall within 8 MW bucket, shall be declared Successful Bidders, subject to meeting following criteria:

- a. Least of all lowest rate discovered for concerned substation(s) is reasonable and acceptable to MPUVNL in light of prevailing market conditions;
- e) For Substations (s), where two or more Qualified Bidders quoted the same tariff, the preference shall be given in following order:
  - aa) Bidder with higher Net-Worth shall be given preference;
  - bb) Bidder with higher annual turnover shall be given preference.

#### **4.5. DECISION AS PER CONVENIENCE**

This RfP is for selection of Successful Bidders who would implement ambitious feeder solarization under component-C of PM KUSUM scheme.

- a) Notwithstanding anything contained in this RfP, competent authority shall have following rights without any obligation or answerability to Bidders:
  - a. decide on acceptable range of rates for Projects under this RfP,
  - b. decide on capacity to be awarded under this RfP
  - c. decide on extra capacity to be awarded to Waitlisted Bidders
  - d. cancel or terminate tendering process at convenience without assigning any reason at any stage of tendering process.

#### **4.6. AWARD OF CONTRACT TO SUCCESSFUL BIDDER**

- a) Nodal Agency shall provide LOA to the Successful Bidder. The date of issuance of LOA shall be intimated by the Nodal Agency to the Successful Bidder.
- b) The Successful Bidder has to accept the LOA and submits PBG in favour of the procurer of required value within thirty (30) days from the date of issuance of LOA, the Nodal Agency reserves the right to annul/ cancel the LOA of the Successful Bidder.
- c) In case Nodal Agency cancels the LOA issued to the Successful Bidder due to its non-compliance or successful bidder fails to sign the PPA within the stipulated timeline, the capacity of such bidder will be withdrawn and bid security of the bidder will be forfeited and/or the bidder will be debarred/ blacklisted from participating in MPUVN RFPs / tenders for a period of five (5) years.
- d) In case, if none of the waitlisted bidder(s) is interested in taking the Project, then Nodal Agency will take appropriate action.
- e) Nodal Agency at its own discretion, has the right to reject any or all the Bid without

assigning any reason whatsoever at any stage of tendering process.

#### **4.7. Performance Bank Guarantee:**

- a) The power producer shall provide Performance Bank Guarantee (PBG) of Rs. 5 Lakh/ MW to procurer within 30 days from date of issue of Letter of Award. Managing Director of MPUVNL can further extend this timeline by another thirty (30) days maximum. Details of such extensions shall be informed to the Board of MPUVNL.
- b) The PBGs submitted by successful bidder shall be valid for a period of 18 months from the date of issuance of LOA for the SPP. Managing Director of MPUVNL can further extend this time- line by another thirty (30) days maximum. Details of such extensions shall be informed to the Board of MPUVNL.
- c) The PBG will be returned to the power producer immediately after successful commissioning of solar power plant, after taking into account any adjustments/ recoveries, including penalties due to delay in commissioning.

#### **4.8. Signing of PPA**

- a) The signing of PPA by the power producer (s) with the Procurers shall happen within 60 days of issuing the LOA on the basis of Project Capacity. Managing Director of MPUVNL can further extend this timeline by another thirty (30) days maximum. Details of such extensions shall be informed to the Board of MPUVNL.
- b) Preferably, individual PPA shall be signed by a Successful Bidder with Procurer for each Project at corresponding tariff discovered through competitive bidding in accordance with this RfP.

However, PPAs for a group of Projects can be executed between Procurer and concerned Successful Bidder(s) as per mutual agreement and arrangement in that behalf for ease of commercial and contractual transactions. In such cases, technical arrangement of concerned Projects shall be ensured and complied with individually. Necessary provisions in this regard may be incorporated in PPA as relevant duly agreed between Procurer and concerned Successful Bidder(s).

- c) The selected RPG is required to sign PPA with the DISCOM in line with the timeline given in the RFP. In case, the selected RPG fails to execute the PPA within the stipulated time period, the RPG will be penalized according to the RFP.
- d) The term of the PPA shall be in line with Article 2 of the PPA. The Procurer will be obliged to buy the power in line with Clause 4.3 of the PPA.
- e) However, the power producer is required to achieve a minimum generation as per



Clause 4.3 of the PPA subject to a minimum CUF of 15% on annual basis during the PPA period.

**4.9. Shortfall in minimum generation:**

- a) For shortfall in generation on annual basis below minimum CUF (15%), penalty of 75% of PPA tariff for generation shortfall below 15% on annual basis shall be levied.
- b) While accounting this shortfall, periods of grid unavailability beyond 50 hours or period of force majeure shall be discounted to provide a level playing field to RPG.
- c) Detailed treatment of shortfall in generation/ minimum generation shall be in accordance with provisions of PPA.

**4.10. Commissioning**

- a) The selected power producer shall commission the solar power plant within nine months from the effective date as specified in article 5 of PPA. The power producer may commission the SPP during this period of nine months and the applicable tariff shall be in accordance to Article 9 of the PPA. A duly constituted Committee of DISCOM officials will physically inspect the Plant in not more than 03 days from the date of receiving a call from the power producer and certify successful commissioning of the plant. In case any power producer fails to achieve this milestone, procurer shall encash the Performance Bank Guarantee (PBG) in the manner as specified in Article 4 of PPA.

- 4.11.** In case any PBG, BG (if available) is utilized, partly or fully, towards recovery/ adjustment of LD/ penalty, the same shall be replenished to its original value and validity period within seven (7) Days of written communication on this behalf from Nodal Agency or procurer to Power Producer.

**SECTION V – FINANCIAL BID**

To be submitted online only

1. Given below is a SAMPLE FORMAT in which the financial bid for each bidding Project/ sub-station will be submitted ONLINE only (Please DO NOT fill this offline and DO NOT submit this with hard copy of bid).
2. Financial Bid format for each substation has to be prepared in desired format separately by completing all entries required in the table, including tariff at which Bidder wants to apply for concerned Project/ substation i.e. given below table is to be prepared separately for each Project/ substation that a Bidder is interested to bid for. [Example: If a Bidder is interested to place bid for any 5 Projects/ substations of their choice, then, 5 such tables shall be prepared separately for individual Project/ substation].
3. Subsequently, Bidder is advised to single PDF file of financial Bid formats of all interested Projects/ substations and upload it at ONLINE portal at desired place in online portal.
4. Financial Bid of only Qualified Bidders for each Project/ substation shall be considered and evaluated for identification of Financially Qualified Bidder for concerned Project/ substation.

1.	<b>Sub-station</b>	
2.	<b>Block</b>	
3.	<b>Village</b>	
4.	<b>Tahsil</b>	
5.	<b>District</b>	
6.	<b>Vidhan Sabha number and name</b>	
7.	<b>Discom</b>	
8.	<b>Bidding Capacity (kW)</b>	
9.	<b>Tariff (INR/ kWh)</b>	

This Tariff to be submitted ONLINE only. This tariff shall be fixed for 25 years from commercial operation date.

**ONLINE BID PORTAL SHALL ALERT A BIDDER sTO CHECK IF HE HAS SUBMITTED ONLINE FINANCIAL BID. Failure to submit correct online financial bid shall be sole responsibility of Bidder**

**SECTION VI: Intentionally left blank section**

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**SECTION VII: FORMATS TO BE SUBMITTED BY BIDDERS**

Bidder should be a body corporate incorporated in India under the Companies Act, 1956 or 2013 including any amendment thereto or a Partnership Firm having executed partnership deed and registered as per sections 58 & 59 of the Partnership Act, 1932, as amended or a Limited Liability Partnership Firm (LLP) registered under section 12 of Limited Liability Partnership Act, 2008, as amended or registered Sole Proprietor.

### CHECK LIST FOR BIDDERS

Bidder should be a body corporate incorporated in India under the Companies Act, 1956 or 2013 including any amendment thereto or a Partnership Firm having executed partnership deed and registered as per sections 58 & 59 of the Partnership Act, 1932, as amended or a Limited Liability Partnership Firm (LLP) registered under section 12 of Limited Liability Partnership Act, 2008, as amended or registered Sole Proprietor.

#### 1. Checklist for ONLINE submission

Sr. No.	Particular	Format No.	Document uploaded online (Yes/ No)
1.	Covering Letter	D1	
2.	General Particulars of the Bidder	D2	
3.	Shareholding certificate	D3	
4.	Bid Security, if applicable in the form of BG	D4	
5.	Power of attorney for authorized signatory on appropriate value stamp paper	D5	
6.	Financial eligibility criteria	D6	
7.	Relationship with affiliate	D7	
8.	Undertaking from Affiliate of Bidder/ Lead Member/ Member of Consortium/ JV, as applicable	D8	
9.	Consortium/ JV Agreement Format	D9	
10.	Power of attorney in favor of lead member of consortium/ JV	D10	
11.	Declaration	D11	
12.	Format for Land Availability Certificate from District Collector	D12	
13.	Proof of Bid Processing Fee Submission	-	

#### 2. Checklist for OFFLINE/ HARD copy submission

Sr. No.	Particular	Format No.	Document uploaded online (Yes/ No)
1.	Shareholding certificate	D3	
2.	Bid Security, if applicable in the form of BG	D4	

Request for Proposal for Grid Connected SPPs in Madhya Pradesh under feeder solarization component of PM KUSUM - C Scheme

3.	Power of attorney for authorized signatory on appropriate value stamp paper	D5	
4.	Consortium/ JV Agreement Format	D9	
5.	Power of attorney in favor of lead member of consortium/ JV	D10	
6.	Pass-phrases for decrypting Technical Bid and Financial Bid		

Signature of authorized signatory of Bidder

Name:

**FORMAT D1: Covering Letter**

**(The covering letter should be on the Letterhead of the Bidder/ Lead Member of Consortium/ JV)**

**Ref. No.** \_\_\_\_\_ (Please insert RfP No)

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

**From:** Insert name and address of Bidder

**Tel.:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**To,**

Superintending Engineer  
Madhya Pradesh Urja Vikas Nigam Limited  
(A Government of Madhya Pradesh Enterprise)  
Urja Bhawan, Link Road No. 2,  
Shivaji Nagar, Bhopal - 462016

Sub: Request for Proposal (RFP) for Selection of renewable power generator (RPG) setting up of Grid connected Solar based Power Plants (SPP) for feeder solarization component under PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India, for sale of power to MPPMCL.

Dear Sir,

- a) We, the undersigned \_\_\_\_\_ [insert name of the Bidder] having read, examined and understood in detail the Request for Proposal (RFP) for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of approximate 8 MW under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India for Sale of Solar Power to MPPMCL at the Delivery Point in each substation [i.e. preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bas of 33/11 kV or higher voltage substation with due approval of Procurer] near Sanchi in the state of Madhya Pradesh, India, hereby submit our Bid comprising of Financial Bid and Technical Bid. We confirm that neither we nor any of our Affiliate (if applicable) has submitted

Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

b) We give our unconditional acceptance to the RFP attached thereto, issued by Madhya Pradesh Urja Vikas Nigam Limited, as amended. As a token of our acceptance to the RFP, the same have been initialled by us and enclosed to the Bid. We shall ensure that we execute such RFP as per the provisions of the RFP and provisions of such RFP shall be binding on us.

**c) Projects**

We are pleased to submit our bid for the following substations as mentioned in table<sup>1</sup> below:

Sr No	District	Tehsil	Village	Feeder name	Substation Name	Capacity quoted (in kW)

**d) Bid Security**

We have submitted/ enclosed Bid Security as prescribed in this RfP.

**e) Acceptance**

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

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfil our obligations with regard to execution of projects of capacity offered.

**f) Familiarity with Relevant Indian Laws & Regulations**

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

We undertake that we have satisfied ourselves with the site conditions of the projects and

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<sup>1</sup> Please insert the rows according to the number of applied sub-stations by bidder.



our proposed financial bid takes into consideration the existing site conditions.

**g) Contact Person**

Details of the contact person are furnished as under:

<b>Particulars</b>	<b>Description</b>
Name	
Designation	
Company	
Address	
Phone Nos.	
E-mail address	

We confirm that our bid shall remain valid for a period of one hundred and eighty (180) Days from Bid Deadline. We are enclosing herewith covering letter, processing fee and Bid Security and technical documents as per applicable containing duly signed formats as desired by you in the RFP for your consideration.

It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from Nodal Agency. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and eighty days, confirm that we have not taken any deviations, so as to be deemed non-responsive.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2022

Thanking you,

We remain,

Yours faithfully,

(Signature of Authorized Person in whose name Power of Attorney/ Board Resolution)

**Name:**

**Designation:**

**Organization Stamp:**

**FORMAT D2: General Particulars of the Bidder**

1.	Name of the Bidder	
2.	Type of Bidders (Company/ Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor)	
3.	Is proof for the bidder eligibility is attached (e.g. certificate of incorporation etc.)	Yes/ No
4.	Address for communication	
5.	E-mail	
6.	Website	
7.	Authorized Contact Person(s) with name, designation, Address and Mobile Phone No., E-mail address/ Fax No. to whom all references shall be made	
8.	Year of Incorporation (as applicable)	
9.	Have the Bidder/ Company debarred/ blacklisted in preceding 5 years from bid submission date by any Govt. Dept. / undertaking for undertaking any work	Yes/ No
10.	Reference of any documentation formation attached by the Bidder other than specified in the RFP.	
11.	Whether the Bidder wishes to form a Project Company for execution of work	Yes/ No
12.	Bidder is listed in India (as applicable)	Yes/ No
13.	GSTIN No. (if Applicable)	
14.	PAN No.	
15.	Certificate of Incorporation of Bidder/ Affiliate (as applicable) enclosed	Yes/ No
16.	Partnership deed for LLP/ Sole Proprietor registration (as applicable) enclosed	Yes/ No

\_\_\_\_\_  
(Signature of Authorized Signatory)

**Name:**

**Designation:**

**Organization Stamp:**

**FORMAT D3: Shareholding certificate for company / partner contribution in a partnership firm (as applicable)**

(To Be Issued by CA/ Statutory Auditor's on letterhead of CA/ Statutory Auditor)

SHAREHOLDING CERTIFICATE FOR COMPANY

Name of the Equity holder	Type and Number of shares owned	% of equity holding	Extent of Voting rights

OR

PARTNER CONTRIBUTION IN A PARTNERSHIP FIRM

Name of Partner	Capital Contribution (Rs)	% of Ownership in the Firm

\_\_\_\_\_  
(Signature of Authorized Signatory) With Stamp

\_\_\_\_\_  
(Signature of Company Secretary/ Director/ Chartered Accountant)

**FORMAT D4: Bid Security**

(To be stamped on non – judicial stamp paper of minimum INR 1000)

Ref. \_\_\_\_\_ Bank Guarantee No. \_\_\_\_\_  
Date: \_\_\_\_\_

In consideration of the [Insert name of the Bidder] (hereinafter referred to as Bidder) submitting the response to RFP for Selection of RPGs for Implementation of approximate 8 MW Grid Connected Solar based power plants connected to selected 33/ 11 kV substation(s), near Sanchi, for Sale of Solar Power to MPPMCL in the state of MP under feeder solarization component of PM KUSUM-C in response to the RFP No. \_\_\_\_\_ Dated \_\_\_\_\_ issued by Madhya Pradesh Urja Vikas Nigam Limited (hereinafter referred to as Nodal Agency) and Nodal Agency considering such response to the RFP off [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 Nodal Agency at [Insert Name of the Place from the address of Nodal Agency] forthwith on demand in writing from Nodal Agency or any Officer authorized by it in this behalf, any amount upto and not exceeding Rupees [Insert amount] 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 this RFP] and shall not be terminable by notice or any change in the constitution of the Bank or the term of Agreement or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective Agreement.

Our liability under this Guarantee is restricted to Rupees (Rupees \_\_\_\_\_ only). Our Guarantee shall remain in force until [insert date of Bid Validity in accordance with this RFP]. Only Nodal Agency shall be entitled to revoke this Guarantee till \_\_\_\_\_ [Insert date which is 30 days after the date in the preceding sentence].

The Guarantor Bank hereby agrees and acknowledges that only the Nodal Agency shall have a right to revoke 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 Nodal Agency, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to Nodal Agency.

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Bhopal 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 Nodal Agency 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 Nodal Agency or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees \_\_\_\_\_ (Rupees \_\_\_\_\_ only) and it shall remain in force until [Date to be inserted on the basis of this RFP] with an additional claim period of thirty (30) days thereafter.

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

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

For [Insert Name of the Bank]

Banker's Stamp and Full Address

Date, this \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_.

**FORMAT D5: Power of Attorney**

*(To be stamped on non – judicial stamp paper of minimum INR 1000)*

- a) Power of Attorney to be provided by the Bidder in favour of its representative as evidence of authorized signatory's authority.
  
- b) Know all men by these presents, we (name and address of the registered office of the Bidder as applicable) do hereby constitute, appoint and authorize Mr./ Ms. (name & residential address) who is presently employed with us and holding the position of \_\_\_\_\_ 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 Selection of RPG for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of \_\_\_\_\_ MW under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India for Sale of Solar Power to MPPMCL at the delivery point in (each) substation near Sanchi in the state of Madhya Pradesh, India in response to the RFP No..... Dated: \_\_\_\_\_ issued by Nodal Agency including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Nodal Agency may require us to submit. The aforesaid Attorney is further authorized for making representations to the Madhya Pradesh Urja Vikas Nigam Limited and providing information / responses to Nodal Agency representing us in all matters before Nodal Agency and generally dealing with Nodal Agency in all matters in connection with Bid till the completion of the bidding process as per the terms of the above mentioned in RFP.
  
- c) 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 be binding on us and shall always be deemed to have been done by us.
  
- d) 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 executant's/executant's company)

through the hand of

Request for Proposal for Grid Connected SPPs in Madhya Pradesh under feeder solarization component of PM KUSUM - C Scheme

---

Mr \_\_\_\_\_

duly authorized by the Board to issue such Power of Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Accepted

\_\_\_\_\_

Signature of Attorney

Name:

Designation:

Address of the Attorney:

Attested

\_\_\_\_\_

(Signature of the executant)

Name:

Designation:

Address of the executant:

\_\_\_\_\_

Signature and stamp of Notary of the place of execution

Common seal of \_\_\_\_\_ has been affixed in my/ our presence pursuant to Board of Director's Resolution dated \_\_\_\_\_

WITNESS

\_\_\_\_\_

(Signature)

Name \_\_\_\_\_

Designation \_\_\_\_\_

Name of Organization (Stamp) \_\_\_\_\_

(Signature)

Name \_\_\_\_\_

Designation \_\_\_\_\_

Name of Organization (Stamp) \_\_\_\_\_

**FORMAT D6: Financial Eligibility Criteria Requirement**

(To be submitted on the CA/ Statutory Auditor's Letterhead, duly sealed and signed by CA/ Statutory Auditor)

To,

Superintending Engineer  
Madhya Pradesh Urja Vikas Nigam Limited  
(A Government of Madhya Pradesh Enterprise)  
Urja Bhawan, Link Road No. 2,  
Shivaji Nagar, Bhopal - 462016

Ref.: RFP No. \_\_\_\_\_ dated / / and corrigenda/ addenda/ amendments thereof

Dear Sir,

Sub: Financial eligibility fulfilment in response to above referred RFP

We, M/ s \_\_\_\_\_ (Mentioned the Name of Chartered Auditor), Chartered Accountant (CA) and authorized by below mentioned entities to certify their net-worth and/ or turnover for FY20, FY21 and FY22, as applicable according to the clause 3.14.5, do hereby certify and state the following:

Based on audited annual accounts, net worth (latest of FY21 or FY22) and/ or turnover (continuous 2 years among FY20, FY21 or FY22) of below mentioned entities are as mentioned in table below:

Name of Entity being evaluated (Lead Member in case of Consortium/ JV)	Name of Affiliate in case its Financial Strength being used	Financial Year	Financial Parameters	
			Net worth (INR Lakh)	Turn over (in Cr)
		FY 20		
		FY 21		
		FY 22		

Consortium/ JV Member (provide details if applicable, else leave blank)

Name of Consortium/ JV Partner	Financial Year	Financial Parameters	
		Net worth (INR Lakh)	Turn over (in Cr)
	FY 20		



Name of Consortium/ JV Partner	Financial Year	Financial Parameters	
		Net worth (INR Lakh)	Turn over (in Cr)
	FY 21		
	FY22		

The relevant financial statement for respective years shall be enclosed, duly signed by authorised signatory.

Note:

1. Please attached audited financial statements (balance sheets, including all related notes, and income statements) clearly mentioning the UDIN number, for the years required above complying with the following condition:
  - a. Must reflect the financial situation of the Bidder as well as a member of a Consortium/ JV (if applicable), and not sister or parent companies;
  - b. Historic financial statements must be audited by a certified public accountant;
  - c. Historic financial statements must correspond to accounting periods already completed and audited. No statements for partial periods shall be accepted;
  - d. Should be submitted on the letter head of the public accountant.
2. Net worth and turnover will be calculated as per methodology under the clause 3.14.5 of RfP no. \_\_\_\_\_ dated \_\_\_\_/ / , and its amendments/ corrigenda etc.
3. The bidders shall declare in undertaking (Format-D8) the criteria on which they fulfil the financial eligibility as per the provisions of this RFP.
4. Audited consolidated annual accounts of the Bidder may also be used for the purpose of financial criteria provided the Bidder has at least 26% equity and control in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Name: \_\_\_\_\_

Registration No.: \_\_\_\_\_

Registered office: \_\_\_\_\_

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

Place: \_\_\_\_\_

Signature and stamp (on each page) of Chartered Accountant/ Statutory Auditors of Bidder

**FORMAT D7: Format for certificate of relationship of affiliate with the bidder**  
(CA/ statutory auditor's certificate to be submitted by Bidder/ Lead Member on behalf of self, as applicable)

To,

Superintending Engineer,  
Madhya Pradesh Urja Vikas Nigam Limited  
Urja Bhawan, Link Road No. 2,  
Shivaji Nagar, Bhopal - 462016

Ref.: RFP no. \_\_\_\_\_ and corrigenda/ addenda/ amendments thereof

Dear Sir,

Sub: Relationship of lead member with affiliate bidder

We hereby certify that M/ s \_\_\_\_\_, M/ s \_\_\_\_\_, M/ s \_\_\_\_\_, are the Affiliate(s) of the Bidder as per the definition of Affiliate as provided in this RFP and based on details of equity holding as on seven (7) Days prior to the Bid Deadline.

The details of equity holding of the Affiliate / Bidder or vice versa as on seven (7) Days prior to the Bid Deadline are given as below:

a) In case of Bidder being Company/ LLP/ Partnership Firm/ Sole – Proprietor:

Name of Company/ LLP/ Partnership Firm/ Sole – Proprietor	Name of the Affiliate	Details of Equity Holding

OR

b) In case of Bidder being member of the Consortium/ JV

Name of Member of Consortium/ JV	Name of the Affiliate	Details of Equity Holding

Yours Faithfully

\_\_\_\_\_  
Signature of Statutory Auditor

**Name:**

**Designation:**

**Organization Stamp:**

**FORMAT D8: Undertaking Form**

Undertaking from Affiliate of Bidder/ Lead Member/ Member of Consortium/  
JV, as applicable

Name: \_\_\_\_\_

Full Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

To,

\_\_\_\_\_

Dear Sir,

- a) We refer to the RFP No: ..... Dated: \_\_\_\_/ / for Request for Proposal (RFP) for Selection of RPG for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of approximately 8 MW under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India for Sale of Solar Power to MPPMCL at the delivery point in (each) substation [i.e. preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bar of 33/11 kV or higher voltage substation(s) with due approval of Procurer(s)].
- b) We have carefully read and examined in detail the RFP regarding submission of an undertaking, as per the prescribed Format of the RFP.
- c) We confirm that M/ s \_\_\_\_\_ (Insert name of Bidder) is our Affiliate on the following basis:
- d) that M/ s (Insert name of Bidder) has been authorized by us to use our financial capability for meeting the Financial Eligibility as specified in the RFP referred to above in terms of Net worth and/ or Turnover.
- e) We have also noted the amount of the Performance Guarantees and Bid Security required to be submitted as per the RFP by (Insert the name of the Bidder) in the event of it being selected as the SPD.
- f) In view of the above, we hereby undertake to you and confirm that in the event

of failure of (Insert name of the Bidder) to submit the Performance Guarantees in full or in part at any stage and Bid Security, as specified in the RFP, we shall submit the Performance Guarantee and Bid Security not submitted by (Insert name of the Affiliate/ Consortium/ JV member of Bidder)”.

- g) We also undertake that we shall maintain our relationship with M/s \_\_\_\_\_ (insert name of bidder) so that it is in accordance with principles of ‘Control’ and ‘Affiliate’ laid out in RfP No. \_\_\_\_\_ Dated: / / . (**in case of affiliate**)
- h) We have attached hereto certified true copy of the Board Resolution, whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.
- i) All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

\_\_\_\_\_

Signature of Chief Executive Officer/ Managing Director/ Authorized Signatory

Common seal of has been affixed in my/ our presence pursuant to Board of Director’s Resolution dated.

Name:

Designation:

Name of Organization:

WITNESS

\_\_\_\_\_

(Signature)

Name:

Designation:

Name of Organization:

\_\_\_\_\_

(Signature)

Name:

Designation:

Name of Organization:

**FORMAT D9: Format for Consortium/ JV Agreement for Participation  
In Request for Proposal (RFP)**

**for**

**Selection of Renewable Power Generator (RPG)**

**for**

Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of approximately 8 MW under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India, for Sale of Solar Power to MPPMCL at the delivery point at concerned substation(s) in Madhya Pradesh, India.

*(To be stamped as per the stamp act of the state where the document is made, on minimum INR 1000 value non judicial stamp paper)*

THIS AGREEMENT is entered into on this \_\_\_ day of \_\_\_\_\_ 2022.

**AMONGST**

{ \_\_\_\_\_, party on **First Part** of consortium/ JV} and having its registered office at \_\_\_\_\_ (Hereinafter referred to as the "**First Part**" or "**Lead Member**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

\_\_\_\_\_ Having its registered office at \_\_\_\_\_.(Hereinafter referred to as the "**Second Part**" or "**Member**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above-mentioned parties of the First and Second are collectively referred to as the "**Parties**" and each is individually referred as a "**Party**"

**WHERE AS,**

i. Madhya Pradesh Urja Vikas Nigam Ltd. (hereinafter referred to as the

“**MPUVNL**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its RFP No: ..... Dated: \_\_\_\_\_ for award of the rate contract/ work under “Selection of solar power generator (SPG) for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of approximate 8 MW for Sale of Solar Power to MPPMCL at the delivery point in (each) substation near Sanchi in the state of Madhya Pradesh, India (hereinafter called “**Project (s)**”) and Selection of RPG for the same.

ii. The Parties are interested in jointly bidding for the Project as members of consortium/ JV in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

iii. It is a necessary condition under the RFP document that the members of the Consortium/ JV shall enter into a Consortium/ JV agreement and furnish a copy thereof with the Application.

**NOW IT IS HEREBY AGREED as follows:**

### **Definitions and Interpretations**

In this agreement, the capitalized terms shall, unless the context otherwise require, have the

Meaning ascribed thereto under the above mentioned RFP.

#### **1. Consortium/ JV**

The Parties do hereby irrevocably constitute a consortium/ JV (the “**Consortium or JV**”) for the purposes of jointly participating in the Bidding Process. The Parties hereby undertake to participate in the Bidding Process in a Project Group as per Table 1 of this RFP, only through this Consortium/ JV and not individually and/ or through any other consortium / JV constituted for this RFP, either directly or indirectly or through any of their Affiliate(s).

Parties do hereby irrevocably state and affirm that if consortium/ JV has referred financial credentials of its Affiliate to meet the Financial Eligibility criteria, then the same relationship with the Affiliate by the Parties shall continue at least for the period of First Operational Year (equity lock-in period).

#### **2. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) The parties agree to submit bid as Consortium/ JV for following Project(s)/ Substation(s):

Sr No	District	Tehsil	Village	Feeder name	Substation Name	Capacity quoted (in kW)

- b) Only First Part shall be evaluated for qualification against technical eligibility criteria as per RFP.
- c) First Part shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium/ JV during the Bidding Process and after its selection as Successful Bidder.
- d) First Part would be responsible and obligated for successful execution of all work awarded to them by MPUVNL and in no circumstances the same shall be the responsibility of Second Part. Pursuant to selection of Successful Bidder as per criteria delineated in the RFP, all obligations as per RFP shall be borne by the First Part.
- e) Second Part and Third part shall work in accordance with roles and responsibilities assigned to them by First Part as a part of their internal understanding.
- f) Parties have agreed and documented clearly stated roles and responsibilities between First Part, Second Part and Third Part for execution of work awarded by MPUVNL.
- g) Subject to the terms of this agreement, the share of each Member of the Consortium/ JV in the “issued equity share capital” shall be in the following proportion: (if applicable)

Name of Member	Proposed % Equity holding
Lead Member	..... (At least 51%)
Member	



### 3. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Bid Validity Period of Award and further in accordance with the LOA subsequently issued if bid arrives as successful. However, in case the Consortium/ JV is either not pre-qualified for the Project or does not get selected for Award of the work, the Agreement will stand terminated in case the Applicant is not pre-qualified.

### 4. Miscellaneous

This Joint Bidding Agreement shall be governed by laws of India. The Parties acknowledge and accept that this Agreement shall not be amended by Parties without the prior written consent of the MPUVNL. Party of First Part would decide on the representative of Consortium/ JV at MPUVNL.

IN WITNESS WHERE OF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND  
DELIVERED For and on behalf of

Lead Member by:

(Signature)

(Name & Designation)

Organization Name

(Address)

In Presence of:

Witness -1

Witness -2

SIGNED, SEALED AND DELIVERED  
For and on behalf of Second Part:

(Signature)

(Name & Designation)

Organization Name

(Address)

In Presence of:

Witness -1

Witness -2

**FORMAT D10: Power of attorney in favour of lead member of the consortium/ JV**

*(to be submitted by each member of the Consortium/ JV)*

*(To be stamped as per the stamp act of the state where the document is made, minimum INR 1000 value stamp paper)*

Whereas Madhya Pradesh Urja Vikas Nigam Ltd. (MPUVNL) has invited applications (the "Applications") by its RFP No: ..... Dated: \_\_\_\_/ / for Selection of RPGs for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of \_\_\_\_ MW under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India, for Sale of Solar Power to MPPMCL at the Delivery Point in (each) substation [i.e. preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bar of 33/11 kV or higher voltage substation(s) with due approval of Procurer(s)] (hereinafter called "Project")

Whereas, ....., ....., and ..... (collectively the **Consortium/ JV**) being Members of the Consortium/ JV and having signed a Joint Bidding Agreement dated [●], are interested in submitting a Bid in accordance with the terms and conditions of the Request for Proposal (**RFP**) and the other Bid Documents, and

Whereas, it is necessary for the Members of the Consortium/ JV to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium/ JV, all acts, deeds and things as may be necessary in connection with the Consortium's/ JV's bid for the Unit(s) and its execution.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**

- a) We, ....., having our registered office at ....., and ....., having our registered office at ....., (hereinafter collectively referred to as the **Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise ..... having its registered office at ....., being one of the Members of the Consortium/ JV, as the Lead Member and true and lawful attorney of the Consortium/ JV (hereinafter referred to as the **Attorney**).

We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium/ JV, and any one of us, during the Bid Process, including undertaking all acts required for the submission of the Bid in accordance with the terms and conditions of the RFP. Additionally, we also authorise the Lead Member to do any other acts or submit any information and documents related to the above Bid submission, to do on our behalf and on behalf of the Consortium/ JV, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Unit(s), including but not limited to signing and submission of all applications, undertakings and other documents and writings, participate in bidders and other conferences and respond to queries, if required. In the event the Consortium/ JV is awarded the Project Documents for developing the Units, we authorise the Lead Member to submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium/ JV in relation to the incorporation of the SPV and generally to represent the Consortium/ JV in all its dealings with RUMSL, and/ or any other Government Agency or any Person, in all matters in connection with or relating to or arising out of the Consortium's/ JV's Bid for the Unit(s) and/ or upon award thereof till incorporation of the SPV.

- b) **AND** hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium/ JV.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2022

For .....

(Signature)

.....

Name:

Designation:

Organization Name:

For .....

(Signature)

.....

Name:

Designation:

Organization Name:

(To be executed by authorized signatories of the Members of the Consortium/ JV, except the Lead Member)

Witnesses:

1.

(Signature)

Name:

Designation:

Organization Name:

2.

(Signature)

Name:

Designation:

Organization Name:

(Notarised)

Accepted

.....

(Signature of the authorized signatory of the Lead Member)

(Name, Title and Address of the Attorney)

Instructions:

(1) *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the*

*executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

*(2) Also, wherever required, the Members should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Member of the Consortium/ JV.*

### **FORMAT D11: Declaration**

(To be submitted on Original Letterhead of Bidder/ Lead Member of Consortium/ JV)

I/ We have carefully read and understood the Terms and Conditions of the RFP and agree to abide by them. I/ We accept and undertake, the following statements that,

1. I/ We have carefully read and understood terms and conditions of above referenced RFP (RfP no. \_\_\_\_\_/\_\_\_\_ dated \_\_/\_\_/\_\_\_\_) and associated PPA and their corrigenda/ addenda/ amendments issued from time to time before bid submission end date (collectively called as "RfP Documents"). In case, at any stage of bidding process or after award of work, our bid or award of work is found non-compliant with any provisions of RfP Documents or any of our undertakings/ declarations are found wrong/ unsolicited/ misrepresented/ unfulfilled, we unconditionally declare and undertake to accept, without any responsibility/ accountability/ implications/ liabilities/ obligations on anyone other than us, decision of competent authority as appropriate, including rejection of our bid and/ or cancellation of award of work, without prejudice to any other rights that competent authority may be entitled to exercise as per law or under provisions of RfP documents
2. I/ We have, in last 5 years, not been Black listed or debarred or otherwise for any Supply of Goods / Services / Works by any Ministry / Department / PSU of Central Government / Any of the State Government(s), anytime / anywhere in the Country or have failed to execute any previous work of MPUVNL.
3. I/ We solemnly undertake that, the responsibility of execution of the Work as per the terms and conditions of the RFP/Contract Agreement shall be entirely ours.
4. Except as required by nodal agency, we have not taken support from any of the independent Consultant or Consulting Agency who is associated with Nodal Agency in any form while preparing RFP.
5. I/ We are aware that, I/ we should ensure compliance to the MNRE's order/ rule/ guidelines pertaining to KUSUM-C.

If this Declaration is found to be incorrect or if any RFP Condition is found violated by us, then without prejudice ..... (*Insert Bidder's Name*) including our Members, Parent, Ultimate Parent, and our Affiliates shall be suspended/ debarred/ blacklisted from participating in upcoming tenders issued by any department of MP State Government for a period of 5 years from the date of default as notified by MP Urja Vikas Nigam Limited. and the Proposal to the Extent of Acceptance / anytime during Execution of Assignment may be cancelled.

(Signature of Authorized Signatory)

Name (in Block Letter):

Designation & Organization Name (in Block Letter):

**FORMAT D12: Format for Land Availability Certificate from District Collector**

(Applicable to Bidders willing to avail government land for project development)

**To whomsoever it may concern**

The government land having survey no .. \_\_\_\_\_ situated in village \_\_\_\_\_ tehsil, \_\_\_\_\_ district \_\_\_\_\_ is available for utilization by solar projects and it can be transferred through Department of New and Renewable Energy, GoMP.

Name and signature of Collector

Seal of Collector

**Section IX: Formats for Submitting Performance Bank Guarantee (PBG) By  
Successful Bidders**

**FORMAT 1: Format for performance bank guarantee**

*(To be stamped on non – judicial stamp paper as per the stamp act of the state where the document is made)*

- a) In consideration of the *[Insert name of the Bidder]* (hereinafter referred to as (Bidder) submitting the response to Request for Proposal (RFP) for Selection of RPGs for Design, Engineering, Supply, Installation, Testing and Commissioning including construction of bay and related switchgear at sub-station along with Comprehensive Operation & Maintenance (for twenty-five (25) Operational Years of Grid Connected Solar based Power Plants (SPPs) of aggregate capacity of approximate 8 MW, under feeder solarization component of PM KUSUM-C scheme near Sanchi in the state of Madhya Pradesh, India, for Sale of Solar Power to MPPMCL at the delivery point [i.e. preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bas of 33/11 kV or higher voltage substation with due approval of Procurer(s)] in concerned 33/11 substation(s) in Madhya Pradesh, India in response to the RFP dated \_\_\_\_\_ issued by Madhya Pradesh Urja Vikas Nigam Limited (hereinafter referred to as Nodal Agency) and Nodal Agency considering such response to the RFP of [insert the name of the RPG] (which expression shall unless repugnant to the context or meaning thereof include its executers, administrators, successors and assignees) and selecting the Project of the RPG and issuing LOA No. \_\_\_\_ to (Insert Name of RPG) as per terms of RFP and the same having been accepted by the selected 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 Nodal Agency at [Insert Name of the Place from the address of the Nodal Agency] forthwith on demand in writing from Nodal Agency, or any officer authorized by it in this behalf, any amount upto and not exceeding Rupees \_\_\_\_\_ [Rupees \_\_\_\_\_ (Total Value in words)] only, on behalf of M/ s *[Insert name of the SPD / 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 Agreement or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed



with or without our knowledge or consent, by or between parties to the respective Agreement.

- b) Our liability under this Guarantee is restricted to Rupees \_\_\_\_\_(both in numbers and words)
- c) Our Guarantee shall remain in force until Nodal Agency shall be entitled to invoke this Guarantee till\_\_\_\_\_. The Guarantor Bank hereby agrees and acknowledges that Nodal Agency shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.
- d) The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by Nodal Agency, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to Nodal Agency.
- e) The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by [Insert name of the SPD. The Guarantor Bank shall not require Nodal Agency to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against Nodal Agency in respect of any payment made hereunder.
- f) This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Bhopal shall have exclusive jurisdiction.
- g) The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.
- h) This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.
- i) This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly Nodal Agency shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected RPG / Project Company, to make any claim against or any demand on the RPG or to give any notice to the RPG / Project Company or to enforce any security held by Nodal Agency or to exercise, levy or enforce any distress, diligence or other process against the RPG / Project Company.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees \_\_\_\_\_ (Rupees \_\_\_\_\_ only) and it shall remain in force until we are liable to pay the guaranteed amount or any part thereof under this Bank

Guarantee only if Nodal Agency serves upon us a written claim or demand.

\_\_\_\_\_

Signature

Name

Power of Attorney No.

For

[Insert Name of the Bank]

Banker's Stamp and Full Address.

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

Witness:

\_\_\_\_\_

Signature

Name and Address\_\_\_\_\_

\_\_\_\_\_

Signature

Name and Address\_\_\_\_\_

**FORMAT 2: Check list for PBG**

<b>S. No.</b>	<b>Details of checks</b>	<b>YES/ NO</b>
1	Is the Bank Guarantee on non-judicial Stamp paper of appropriate value, as per applicable Stamp Act of the place of execution	
2	Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor? (The date of purchase of stamp paper should be not later than the date of execution of Bank Guarantee and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the Bank Guarantee has been issued. Also the Stamp Paper should not be older than six (6) Months from the date of execution of Bank Guarantee).	
3	Has the executing Officer of Bank Guarantee indicated his name, designation and Power of Attorney No./ Signing Power no. on the Bank Guarantee?	
4	Is each page of Bank Guarantee duly signed / initialled by executant and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed Performa?	
5	Does the Bank Guarantees compare verbatim with the Performa prescribed in the Bid Documents?	
6	Are the factual details such as Bid Document No. / Specification No., / LOA No. (if applicable) / Amount of Bank Guarantee and Validity of Bank Guarantee correctly mentioned in the Bank Guarantee	
7	Whether overwriting/ cutting if any on the Bank Guarantee have been properly authenticated under signature & seal of executant?	

**ANNEXURE -1 – List of Substations along with Capacity**

**Substations identified by concerned Discoms meet following criteria:**

- a). It has at least one dedicated agricultural feeder emanating from 33/11 kV substation
- b). It has at least one non-agricultural feeder emanating from 33/11 kV substation
- c). Concern 33/11 kV substation has technically feasible capacity to accommodate proposed capacity of solar project under feeder solarization component of PM KUSUM-C

**Central DISCOM**

List of substations of Central Discom meeting desired criteria

Sl. no	Circle	Division	Name of 33/11 substation**	Name of 11 kV feeders	Type of consumers served	Tentative capacity of solar plan (MW)
1.	Raisen	Raisen	Sanchi-2	Sanchi town,	Non-agricultural	3
				Salamatpur-Billori, Nonakhedi	Agricultural	5

**IMPORTANT NOTE:**

- 5. Revenue land availability:** MPUVNL has identified revenue land blocks at two locations near Sanchi- (a) about 12 hectare land at Gulgaon and (b) about 10 hectare land in proximity of 132/ 33 kV Salamatpur substation. If interested Bidders show willingness to avail suitable land parcel(s) from any of these land blocks, it may be provided to Successful Bidder as per prevailing policy of Govt. of Madhya Pradesh on best endeavor basis. However, this does not absolve interested Bidder/ Successful Bidder of their primary obligation to arrange land necessary for project implementation within agreed timelines.
- 6.** Due to special nature of this project, as per technical feasibility and approval of competent authorities, the Delivery Point/ interconnection point could be at 132/ 33 kV substation at Salamatpur near Sanchi\*\*.

**ANNEXURE – 2 – Model PPA**

**STANDARD**

**POWER PURCHASE AGREEMENT FOR**

**PROCUREMENT OF ..... MW \_\_\_ POWER ON LONG TERM**

**BASIS**

**Between**

**[Name of Renewable Power Generator]**

**And**

**Madhya Pradesh Power Management Company Limited**

**[month and year]**

This Power Purchase Agreement is made on the \_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_

Between

\_\_\_\_\_ [name of the Renewable Power Generator], \_\_\_\_\_, [details of Renewable Power Generator] (hereinafter referred to as “**Renewable Power Generator or RPG**”, 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

**Madhya Pradesh Power Management Company Limited** , a company incorporated under the Companies Act 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as “**PROCURER**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The RPG and PROCURER are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

**WHEREAS:**

- A. The Ministry of New and Renewable Energy [MNRE] has launched PM KUSUM scheme for farmers on 8th March 2019 and issued implementation guidelines subsequently;
- B. MNRE issued detailed guidelines for feeder level solarization under KUSUM-C scheme on 4 December 2020;
- C. As per MNRE guidelines for feeder level solarization under KUSUM-C scheme, Government of India (GoI) shall provide subsidy at a rate 30% of estimated cost of INR 3.5 crore/ MW for projects meant for feeder solarization of agricultural feeders;  
**Important clarification:** In cases where Project Capacity is determined to meet energy requirement of concerned agricultural feeders as well as energy requirement of nearby urban/ rural load centres, the CFA shall be limited to capacity adequate for meeting energy requirements of concerned agricultural feeders only as per KUSUM-C guidelines.
- D. Tariff for projects set up under feeder level solarization has been arrived at after factoring in the GoI subsidy from total project cost;
- E. The MNRE has accorded a sanction and allotted solarization of \_\_\_\_\_ pumps through feeder level solarization to Madhya Pradesh Urja Vikas Nigam Limited for under the said scheme on \_\_\_\_\_.2020.
- F. Madhya Pradesh Urja Vikas Nigam Limited had initiated a selection process for procurement of \_\_\_\_\_ MW of the power generated from the Grid Connected \_\_\_\_\_Power Project on the terms and conditions contained in the RFP No. \_\_\_\_\_ dated \_\_\_\_\_



- G. The RPG has been selected in the Process for development, generation and supply of electricity from the \_\_\_\_MW \_\_\_\_\_ Power Project to be established by RPG at [location of proposed power plant] and electricity generated to be fed to the \_\_\_\_\_ [Name and location of 33/ 11 kV substation];
- H. Madhya Pradesh Urja Vikas Nigam Limited has issued the Letter of Award No\_\_\_\_dated \_\_\_\_in favour of the RPG for development and establishment of the\_\_\_\_MW \_\_\_\_\_ Power Project as per the terms and conditions contained in the EoI/ RfS.
- I. The RPG has furnished the Performance Bank Guarantee in the sum of Rs \_\_\_\_\_ in favour of PROCURER as per the format prescribed by the PROCURER.
- J. The RPG has fulfilled the terms and conditions for signing this Power Purchase Agreement as a definitive agreement for establishing the \_\_\_\_ Power Project of \_\_\_\_MW at \_\_\_\_\_, for generation and sale of electricity by the RPG to PROCURER at 33/ 11 kV S/ S;
- K. The parties have agreed to execute this Power Purchase Agreement in terms of the EoI/ RfS and the Letter of Award in regard to the terms and conditions for establishment of the \_\_\_\_\_ Power Project at, and for generation and supply of electricity by the RPG to PROCURER.

**Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:**

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall be the commission of the state where PROCURER is situated;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to RPG and PROCURER, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State;

Request for Proposal for Grid Connected SPPs in Madhya Pradesh under feeder solarization component of PM KUSUM - C Scheme

“Capacity Utilisation Factor” or “CUF”	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$ ;
Central Financial Assistance (CFA)	shall be INR 1.05 crore/ MW i.e. 30% of estimated cost of installation of SPP at INR 3.5 crore/ MW. CFA shall be governed by relevant Govt. of India guidelines from time to time.  CFA/ subsidy from Govt. of India will be released to the RPG through nodal agency on successful operation and performance of the solar power plant for two months after the commissioning, with at least one-month CUF as per minimum CUF agreed in PPA.
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commercial Operation Date (COD)”	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the project;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and	shall mean all authorizations, licenses, approvals, registrations, permits, waivers,
“Permits”	privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a RPG 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:  (i) in the financial year in which the COD would occur, the Contract Year shall end on the date immediately before the COD and a new Contract Year shall commence once again from the COD and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and  (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean [Insert capacity] MW contracted with PROCURER for supply by the RPG to PROCURER at the Delivery Point from the Power Project;

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"Delivery Point"	shall mean preferably be 11 kV bus bar at the 33/ 11 kV Sub-station. However, as per necessity and technical feasibility, Delivery Point can be at 33 kV bus bar of 33/11 kV or higher voltage substation with due approval of Procurer(s). Metering shall be done at this interconnection point where the power is injected into the 33/ 11 kV Sub-station. For interconnection with grid and metering, the RPG shall abide by the relevant and applicable regulations, Grid Code notified by the State Commission and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the Appropriate Commission or CEA. All charges and losses related to Transmission of power from project up to Delivery Point as notified by the Appropriate Commission shall be borne by the RPG.
"Dispute"	shall mean any dispute or difference of any kind between PROCURER and the RPG, 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"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the PROCURER or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the PROCURER.
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twenty-five (25) years from the Commercial Operation Date subject to that the supply of power shall be limited for a period of 25 years from the COD unless extended by the Parties as per this Agreement;
"Financing Agreements"	shall mean the agreements pursuant to which the RPG has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of PROCURER;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state of and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India;

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"Insurances"	shall mean the insurance cover to be obtained and maintained by the RPG in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on RPG's side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"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 Commissions;
"Letter of Credit" or "L/ C"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Letter of Award" or "LoA"	shall mean Letter of Award issued by Madhya Pradesh Urja Vikas Nigam Limited to the RPG for the project;
"MNRE"	shall mean the Ministry of New and Renewable Energy, Government of
"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;
"Power Project" or "Project"	shall mean the _____ power generation facility of Contracted Capacity of .[Insert capacity] MW, located at _____, [Insert name of the District and State] having a separate control system, metering and separate points of injection into the grid at Delivery point of 33/ 11 kV or higher voltage substation. The Project shall include all units and auxiliaries such as water supply, treatment or storage facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/ structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;

Request for Proposal for Grid Connected SPPs in Madhya Pradesh under feeder solarization component of PM KUSUM - C Scheme

“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:  a) Operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"Rupees", "Rs.",	shall mean Indian rupees, the lawful currency of India;
Renewable Power Generator	Shall mean bidding Company/ Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor or Consortium/ JV in any form submitting the Bid and is hereinafter also called Renewable Power Generator (RPG). They must participate in the selection process to be carried out by Madhya Pradesh Urja Vikas Nigam Ltd.. The successful RPG shall have to sign PPA and install the plant as per provisions of the PM KUSUM scheme guidelines and applicable rules and regulations.
“Scheduled Commissioning Date” or “SCD” of the Project	Shall mean the nine (9) Months from the Effective Date.
"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
“Term of Agreement”	"Term of shall have the meaning ascribed thereto in Article 2 of this Agreement;

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

### **2.1 *Effective Date***

2.1.1 This Agreement shall come into effect from date of signing of this Agreement (insert date) by the parties and such date shall be referred to as the Effective Date

### **2.2 *Term of Agreement***

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

2.2.2 The RPG is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the PROCURER, PROCURER shall not be obligated to procure power beyond the Expiry Date.

### **2.3 *Early Termination***

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

### **2.4 *Survival***

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 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**

3.1 The RPG agrees and undertakes to make Project Financing Arrangements for its Project and shall provide necessary documents to PROCURER in this regard within six Months from Effective Date for the project.



## **ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

### **4.1 *RPG's Obligations***

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

- a) The RPG shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the 33/ 11 kV sub-station for confirming the evacuation of power by the Scheduled Commissioning date or COD, whichever is earlier, and all clearances related thereto; The RPG shall furnish the necessary documents to establish possession in the name of the RPG of the required land/ Lease Agreement;
- b) Obtaining all Consents, Clearances and Permits as required and maintaining all documents.
- c) Design, Supply, Construction, Erection, Testing and Commissioning, of Solar Power Project in accordance with the applicable Law, Grid Code, as per regulations and terms & conditions of the Agreement as well as Prudent Utility Practices.
- d) The commencement of supply of power up to the Contracted Capacity to PROCURER no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- e) Connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point. The RPG shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- f) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- g) Fulfilling all obligations undertaken by the RPG under this Agreement.
- h) The RPG shall be responsible to for directly coordinating and dealing with the PROCURER, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code/ State Regulations.
- i) All costs and charges including but not limited to line losses and other charges up to the point of interconnection, if applicable, associated with the evacuation arrangement shall be borne by RPG.

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

4.2.1 Subject to the terms and conditions of this Agreement, the RPG undertakes to sell to PROCURER and PROCURER undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.2.2 The RPG shall not sell power generated from concerned Project to any buyer other than the Procurer during whole tenure of PPA. In case an RPG is found to do this under any circumstances, proportionate amount of CFA shall be refunded by such RPG (Calculation of proportionality shall be based on annual energy generation calculated at 21% CUF)

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

4.3.1 PROCURER, in any Contract Year shall not purchase any additional energy above 21% CUF on annual basis during the PPA period from the RPG at the PPA tariff of that year. However, the excess energy generated by RPG above 21% CUF will be procured by PROCURER at 75% of the PPA tariff as per Article 9. For any Contract Year except for the first year of operation, the RPG shall be required to achieve a minimum CUF of 15% on annual basis during the period of PPA. For the first year of operation, the above limits shall be considered on pro-rata basis. The lower limit will, however, be relaxable by PROCURER to the extent of grid non-availability for evacuation which is beyond the control of the RPG.

4.3.2 In case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the RPG will have to forego the excess generation and reduce the output to the contract capacity and shall also have to pay the penalty/ charges (if applicable) as per applicable regulations.

4.3.3 For shortfall in generation on annual basis below minimum CUF (15%), penalty of 75% of PPA tariff for generation shortfall below 15% on annual basis shall be levied. However, while accounting this shortfall, periods of grid unavailability beyond 50 hours or period of force majeure shall be discounted to provide a level playing field to RPG.

#### 4.4 ***Extensions of Time***

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

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

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article

4.4.5, for a reasonable period but not less than 'day for day' basis, to permit the RPG or PROCURER through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the RPG or PROCURER, or till such time such Event of Default is rectified by PROCURER.

4.4.2 In case of extension due to reasons specified in Article 4.4.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5. In case neither



party terminates the agreement under this clause, the agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force majeure event unless the parties mutually agree to extend the agreement for the further period.

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

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

4.4.5 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.5.2.

4.4.6 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.4.1 shall be an event of default on part of the RPG and shall be subject to the consequences specified in the Article 4.5.

#### **4.5 Liquidated Damages not amounting to penalty for delay in Commissioning**

4.5.1 If the RPG is unable to commission the Project by the Scheduled Commissioning Date other than for the reasons specified in Article 4.4.1, the RPG shall pay to PROCURER, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

Delay beyond the Scheduled Commissioning Date upto (& including) the date as on nine months from Effective Date: The total Performance Bank Guarantee amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned.

4.5.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 11 Months from the Effective Date. In case, the Commissioning of the Project is delayed beyond 11 Months from the Effective Date, it shall be considered as an RPG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 11 Months from Effective Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

4.5.3 The RPG further acknowledge that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by PROCURER.

#### **4.6 Acceptance/ Performance Test**

4.6.1 Prior to synchronization of the Power Project, the RPG shall be required to get the Project certified for the requisite acceptance/ performance test as may be laid down by respective authorities.

**4.7 Third Party Verification**

4.7.1 The RPG 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 and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the RPG at the site of the Power Project.

4.7.2 The third party may verify the construction works/ operation of the Power Project being carried out by the RPG 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 RPG or require the works to be stopped or to comply with the instructions of such third party.

**4.8 Breach of Obligations**

4.8.1 The Parties herein agree that during the subsistence of this Agreement, subject to PROCURER being in compliance of its obligations & undertakings under this Agreement, the RPG would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

**4.9 Generation compensation for Off-take constraints**

4.9.1 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the plant, the grid will be unavailable to the extent **of 50 hours** in any contract year annually for maintenance except for first year of contract. The grid unavailability for the first year of operation shall be considered on pro-rata basis. However, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the RPG. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against PROCURER:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
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<p>Grid unavailability in excess of XX hours in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):</p>	<p><b>Generation Loss = [(Average Generation per hour during the Contract Year) x (number of hours of grid unavailability during the Contract Year)]</b></p> <p>Where, Average Generation per hour during the Contract Year (kWh) = [Total generation in the Contract Year (kWh) / Total hours of generation in the Contract Year]</p>
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The excess generation by the RPG equal to this generation loss shall be procured by PROCURER at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.

**4.9.2 Offtake constraints due to Backdown:** The RPG and PROCURER shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In the eventuality of backdown, subject to the submission of documentary evidences from the competent authority, the RPG shall be eligible for a minimum generation compensation, from PROCURER, restricted to the following and there shall be no other claim, directly or indirectly against PROCURER:

Duration of Backdown	Provision for Generation Compensation
<p>Hours of Backdown during a monthly billing cycle.</p>	<p><i>Minimum Generation Compensation = 50% of [(Average Generation per hour during the month) X (number of backdown hours during the month)] X PPA tariff</i></p> <p>Where, Average Generation per hour during the month (kWh) = [Total generation in the month (kWh) / Total hours of generation in the month]</p>

The RPG shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions. The Generation Compensation shall be paid as part of the energy bill for the successive month after JMR.

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

**5.1 Synchronization, Commissioning and Commercial Operation**

5.1.1 The RPG shall give the PROCURER at least thirty (30) days’ advanced preliminary written notice and at least fifteen (15) days’ advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.

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

5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the RPG at its generation facility of the Power Project at its own cost. The RPG shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/ and checking/ verification is made by the concerned authorities of the PROCURER.

5.1.4 The RPG shall immediately after each synchronization/ tripping of generator, inform the substation of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the RPG will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.

5.1.5 The RPG shall commission the Project within seven (7) Months from the Effective Date. Declaration of COD shall only be done upon the successful visit by the Commissioning Committee and it shall also be informed to Madhya Pradesh Urja Vikas Nigam Limited. Further, following provisions shall take precedence in only in matters related to Commissioning of a Project.

- a) Concerned Project performs satisfactorily for two continuous months after commissioning in terms of provisions of PPA and RfP. Out of which the project achieves generation/ CUF as described below for at least one month.
- b) The Project achieves minimum generation (or equivalent CUF), on monthly basis, for concerned Project Capacity in accordance with values delineated in table below:

<b>Month</b>	<b>Average generation per kW per Day by the project (kWh)</b>
January	3.71
February	4.14
March	4.33
April	4.27
May	3.99
June	3.30
July	2.56
August	2.33
September	3.21
October	3.89
November	3.90
December	3.56

5.1.6 The Parties agree that for the purpose of commencement of the supply of electricity by RPG to PROCURER, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

## **ARTICLE 6: DISPATCH AND SCHEDULING**

### **6.1 *Dispatch and Scheduling***

6.1.1 The RPG shall be required to schedule its power as per the applicable regulations of SERC / SLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the RPG.

6.1.2 The RPG shall be responsible for directly coordinating and dealing with the PROCURER, State Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations.

6.1.3 The RPG shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the RPG.

6.1.4 Auxiliary power consumption will be treated as per the concerned state regulations.

## **ARTICLE 7: METERING**

### **7.1 *Meters***

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

7.1.2 The RPG shall bear all costs pertaining to installation, testing, calibration, Automatic Meter Reading facility, maintenance/ replacement of the meters at RPG's side of Delivery Point

7.1.3 In addition to ensuring compliance of the applicable codes, the RPG shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable regulations of the State where the Project is located.

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

7.2.1 The grid connected renewable power plants will install necessary equipment for regular

monitoring of required data and simultaneously for monitoring of the electric power generated from the Project.

7.2.2 Online arrangement would have to be made by the RPG for submission of above data regularly for the entire period of this Power Purchase Agreement to the PROCURER, the MNRE and concerned agency as per applicable regulation / directions.

7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the RPG to Ministry of New and Renewable Energy/ National Institute of Solar Energy through PROCURER for entire period of PPA.

## **ARTICLE 8: INSURANCES**

### **8.1 Insurance**

8.1.1 The RPG 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 to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, and under the applicable laws.

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

8.2.1 In case of the Project not being implemented through Financing Agreement(s), 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.

In case of the Project being financed through Financing Agreement(s), 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 applied as per such Financing Agreements.

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 claim on such proceeds of such Insurance limited to outstanding dues of PROCURER against RPG.

### **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 RPG can claim compensation, under any Insurance shall not be charged to or payable by PROCURER.

It is for the RPG to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

## **ARTICLE 9: APPLICABLE TARIFF**

9.1 The RPG shall be entitled to receive the Tariff of Rs. ....../ kWh, fixed for the entire term of this Agreement, with effect from the COD, for the power sold to the PROCURER subject to clause 4.3 as reflected in the Energy Accounts. In case of early part commissioning, till the achievement of full commissioning of the Project or SCD, whichever is earlier, subject to the consent for such purchase by the PROCURER, PROCURER may purchase the generation at 75% (seventy five percent) of the PPA Tariff. Any energy produced and flowing into the grid before SCD shall not be at the cost of PROCURER. However, RPG may sell energy generated prior to SCD to any other entity other than PROCURER as per provisions of prevailing Regulations. Any excess generation in a contract year subject to clause 4.3 shall be procured by the PROCURER at 75% of the applicable PPA tariff of that year.

This tariff has been arrived at after giving due consideration to available Gol subsidy at a rate of 30% of estimated project cost of INR 3.50 crore/ MW i.e. INR 1.05 crore/ MW Gol subsidy has been factored in total project cost to arrive at quoted tariff, irrespective of actual cost of concerned project.

9.2 CFA/ subsidy from Central Govt. shall be INR 1.05 crore/ MW i.e. 30% of estimated cost of installation of SPP at INR 3.5 crore/ MW. CFA shall be governed by relevant and applicable Govt. of India guidelines from time to time. CFA/ subsidy from Govt. of India will be released to the RPG through nodal agency on successful operation and performance of the solar power plant for two months after the commissioning, with at least one-month CUF as per minimum CUF agreed in PPA.

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

### **10.1 General**

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

10.1.2 The RPG shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

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



10.2.1 The RPG shall issue to PROCURER hard copy of a signed Monthly Bill in 3 copies in accordance with the format provided by the PROCURER for the immediately preceding Month based on the JMR/ Energy Account along with all relevant payment receipt documents (payments made by RPG for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per regulations of SERC/ SLDC, if applicable.) to respective Superintending Engineer (SE) / General Manager (GM) of the circle and after verification SE / GM will forward the verified bills to Procurer within three (03) days

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on JMR/ Energy Accounts. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

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

10.3.1 PROCURER shall pay the amount payable under the Monthly Bill by the Due Date to such account of the RPG, as shall have been previously notified by the RPG.

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

- i) deductions required by the Law; and
- ii) Amount claimed by PROCURER, if any, from the RPG, will be adjusted from the monthly energy payment.

The RPG shall open a bank account (the "RPG's Designated Account") for all Tariff Payments to be made by PROCURER to the RPG, and notify PROCURER of the details of such account at least sixty (60) Days before the dispatch of the first Monthly Bill.

### 10.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by PROCURER beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the RPG 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 RPG through the Supplementary Bill.

### 10.3.5 **Rebate**

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the RPG to PROCURER in the following manner and the RPG shall not raise any objections to the payments made under this article.

- a) A Rebate of 2% shall be payable to the PROCURER for the payments made within a period of seven clear working days of the presentation of hard copy of Bill along with required



supporting documents at PROCURER office.

- b) Any payments made after seven clear working days of the date of presentation of hard copy of the Bill along with the required supporting documents at PROCURER office up to the Due Date shall be allowed a rebate of 1 %.
- c) For the above purpose, the Zero date of Bill shall be the next Business Day of delivery of verified original copies of the Bill at PROCURER office
- d) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

For the above purpose date of presentation of bill shall be the same day of delivery in hard copy. However, for consideration of rebate, next business day shall be considered.

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

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

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

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

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

10.4.3 Provided that the RPG shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/ or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 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, PROCURER shall restore such shortfall within fifteen (15) days.

10.4.5 PROCURER shall cause the scheduled bank issuing the Letter of Credit to intimate the RPG, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 PROCURER shall ensure that the Letter of Credit shall be renewed not later than its expiry. 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by PROCURER.

10.4.8 If PROCURER fails to pay undisputed Monthly Bill or Supplementary Bill or a part

thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the RPG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from PROCURER, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to RPG and;
- ii) a certificate from the RPG 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.

### **10.5 Disputed Bill**

10.5.1 If the PROCURER does not dispute a Monthly Bill or a Supplementary Bill raised by the RPG 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 or a Supplementary Bill, as the case may be, it shall pay undisputed amount of the invoice 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 RPG agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the RPG shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the RPG does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the PROCURER providing:

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

10.5.5 Upon receipt of the Bill Disagreement Notice by the PROCURER under Article

10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the PROCURER and RPG shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, PROCURER shall, without prejudice to its right to Dispute, be under an obligation to make payment of undisputed amount of the invoice amount in the Monthly Bill.

## **10.6 Quarterly and Annual Reconciliation**

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

10.6.2 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 RPG and PROCURER shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the RPG shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

## **10.7 Payment of Supplementary Bill**

10.7.1 RPG may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Joint Meter Reading / Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12

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

10.7.2 PROCURER shall remit all amounts due under a Supplementary Bill raised by the RPG to the RPG's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply. No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

10.7.3 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 10.3.3.

## **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 PROCURER or the RPG whose performance has been affected by an event of Force Majeure.

### **11.3 Force Majeure**

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

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

### **11.4 Force Majeure Exclusions**

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents ;
- c. Non-performance resulting from normal wear and tear typically experienced in power

- generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
  - e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
  - f. Non-performance caused by, or connected with, the Affected Party's:
    - i. Negligent or intentional acts, errors or omissions;
    - ii. Failure to comply with an Indian Law; or
    - iii. Breach of, or default under this Agreement.

### **11.5 Notification of Force Majeure Event**

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

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

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

### **11.6 Duty to Perform and Duty to Mitigate**

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

### **11.7 Available Relief for a Force Majeure Event**

11.7.1 Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its

obligations;

- (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 term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including

- i the enactment of any new law; or
- ii an amendment, modification or repeal of an existing law; or
- iii the requirement to obtain a new consent, permit or license; or
- iv any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the RPG; or
- v any change in the rates of any Taxes including any duties and cess or Introduction of any new tax made applicable for setting up the power project and supply of power from the Power project by the RPG Which have a direct effect on the Project.

However, Change in Law shall not include

- i any change in taxes on corporate income or
- ii any change in any withholding tax on income or dividends distributed to the shareholders of the RPG, or
- iii any change on account of regulatory measures by the Appropriate Commission.

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

In the event of any decrease in the recurring/ nonrecurring expenditure by the RPG or any income to the RPG on account of any of the events as indicated above, RPG shall file an application to the Appropriate Commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law and to determine the impact on the cost of Solar PV modules / cell. In the event of the RPG failing to comply with the above requirement, in case of any gain to the RPG, PROCURER shall withhold the monthly tariff payments on immediate

basis, until compliance of the above requirement by the RPG.

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

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

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

## **ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION**

### **13.1 RPG Event of Default**

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

- (i) the failure to commence supply of power to PROCURER up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to PROCURER after Commercial Operation Date throughout the term of this Agreement, or

if

- a) the RPG 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 RPG transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
  - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
  - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

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

- (iii) the RPG 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
- (iv) except where due to any PROCURER's failure to comply with its material obligations, the RPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPG within thirty (30) days of receipt of first notice in this regard given by PROCURER.
- (v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the RPG.
- (vi) except where due to any PROCURER's failure to comply with its material obligations, the RPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPG within thirty (30) days of receipt of first notice in this regard given by PROCURER.

### **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 RPG 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), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the RPG is unable to recover the amount outstanding to the RPG through the Letter of Credit,
- (ii) PROCURER repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the RPG in this regard; or
- (iii) except where due to any RPG'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 sixty (60) days of receipt of notice in this regard from the RPG to PROCURER; or

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 sixty (60) 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;

- (iv) 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 RPG Event of Default**

13.3.1 Upon the occurrence and continuation of any RPG Event of Default under Article 13.1, PROCURER shall have the right to deliver to the RPG, with a copy to the representative of the lenders

to the RPG with whom the RPG has executed the Financing Agreements, 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 a PROCURER Preliminary Default Notice, the Consultation Period of ninety (90) 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.

13.3.3 During the Consultation Period, the Parties shall 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 RPG 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 sixty (60) days to the RPG.

13.3.5 Subject to the terms of this Agreement, upon occurrence of a RPG Event of Default under this Agreement, the lenders in concurrence with the PROCURER, may exercise their rights, if any, under Financing Agreements, to seek substitution of the RPG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the RPG and performing the obligations of the RPG. However, in the event the lenders are unable to substitute the defaulting RPG within the stipulated period, PROCURER may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

Provided that any substitution under this Agreement can only be made with the prior consent of PROCURER including the condition that the selectee meets the eligibility requirements of Request

for Selection (RfS) issued by Madhya Pradesh Urja Vikas Nigam Limited and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with PROCURER, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The RPG shall cooperate with PROCURER to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/ Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 1 Lakh per MW +18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the RPG to PROCURER.

13.3.7 In the event the lenders are unable to substitute the defaulting RPG within the stipulated period, PROCURER may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

13.3.8 In case of any liquidation of assets of the Project prior to completion of PPA period, the first charges shall be towards recovery of proportionate CFA, towards remaining period of PPA, granted to the Project (Calculation of proportionality shall be based on annual energy generation calculated at 21% CUF and remaining period of PPA)

#### **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 RPG shall have the right to deliver to PROCURER, a RPG 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 RPG Preliminary Default Notice, the Consultation Period of ninety (90) 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 two hundred ten (210) 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, PROCURER under intimation to RPG shall, subject to the prior consent of the RPG, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the RPG, or if no

offer of novation is made by PROCURER within the stipulated period, then the RPG may terminate the PPA and at its discretion require PROCURER to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the RPG, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the RPG.

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 RPG.

### **13.5 Termination due to Force Majeure**

13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period as specified in Article 4.4.2, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination

## **ARTICLE 14: LIABILITY AND INDEMNIFICATION**

### **14.1 Indemnity**

14.1.1 The RPG 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 RPG 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 a breach by the RPG of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the RPG, for which specific remedies have been provided for under this Agreement).

14.1.2 PROCURER shall indemnify, defend and hold the RPG harmless against:

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

### **14.2 Procedure for claiming Indemnity**

#### **14.2.1 Third party claims**

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

- i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2;  
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.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### **14.3 Indemnifiable Losses**

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of 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 RPG 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 RPG 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 RPG or any Affiliate of the RPG or any of its officers, directors or shareholders for such claims excluded under this Article. The RPG 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.

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

#### 15.1 ***Assignments***

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by PROCURER subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD.

Provided that, PROCURER shall permit assignment of any of RPG's rights and obligations under this Agreement in favour of the lenders to the RPG, if required under the Financing Agreements. Provided that, such consent shall not be withheld if PROCURER seeks to transfer to any transferee all of its rights and obligations under this Agreement.

The enforcement of the rights and obligation between the RPG and the PROCURER provided in this Agreement shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 1 Lakh per Transaction as Facilitation Fee (nonrefundable) shall be deposited by the RPG to PROCURER. Provided further that, such consent shall not be withheld by the RPG if PROCURER seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

In the event of Change in Shareholding/ Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 1 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the RPG to PROCURER.

## 15.2 ***Permitted Charges***

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

## **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 under this Agreement shall be under the jurisdiction of appropriate courts in .

### 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:

- (a) a description of the Dispute;
- (b) the grounds for such Dispute; and
- (c) all written material in support of its claim.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:

- (a) counter-claim and defenses, if any, regarding the Dispute; and
- (b) 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 16

- (i) if the other Party does not furnish any counter claim or defense under Article 16



- (ii) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
- (iii) 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**

- i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as 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, and relates to any matter agreed to be referred to the Appropriate Commission, 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.
- ii) PROCURER shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

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

- i) If the Dispute arising as per Article 16.2.1 is not amicably resolved & such dispute is not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the provisions of the Electricity Act, 2003 (as amended from time to time) as under: Proceedings as well as appointment of the arbitrator(s) shall be carried out by the Appropriate Commissions under the Electricity Act 2003 as amended from time to time. As stipulated by the said Electricity Act 2003, the said arbitration will take place as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.
- ii) The place of arbitration shall be the (City where head quarter of PROCURER is located).  
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.
- vi) PROCURER shall be entitled to co-opt the lenders (if any) as a supporting party in such arbitration proceedings.

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

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission and save as the Appropriate Commission 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 Party.

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

Address:

Attention:

Email:

Fax. No. :

Telephone No. :

17.6.3 If to PROCURER, 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:

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 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, 2013.

#### **17.9 *Taxes and Duties***

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

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

17.9.3 PROCURER shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the RPG by PROCURER on behalf of RPG.

#### **17.10 *Independent Entity***

17.10.1 The RPG shall be an independent entity performing its obligations pursuant to the Agreement.

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

**17.11 Compliance with Law**

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

**17.13 Breach of Obligations**

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

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  
[PROCURER]

For and on behalf of [RPG]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

- 1.
- 2.

Witness:

- 1.
- 2.