



**REQUEST FOR SELECTION DOCUMENT**

**For Selection of RE Power Developers  
For  
Supply of 1500MW 'Firm & Dispatchable' power from ISTS  
connected Renewable Energy Power Projects coupled with  
energy storage system on 'anywhere in India' basis under Tariff  
Based Competitive Bidding (TBCB)**

**(Under Open Category)**

**(Tender ID: 2023\_NHPC\_773818\_1)**

**ISSUED BY:  
NHPC Limited  
CONTRACTS (CIVIL) DIVISION  
REGD. OFFICE: NHPC OFFICE COMPLEX, SECTOR-33,  
FARIDABAD – 121003**

**CIN: L40101HR1975GOI032564**

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**DISCLAIMER**

1. Though adequate care has been taken while preparing the Request for Selection (RfS) document, the Bidder shall satisfy himself that the document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any bidder within 20 (Twenty) days from the date of issuance of RfS documents, it shall be considered that the document is complete in all respect and has been received/ acknowledged by the bidder
2. NHPC Limited (NHPC) reserves the right to modify, amend or supplement this RfS document.
3. Though this RfS document has been prepared in good faith, neither NHPC nor its employees or advisors make any representation or warranty, expressed or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of information, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this RfS document, even if any loss or damage is caused by any act or omission on their part.
4. In case of any discrepancy in the documents uploaded on the websites of NHPC and CPP portal, the documents uploaded on the CPP Portal will prevail

Authorized Person

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**CONTENTS**

<b>SECTION 1</b>		<b>PAGE NO.</b>
1.0	NOTICE INVITING TENDER(NIT)	6-10
<b>SECTION 2</b>		
2.0	DEFINITIONS	11-15
<b>SECTION 3</b>		
3.0	INFORMATION AND INSTRUCTIONS TO BIDDERS	16-49
3.1	TOTAL CAPACITY OFFERED	
3.2	CAPACITY OF EACH PROJECT	
3.3	PROCESSING FEES	
3.4	CRITICAL DATE SHEET FOR ACTIVITIES INVOLVED IN THE RFS (THROUGH E-BIDDING PROCESS):	
3.5	BIDDING FOR SOLAR POWER PROJECTS	
3.6	LOCATION OF SOLAR PROJECT	
3.7	NUMBER OF RESPONSE TO RFS BY A COMPANY	
3.8	QUALIFICATION REQUIREMENTS	
3.9	TECHNICAL CRITERIA AND CONNECTIVITY WITH THE GRID	
3.10	CAPACITY UTILIZATION FACTOR	
3.11	SHORT-LISTING OF BIDDERS FOR OPENING OF FINANCIAL BIDS	
3.12	SELECTION OF SOLAR POWER GENERATORS	
3.13	PAYMENT SECURITY MECHANISM	
3.14	POWER PURCHASE AGREEMENT (PPA)	
3.15	SUBMISSION OF RESPONSE TO RFS BY THE BIDDER	
3.16	REJECTION OF BID.	
3.17	THE BIDDER SHOULD NOTE THAT:	
3.18	DUE DATE	
3.19	METHOD OF SUBMISSION	
3.20	VALIDITY OF THE RESPONSE TO RFS	
3.21	PREPARATION COST	
3.22	ENQUIRIES/CLARIFICATIONS	
3.23	RIGHT OF NHPC TO REJECT A BID	
3.24	BANK GUARANTEES	
3.25	FORFEITURE OF EMD	
3.26	MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY THE PROMOTER	
3.27	FINANCIAL CLOSURE OR PROJECT FINANCING ARRANGEMENTS:	
3.28	COMMISSIONING:	
3.29	COMMERCIAL OPERATION DATE (SCSD)	
3.30	NOT APPLICABLE	
3.31	CORRUPT OR FRAUDULENT PRACTICES:	
3.32	DELETED	
3.33	CONTACTING NHPC	
3.34	INTEGRITY PACT	
3.35	DELETED	

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

3.36	BANK GUARANTEES OF ALL SUCH AGENCIES WILL BE ENCASHED.	
3.37	INELIGIBILITY FOR PARTICIPATION IN RETENDERS	
<b>SECTION 4</b>		
4.0	EVALUATION CRITERIA	
4.1	STEP I - RESPONSIVENESS CHECK	50-52
4.2	Step II - BID EVALUATION	
4.3	STEP III – REVERSE AUCTION	
<b>SECTION 5</b>		
5.0	OTHER PROVISIONS	53-54

<b>SECTION 6</b>	
FORMATS FOR BID SUBMISSION & ATTACHMENTS	
6.0 LIST OF FORMATS, APPENDICES AND ANNEXURES	
FORMAT 6.1 – FORMAT OF COVERING LETTER	
FORMAT 6.2 – FORMAT FOR POWER OF ATTORNEY	
FORMAT 6.3 A – FORMAT FOR BG FOR EARNEST MONEY DEPOSIT	
FORMAT 6.3 A(I) – FORMAT FOR BG FOR EARNEST MONEY DEPOSIT for POI	
FORMAT 6.3 B – FORMAT FOR PERFORMANCE BANK GUARANTEE	
FORMAT 6.3 B(I) – FORMAT FOR PERFORMANCE BANK GUARANTEE for POI	
FORMAT 6.4 – FORMAT FOR BOARD RESOLUTIONS	
FORMAT 6.5 – FORMAT FOR CONSORTIUM AGREEMENT	
FORMAT 6.6 –FORMAT FOR FINANCIAL REQUIREMENT – NET WORTH	
FORMAT 6.7 - FORMAT FOR TECHNICAL CRITERIA	
FORMAT 6.8 – FORMAT FOR DISCLOSURE	
FORMAT 6.9 -- DECLARATION FOR TECHNOLOGY TIE-UP	
FORMAT 6.10 – FORMAT FOR CONNECTIVITY LETTER	
FORMAT 6.11 - FORMAT OF FINANCIAL BID	
FORMAT 6.12 –INTEGRITY PACT	
FORMAT 6.13–CERTIFICATE FOR COMPLIANCE TO ALL PROVISIONS OF RFS DOCUMENT	
APPENDIX – A CHECK LIST FOR BANK GUARANTEES	
ANNEXURE - 1 Deleted	
ANNEXURE – 2 CHECKLIST FOR FINANCIAL CLOSURE	
ANNEXURE – 3 COPY OF PPA AND PSA	
ANNEXURE-4 IMPORTANT INSTRUCTIONS TO BIDDERS FOR ONLINE BIDDING	
ANNEXURE – 5 TERMS & CONDITIONS OF REVERSE AUCTION	
ANNEXURE – 6 PROCESS COMPLIANCE FORM FOR E-REVERSE AUCTION	
ANNEXURE – 7 FORMAT FOR SUBMITTING PRICE CONFIRMATION FOR E-REVERSE AUCTION	

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Section 1**

**NOTICE INVITING TENDER  
(NIT)**

## NOTICE INVITING TENDER

### INTRODUCTION

- 1.0 NHPC Limited (hereinafter called NHPC) intends to procure Firm and Dispatchable RE power coupled with energy storage system up to capacity of 1500 MW through Competitive Bidding Process (conducted online followed by reverse auction). After conclusion of bidding process NHPC shall enter into Power Purchase Agreement (PPA) with the selected Bidders, based on this RfS for purchase of Solar power for a period of 25 years from the Scheduled Commissioning Date of the project based on the terms, conditions and provisions of the RfS and PPA.
- 1.1 This document is for selection of RE Power Developers (REPDs) for setting up-ISTS connected Firm and Dispatchable RE Power Project coupled with energy storage system of aggregate capacity of **1500 MW** on the land to be identified & arranged by the REPDs in anywhere in India. The solar power produced by the selected SPGs from their respective Solar-PV Power Projects will be purchased by NHPC and would be sold to the State Utilities/ Discoms/any other Beneficiaries. The details of Buying Entities shall be intimated at a later date. NHPC shall at its discretion be entitled to substitute any entity in other states only for selling the power procured from the selected Bidders. NHPC shall be an intermediary nodal agency for procurement of power supplied by the REPDs and sale of such power to the Buying Entity(ies) entirely on back-to-back basis, based on due performance by the REPDs as well as the Buying Entity(ies).
- 1.2 The minimum project size will be 50 MW and in multiples of 10 MW thereafter under OPEN category. **The cumulative capacity offered should not exceed 750 MW. However, for Projects located in North-Eastern States and Special Category, the minimum quantum of Contracted Capacity that can be offered by a Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company, shall be 30 MW.**
- 1.3 The bidders will be short-listed by the process of e-bidding (**Single Stage Two Envelope Bidding Process. Envelope-I: Technical Bid and Envelope-II: Financial Bid**) to be followed by reverse auction process for selection of bidders. E-bidding is a new methodology for conducting Public Procurement in a transparent and secured manner. For conducting electronic tendering, NHPC Ltd. is using the Central Public Procurement (CPP) Portal <http://eprocure.gov.in/eprocure/app>. The site can also be viewed through e-procurement corner of NHPC website [www.nhpcindia.com](http://www.nhpcindia.com) and CPP Portal. A portal built using Electronic Tender's software is also referred to as Electronic Tender System<sup>®</sup> (ETS).

### OVERVIEW OF RFS:

- 1.4 RE Power Developers (hereafter referred to as REPDs selected by NHPC based on this RfS, shall set up of ISTS-connected RE Projects for supply of 1500 MW Firm and Dispatchable RE power, from ISTS-connected RE Power Projects coupled with energy storage systems in India, on Build-Own-Operate (BOO) basis. NHPC shall enter into a Power Purchase Agreement (PPA) with the successful Bidders selected based on this RfS for purchase of power for a period of 25 years based on the terms, conditions and provisions of the RfS document and standard Power Purchase Agreement (PPA). The standard PPA document can be downloaded from CPP portal <http://eprocure.gov.in/eprocure/app>
- 1.5 NHPC shall enter into PPA with successful REPDs for a period of 25 years from the date as per the provisions of PPA. The Bidders will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays etc. as available for such projects. The same will not have any bearing on comparison of bids for selection. As equal opportunity is being provided to all bidders at the time of tendering itself, it is up to the Bidders to avail various tax and other benefits. No claim shall arise on



NHPC for any liability if Bidders are notable to avail fiscal incentives and this will not have any bearing on the applicable tariff.

- 1.6 Bidder shall quote a single tariff for entire of its projects' capacity offered, which shall be applicable for all the 25 years.
- 1.7 If the Project is transferred or sold to a third party during its tenure (after initial lock-in period of 1 (One) year after "Commercial Operation Date and Schedule Commencement of Supply Date" (SCSD)), NHPC will retain full rights to operationalize the PPA with the third party, which will be under full obligation to honour all the obligations and terms & conditions of the PPA.

#### **SELECTION OF TECHNOLOGY & ELIGIBLE PROJECTS UNDER THIS RFS**

- 1.8 Under this RfS, the RPD shall set up the RE Power Project(s), including the dedicated transmission network up to the Interconnection/Delivery Point, at its own cost and in accordance to the provisions of this RfS document. All approvals, permits and clearances required for setting up of the Project(s) and/or dedicated transmission network upto the Interconnection/ Delivery Point (along with connectivity), including those required from State Government and local bodies, shall be in the scope of the RPD. The Projects to be selected under this scheme provide for deployment of wind, solar PV and ESS capacities. However, the selection of Projects would be technology agnostic.

The Projects to be selected under this RfS for aggregate capacity of 1500 MW to be installed anywhere in India, provide for deployment of RE Power. Only commercially established and operational technologies can be used to minimize the technology risk and to achieve the timely commissioning of the Projects.

- 1.9 Developers/Generators who have already commissioned RE Power Plants or are in process of constructing such plants and have untied capacity may also participate in the bid. Developers who have already set up capacity or who have spare untied capacity (that is unencumbered from any power supply commitments or power purchase agreements and is available for augmenting the proposed RE power under this RfS) may also participate in the bid..
- 1.9.1 No separate Central Financial Assistance is envisaged for implementation of the Projects selected under this RfS.

#### **GUIDELINES FOR IMPLEMETATION OF THE RFS**

- 1.10 With the objective to enable procurement of Firm and Dispatchable RE power by DISCOMs from grid-connected Renewable Energy (RE) power projects, with Energy Storage through tariff based competitive bidding Ministry of Power has issued "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems" vide Gazette Resolution no. 23/03/2023-R&R dated 09.06.2023. These Guidelines have been issued under section 63 of the Electricity Act, 2003 to enable procurement of Firm and Dispatchable RE power by DISCOMs from grid-connected Renewable Energy (RE) power projects, with Energy Storage through tariff based competitive bidding. This RfS document has been prepared in line with the above Guidelines, including subsequent amendments and clarifications, issued until the last date of bid submission of this RfS These guidelines and their elaborations/clarifications form the basis for selection of new Projects under this RfS. In case of any difference in interpretation between this RfS document and said guidelines, the matter shall be referred to the 'Appropriate Authority' as per issued guidelines and latest amendments thereof and the decision of this 'Appropriate Authority' shall be final and binding on Bidder/REPD and NHPC.

- 1.11 NHPC Limited (NHPC) has issued this RfS in the capacity of "Intermediary Procurer" as defined in the aforementioned Guidelines. NHPC may develop a suitable monitoring mechanism, to analyze the performance of the projects and carry out random checks to verify compliance of quality standards.

#### GENERAL

- 1.12 The complete RfS Documents are available at CPP portal <http://eprocure.gov.in/eprocure/app>. The site can also be viewed through e-procurement corner of NHPC website [www.nhpcindia.com](http://www.nhpcindia.com) and CPP Portal. Interested bidders shall download the RfS Documents from the CPP portal <http://eprocure.gov.in/eprocure/app> as per the provisions available therein.
- 1.13 For proper uploading of the bids on the portal namely <http://eprocure.gov.in/eprocure/app> (*hereinafter referred to as the 'portal'*), it shall be the sole responsibility of the bidders to apprise themselves adequately regarding all the relevant procedures and provisions as detailed in the portal. The Employer in no case shall be responsible for any issues related to timely or properly uploading/ submission of the bid in accordance with the relevant provisions of Section II - ITB of the Bidding Documents.
- 1.14 A Single Stage Two Envelope Bidding Procedure will be adopted and will proceed as detailed in the RfS Documents. Bidding will be conducted through the global competitive bidding procedures as per the provisions of ITB and the contract shall be executed as per the provisions of the Contract. It shall be noted that the respective rights of the Employer and the Bidder/ REPD shall be governed by the RfS Documents/Contract signed between the Employer and the REPD for the project.
- 1.15 Bidders should submit their bid proposal online complete in all aspect on or before last date and time of Bid Submission as mentioned on CPP portal (<http://eprocure.gov.in/eprocure/app>).
- 1.16 Bidder shall submit bid proposal along with Bid Processing Fees (non-refundable) and Earnest Money Deposit (EMD) complete in all respect as per the Bid Document. Techno-commercial bids will be opened in online presence of authorized representatives of bidders who wish to be present online. Bid proposals received without the prescribed Bid Processing Fees and Earnest Money Deposit (EMD) may be considered as non-responsive. **In the event of any date indicated is a declared Holiday, the next working day shall become operative for the respective purpose mentioned herein.**
- 1.17 RfS documents which include Eligibility Criteria, Technical Specifications, various Conditions of Contract, Formats etc. can be downloaded from CPP portal (<http://eprocure.gov.in/eprocure/app>). Any amendment(s) / corrigendum(s) / clarification(s) with respect to this RfS shall be uploaded on CPP portal. The Bidder should regularly check for any Amendment(s) / Corrigendum(s) / Clarification(s) on the above mentioned website.
- 1.18 For multiple Projects, separate Performance Bank Guarantees shall be furnished against each Project being executed under this RfS by the REPD after issuance of Letter of Award (LOA) by NHPC.
- 1.19 The detailed Qualifying Requirements (QR) is given in Section 3 of the RfS.
- 1.20 NHPC shall conduct e-Reverse Auction (e-RA), if required or as per provisions of RfS documents.
- 1.21 ***NHPC reserves the right to cancel / withdraw this invitation for bids without assigning any reason and shall bear no liability whatsoever consequent upon such a decision.***

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

### **INTERPRETATIONS**

1. Words comprising the singular shall include the plural & vice versa.
2. An applicable law shall be construed as reference to such applicable law including its amendments or re-enactments from time to time.
3. A time of day shall save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
4. 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.
5. The table of contents and any headings or sub headings in the contract has been inserted for case of reference only & shall not affect the interpretation of this agreement.

## **Section 2**

### **Definitions**

## Definitions

### 2.0 Definitions

- i) "**Act**" or "**Electricity Act, 2003**" shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
- ii) "**Affiliate**" shall mean a Company that, directly or indirectly, controls, or is controlled by, or is under common control with, a Company developing a Project or a Member in a Consortium developing the Project and control means ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such company or right to appoint majority Directors;
- iii) "**Applicable Tariff**" shall be the quoted Tariff by the selected RE Power Developer/Project Developers.
- iv) "**BID**" or "**PROPOSAL**" shall mean the documents submitted by the Bidder towards meeting the techno-commercial and financial qualifying requirements, along *with* the price bid submitted by the Bidder and submissions during the e-Reverse Auctions, if applicable, as part of its response to the RfS issued by NHPC.
- v) "**Bidder**" shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium / Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require;
- vi) "**Bidding Company**" shall refer to such single company that has submitted the response in accordance with the provisions of this RfS;
- vii) "**Bidding Consortium**" or "**Consortium**" shall refer to a group of companies that has collectively submitted the response in accordance with the provisions of this RfS;
- viii) "**BID CAPACITY (Contracted Capacity)**" shall mean aggregate project capacity of the RE Power Project(s) combined with Energy Storage Systems (ESS) as proposed by the Bidder to meet the project parameters for 'firmness and dispatchability' power as defined in SCC.
- ix) "**BUYING ENTITY**" shall mean any Discom/distribution licensee that requires RE Power to fulfil its other RPO under respective RPO regulations / Energy Storage Obligations as per the Government of India's orders or notifications..
- x) "**Capacity Utilization 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 Capacity at the "Delivery / Inter-connection / Metering Point"
- xi) "**Chartered Accountant**" shall mean a person practicing in India or a firm whereof all the partners are practicing in India as Chartered Accountants within the meaning of the Chartered Accountants Act, 1949;
- xii) "**Company**" shall mean a body corporate incorporated in India under the Companies Act, 1956 or the Companies Act, 2013 as applicable;
- xiii) "**Control**" The control shall mean holding more than 50% of paid-up share capital;
- xiv) "**Commercial Operation Date and Schedule Commencement of Supply Date (SCSD)**" shall be the actual date of commissioning of the Project, as indicated on the Commissioning Certificate, upon successful commissioning of the full capacity of the Project and the date of commencement of supply of power of the contracted capacity
- xv) "**CTU or Central Transmission Utility**" shall mean the Central Transmission Utility as defined in sub-section (10) of Section 2 of the Electricity Act 2003;
- xvi) "**End Procuree**" is the distribution licensees/consuming entities/open access consumers in such cases. "

- xvii) **"Financial Closure"** shall mean arrangements of necessary funds by the RE Power Generator/Project Developer either by way of commitments of funds by the Company from its internal resources and/or tie up of funds through a bank/financial institution by way of sanction of a loan and fulfilling all requirements mentioned in clause 3.27 of RfS.
- xviii) **"Group Company"** of a Company shall mean:
- (i) a Company which, directly or indirectly, holds 10% (ten percent) or more of the paid up share capital of the Company or;
  - (ii) a Company in which the Company, directly or indirectly, holds 10% (ten percent) or more of the paid up share capital of such Company or;
  - (iii) a Company in which the Company, directly or indirectly, has the power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;
  - (iv) a Company which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;
  - (v) a Company which is under common control with the Company, and control means ownership by one Company of at least 10% (ten percent) of the paid up share capital of the other Company or power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise.

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

- xix) **"Inter-connection point /Delivery/Metering point"**
- xx) shall mean a single point or multiple points at 220kV or above, where the power from the Project is injected into the identified ISTS Substation (including the dedicated transmission line connecting the Projects with the substation system) as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the RPDs/RE-PGs shall abide by the relevant CERC/ SERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time." "Intermediary Procurer" shall mean a trader who shall aggregate the power purchased from different RE Projects and sell it to the distribution licensee(s).
- xxi) **"Joint Control"** shall mean a situation where a company has multiple promoters (but none of the shareholders has more than 50% of voting rights and paid up share capital).
- xxii) **"Paid-up share capital"** shall mean such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid up in respect of shares of the company but does not include any other amount received in respect of such shares, by whatever name called;
- xxiii) **"Lead Member of the Bidding Consortium" or "Lead Member"**: There shall be only one Lead Member, having the shareholding more than 50% in the Bidding

- Consortium and cannot be changed till 01 (One) year of the Scheduled Commencement-of-Supply Date (SCSD) of the Project;
- xxiv) **"Letter of Award" or "LOA"** shall mean the letter issued by NHPC Limited (NHPC) to the Selected Bidder for award of the Project.
- xxv) **"Member in a Bidding Consortium" or "Member"** shall mean each Company in a Bidding Consortium. In case of a Technology Partner being a member in the Consortium, it has to be a Company.
- xxvi) **"Month"** shall mean a period of thirty (30) days from (and excluding) the date of the event, where specified, else a calendar month;
- xxvii) **"Parent"** shall mean a Company, which holds not less than 51% equity either directly or indirectly in the Project Company or a Member in a Consortium developing the Project;
- xxviii) **"Part Commencement of Supply of Power " Part Commencement of Supply of Power from** the Project will be considered if all equipment as per acceptable project capacity less than contracted project capacity has been installed and energy has flown into grid;
- xxix) **"Payment on Order instrument"** means Letter of Undertaking from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC) [the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP)], to pay in case situation of default of generator in terms of tender conditions/Power Purchase Agreement (PPA) arises. Such Letter(s) will have same effect as that of a Bank Guarantee issued by any public sector bank.
- xxx) Procurer' as the context may require, shall mean the distribution licensees, or the Authorized Representative(s), or an Intermediary Procurer.
- xxxi) **"PROJECT" or "RENEWABLE POWER PROJECT" or "RE PROJECT"** shall mean the renewable energy generation facility owned by the RPD/RE-PG, comprising Solar Power Generating systems, Wind Power Generating systems, or a combination thereof, for supply of RE power, including ESS (which may be leased/tied-up from a third party), having single or multiple point(s) of injection into the grid at Interconnection/ Delivery/ Metering Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control systems and metering. The Project shall include auxiliaries and associated facilities, bay(s) for transmission system in their switchyard, dedicated transmission line up to the injection point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to NHPC. It may be noted that the sources of generation and ESS, if any, may be co-located, or may be located at different locations, to be considered a single Project. However, it is clarified that ESS charged using a source other than RE power would not qualify as RE power. Further, the ESS offered with a project under this RfS should only be charged from RE power capacity. The same RE power shall either be considered for getting compensation in case of curtailment or for charging of ESS.
- xxxii) **"Project Company"** shall mean the Company incorporated by the Bidder as per The Companies Act, 1956 or the Companies Act, 2013 as applicable;



- xxxiii) **"Project Commissioning"** the Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid;
- xxxiv) **"Project Financing Arrangements"** shall mean arrangement of necessary funds by the RE Power Generator/Project Developer either by way of commitment of funds by the company from internal resources and/or tie up of funds through a bank / financial institution by way of sanction of a loan.
- xxxv) **PROJECT DEVELOPER" or "DEVELOPER" or "RE POWER DEVELOPER (RPD) or RE POWER GENERATOR (RE-PG)"** shall mean the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a Project capacity by NHPC (through a competitive bidding process), including the SPV formed by the selected bidder/ consortium for the purpose of signing of PPA with NHPC and supplying power under the PPA. The term "RPD" / "RE-PG" shall also refer to a generator and supplier of firm and dispatchable RE Power complemented with Power from any other source or Energy Storage System (ESS) as defined in this RfS.
- xxxvi) 'RE Park' shall refer to areas or parks developed, in accordance with the Guidelines issued by Central or State Governments, for setting-up of renewable energy power projects, including Solar-Wind Hybrid Power projects.
- xxxvii) **Scheduled Commencement-of-Supply Date (SCSD)** in relation to the contracted capacity shall mean the date corresponding to the date of commencement of supply as indicated in the RfS.
- xxxviii) **Scheduled** Commencement of Supply Date (SCSD) shall be **24 (Twenty Four)** months from the Effective Date of PPA
- xxxix) **"Selected Bidder or Successful Bidder"** shall mean the Bidder selected pursuant to this RfS to set up the Project and supply electrical output as per the terms of PPA;
- xl) **"RE Power Generator (RE-PG)"** shall refer to a generator or supplier of RE power with or without energy storage system. Further, The term "RE Power Developer (RPD)" where ever used in RfS/PPA/PSA documents shall have same meaning as RE Power Generator (RE-PG).
- xli) **"RE Project"** shall mean the Renewable Energy power project / Generating Systems with Energy Storage Systems (ESS), as the case may be. It is clarified that ESS charged using a source other than RE power would not qualify as RE;
- xlii) **"STU or State Transmission Utility"** shall mean the Board or the Government Company notified by the respective State Government under Sub-Section 1 of Section 39 of the Electricity Act 2003;
- xliii) **"Trading Margin"** Shall mean margin payable by Discom(s) or any other entity towards the services provided by NHPC for sale of RE power to Discom(s) or any other entity, which shall be **Rs 0.07/kWh**
- xliv) **"Ultimate Parent"** shall mean a company, which owns not less than fifty one percent (51%) of paid up share capital either directly or indirectly in the Parent and Affiliates.
- xlv) **EFFECTIVE DATE"** shall be the date as on 90 days from the date of issue of LoA. Subsequent to expiry of the 90 day period after the issuance of LoA, in case NHPC intimates to the Successful Bidder, a particular date as the date for signing of

PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.

- xlvi) **“ENERGY STORAGE SYSTEMS” or “ESS”** shall mean the system(s) installed in addition to the RE power capacity as part of the Project, that can capture energy produced at one time for use at a later time.
- xlvii) **“EQUITY”** shall mean Net Worth as defined in Companies Act, 2013.
- xlviii) **“FIRM AND DISPATCHABLE RE POWER”** shall mean the power profile configuration that is defined in the RfS to be met by RE power sources and will include Supply of contracted capacity of Firm and Dispatchable Power from ISTS- Connected Renewable Energy (RE) Power Projects based on generating system(s) including solar, wind or any other renewable resource as defined by MNRE for supply of RE Power combined with Energy Storage System (ESS).
- xliv) **“GUIDELINES”** shall mean “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems” issued by the Ministry of Power vide Gazette Resolution no. 23/03/2023-R&R dated 09.06.2023 including subsequent amendments and clarifications thereto, if any, issued until the last date of bid submission of this RfS.
  - i) **“GRID CODE REGULATIONS” or “GRID CODE”** shall mean the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time.
  - ii) **“POOLING SUBSTATION/POOLING POINT”** shall mean a point where more than one Project may connect to a common Transmission System. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the RPD(s)/RE-PG(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV or above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual Projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing.
  - iii) **“PROJECT LOCATION(s)”** shall mean the area/areas identified by the RPD/RE-PG, comprising village(s), Tehsil(s)/Taluk(s) and District(s) within a State or States, where the Project is being implemented.
  - iiii) **“PROMOTER”** shall mean Promoter as defined in the Companies Act, 2013.
  - lv) **“RE POWER” or “RENEWABLE POWER” or “RENEWABLE ENERGY (RE) POWER”** shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS) commissioned in pursuance of bidding process under this RfS and the term RE Project to be construed accordingly. It is clarified that ESS charged using a source other than RE power would not qualify as RE power.
  - lvi) **“RfS” or “RfS DOCUMENT” or “BIDDING DOCUMENT(S)” or “TENDER DOCUMENTS”** shall mean the “Request for Selection” document issued by NHPC including standard Power Purchase Agreement and standard Power Sale Agreement along with subsequent clarifications and amendments thereof issued vide RfS No. ....dated .....

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Section 3**  
**Information**  
**and**  
**Instructions to Bidders**

### **Section 3**

#### **3.0 INFORMATION AND INSTRUCTIONS TO BIDDERS**

RfS document is available for download, free of cost from the Central Public Procurement (CPP) Portal <http://eprocure.gov.in/eprocure/app>. The site can also be viewed through e-procurement corner of NHPC website [www.nhpcindia.com](http://www.nhpcindia.com) and CPP Portal.

For further assistance, please contact CPP Portal Helpdesk Toll Free **Number Ph. Nos. +91-120-4711508, +91-120-4001002, +91-120-4001005, +91-120-6277787** Technical Support Email: [support-eproc@nic.in](mailto:support-eproc@nic.in)

#### **3.1 TOTAL CAPACITY OFFERED**

ISTS-connected RE Projects for supply of 1500 MW Firm and Dispatchable RE power, coupled with energy storage systems in India .

Selection of RE Power Generator (REPDs) will be carried out through e-bidding process. The projects will be setup on the land to be identified & arranged by the bidders anywhere in India.

The interested RE Power Developer/Project Developers are required to participate in the Request for Selection (RfS) for installation of ISTS-connected RE Projects for supply of Firm and Dispatchable RE power, coupled with energy storage systems on Build-Own-Operate (B-O-O) basis.

#### **3.2 CAPACITY OF EACH PROJECT**

The minimum capacity of each Project shall be **50 MW** and in **multiples of 10 MW thereafter** and the aggregate capacity of RE projects selected through this RfS will be **1500 MW**. However, for Projects located in North-Eastern States and Special Category, the minimum quantum of Contracted Capacity that can be offered by a Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company, shall be 30 MW. Project Capacity in MW is the installed Capacity of the Power Project / Maximum Power Output (AC) from the RE Power Project which can be scheduled at the Delivery Point / Inter-Connection point during any time block of the day.

**A bidder can offer projects at multiple locations subject to each project have minimum capacity of 50 MW (30 MW in case of Projects located in North-Eastern States and Special Category) with cumulative capacity offered not exceeding 750 MW. However, Bidder shall quote a single tariff for entire of its projects' capacity offered.**

#### **3.3 PROCESSING FEES**

Prospective bidders interested to participate in the bidding process are required to submit their offer on-line on the website <http://eprocure.gov.in/eprocure/app> along with a non-refundable processing fee as mentioned below through Demand Draft in favour of "NHPC Limited" payable at Faridabad only:

<b>Cumulative Project capacity quoted by bidder</b>	<b>Processing Fee</b>
For 50 MW	Rs. 3 Lakh + Applicable GST@18%
Above 50 MW up to 100 MW	Rs. 5 Lakh + Applicable GST@18%

Request for Selection of 1500MW ‘Firm & Dispatchable’ power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

Above 100 MW up to 250 MW	Rs. 10 Lakh + Applicable GST@18%
Above 250 MW up to 500 MW	Rs. 20 Lakh + Applicable GST@18%
Above 500 MW	Rs. 30 Lakh + Applicable GST@18%

The processing fee is to be submitted offline along with other documents at NHPC office at Faridabad before last date and time of submission of bids as per clause 3.12.4.1 of this RfS document.

A bidding Company/Consortium will be eligible to participate in the bidding process only on submission of RfS along with the Processing Fee.

The bidder is required to pay the Processing Fee including applicable GST which is presently applicable @18%.

**3.4 CRITICAL DATE SHEET FOR ACTIVITIES INVOLVED IN THE RFS (THROUGH E-BIDDING PROCESS):**

**A. THE BRIEF DETAILS OF THE TENDER ARE AS UNDER:**

Sl. No.	Item	Description
i)	Mode of tendering	e-procurement System Cover-I: Online Techno-Commercial Bid Cover-II: Price Bid
ii)	Tender ID No.	<b>2023_NHPC_773818_1</b>
iii)	Tender reference No.	NH/CCW/CC-III/CO-271/PR16923/20
iv)	Cost of bid document	Processing fees as per para 3.3 above in the form of demand draft from a Nationalized / Scheduled bank in favour of NHPC Ltd. Payable at Faridabad.
v)	Bid Security (EMD/BG)	Rs. 12.5 Lacs Per MW (Five Lacs Sixty Thousand Per MW) in the form of DD/BG/POI Subject to Minimum of Rs 6 Crs and Maximum of Rs 20 Crs per project.
vi)	Period of Bid Validity	180 days from the technical bid opening date.
vii)	Completion Period	As per <b>“Scheduled Commissioning Date” defined in Section 2 – Definitions, above.</b>
viii)	Tender inviting Authority	General Manager (Civil Contracts-III) Room No. 218, 2nd Floor, Jyoti Sadan, NHPC OFFICE COMPLEX, Sector-33, Faridabad-121003, Haryana, India Tele No :+91 (129) 2270596 Email: contcivil3-co@nhpc.nic.in

**B. THE CRITICAL DATES OF TENDER ARE AS UNDER:**

S. No.	Particulars	Date & Time
i)	Publishing Date & Time	30.09.2023 (17:00 Hrs)
ii)	Document Down load Start Date & Time	04.10. 2023 (17:30 Hrs)

Request for Selection of 1500MW ‘Firm & Dispatchable’ power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

iii)	Last date of Receipt of queries /clarification on bid.	13.10.2023 (upto 17:30 Hrs)
iv)	Pre bid meeting Date & Time	16.10.2023 (15:00 Hrs)
v)	Online Bid Submission Start Date & Time	30.10.2023 (11:00 Hrs)
vi)	Online Bid Submission Closing Date & Time	13.11.2023 (17:30 Hrs)
vii)	Last date of Offline submission (date, time and address)	17.11.2023 (upto 17:00 Hrs) Address : General Manager (Civil Contracts-III) Room No.218, 2nd Floor, Jyoti Sadan, NHPC OFFICE COMPLEX, Sector-33, Faridabad-121003, Haryana, India Tele No :+91 (129) 2270596 Email: contcivil3-co@nhpc.nic.in
viii)	Opening: Date, Time & Venue of Online/ Offline Bid (Technical Bid (Part-I) submission	20.11 2023 ( 11:30 Hrs) Venue: General Manager (Civil Contracts-III) Room No.218, 2nd Floor, Jyoti Sadan, NHPC OFFICE COMPLEX, Sector-33, Faridabad-121003, Haryana, India Tele No :+91 (129) 2270596 Email: contcivil3-co@nhpc.nic.in
ix)	Price Bid Opening (Part-II) – Financial Bid	Venue, Date & time to be intimated later to the bidders whose Techno-commercial Bids will be found responsive
x)	Date & Time of Start of e- Reverse Auction	Shall be intimated separately by NHPC

### 3.5 BIDDING FOR RE POWER PROJECTS

Bidders may submit online response to Request for Selection (RfS) for setting up of Grid-connected RE Projects under this scheme as per the terms & conditions of this RfS.

### 3.6 LOCATION OF RE PROJECT

3.6.1 The bidders are free to locate their RE PV Project(s) anywhere in India on the land to be identified and purchased/leased by the bidder.

3.6.2 The bidder shall indicate the proposed location of the projects at the time of bid submission in Format-6.1. However, the successful bidder shall have option to change the Project location before the Financial Closure as per Clause 3.27 of RfS.

### 3.7 NUMBER OF RESPONSE TO RFS BY A COMPANY

3.7.1 **A bidder can offer projects at multiple locations subject to each project have minimum capacity of 50 MW with cumulative capacity offered not exceeding 750 MW.** However, for Projects located in North-Eastern States and Special Category, the minimum quantum of Contracted Capacity that can be offered by a Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company, shall be 30 MW. However, the bidder shall have to meet the Qualification Requirements for shortlisting of Bids/Projects.

- 3.7.2 Bidding Company, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit one single application in the prescribed format detailing all projects for which the bidder is submitting the application. Statement for the same is to be submitted as per Format for Disclosure (**Format – 6.8**).

### **3.8 QUALIFICATION REQUIREMENTS**

- 3.8.1 The bidder should be a company (Bidding Company) or a Consortium of Companies (Bidding Consortium) with one of the Companies acting as the Lead Member of the Bidding Consortium. Short-listing of Bidder for opening of Financial Bid will be based on meeting the Qualification Requirements specified below:

#### **3.8.2 COMPANIES ELIGIBLE FOR PARTICIPATION:**

- (i) Companies incorporated in India under the Companies Act, 2013;
- (ii) A foreign company can also participate on standalone basis or as a member of consortium at RfS stage. But before signing of PPA, keeping the original shareholding unchanged it has to form an Indian Company registered under the Companies Act, 2013 as its fully owned subsidiary Company (i.e. 100% subsidiary) before signing of PPA. In case a Foreign Company is selected as the successful bidder, it shall comply with all the laws and provisions related to Foreign Direct Investment in India.
- (iii) A Bidding Consortium (that may / may not have a foreign company) can participate at RfS stage;

#### **3.8.3 FINANCIAL CRITERIA**

##### **(i) Net Worth**

- a. The Net Worth of the bidder should be equal to or greater than the value calculated at the rate of **Rs.1.3 Crore or equivalent US\$ per MW** of the project capacity as on last date of previous financial year in accordance to Note 8 below or as on the day not more than seven (07) days prior to due date of bid submission. The computation of Net Worth shall be based on unconsolidated audited annual accounts of the bidder.
- b. 'Net Worth' means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

##### **(ii) Liquidity:**

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

- a. A minimum annual turnover of **Rs. 63.8 Lakhs/MW** of the quoted capacity during the previous financial year in accordance to Note 8 below. It is hereby clarified that "Other Income" as indicated in the annual accounts of the Bidder shall not be considered for arriving at the annual turnover.
- b. Internal resource generation capability, in the form of Profit Before Depreciation Interest and Taxes (PBDIT) for a minimum amount of **Rs. 12.75 Lakhs/MW** of the quoted capacity, as on the last date of previous financial year in accordance to Note 8 below.



- c. In-principle sanction letter from the lending institutions/banks of the Bidder for the project quoted under this RfS, committing a Line of Credit for a minimum amount of **Rs. 15.94 Lakhs/MW** of the quoted capacity, towards meeting the working capital requirement of the project quoted under this RfS. Such letter can also be obtained by the Affiliate(s) of the Bidder.

**Notes:**

1. For the purposes of meeting financial requirements, only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty six percent (26%) paid up share capital in each Company whose accounts are merged in the audited consolidated account.
2. A foreign company can participate on standalone basis or as a member of consortium at RfS stages. In case of foreign company participating on standalone basis and its selection as successful bidder, it has to form an Indian Company registered under the Companies Act, 2013 as its fully owned subsidiary Company (i.e. 100% subsidiary) before signing of PPA. In case a Foreign Company is selected as the successful bidder, it shall comply with all the laws and provisions related to Foreign Direct Investment in India.
3. In case the foreign company participating as a member of consortium, the **clause (iii)** as below shall be applicable.
4. The Bidder may seek qualification on the basis of financial capability of its Parent and / or its Affiliate(s) for the purpose of meeting the Qualification Requirements as per (i) and (ii) above. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Affiliate(s). In such cases, the Bidder shall be required to submit Board Resolutions from the Parent Company and/or the Affiliates undertaking to contribute the required equity funding and performance bank guarantees in case the Bidder(s) fail to do so in accordance with the RfS.
5. For the Qualification Requirements, if data is provided by the Bidder Company in foreign currency, equivalent rupees of Net Worth will be calculated using bills selling exchange rate (card rate) USD / INR of State Bank of India prevailing on the date of closing accounts for the respective financial year as certified by the bidder's banker. For currency other than USD, bidders shall convert such currency into USD as per exchange rates certified by their banker prevailing on the relevant date and used for such conversion.
6. A Company/Consortium would be required to submit Annual Audited Accounts for the last Financial Year in accordance to Note 8 below alongwith net worth, annual turnover and PBDIT certificate (as applicable) from Statutory Auditor with Unique Document Identification Number (UDIN) to demonstrate fulfillment of criteria. In case, bidder is seeking qualification based on networth as on the day not more than seven (07) days prior to the due date of bid submission, it shall submit a certificate from Statutory Auditor with Unique Document Identification Number (UDIN) certifying the availability of Net worth on the date not more than seven (07) days prior to due date of bid submission along with a certified copy of Balance sheet, Profit & Loss Account, Schedules and Cash Flow statements supported with Bank Statement. In case of foreign companies, the Bidders shall be required to submit the annual audited accounts for the last financial year as the general norm in the country where the Bidder or its Affiliate(s) is/are located.
7. In case of foreign Bidders, in the event the Bidder is unable to furnish the audited annual accounts for the previous financial year as per the prevalent norm in the respective country, the Bidder shall submit the annual audited accounts of the last financial year for which the audited accounts are available. This However, would be acceptable, subject to the condition that the last date of response to this RFS

falls on or within the deadline for completion of audit of annual accounts of companies, as stipulated by the laws/rules of the respective country and the Bidder shall submit the corresponding documentary evidence against the same. In case the annual accounts are submitted in a language other than English, a certified English translation from an approved translator shall be required to be submitted by the Bidder.

8. The Bidder's financial evaluation vis-à-vis the requirement as stipulated above shall be done on the basis of duly printed Annual Report submitted by the Bidder along with the Bid. In case, bid submission date falls up to 30<sup>th</sup> September of the Financial Year, the annual report up to previous year of immediate preceding Financial Year shall be considered and for the Tenders having Bid Submission date after September, the annual reports up to immediate preceding Financial Year shall be considered.

In case, if Bidder has not submitted the above Annual Report along with Bid, then a certificate from CEO/CFO of the Bidder shall be submitted along with Bid mentioning that the requirement of Annual Report as per governing law of country is not mandatory. In such cases duly Notarized copies of Audited Printed Annual Financial Statement (Balance Sheet, Profit & Loss Statement, cash flow statement, Auditor 's Report thereon including all relevant Schedules/ annexures etc.) for the immediately preceding year be submitted by the Applicant along with the Application. The Annual Financial Statement shall be considered for evaluation in same manner as defined in above Para for consideration of Annual Reports.

**(iii) For Bidding Consortium:**

If the response to RfS is submitted by a Consortium the financial requirement as per Para-3.8.3 (i) and 3.8.3 (ii) above shall be met individually and collectively by all the Members in the Bidding Consortium. The financial requirement are to be met by each Member of the Consortium, which shall be computed in proportion to the equity commitment made by each of them in the Bidding Consortium.

Any Consortium, if selected, shall for the purpose of sale of power to NHPC, incorporate a Project Company with equity participation by the Members in line with Consortium Agreement (to be submitted along with RfS) before signing the PPA with NHPC i.e. the Project Company incorporated shall have the same Shareholding Pattern as given at the time of RfS. This shall not change till the signing of PPA and the Controlling Shareholding (held by the Lead Member holding more than 50% of the voting rights) shall not change from the RfS application date till **1 (One )** year after the Scheduled Commencement of Supply Date (SCSD) of the Project. However, in case of any change in the shareholding of the other shareholders (other than the Controlling Shareholder including Lead Member) after signing of PPA, the arrangement should not change the status of the Controlling Shareholder and the lead member in the Project Company at least up to **1 (One )** year after the Scheduled Commencement of Supply Date (SCSD) of the Project. Further, such change in shareholding would be subject to continued fulfilment of the financial and technical criteria, by the Project Company.

**3.8.4. OTHER CRITERIA:**

1. The Bidder or any of its Affiliates should not be a willful defaulter to any lender, and that there is no major litigation pending or threatened against the

Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project. The Bidder shall submit an undertaking to this effect (as per format provided in the bid document).

2. The Bidder or partner of JV against whom an application for initiating corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code 2016, or as amended from time to time, shall not be eligible for bidding. The same shall also be applicable to the bidder company who has taken unconditional technical and/or financial support from their Parent/Holding Company, against whom an application for initiating corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code 2016 (IBC 2016), or as amended from time to time.

In case, bidder or partner of JV in respect of whom any application for initiating corporate insolvency resolution process was not admitted at the time of submission of bid but subsequently during the period of evaluation of bids or any time before the work is awarded, any such application is admitted by the Adjudicating Authority under the IBC 2016 (equivalent laws of the country where the firm has been incorporated / registered shall be applicable), the bidder shall be considered as ineligible and his bid shall be rejected.

An undertaking that “no insolvency proceedings are admitted by the Adjudicating Authority against bidder or partner of JV under the IBC 2016” (equivalent laws of the country where the firm has been incorporated / registered shall be applicable) shall be submitted on letter head duly signed by the authorized representative of bidder or all the partners of JV.

Further, the bidder after submitting the bid till the time of award of work, shall inform NHPC regarding any admission of application for corporate insolvency resolution process by the Adjudicating Authority under the IBC 2016 against bidder or partner of JV and any suppression of such fact shall render the bidder liable for rejection of his bid and banning of business dealing as per terms and conditions of Guidelines of banning of business dealings under Integrity Pact.

### 3.8.5. TECHNICAL CRITERIA:

This RfS requires deployment of only (RE) Solar PV Technology projects, Wind Power Projects. and Energy Storage System Technology projects. The Bidder shall deploy commercially established and operational technologies to minimize the technology risk and to achieve commissioning of the Projects. Detailed technical parameters for Projects to be selected as specified in the tender documents.

The developer has the option of Leasing Power Plant Equipment from Foreign Parent/Affiliate

### 3.9 SOLAR MODULES AND CONNECTIVITY WITH THE GRID:

- 3.9.1 The cells and modules used in the Project shall be sourced only from the models and manufacturers included in the “Approved List of Models and Manufacturers” as published by MNRE and updated as on the date of commissioning of the Project.

Further, the provisions as contained in the O.M. dated 10.03.2021 issued by MNRE on the subject “Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement of Compulsory Registration) Order, 2019-Implementation-Reg.” and its

subsequent amendments and clarifications issued until the bid submission deadline, shall be applicable for this RfS. The modules used in the Project under this RfS should have been included in the List-I under the above Order, valid as on the date of invoicing of such modules.

The bidders are advised to take cognizance of the O.M. dated 09.03.2021 issued by MNRE, on the subject of "Imposition of Basic Customs Duty (BCD) on Solar Cells & Modules/Panels", while preparation of their response to this RfS. The above O.M. and its associated orders issued by the Ministry of Finance will be applicable on this tender and imposition of taxes/duties as laid out in the above OM, will not be considered under "Change in Law" under the PPA.

### **3.9.2 Connectivity with the Grid**

- i. The Project should be designed for interconnection with the ISTS in accordance with prevailing CERC regulations in this regard. For interconnection with the grid and metering, the REPD shall abide by the applicable Grid Code, Grid Connectivity Standards, Regulations on Communication System for transmission of electricity and other regulations/procedures (as amended from time to time) issued by Appropriate Commissions and Central Electricity Authority (CEA). Minimum voltage for interconnection at the ISTS shall be 220 kV.
- ii. At the time of Financial Closure, the SPD shall be required to submit the Connectivity Agreement signed with Central Transmission Utility (CTU), confirming technical feasibility of connectivity of the plant to the ISTS substation.
- iii. The responsibility of getting the ISTS connectivity shall entirely be of the REPD and shall be at the risk and cost of the REPD. The Metering Point, which is the point at which energy supplied to the Procurer shall be measured, shall be the low voltage side of the CTU/STU substation. In case of RE parks, the metering point is the ISTS/In-STS pooling station with which the internal transmission from all the pooling substations is connected. All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the Generators without any reimbursement by the Procurer. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurers as per the regulation notified by the Commission from time to time. The transmission of power up to the point of interconnection where metering is done for energy accounting, shall be the responsibility of the REPD at its own cost. In case an REPD is required to use InSTS to bring solar power at ISTS point, it may do so as per rule and regulations prescribed by the respective SERC in this regard. The maintenance of Transmission system up to the interconnection point shall be responsibility of the REPD, to be undertaken entirely at its cost and expense.
- iv. The arrangement of connectivity can be made by the REPD through a dedicated transmission line up to the Interconnection Point. The entire cost of transmission including cost of construction of line, wheeling charges, SLDC/Scheduling charges, SOC, MOC, maintenance, losses etc. and any other charges from the Project up to and including at the Interconnection Point will be borne by the REPD and will not be reimbursed by NHPC or met by the STU / CTU / DISCOMs. Arrangements shall be put in place prior to commissioning of project as regards the methodology for billing these expenses directly to the Buying Entities.
- v. Metering arrangement of each Project shall have to be adhered to in line with relevant clause of the PPA. Two or more Projects can be connected to a common pooling substation from which the pooled power can be transferred to the ISTS substation through a common transmission line subject to the following conditions:
  - a. Acceptance of such an arrangement by CTU/ RLDC.

- b. Energy injected by each Project will be recorded and jointly signed by respective REPDs and copies of the same will be submitted to NHPC/CTU as required.
- c. The energy accounts are divided and clearly demarcated for the power supplied by the Project and are issued by the STU/SLDC/RLDC/RPC concerned.
- d. In case of Pooling substation, losses in the transmission line between the Pooling substation and the ISTS substation, shall be apportioned among the REPDs who share such a Pooling arrangement, based on their monthly generation
- vi. The REPD shall comply with CERC/SERC regulations on Forecasting, Scheduling and Deviation Settlement, as applicable and are responsible for all liabilities related to Connectivity. The scheduling of the power from the Project as per the applicable regulation shall be the responsibility of the REPD and any financial implication on account thereof shall be borne by the REPD. In order to remove potential discrepancies and ambiguities, the REPDs are hereby instructed that, as part of scheduling of power from the Project, they will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/Discom, as per the Regulations in force, under intimation to NHPC. NHPC may facilitate in identification of any discrepancy and assist the REPD for its early rectification without any liability on NHPC. The REPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- vii. Reactive power charges and charges against power drawn from grid as per CERC/SERC regulations, shall be payable by REPD as per provisions of PPA.
- viii. The REPD shall be required to follow the Detailed Procedure as issued by CERC/CTU under General Network Access under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, as well as other Regulations issued by CERC/CEA as amended from time to time. It is further clarified that the Entities (REPD and Buying Entity) as indicated in the Detailed Procedure issued under the above Regulation, will be responsible for their respective obligation as notified in the Detailed Procedure, irrespective of the provisions of the RfS, PPA and PSA. It is clarified that in case the Detailed Procedure under the GNA regulations are not enforced until the Project commissioning, the REPD and the Buying Entity(ies) shall abide by the current Procedure under applicable CERC regulations. In such a scenario, the responsibility of obtaining LTA will be that of the REPD. In the alternate scenario, no such requirement will be applicable on the REPD.
- ix. Pursuant to Clause (viii) above, the Buying Entity will be responsible for obtaining General Network Access (GNA), and shall bear all transmission charges and losses and any other charges as applicable under the respective regulations beyond Delivery Point and up to the Drawl Point.
- x. The Bidders will be required to indicate their proposed substation at the time of bid submission in the Covering Letter (**Format 6.1**).
- xi. The REPDs will be required to apply for connectivity at the identified substation, as mentioned in the Covering Letter (**Format 6.1**), within 30 days of issuance of LoAs, and shall furnish copies of the application, complete in all respect, to NHPC within 15 days of date of filing of application. REPD shall also have to provide the copy of in-principle grant of connectivity, final grant of connectivity, connectivity agreement within 15 days of issuance of letter by CTU/ signing of connectivity agreement, as the case may be, to NHPC. In case the REPD is required to obtain LTA under the extant regulations, the same shall be applied for by the REPD, within 30 days of signing of PSA, and intimation of the same by NHPC to the REPD.

- xii. The REPD has to follow the timelines mentioned in the GNA regulation with respect to Connectivity. In case, connectivity has been revoked due to non-compliance of REPD, then the same may be considered as REPD's Event of Default and shall be dealt as per the provision of PPA. In case the REPD fails to obtain the connectivity at a Substation identified by the Bidder, the same shall be immediately notified by the REPD to NHPC
- xiii. At least 30 days prior to the proposed commissioning date, the REPD shall be required to submit the Connection Agreement signed with Central Transmission Utility (CTU), confirming technical feasibility of connectivity of the plant to the ISTS substation.
- xiv. The responsibility of getting Transmission Connectivity and Long Term Access (if any) to the transmission system owned by the CTU will lie with the Solar Power Generator/Project Developer and shall be at the cost of REPD.
- xv. Penalties, fines and charges imposed by the CTU under any statute or regulation in relation to delay in commissioning of the project shall be payable by the Solar Power Generator to the extent the delay is attributable to the solar power Generator.

### **3.10 CAPACITY UTILIZATION FACTOR (CUF)**

- i. The Bidders will declare the annual CUF of the Projects at the time of submission of response to RfS, and the REPDs will be allowed to revise the same once within first year of COD. Thereafter, the CUF for the Project shall remain unchanged for the entire term of the PPA. Minimum availability of 90% of contracted capacity during peak hours and annual CUF not below 40%. Peak hours shall be 4 hrs out of 24 hrs as declared by the respective RLDCs of buying entities

It shall be the responsibility of the REPD, entirely at its cost and expense to install such number of Solar panels, wind turbines and associated equipment (including arrangement of extra land for such installation) as may be necessary to achieve the required CUF, and for this purpose REPD shall make its own study and investigation of the GHI and other factors prevalent in the area which have implication on the quantum of generation.

REPD shall maintain generation so as to achieve annual CUF within (+) 10% and (-) 15% of the declared value till the end of 10 years from SCSD, subject to the annual CUF remaining minimum of 40%, and within (+)10% and (-)20% of the declared value of the annual CUF thereafter till the end of the PPA duration of 25 years. The lower limit will, however, be relaxed by NHPC to the extent of non-availability of grid for evacuation which is beyond the control of the REPD. For the first year of operation of the project, the annual CUF shall be calculated based on the first year after COD of the Project. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March next year.

#### **ii. Shortfall in Energy Supply:**

If for any Contract Year, it is found that the SPG has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the SPG, on account of reasons primarily attributable to the SPG, such shortfall shall be dealt as per the applicable provisions of the PPA.

### **3.11 SHORT-LISTING OF BIDDERS FOR OPENING OF FINANCIAL BIDS**

NHPC shall evaluate only those responses to RfS, which are submitted on-line on the earmarked website by the due date and time. The responses will be evaluated based on the Qualification Requirement and all the responses meeting the Qualification Requirements shall be considered for opening of their Financial Bid (first round tariff bid).

### 3.12 SELECTION OF RE POWER DEVELOPER

3.12.1 This sub-clause is not in use.

3.12.2 **The bidders will have to submit bids quoting a fixed levelised tariff for entire project duration of 25 years.** This will be the "First Round Tariff Bid" of the Bidder after which the shortlisted bidders shall be invited for the Reverse Bid Auction.

3.12.3 This sub-clause is not in use.

#### 3.12.4 Methodology for Selection of RE Power Developer RE Power Developer (SPGs): -

The methodology to be adopted for selection of SPGs is mentioned below:

3.12.4.1 All the bidders will be required to submit online bids (e-bids) on the CPP portal. The bidders will be shortlisted by 'Single Stage – Two Envelope' bidding process followed by reverse auction among shortlisted bidders.

##### Documents to be submitted Offline

Following documents are to be submitted offline in a sealed envelope at NHPC Office Faridabad on or before the end date and time of bid submission: -

- i. Instrument towards Processing Fee;
- ii. Bank Guarantee/POI towards EMD (in original) as per **Clause 3.24**;
- iii. Certified True Copy of Board Resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the response to RfS;
- iv. Original Integrity Pact (Details mentioned in **Clause 3.34** below) signed by Authorized representative of Bidder.
- v. Certificate of Compliance as per **Format 6.13a**.

In case requisite Processing Fees and/or EMD/POI (as per Clause 3.24) and/or Integrity Pact (as per Clause 3.34) and/or Certificate of Compliance to All Provisions are not submitted before the end date and time of bid submission then bid shall be rejected and returned unopened.

##### Documents to be submitted Online

###### **First Envelope (Technical Bid)**

In the Technical Bid (First Envelope) the bidders will be required to submit the documents related to Qualifying Requirements and other required documents.

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

In the second envelope bidders will be required to submit "**first round tariff bid.**"

Second Envelope (containing first round tariff bid) of only those bidders shall be opened who are found to be technically qualified. After evaluation of technical bid, if a bidder is found to be qualified for lower capacity of Projects than that applied, the Price quoted by the bidder (i.e. first round tariff) in the Second envelope will be considered valid for lower capacity of Projects and the bidder will have to accept the lower capacity of projects than applied for, if found successful after closing of Reverse Auction. However, if a bidder is found to be qualified for less than 50 MW capacity as per qualifying requirement then they shall be considered disqualified for this tender.

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

The tariff has to be quoted up to two places of decimal only. If it is quoted with more than two digits after decimal, the third digit at the third decimal place shall be

ignored after first two decimal places. (For e.g. if the quoted tariff is INR 2.337, then it shall be considered as INR 2.33).

#### **3.12.4.2 Reverse Auction**

##### **Intimation of Date and Time of Reverse Auction:**

At-least one week prior to reverse auction, an advance intimation regarding the date and time of the reverse auction will be sent by email to all bidders whose technical bids have been opened. However, from this advance intimation it shall not be construed by the bidders that they have been short-listed for Reverse Auction. Further, a system generated email for invitation for Reverse Auction will be sent to all those bidders who have been short-listed based on the criteria mentioned at clause 3.12.4.3.

Since the Reverse Auction will be conducted in a separate module on a portal selected by NHPC, the bidders will be required to complete all pre-requisite and configure their system for participation in Reverse Auction in advance before commencement of Reverse Auction. On E-Reverse Auction overview page, the bidders are advised in their own interest to view their start price (which shall be same as their 'first round tariff' and displayed in Bidder's window as 'My Financial Bid Price') and the capacity of Projects for which they have been considered qualified (which will be displayed under Quantity). In case there is any discrepancy in the Start Price and the 'First Round Tariff' of any bidder, the same shall be immediately intimated to NHPC before start of Reverse Auction otherwise the Start Price will be considered final and binding on that bidder. A wrong and misleading intimation in this regard may lead to disqualification in further tendering process and award. Short-listed bidders for Reverse Auction will be able to login into the portal selected by NHPC for reverse action before the start time of reverse auction.

The bidders may note that the person who has been authorized to sign and submit the bid at the time of submission of Technical and Financial bid may only be authorized to participate in the Reverse Auction process on behalf of the bidder as any price submitted by the bidder during the Reverse Auction will be considered final and binding on that bidder as if it had been submitted initially in the Financial bid without requiring any further authentication from the bidder.

#### **3.12.4.3 Ranking and Short-listing of bidders for Reverse Auction:**

All those bidders who are found to be technically qualified, will be ranked according to the quoted first round tariff bid with highest ranking (Rank 1) to that bidder who has quoted the lowest first round tariff bid and so on.

If the first round tariff bid is same for two or more bidders, then the bidder with higher net worth shall be given higher ranking. In case the net worth of bidders are also same, then relative ranking shall be decided through draw of lots.

Out of all qualified bidders, short-listing will be done for Reverse Auction as under:

##### **A. When cumulative capacity of technically qualified bidders > 1875MW**

All the qualified bidders shall be invited for Reverse Auction other than one lowest ranked bidder based on First Round Tariff bid i.e. the bidder quoting the highest first round tariff (i.e. H1) subject to the condition that after removal of H1 bidder, the cumulative capacity remains greater than 1875MW. In case, after removal of H1 bidder, the cumulative capacity of technically qualified bidders becomes less than 1875MW then all the technically qualified bidders will participate in reverse auction.



**B. When cumulative capacity of technically qualified bidders  $\leq$  1875MW**

All the technically qualified bidders will be shortlisted for Reverse Auction. However, in such case the offered capacity for award by NHPC as per Clause 3.1 shall stand reduced to 80% of the cumulative capacity of technically qualified bidders or shall be reduced by the capacity of the H1 bidder, whichever is less.

For the purpose of determination of the lowest Ranked bidder, if there is a tie among two or more bidders based on First Round Tariff Bid, the bidder with the lowest net worth among these bidders will be considered having lowest rank than the other bidder(s).

At the start of the reverse auction process, the first round tariff bid along with the qualified capacity of Project(s) (lower of the applied capacity of projects or technically qualified for as per Financial criteria) of short-listed bidders shall be fed as their first quoted tariff and Project(s). The minimum decrement value for Reverse Auction is 0.01 INR i.e. one paisa.

Bidders can quote any value lower than their quoted tariff. However, no upward revision of quoted tariff will be allowed. Bidders can improve their ranking by quoting the tariff lower than their last quoted tariff by any number of decrements. Further, in Reverse Auction no revision in capacity of Project(s) for which a bidder is considered qualified after evaluation of technical bid is allowed. The bidder shall not have the option of changing the capacity of projects while quoting tariff.

The initial auction period will be of one (01) hour with a provision of auto extension by 10 (Ten) minutes from the scheduled/extended closing time if any fresh bid is received in last 10 (Ten) minutes of auction period or extended auction period. If no valid bid is received during last ten minutes of auction period or extended auction period, the reverse auction process will get closed.

**3.12.4.4 Selection of Successful Bidders**

After the reverse auction is closed, bucket filling will be done based on the ranking of bidders and capacity of qualified Projects. The lowest quoting bidder will be allotted its qualified capacity of Project(s) and then, next higher bidder will be allotted its qualified capacity of Project(s) and so on, at their respective last quoted tariff till the offered capacity of Projects is fully allotted.

In case of tie among two or more bidders (i.e. their last quoted tariff being same), the resolution shall be done as under:

- i) The First Criterion shall be the time stamping of last tariff bid. The preference shall be given to that bidder who has quoted its last tariff bid earlier than other such bidders.
- ii) The Second Criterion shall be the evaluated net worth by NHPC. The bidder with higher evaluated net worth shall be given preference over other such bidders.

These criteria shall be applied in the sequence as mentioned above. If the tie still remains unresolved, the relative ranking of such bidders shall be decided through draw of lots at NHPC office at Faridabad on designated date and time among such bidders in the presence of their authorized representatives.

Further if a bidder who has been invited for the reverse auction does not reduce its tariff bid or does not participate in the reverse auction for any reason whatsoever, its first round tariff bid shall be considered its final bid price in the reverse auction.

The time stamping of all such bidders shall be the time of commencement of reverse auction.

After arranging the bidders in the ascending order of tariff, the Project capacities will be awarded only to those bidders whose final price bids are within a range of "L1+2%", in terms of INR/kWh.

In case the partial capacity offered to the last Bidder after completion of the e-RA is lower than 50% of the total quoted capacity by such Bidder, the Bidder shall have an option to refuse such offered partial capacity, and the BG against EMD submitted by such Bidder shall be returned along with those of the unsuccessful Bidders.

In case the partial capacity offered to the last Bidder after completion of the e- RA is greater than or equal to 50% of the total quoted capacity by such Bidder, it shall be mandatory for the last Bidder to accept the partial capacity offered against its quoted capacity, subject to the total cumulative capacity awarded after e-RA to the successful Bidders not exceeding 1500 MW. In case the last Bidder refuses to accept such partial capacity offered by NHPC, the Bank Guarantee against EMD submitted by such Bidder shall be encashed by NHPC.

A detailed auction mechanism is enclosed at **Annexure - 5**.

In all cases, NHPC decision regarding selection of bidders through Reverse Auction or otherwise based on First Round Tariff bid or annulment of tender process shall be final and binding on all participating bidders.

At the end of selection process, a Letter of Award (LOA) will be issued to all the successful Bidders only after getting written consent from the Discoms / Power Distribution Company of the States for purchase of power at discovered tariff.

**Note:**

- 1 NHPC reserves the right to verify the documents furnished by the bidders at the time of submission of RfS including availability of the Net Worth and other Financial Criteria to the extent claimed in the RfS with the original documents and bank statements and the shareholding of the Project Company along with a copy of complete documentary evidence supported with originals at any stage from evaluation upto the expiry of PPA.

Before signing the PPA, NHPC will ask the successful Bidder to furnish the Memorandum & Articles of Association of Project Company/Project Developer/Solar Power Generator (highlighting the relevant provision of Power / Energy / Renewable Energy / Solar Power Plant development) in case the same was not available in the Memorandum & Articles of Association of the Bidder at the time of submission of Bid. If at any stage it is found that the documents furnished by the bidders during RfS are misleading or misrepresented in any way then the EMD shall be forfeited and the agency shall be blacklisted for an appropriate period decided by NHPC.

**3.13 PAYMENT SECURITY MECHANISM (PSM) CHARGES: :**

As part of the Payment Security Mechanism as brought out in the PPA, the SPG shall undertake to pay PSM Charges @ Rs. 0.02/kWh to NHPC, by offering a commensurate discount in the monthly tariff payment being made by NHPC.

**3.14 POWER PURCHASE AGREEMENT (PPA)**

Power Purchase Agreement shall be signed between NHPC and successful bidders. A copy of Power Purchase Agreement to be executed between NHPC and the Selected Bidder(s) is enclosed at **Annexure - 3**. The PPA shall be executed within 90 (Ninety) days of the date of issue of Letter of Award, if not extended by NHPC. Separate PPA

will be executed between NHPC and SPG for each Project. However, Letter of Award to SPG shall be issued only after getting written consent from the Discoms / Power Distribution Company of the States for purchase of power at discovered tariff. The successful bidder shall provide the Project breakup for the cumulative capacity quoted, in the Covering Letter (Format 6.1) within 05 (five) days of conclusion of Reverse Auction, which can be changed by the SPD prior to signing of PPA, subject to minimum capacity of each Project shall not be less than 50 MW. The final project configuration, adding up to the cumulative capacity awarded to the Bidder, may be intimated to NHPC at the time of signing of PPA, subject to minimum capacity of each Project shall not be less than 50 MW, which shall then remain unchanged subsequent to signing of PPA. Delays in meeting the project execution timeline on account of changes in the project parameters from the data as submitted in the Covering Letter (Format 6.1), shall be at the risk and cost of the Successful Bidder. The PPA shall be for a period of **25 years** from the Scheduled Commissioning Date of the Project. The PPA(s) will be signed after signing of PSA(s) for the respective Project(s).

The generators/developers will be free to upgrade and repower their plants during the PPA period at its own risk and cost without any recourse to NHPC, and participate in subsequent bids to the extent of their untied capacity.

In case the project supplies energy less than the energy corresponding to the minimum CUF, the SPG will be liable to pay to the Procurer, penalty for the shortfall in availability of energy. The amount of such penalty will be equal to one and a half times the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.

In case the energy available is more than the quantum corresponding to maximum CUF specified, the Solar Power Generator will be free to sell it to any other entity provided first right of refusal will vest with NHPC. In case, NHPC (if accepted by the Discom(s)/beneficiaries) purchases the excess generation, the same shall be procured at the PPA tariff.

In order to allow optimization of operation of RE, the Generator is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer (However, first right of refusal shall vest with NHPC). The Generator may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer.

Any extension of the PPA period beyond 25 years shall be through mutual Agreement between the Solar Power Generator and NHPC. Generator 3.14.1 The Effective Date of PPA shall be 90 (ninety) days from issuance of LoA or the actual date of signing of PPA, whichever is later.

- 3.14.2 The Performance Bank Guarantee /POI as per Clause 3.24 of this RfS shall be submitted by the SPG prior to signing of PPA. Before signing of PPA between NHPC and the SPGs, NHPC will verify the shareholding of the Project Company along with a copy of complete documentary evidence. If at this stage, it is found that the documents furnished by the SPGs are false / misleading or misrepresented in any way, then the provisions contained in this RfS will be applicable.
- 3.14.3 Successful bidders will have to submit the required documents to NHPC within 70 days from the issue of LoA. In case of delay in submission of documents beyond the period as

mentioned above, NHPC shall not be liable for delay in verification of documents and subsequent delay in signing of PPA.

- 3.14.4 Back-to-back Power Sale Agreements (PSAs) in respect of all rights and obligation under the PPA between the SPG and NHPC, will be executed by NHPC with the Buying Entity for sale of power to Buying Entity, with the buying entity assuming all the obligations of NHPC under the PPA. NHPC's obligation to SPG under the PPA shall also be on the back to back basis as provided in the PPA and the corresponding PSA

### 3.15 SUBMISSION OF RESPONSE TO RFS BY THE BIDDER

The bidder is requested to submit the following documents in originals to the under mentioned address in a Sealed Envelope before end date and time of submission of Bid.

**General Manager (Civil Contracts - III)**  
Room No.218, 2nd Floor, Jyoti Sadan, NHPC OFFICE COMPLEX,  
Sector-33, Faridabad-121003, Haryana, India  
Tele No.: +91 (129) 2270596  
Email: contcivil3-co@nhpc.nic.in

**The envelope shall bear (REPower Project), the RfS No. and the words 'DO NOT OPEN BEFORE' (due date & time).**

1. Processing Fee in the form of Demand Draft of requisite amount in favour of "NHPC Limited" payable at Faridabad.
2. Bank Guarantee towards EMD/POI as per **Format 6.3 A/6.3 A(I)**.
3. Duly signed Original Integrity Pact
4. Certified True Copy of Board Resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the response to RfS.
5. Certificate of Compliance as per **Format 6.13a/6.13B(I)**.

The response to RfS shall be submitted electronically in the method specified as per **Clause 3.19** on <http://eprocure.gov.in/eprocure/app> which should contain the following:

- A. First Envelope (Technical Bid):** - Bidders shall submit technical bid containing the scanned copy of following documents in SEQUENCE as mentioned below with index and page number duly mentioned on each page and in index: -
1. Covering Letter as per **Format 6.1**;
  2. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by all the other Members of the Consortium shall be provided as per **Format 6.2**.  
  
In the event any Member of the Bidding Consortium (other than Lead Member) being a foreign entity, it may submit Board Resolutions in place of Power of Attorney for the purpose of fulfilling the requirements under this Clause. Provided that such Board Resolutions shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board Resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.
  3. Board Resolutions, as per **Format 6.4** duly certified by the Company Secretary or the Director of the relevant Bidder, as applicable to the Bidder and mentioned hereunder:

- a. Board Resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the response to RfS;
  - b. Board Resolution from the Bidding Company committing one hundred percent (100%) of the equity requirement for the Project / Board Resolutions from each of the Consortium Members together in aggregate committing to one hundred percent (100%) of equity requirement for the Project (in case of Bidding Consortium) and authorizing a person to execute the Consortium agreement;
  - c. Board Resolutions from each of the Consortium Members and Lead member contributing such additional amount over and above the percentage limit (specified for the Lead Member and other member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement.
  - d. Board Resolutions from Parent and/or Affiliate (whose credentials were used in the response to RfS) of the Bidding Company / any Member of the Bidding Consortium undertaking to invest the entire amount and submit the requisite Performance Bank Guarantee as committed by Bidding Company / Member of the Bidding Consortium, in event of failure of Bidding Company / Member of the Bidding Consortium to make such investment and/or to submit the requisite Performance Bank Guarantee.
4. In case of a Consortium, the Consortium Agreement between the Members in the Consortium as per **Format 6.5** along with Board resolution from each Member of the Consortium for participating in consortium;
  5. Financial Requirements as per **Format 6.6** as applicable;
  6. Format for Technical Criteria wherein Bidder shall certify that the technology to be adopted shall be commercially established and operational technology as per **Format 6.7**;
  7. A disclosure statement as per **Format 6.8** regarding participation of any related companies in this bidding process;
  8. Declaration by the Bidding Company / Lead Member of Bidding Consortium for the Proposed Technology Tie Up as per **Format 6.9**;
  9. Checklist for Bank Guarantee as per **Appendix – A**;
  10. Memorandum & Articles of Association (highlighting relevant provision of Power / Energy / Renewable Energy / Solar Power Plant development), Certificate of Incorporation (if applicable) of Bidding Company / all member companies of Bidding Consortium along with shareholders rights and obligations filed with ROC. In case of foreign bidders having documents other than English language then all these documents shall be translated in English language by approved translator and shall be notarized by the Indian Consulate in that country.

At the time of submission of bid if the Bidder does not have the aforesaid relevant provision of Power / Energy / Renewable Energy / Solar Power Plant development in its existing Memorandum & Articles of Association, the same may be incorporated later in the Memorandum & Articles of Association of Project Company / Solar Power Generator/Project Developer and submit the same to NHPC **within 15** days from the date of issue of Letter of Award and before signing of PPA.

**B. Second Envelope (Financial Bid): -**

Bidders shall submit the Financial Bid as per **Format 6.11** containing the First round tariff bid (in Rs/kWh). The bidders shall quote a single tariff for all the projects applied by them. The Bidder has to accept that the quoted first round tariff bid is valid for capacity of projects qualified for even if the capacity of projects qualified for is less than the capacity of projects quoted for.

First round tariff bid (in Rs/kWh) shall be quoted upto two places of decimal only. If first round tariff bid is offered with more than two digits after decimal, it shall be truncated and considered upto two places of decimal (in Rs/kWh).

- 3.16** Wherever information has been sought in specified formats, the Bidders shall fill-in the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format. Any document submitted in format other than that specified in this RfS document may call for rejection of bid.

**3.16.1 Modification of Bid**

The bidder may modify its bid prior to deadline of bid submission. For the purpose of evaluation, the last modified bid uploaded on CPP portal shall be considered as final submission.

**3.17 THE BIDDER SHOULD NOTE THAT:**

- a. The bidder may be shortlisted based on the declarations made by them in relevant schedules of RfS. The documents submitted online will be verified before signing of PPA in terms of Clause 3.12.
- b. If the Bidder/Member in a Bidding Consortium conceals any material information or makes a wrong/misleading statement or misrepresents facts in its response to RfS, in any manner whatsoever, NHPC reserves the right to reject such response to RfS and/or cancel the Letter of Award, if issued and the Bank Guarantee provided upto that stage shall be encashed. Bidder shall be solely responsible for disqualification based on their declaration in the response to RfS submitted online with CPP website.
- c. If the event specified at 3.17 (b) above is discovered after the Effective Date of PPA, it shall be treated as "SPG Event of Default" under PPA and consequences as specified in PPA shall apply.
- d. Response submitted by the Bidder shall become the property of NHPC and NHPC shall have no obligation to return the same to the Bidder.
- e. All documents of the response to RfS submitted online must be digitally signed by the person authorized by their respective Boards on behalf of the Bidder as per **Format 6.4**.
- f. The response to RfS shall be submitted as mentioned in Clause 3.15 above. No change or supplemental information to a response to RfS will be accepted after the scheduled date and time of submission of response to RfS. However NHPC reserves the right to seek additional information or clarifications from the Bidders, if found necessary, during the course of evaluation of the response to RfS.
- g. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.
- h. Response to RfS that are incomplete or do not substantially meet the requirements prescribed in this RfS, will be liable to rejection by NHPC.
- i. Response to RfS not submitted in the specified formats will be liable to rejection by NHPC.

- j. Bidders delaying in submission of additional information or clarifications sought by NHPC will be liable to rejection.
- k. Non submission and/or submission of incomplete data/ information required under the provisions of RfS shall not be construed as waiver on the part of NHPC of the obligation of the Bidder to furnish the said data/information unless the waiver is given in writing.
- l. Only Faridabad Courts shall have exclusive jurisdiction in all matters pertaining to RfS.
- m. All the information should be submitted in English language only. In case of foreign bidders having documents other than English language then all these documents shall be translated in English language by approved translator and shall be notarized by the Indian Consulate in that country.

### 3.18 DUE DATE

Bidders should submit the response to RfS online on Central Public Procurement e-Portal <http://eprocure.gov.in/eprocure/app> as per the schedule specified at Clause 3.4 above. No offline or late bids will be allowed.

### 3.19 METHOD OF SUBMISSION

Detail instructions to be followed by the bidders for online submission of response to RfS are as stated at **Annexure - 4**.

### 3.20 VALIDITY OF THE RESPONSE TO RFS

The Bidder shall submit the response to RfS which shall remain valid up to **One Hundred Eighty (180) days** from the technical bid opening date ("**Bid Validity**"). NHPC reserves the right to reject any response to RfS which does not meet the aforementioned validity requirement. In exceptional circumstances, NHPC may solicit the Bidder's consent to an extension of the initial bid validity period. The request and responses thereto shall be made in writing by email or post or by telefax followed by post confirmation. If a Bidder accepts to extend the period of bid validity, the validity of Earnest Money Deposit shall also be suitably extended. A Bidder may refuse the request to extend the period of bid validity. In such case NHPC will not forfeit its Earnest Money Deposit. A Bidder granting the request will not be required nor permitted to modify its bid.

### 3.21 PREPARATION COST

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

### 3.22 ENQUIRIES/CLARIFICATIONS

#### a. Pre-Bid Meeting

- i. Clarifications/ Doubts, if any, on RfS document may be addressed to General Manager (Civil-Contracts-III) at the address mentioned below on or before the date as mentioned in the Clause 3.4 above.
- ii. NHPC will make all efforts to respond to the same in the Pre Bid Conference to be held as per Clause 3.4 above at **NHPC Office Complex, Sector-33, Faridabad (Haryana)-121003**. A compiled list of such questionnaire and NHPC's response will be uploaded in the website <http://eprocure.gov.in/eprocure/app>. Bidders are required to remain updated with the website. No separate reply/intimation will be given

elsewhere. Verbal clarifications & information given by NHPC or their employees(s) or their representative(s) shall not be in any way binding on NHPC.

Enquiries/ clarifications may be sought by the Bidder in following format on email ID: [contcivil3-co@nhpc.nic.in](mailto:contcivil3-co@nhpc.nic.in):

Sl. no.	Clause no. of RfS	Provision of RfS	Query of bidder

The bidders are required to submit the queries in MS Word file also.

Name & Address of the Authorized Person of NHPC:

General Manager (Civil Contracts-III)  
Room No.218, 2nd Floor, Jyoti Sadan, NHPC OFFICE COMPLEX,  
Sector-33, Faridabad-121003, Haryana, India  
Tele No :+91 (129) 2270596  
Email: [contcivil3-co@nhpc.nic.in](mailto:contcivil3-co@nhpc.nic.in)

### 3.22.1 Amendment to RfS Documents

At any time prior to the deadline for submission of bids, NHPC may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the RfS documents. The amendment will be uploaded on the website <http://eprocure.gov.in/eprocure/app>. Bidders are required to remain updated with the website. No separate intimation will be given elsewhere. The amendment will be binding on Bidders and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid.

### 3.22.2 Clarification on Bids

During bid evaluation, NHPC may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the substance of the bid shall be sought, offered or permitted.

### 3.23 RIGHT OF NHPC TO REJECT A BID

NHPC reserves the right to reject all or any of the response to RfS or cancel the tender or annul the bidding process at any stage without assigning any reasons whatsoever and without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the NHPC's action.

### 3.24 BANK GUARANTEES

The Bidder shall provide the following Bank Guarantees for the amounts expressed in Indian Rupees issued by an Indian Nationalized / Scheduled Commercial Bank or a Foreign Bank notified as a Scheduled Bank under the provisions of the 'Reserve Bank of India Act' through any of its Branches in India.:

- i) **Earnest Money Deposit (EMD) of Rs 12.5 Lacs Per MW (Five Lacs Sixty Thousand Per MW) in the form of DD/BG/POI Subject to Minimum of Rs 6 Crs and Maximum of Rs 20 Crs per Project in the form of Bank Guarantee/POI according to Format 6.3A/ 6.3A(I) and valid for 12 months from the last date of bid submission, shall be submitted by the Bidder along with their bid, failing which the bid shall be summarily rejected. The Bank Guarantees towards EMD have to be issued in the name of the Bidding Company/ Lead Member of Bidding Consortium. In the**



**event of encashment of EMD, the encashed amount shall include all applicable taxes.** Scanned copy of Bank Guarantee towards EMD is to be submitted along with response to RfS in First Envelope (Technical Bid). However, the Bank Guarantee towards EMD (in original) in a sealed envelope is to be submitted in NHPC Office at Faridabad on or before bid submission date and time. If a bidder extends the period of bid validity pursuant to clause 3.20 of RfS, the validity of EMD shall also be extended so that it remains valid for a period of 60 days beyond the Bid Validity.

**Payment on Order Instrument (POI):** As an alternative to submission of EMD as above, the Bidder also has an option to submit a letter of undertaking issued by either of the following three organizations, viz. (i) Indian Renewable Development Agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited. This Letter of Undertaking shall be issued as "Payment on Order Instrument" (POI), wherein the POI issuing organization undertakes to pay in all scenarios under which the EMD would be liable to be encashed by NHPC within the provisions of RfS/PPA. This instrument would have to be furnished as per Format 6.3 A (I) of the RfS, within the timelines as per Clause 3.24 (i) above, for the amount and validity period as per those Clause above.

The term "Bank Guarantee (BG) towards/ against EMD" occurring in the RfS shall be read as "Bank Guarantee (BG)/ Payment on Order Instrument (POI) towards/ against EMD".

- ii) **Performance Bank Guarantee (PBG) of Rs. 31.25 Lakh/MW for each project** as per Format 6.3 B/ 6.3 B (I), is to be submitted by the successful bidder to NHPC before signing of PPA. The PBG should be valid for a period up to (& including) the date as on 9 months after the Scheduled Commissioning Date of the Project. PBG shall be submitted for each project separately.

On receipt and after verification of the Total Performance Bank Guarantee in acceptable format and after signing of PPA, the earlier Bank Guarantee towards EMD would be returned to the Bidder. It may be noted that PPA will be signed only upon successful verification of the PBG submitted by the SPG.

**Payment on Order Instrument (POI):** As an alternative to submission of PBG as above, the SPG also has an option to submit a letter of undertaking issued by either of the following three organizations, viz. (i) Indian Renewable Development agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited. This Letter of Undertaking shall be issued as "Payment on Order Instrument" (POI), wherein the POI issuing organization undertakes to pay in all scenarios under which the PBG would be liable to be encashed by NHPC within the provisions of RfS/PPA. This instrument would have to be furnished as per Format 6.3 B(I) of the RfS, within the timelines as per Clause 3.24 ((ii) above, for the amount and validity period as per those Clause above. In case the SPG chooses to submit POI, delay in submission of the POI beyond the timeline stipulated at Clause 3.24 ((ii) above, the provisions of Clause 3.24 ((ii) will be applicable in this case too.

The Bank Guarantees submitted by a generator as 'Performance Bank Guarantee(PBG)' may be released, if the generator is able to replace the same with "Payment on Order instrument" / Letter(s) of Undertaking to pay in case situation of default of generator in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC). Generators can seek such Letters(s) by offering due security to the above mentioned three nonbanking financial institutions (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies.

The term "Performance Bank Guarantee (PBG)" occurring in the RfS shall be read as "Performance Bank Guarantee" (PBG)/Payment on Order Instrument (POI)"

In case of a Joint Venture / Consortium, the Performance Bank Guarantee shall be in the name of individual partner of Joint Venture in proportion of its participation share. The performance security shall not be released till liquidated damages, if any, is pending for recovery.

If the contractor does not submit the performance security within the stipulated period due to any valid reason, Tender Inviting Authority may grant time extension for submission of performance security based on the request of contractor.

In case, the contractor does not submit performance security without a valid reason, the Employer shall impose simple interest @12% per annum on the full amount of applicable performance security (alongwith applicable taxes, if any) for the period of delay in submission of performance security. The interest on delayed period shall be calculated on pro rata basis for number of delayed days.

The interest accrued shall be payable by the Contractor within 14 days from the date of intimation by Tender Inviting Authority in form of Bank Demand Draft/ Banker Cheque in favour of 'NHPC Ltd', otherwise the same shall be recovered from any payment due or become due against bills / any other amount lying with NHPC.

The delayed submission of Performance Security by the Contractor shall be recorded in substantial completion and final completion certificates. Further, no claim for extension of time for completion period or any other type of claim on account of delayed submission of performance security shall be entertained.

- 1) If contractor fails to submit the Performance Security within 45 days (for the contracts having time for completion - upto 12 months) or 60-days (for the contracts having time for completion - more than 12 months) from the date of notification of signing of Power Purchase Agreement, then following actions shall be taken against such Contractor:
  - i) Award shall summarily be terminated
  - ii) EMD/ Bid security shall be forfeited.
  - iii) The bidder shall be debarred / banned to participate in the business dealings with NHPC for a period of one year.
  - iv) The name of the Contractor shall be hosted on the NHPC website etc. as per existing norms of NHPC / Govt. of India.
  - v) Such defaulted contractor shall not be eligible to participate in the bidding process of re-tender of this work.

***Note: In case any extension is given to the Project, the corresponding extension needs to be made in the validity of PBG. The PBGs are required to be submitted in the name of the entity signing the PPA. In case of PPA being eventually signed with the SPV incorporated/utilized by the successful bidder, the PBG may be submitted in the name of the successful bidder at an earlier date, if the bidder chooses to do so, and the same shall be replaced by the PBG issued in the name of the SPV, prior to signing of PPA***

**(i) General:**

- a. The format of the Bank Guarantees/POI prescribed in the Format 6.3 A / 6.3 A(I) (EMD)/ 6.3 B/ 6.3 B(I) (PBG) shall be strictly adhered to and any deviation from the above Formats shall result in rejection of the EMD/PBG and consequently, the bid. In case of deviations in the formats of the Bank Guarantees, the corresponding PPA shall not be signed. The selected Bidder for the Project selected based on this RfS is required to sign PPA with NHPC within the timeline as stipulated in Clause 3.14 of the RfS. In case, NHPC offers to execute the PPA with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Clause 3.14 of the RfS, or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by NHPC from the Bank Guarantee available with NHPC (i.e. EMD or PBG) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.**
- b. The Bank Guarantees have to be executed on non-judicial Stamp paper / e-stamp paper of appropriate value, as per Stamp Act .The Bank Guarantees have to be in the name of the Bidding Company / Lead Member of Bidding Consortium.**
- c. All expenditure towards execution of Bank Guarantees such as stamp duty etc. shall be borne by the Bidders/SPGs. Any Bank Guarantee or amendment to be submitted as part of the bidding process / contract execution, shall be effective only when the BG issuance message is transmitted by the issuing bank through SFMS to (Name of the beneficiary: NHPC Ltd. Account No.: 10813608692 IFSC Code: SBIN0017313 Address of the Bank: State Bank of India 5th Floor, Redfort Capital, Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001) and a confirmation in this regard is received by NHPC”.
- d. In case of Bank Guarantees issued by foreign branch of a Scheduled Commercial Bank, the same is to be endorsed by the Indian branch of the same bank or SBI, and the endorsing bank would be required to provide the SFMS confirmation.
- e. The EMD of unsuccessful bidders shall be released within fifteen days of the completion of reverse auction process.
- f. In addition to the other remedies, this PBG can be encashed to recover any damages/dues of the Solar Power Generator in terms of the PPA. It is hereby clarified that the damages/dues recovered by the Intermediary Procurer by encashing the PBG, upon the default of the Solar Power Generator under the PPA, shall be credited to the Payment Security Fund to be maintained by NHPC as mention in clause 3.13 of this RfS.
- g. The PBG of SPGs shall be returned to them, after successful commissioning of their projects as per Terms of PPA, after taking into account any liquidated damages due to delays in commissioning as per relevant Clauses of the RfS. In case of part commissioning, PBG, corresponding to the part capacity commissioned, shall be released after successful part commissioning of their projects as per Terms of PPA, after taking into account any liquidated damages due to delays in commissioning as per relevant Clauses of the RfS.
- h. The Bank Guarantees have to be executed on non-judicial Stamp paper / e-stamp paper of appropriate value, as per Stamp Act .The Bank Guarantees have to be in the name of the Bidding Company / Lead Member of Bidding Consortium.
- i. In order to facilitate the Bidders to submit the Bank Guarantee as per the prescribed format and in line with the requirements, check-list at Appendix – A has been attached. Bidders are advised to take note of the above checklist while submitting

the Bank Guarantees. Bidders have to submit the above check list duly filled in along with Bank Guarantee.

### 3.24.1 Online Confirmation of BG towards EMD and PBG

For online confirmation of Bank Guarantee against Performance Security and Bid Security, the bank details of NHPC to be communicated to the issuing Bank is as under:

Name of the beneficiary:	NHPC Ltd.
Account No. :	10813608692
IFSC Code:	SBIN0017313
Branch Code:	17313
Address of the Bank:	State Bank of India, 5 <sup>th</sup> Floor, Red Fort Capital, Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi – 110 001

### 3.25 FORFEITURE OF EMD

The EMD shall be forfeited in following cases:

- a) If the bidder/his representatives commit any fraud while competing for this contract;
- b) If the bidder withdraws or varies the bid during the validity of the bid;
- c) In case, NHPC offers to execute the PPA with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Clause 3.12.4.4 or does not execute the PPA, within the stipulated time period.
- d) If the bidder refuses to withdraw, without any cost to NHPC, any deviation, variation, additional condition or any other mention anywhere in the bid, contrary to the provisions of the RfS Document;
- e) If the bidder fails to furnish required Performance Bank Guarantee in accordance with Clause 3.24; and
- f) In case the bidder is disqualified from the bidding process in terms of Section 3 & 4 of Integrity Pact.

### 3.26 MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY THE PROMOTER

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

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

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

- a. Infusion of Fresh equity capital amongst the existing shareholders/promoters at the time of Bid Submission to meet equity requirements.
- b. Conversion of CCDs, CCPs etc. already issued to existing shareholders.
- c. Death, marriage, Divorce, minor attaining major (any legal heir who was minor at the time of signing of PPA), insolvent, insane of existing shareholders.
- d. Transfer of shares within the members of Immediate Promoter Group only.
- e. Transfer of shares to IEPF. vi. Issue of Bonus Shares.

The Successful bidder, if being a single company, shall ensure that its shareholding in the SPV/ project company executing the PPA shall not fall below 51% (fifty one per

cent) at any time prior to 1 ( One) year from the SCSD, except with the prior approval of NHPC.

In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 ( One) year from the COD, except with the prior approval of NHPC.

**Further, the successful bidder, shall ensure that its promoters** shall not cede control till 1 ( One) year from the SCSD except with the prior approval of NHPC. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to NHPC before signing of the PPA with NHPC.

Any change in the shareholding after the expiry of 1(One) year from the SCSD can be undertaken under intimation to NHPC.

The expression "control" shall mean the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such Company or right to appoint majority Directors.

In the event the Solar Power Generator is in default to the lender(s), lenders shall be entitled to undertake 'Substitution of Promoter' in concurrence with the Procurers."

In the event of Change in Shareholding/ Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of INR 10 Lakh per Project +18% GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the developer to NHPC.

*Note: - In case Bidding Company or Bidding Consortium is selected for more than one project, then separate project company may be formed for each project; however the equity commitment (in case of bidding consortium) as informed at the stage of RfS shall be maintained in all the project companies to be formed before signing of PPA with NHPC. Similarly for the Bidding Company, forming a project company with no change in Shareholding shall be permitted from the RfS stage upto PPA, but the controlling shareholding as informed at the stage of RfS shall not change up to 1 ( One)year after SCSD of the Project. An Indian company can form a Special Purpose Vehicle (SPV) for execution of the Project before signing of PPA. The SPV so formed shall be 100% owned subsidiary of the Bidding Company.*

### **3.27 FINANCIAL CLOSURE OR PROJECT FINANCING ARRANGEMENTS AND LAND ARRANGEMENTS FOR THE PROJECT:**

The Projects shall achieve Financial Closure within 18 (Eighteen) months from the Effective Date of the PPA. Any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days of submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more, shall entail a corresponding extension in financial closure..

At the stage of financial closure, the SPGs shall report 100% tie-up of Financing Arrangements for the Projects. In this regard, the SPG shall submit a certificate/necessary documents from all financing agencies regarding the tie-up of 100% of the funds indicated for the Project, including arrangements of funds in the form of Equity.

The Solar Power Generator/project developer would provide evidence that the requisite technical criteria as per **Annexure – 1** have been fulfilled and orders placed / agreements entered into, for supply of plants and equipment for the project.

Checklist of documents to be submitted at this stage is provided at Annexure-2 of the RfS.

The bidder has to indicate the proposed location of the projects at the time of bid submission in **Format-6.1**. However, the successful bidder shall have option to change the Project location before the Financial Closure. At this stage, Solar Power Generator/Project Developer will also be required to furnish copy of connectivity agreement with CTU confirming technical feasibility of connectivity of the plant to CTU substation at the indicated location. The change of location of the project shall not be permitted after Financial Closure.

In case of delay in achieving above condition as may be applicable, NHPC shall encash Performance Bank Guarantees and shall remove the project from the list of the selected projects, unless the delay is on account of factors not owing to any action or inaction on the part of the SPG, or caused due to a Force Majeure as per PPA. An extension can however be considered, on the sole request of project developer, on payment of a penalty of **Rs.1,000/- per day per MW**. This extension will not have any impact on the Scheduled Commissioning Date. The penalty paid by the Solar Power Generator/project developer shall be returned to the SPG/project developer without any interest on achievement of successful commissioning up to the rated project capacity within the Scheduled Commissioning Date. However, if the entire capacity of the project is not commissioned within the Scheduled Commissioning Date, then penalty amount shall not be refunded.

Subsequent to the completion of deadline for achieving financial closure, NHPC shall issue notices to the SPGs who are not meeting the requirements of Financial Closure as per the RfS deadlines. The notice shall provide a period of 7 business days to the respective SPGs to either furnish the necessary documents or make the above mentioned payment of Rs. 1,000/MW/day. In case of non submission of either-the requisite documents or the necessary amount upon expiry of the above mentioned notice period of 7 days-NHPC shall encash the PBG/POI of the corresponding SPGs and terminate the PPA for the corresponding Project. The amount of Rs. 1,000/MW/day shall be paid by the SPGs in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the SPG. In case of the SPG meeting the requirements of Financial Closure before the last date of such proposed delay period, the remaining amount deposited by the SPG shall be returned by NHPC. Interest on account of delay in deposition of the above mentioned charges or on any subsequent extension sought, shall be levied @ one year SBI MCLR rate /annum on pro-rata basis. Any extension charges paid so, shall be returned to the SPG without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date.

The SPG will have to submit the required documents to NHPC at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, NHPC shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

It is presumed that the tariff will be adopted by the Appropriate Commission within 60 (sixty) days of submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more. However, any delay in adoption of tariff by the Appropriate Commission beyond 60 (sixty) days of submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more, shall entail a corresponding extension in Financial Closure.

**LAND ARRANGEMENTS FOR THE PROJECT:**

The REPD shall be entirely responsible for acquiring the land required for setting up the project and NHPC shall not in any manner be responsible for the same.

The REPD shall submit documents/Lease Agreements to establish possession/right to use 100% (hundred per cent) of the required land in the name of the REPD for a period not less than the complete term of the PPA, on or before the Scheduled Commissioning Date (SCD).

The REPD shall submit a sworn affidavit from the authorized signatory of the REPD listing the details of the land and certifying that total land required for the Project is under clear possession of the REPD.

With respect to demonstration of land possession by the REPD, commissioning of the Project will not be allowed until the demonstration of land possession by the REPD in terms of this Clause.

In case of part-commissioning of the Project, land possession corresponding to the part capacity (calculated on pro-rata basis) being commissioned, shall be required to be demonstrated by the REPD prior to declaration of commissioning of the said part capacity.

However, in case of delays in demonstrating land possession by the REPD on account of Government delay (including but not limited to delay in land use pattern change, and/or relaxation under respective State land ceiling Act, and/or land lease permission from State Government/Authorities) or delay caused due to a Force Majeure as per PPA, SCD shall be suitably extended.

### **3.28 COMMENCEMENT OF SUPPLY OF POWER :**

#### **Commencement of Supply from Projects:**

**Commencement of Supply Date (CSD) shall be the actual date of commissioning of the Project. Commissioning of the Project shall be carried out by the REPD in line with the procedure as per the PPA document. NHPC may authorize any individual or committee or organization to witness and validate the commissioning procedure on site. Commissioning certificates shall be issued by the State Nodal Agency or NHPC after successful commissioning.**

#### **Part Commencement of Supply of Power :**

Part Commencement of Supply of Power:

Part Commencement of Supply of Power of the Project shall be accepted by NHPC subject to the condition that the Minimum Capacity for acceptance of first and subsequent part(s) shall be 50 MW (with the last part being the balance Contracted Capacity), without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. However, the Scheduled Commencement of Supply Date (SCSD) will not get altered due to part-commencement of supply of power. Irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for a period of 25 (twenty five) years from SCSD.

**In case of part commencement of supply of power from the Project, land possession corresponding to the part capacity (calculated on pro-rata basis) being commence the supply of power , shall be required to be demonstrated by the REPD prior to declaration of commencement of supply of power of the said part capacity.**

In cases of early part-commencement of supply of power , till Scheduled Commencement of Supply Date (SCSD) , subject to the consent for such purchase by the Discom(s), NHPC may purchase the generation at the PPA tariff payable to the project developer.

#### **Early Commencement of Supply of Power :**

**The Solar Power Generator shall be permitted for commencement of supply of power corresponding to full as well as part contracted capacity, even prior to the**

**SCSD, subject to availability of transmission connectivity and General Network Access.**

**Early commencement of supply of power of the Project will be allowed solely at the risk and cost of the REPD, and NHPC shall purchase the energy from such early commissioned Project at the PPA tariff, only in case the corresponding Buying Entity agrees to purchase power from the Project at an earlier date, and at the PPA tariff plus NHPC's trading margin. In case NHPC does not agree to purchase such energy, early part/full commencement of supply of power from the Project shall still be allowed and the REPD will be free to sell such energy to a third party, until SCSD or the date of commencement of procurement of power from the Project as notified by NHPC, whichever is earlier, without requiring any No-Objection Certificate (NOC) from the Procurer. In such cases a Provisional Commissioning Certificate will be issued to REPD for period up to SCSD or date of commencement of Power Procurement (whichever is earlier), along with a NOC for sale of Power to 3rd Party for such period. Unit Scheduled Commencement of Supply Date (USCSD)/SCSD of the Project under the PPA will be the date on which the commissioning certificate is issued upon successful commissioning of the part/full capacity of the Project. However, early part/ full commencement of supply of power from of the Project and subsequent energy procurement from the same shall be subject to the approval of NHPC. Such intimation regarding consent to procure energy from early commissioning shall be provided by NHPC within 15 days of receipt of the request being made by the REPD, beyond which it would be considered as deemed refusal.**

**Commencement of Supply Schedule and penalty for delay in commencement of supply:**

**:**

**The Scheduled Commencement of Supply of power Date (SCSD) for the full contracted capacity shall be the date as on 24 months from the Effective Date of the PPA. The maximum time period allowed for commencement of supply of power for the full contracted capacity with applicable liquidated damages, shall be limited to the date as on 06 months from the SCSD or the extended SCSD (if applicable).**

In case of failure to achieve this milestone, the REPD/project developer shall pay the liquidated damage in the following manner as specified in PPA:

- (a) For Delay in commencement of supply of power up to 6 (six) months from the Scheduled Commencement of Supply of power Date (SCSD or the extended SCSD (if applicable) - NHPC will encash the Performance Bank Guarantee (PBG)/POI on per day basis and proportionate to the Capacity not commissioned.**
- (b) For Delay in commencement of supply of power beyond 6 (six) months from the Commencement of Supply of power Date (SCSD) or the extended SCSD (if applicable) –**
  - I. Generator Event of Default shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity that has commenced supply of power within the period of SCSD or the extended SCSD (if applicable) + 6 (six) months. The PPA for the balance capacity that has not commenced supply of power shall be terminated.**



II. The Generator shall be debarred from participating in bids issued by any Procurer or any Intermediary Procurer for the following period:

- (a) For one year in case of first default
- (b) For not less than 2 years and not more than 3 years for second and any subsequent defaults.

(c) The maximum time period allowed for commencement of supply of power for the full contracted capacity with applicable liquidated damages, shall be limited to the date as on 06 months from the SCSD or the extended SCSD (if applicable). It is presumed that the tariff will be adopted by the Appropriate Commission within 60 days of such submission or within 120 days from the date of Power Sale Agreement (PSA), whichever is more. However, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission or 120 days from of PSA, whichever is more, shall entail a corresponding extension in SCSD..

### **3.29 COMMERCIAL OPERATION DATE (COD) AND COMMENCEMENT OF SUPPLY DATE (CSD):**

Commercial Operation Date (COD) and Commencement of Supply Date (CSD) shall be the actual date of commissioning of the Project, as indicated on the Commissioning Certificate, upon successful commissioning of the full capacity of the Project and the date of commencement of supply of power of the contracted capacity. The following milestone dates may therefore be observed and may fall on separate dates:

- a. Interconnection with Grid: This may be provided by the STU/ CTU/ DISCOM, on the request of the REPD, even if the Project is only partially ready, to facilitate testing and allow flow of power generated into the grid to avoid wastage of Power.
- b. Commissioning of the Project: This will be on a date, when the project meets the criteria defined for project commissioning. NHPC may authorize any individual or committee or organization to declare the project commissioned on site.

Any energy produced and flowing into the grid before CSD shall not be at the cost of NHPC under this scheme and developers/generators will be free to make short-term sale to any organization or individual. NHPC may agree to buy this power as a trader if they find it viable outside this RfS..

### **3.30 DELAY IN COMMENCEMENT OF SUPPLY OF POWER ON ACCOUNT OF DELAY IN GNA OPERATIONALIZATION:**

**The responsibility of obtaining General Network Access (GNA) shall be of the Buying Entity prior to commissioning of the Project. For sale of power to NHPC from SCD, the GNA is required to be obtained by the Buying Entity. It is further clarified that the Entities (REPD and Buying Entity) as indicated in the Detailed Procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022, will be responsible for their respective obligations as notified in the Detailed Procedure irrespective of the provisions of the RfS, PPA and PSA. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power**

**evacuation and transmission infrastructure of the ISTS network until SCD of the Project, and it is established that:**

- (i) The REPD has complied with the complete application formalities as per Clause 3.9.2**
- (ii) The REPD has adhered to the applicable regulations/procedures in this regard as notified by the CERC/CTU, and**
- (iii) The delay in grant of connectivity/GNA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the REPD.**

**The above shall be treated as delays beyond the control of the REPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by NHPC.**

**In case of delay in commissioning of Project due to reasons beyond the reasonable control of the REPD, NHPC may extend the SCSD after examining the issue on a case-to-case basis.**

**On account of delay in Grid Access operationalization, in case of any extension in SCSD beyond 30.06.2025, necessary approval will be granted by MNRE, in line with the OM issued by Ministry of Power vide No. 23/12/2016-R&R dated 30.11.2021, and subsequent amendments/clarifications thereto, read in conjunction with CERC's orders and regulations notified in this regard.**

**The provisions of PPA and PSA in regard to liability of the Buying Entity to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable.**

**Further, in case of delay in Project commissioning on account of reasons solely attributable to the REPD, resulting in any liquidated damages/penalty levied on the Buying Entity under the GNA Regulations, such damages/penalty shall be passed on to the REPD.**

### **3.31 CORRUPT OR FRAUDULENT PRACTICES:**

NHPC requires that Bidders, RE Power Developer, etc. observe the highest standard of ethics during the development and operation of Solar Power Project(s). In pursuance of this policy, NHPC:

- (a) defines, for the purposes of this provision, the terms set forth below as follows :**
  - (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the bidding process or in the development and operation of Solar Power Project(s); and**
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence the bidding process or in the development and operation of Solar Power Project(s) to the detriment of NHPC, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive NHPC of the benefits of free and open competition;**

- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the tender in question and the bid security of the bidder shall be forfeited;
- (c) will declare a firm 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 engaged in corrupt or fraudulent practices in competing for or in executing the development and operation of Solar Power Project(s).

**3.32 Deleted**

**3.33 CONTACTING NHPC:**

- a. Except for when NHPC has sought some clarification or additional information in writing from the bidder, no Bidder or his representative shall contact NHPC on any matter relating to its bid, from the time of the opening of bids to the time the LOA is issued.
- b. Any effort by a Bidder to influence NHPC decision during the evaluation process before LOA is issued to successful bidder(s) may result in rejection of the Bidder's bid.

**3.34 INTEGRITY PACT:**

Bidders are required to unconditionally accept the "Integrity Pact (IP)" (executed on plain paper) as per Format 6.12 to the RfS Documents and submit the same duly signed on all pages by the bidder's authorized signatory along with the bid. In case of bidder being a Consortium, the signing of Integrity Pact (IP) by all Consortium members is mandatory.

The Integrity Pact (IP) is to be submitted in hard copy along with other documents to be submitted offline as per Clause 3.12.4.1. Bidder's failure to comply with the aforesaid requirement regarding submission of 'Integrity Pact (IP)' shall lead to outright rejection of the bid and in such case the bid shall not be opened.

**Independent External Monitors (IEM)s:**

In respect of this tender, the Independent External Monitors (IEM)s would be monitoring the bidding process and the development and operation of Solar Power Project(s) to oversee implementation and effectiveness of the Integrity Pact Program.

To oversee the compliance of obligation under the Integrity Pact, Shri Vivek Kumar Johri and Dr. Vinod Aggarwal have been appointed as Independent External Monitor (IEM) by the Employer.

This panel is authorized to examine / consider all references made to it under this tender. The bidder(s), in case of any dispute(s) / complaint(s) pertaining to this tender may raise the issue either with the designated 'Nodal Officer' in NHPC or directly with the IEMs at following Address:

Shri Vivek Kumar Johri, 106, Malviya Nagar, Bhopal, MP-462003 e-mail – iem.nhpc@gmail.com	Dr. Vinod Aggarwal, B-103, Sarvodaya Enclave, 2nd Floor, New Delhi-110017 e-mail – iem.nhpc@gmail.com
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The Independent External Monitors (IEMs) has the right to access without restriction to all Project documentations of NHPC including that provided by the Contractor. The

Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his Project Documentations. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder / Contractor / Sub-Contractors / JV partners/Consortium member with confidentiality. CGM (Contracts - Civil) or his authorized representative shall be the Nodal Officer for necessary coordination in this regard.

**3.35** Deleted

**3.36** Parent, Affiliate or Ultimate Parent or any Group Company with which the bidding company/member of bidding consortium have direct or indirect relationship cannot bid separately in the same selection process in which the bidding company/member of bidding consortium is participating. In case it is found at any stage that this condition is violated, the response to RfS of all such parties will be rejected and if LOA has been issued or PPA has been signed, the same of all such agencies will be cancelled and the Bank Guarantees of all such agencies will be encashed.

**3.37 Ineligibility for Participation in Retenders**

Notwithstanding the provisions specified in clause 3.25, if a bidder after having been issued the Letter of Award either does not sign the PPA pursuant to Clause 3.14 or does not submit acceptable Performance Bank Guarantees pursuant to Clause 3.24 then such bidder shall be treated ineligible for participation in re-tendering of this particular selection process.

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Section 3B**

**Special Condition Of Contract (SCC)**

## **SPECIAL CONDITIONS OF CONTRACT (SCC)**

### **1 Scope of Work**

- 1.1 The RPD/RE-PG shall be responsible for Supply of the contracted capacity (cumulative capacity under this RfS is 1500 MW) of Firm and Dispatchable Power from ISTS- Connected Renewable Energy (RE) Power Projects based on generating system(s) including solar, wind or any other renewable resource as defined by MNRE for supply of RE Power combined with Energy Storage System including the dedicated transmission network up to the Interconnection / Delivery Point, with the primary objective of supplying RE power to NHPC, at its own cost and as per the provisions of the RfS and PPA. For this purpose, the bidder/RE power developer shall have either set up storage capacity itself; or tie up with energy storage system developers to meet the project parameters for 'firmness and dispatchability' and submit a single bid for the same as per terms and conditions stipulated in this RfS.
- 1.2 Irrespective of the contractual arrangement between the RE Power Generator and Energy Storage system Developer, if any, all the developer related liabilities, under this RfS and the PPA there under, shall be of the entity signing the PPA recognized as RE Power Generator (RE-PG)/RPD.
- 1.3 Bidders who have already commissioned RE plants/storage plants or are in process of constructing such plants and have untied capacity may also participate in the bid. In such case, the spare / untied capacity should be unencumbered from any power supply commitments or power purchase agreements and is available for augmenting the proposed RE power under this RfS.
- 1.4 Identification of land, installation and ownership of the Project(s) along with obtaining connectivity and necessary approvals and interconnection with the ISTS network for supply of power to NHPC will be under the scope of the RPD/RE-PG.
- 1.5 The Projects to be selected under this scheme provide for deployment of RE Power Projects with storage. However, the selection of Projects would be technology agnostic.
- 1.6 The minimum quantum of power that can be offered by the Bidder shall be 50 MW and the maximum quantum of power shall be 750 MW. The total cumulative capacity of power to be awarded under this RfS shall be 1500 MW. A Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit a single bid offering a minimum quantum of Contracted Capacity of 50 MW and a maximum quantum of 750 MW, in the prescribed formats. However, for Projects located in North-Eastern States and Special Category, the minimum quantum of Contracted Capacity that can be offered by a Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company, shall be 30 MW. The Contracted Capacity shall be quoted in multiple of 10 MW only.
- 1.7 No separate Central Financial Assistance (CFA) is envisaged for

implementation of the Projects selected under this RfS.

## **2 Total capacity offered**

- 2.1 The selection of "Project Developer" or "Developer" or "RE Power Developer (RPD)" or "RE Power Generator (RE-PG)" for supply of Firm & Dispatchable RE Power for a total Contracted Capacity of 1500 MW will be carried out through e-bidding followed by e-Reverse Auction process.
- 2.2 Firm & Dispatchable RE power configuration
- i. RE Projects for supply of Firm & Dispatchable power are required to be designed for interconnection with the ISTS substation at a voltage level of 220 kV or above.
  - ii. The RfS has been issued for procurement of cumulative "Contracted Capacity" of 1500 MW, which corresponds to Firm and Dispatchable RE power from the generating system(s) including solar, wind or any other renewable resource as defined by MNRE for supply of RE Power combined with Energy Storage System.
  - iii. Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be constituted as part of the Project or may be tied-up separately with a third party by the RPD / RE-PG, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA, under intimation to NHPC.
  - iv. The capacity (in MW) quoted by the Bidders in the Covering Letter (and the LoA issued by NHPC) shall mean "Contracted Capacity".
  - v. For a Contracted Capacity of 250 MW (for e.g.), the "Installed Capacity" as per the General Network Access (GNA) Regulations can be more than Contracted Capacity. Project Capacity / Installed Capacity shall mean rated AC capacities of Solar PV and Wind power components along with energy storage as committed to be installed under the PPA, and shall be equal to the installed capacity committed under the Connectivity granted under the GNA Regulations. It is to be noted that prior to commencement of supply of power under the PPA, the installation and commencement of power supply from the corresponding committed rated capacity of Wind and Solar PV components as declared in the PPA, will be verified by NHPC.
  - vi. A "Project" under the RfS, PPA and PSA refers to the "RE Project" along with ESS, which forms part of the Firm & Dispatchable RE configuration declared under the PPA. For avoidance of doubt, it is clarified that a single RE-PG / RPD may break up the cumulative awarded Contracted Capacity into multiple Projects. Each such Project may comprise any combination of RE components and ESS within the provisions of the RfS. In case the

RPD/RE-PG chooses to install multiple Projects under the cumulative Contracted Capacity awarded, the "Installed Capacity" for which connectivity has been granted for each Project, shall be verified separately for each Project.

vii. Thus, a possible configuration of "Firm and Dispatchable RE Power" against a Contracted Capacity of 250 MW could be:

- a. Solar PV component: 175 MW
- b. Wind Power component: 100 MW
- c. Energy Storage System (ESS) component: 75 MW

Important Note:

1. Bidders may note that the above configuration is only for illustration purpose and Bidders are required to design their own configuration (Solar / Wind / Storage) as per their suitability/viability to meet the requisite availability stipulated in the RfS.

2. In case of discrepancies with respect to the meaning of the terms as illustrated above with usage of the above terms in other clauses of the RfS, the above clauses i.e., Clause 2.2 (i)-(vii) of the SCC shall prevail.

viii. For each Project, the Project configuration, i.e. the Installed Capacity proposed, will be submitted by the Bidder at the time of bid submission, and it shall remain unchanged until the issuance of LoA. The above configuration can be changed subsequent to issuance of LoAs until the date as on achievement of Financial Closure for the project as specified under Clause 10 of RfS-SCC. Also, any change in delivery point(s) is/are allowed upto the date as on achievement of Financial Closure for the project. However, the RPD / RE-PG is allowed to increase/install additional RE generating capacity and/or Energy storage System (ESS) subsequent to the above deadline/beyond SCSD for the purpose of repowering and/or increase the quantum of Renewable Energy beyond the level initially committed. In case the rated capacities of the RE components are increased subsequent to the above deadline/beyond SCSD and such addition of RE Capacity leads to any additional transmission/other charges upon Procurer, as per the applicable regulations, then such additional transmission/other charges shall be borne by the RPD / RE-PG.

ix. RPD / RE-PG has to offer power such that 100% of the annual energy offered corresponds to RE Power. RPD / RE-PG can, however, source up to 5% RE power (on energy terms) on annual basis from the green market sources/bi-lateral agreements towards meeting the supply conditions stipulated in the RfS.

x. RPD / RE-PG shall combine the RE generating system with energy storage for ensuring that it achieves the required availability and supply of



Firm and Dispatchable RE Power ensuring the performance criteria stipulated in the RfS, provided power from RE sources are used to store energy in the storage system.

### **3 Maximum Eligibility for Contracted Capacity Allocation for a Bidder**

Following conditions shall be applicable to the Bidders for submission of bids against this RfS:

- 3.1 A Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit a single bid offering a minimum quantum of cumulative Contracted Capacity of **50 MW** and a maximum quantum of **750 MW**, in the prescribed formats. However, for Projects located in North-Eastern States and Special Category, the minimum quantum of Contracted Capacity that can be offered by a Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company, shall be 30 MW. The cumulative Contracted Capacity shall be quoted in multiple of 10 MW only.

**Note:** In case a common Company/Companies directly or indirectly hold(s) more than 10% but less than 26% shareholding in more than one Bidder participating in the RfS, each of such Bidders will be required to submit the Disclosure as per Format 6.8A. In all other cases, Format 6.8 will be applicable.

- 3.2 The cumulative Contracted Capacity to be allocated to a Bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall be limited to **750 MW**.
- 3.3 The evaluation of bids shall be carried out as described in Section-5 of the RfS. The methodology for Allocation of Projects is elaborated in Section-5 of the RfS.
- 3.4 Subject to the exception as per Clause 3.1 above, multiple bids from same company including its Parent/ Ultimate Parent/Affiliates/Group Companies shall make all the bids submitted by the group invalid.

### **4 Project Location**

- 4.1 The Projects can be located anywhere in India. For a single Project, the RE generation components, along with ESS, may either be co-located, or may be located at different locations. The different Project components, i.e. Solar PV, Wind and ESS, can be connected with ISTS network at different ISTS sub-stations. However, Project location(s) should be chosen taking cognizance of the provision as per Clause 5 of the RfS-SCC i.e. 'Connectivity with the Grid'.
- 4.2 The term "Project" shall have the meaning as defined in Section-2 of the RfS- Definitions, and shall refer to the Project capacity or the Installed Capacity as quoted by the Bidder (at the time of bidding)/awarded to the Bidder (after issue of LoA).

- 4.3 The RPDs/ RE-PGs are free to change the Project location until the date as on achievement of Financial Closure for the project as specified under Clause 10 of RfS-SCC. Implications of any delay in obtaining connectivity and subsequently, commencement of supply of power on account of the above, will be borne by the RPD / RE-PG. In case any change in project location by the RPD / RE-PG during the project construction period results in any modification in the GNA to be taken by the Buying Entities, any additional charges/ penalties payable by the Buying Entities in this regard shall be borne by the RPD / RE-PG.

## 5 Connectivity with the Grid at the interconnection point

- 5.1 The Project should be designed for interconnection with the ISTS in accordance with the prevailing CERC regulations in this regard. For interconnection with the grid and metering, the RPD/RE-PG shall abide by the applicable Grid Code, Grid Connectivity Standards, Regulations on Communication System for transmission of electricity and other regulations/procedures (as amended from time to time) issued by Appropriate Commissions and Central Electricity Authority (CEA). Minimum voltage level for interconnection at the ISTS shall be 220 kV.
- 5.2 The responsibility of getting the ISTS connectivity shall entirely be of the RPD / RE-PG and shall be at the cost of the RPD / RE-PG, in line with applicable regulations. With such availability of transmission system being dynamic in nature, the Bidder has to ensure actual availability of power injection/evacuation capacity at an ISTS substation. The transmission of power up to the point of interconnection where metering is done for energy accounting, shall be the responsibility of the RPD / RE-PG at its own cost. In case an RPD / RE-PG is required to use InSTS to bring RE power at ISTS point, it may do so as per rule and regulations prescribed by the respective SERC in this regard. The maintenance of transmission system up to the Interconnection Point(s) shall be responsibility of the RPD / RE-PG, to be undertaken entirely at its risk and cost.
- 5.3 The arrangement of connectivity can be made by the RPD / RE-PG through a dedicated transmission line upto the Interconnection Point. The entire cost of transmission including cost of construction of line, wheeling charges, SLDC/Scheduling charges, SOC, MOC, maintenance, losses etc. and any other charges from the Project up to and including at the Interconnection Point will be borne by the RPD / RE-PG.
- 5.4 The RPD / RE-PG shall be required to follow the Detailed Procedure as issued by CERC/CTU under the General Network Access under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, as well as other Rules/Regulations issued by CERC/CEA and as amended from time to time. **It is further clarified that the Entities (RPD / RE-PG and Buying Entity) as indicated in the**

**procedure issued under the above Rules/Regulations, will be responsible for their respective obligation as notified in the procedure, irrespective of the provisions of the RfS, PPA and PSA.**

5.5 The Bidders are free to choose the ISTS substations for Interconnection of the Project to the Grid on a pan-India basis. While doing so, the Bidders shall apply due diligence while choosing the proposed substation, and may choose their substations from any one of the following options:

- i. Existing substations having available margin as indicated by the respective substation owner.
- ii. Existing substations/ substations under construction where augmentation is under process or plans for augmentation have been announced.
- iii. Substations approved under the updated plan made available by the CTU on its website, <https://www.ctuil.in/renewable-energy>, subject to availability of requisite margin for grant of connectivity.

Bids indicating substations outside the above three choices will be liable for rejection.

5.6 The Metering Points, which are the points at which energy supplied to the Procurer shall be measured, shall be the low voltage side of the CTU/STU substation. In case of RE parks, the metering point is the ISTS/In-STS pooling station with which the internal transmission from all the pooling substations is connected. All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the Generators without any reimbursement by the Procurer. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurers as per the regulation notified by the Commission from time to time. Metering arrangement of each Project shall have to be adhered to in line with relevant clause of the PPA. Two or more Projects can be connected to a common pooling substation from which the pooled power can be transferred to the CTU substation through a common transmission line subject to the following conditions;

- I. Acceptance of such an arrangement by CTU/ RLDC.
- II. Energy injected by each Project will be recorded and jointly signed by respective RPDs / RE-PGs and copies of the same will be submitted to NHPC/CTU as required.
- III. The energy accounts are divided and clearly demarcated for the power supplied by the Project and are issued by the STU/SLDC/RLDC/ RPC concerned.
- IV. In case of Pooling substation, losses in the transmission line between the Pooling substation and the ISTS substation, shall be apportioned among the RPDs / RE-PGs who share such a Pooling arrangement,

based on their monthly generation.

- 5.7 The RPD / RE-PG shall comply with CERC/SERC regulations on Forecasting, Scheduling and Deviation Settlement, as applicable and are responsible for all liabilities related to Connectivity. The scheduling of power from the Project as per the applicable regulations shall be the responsibility of the RPD / RE-PG and any financial implication on account thereof shall be borne by the RPD / RE-PG. In order to remove potential discrepancies and ambiguities, the RPDs / RE-PGs are hereby instructed that, as part of scheduling of power from the Project, they will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entities, as per the Regulations in force, under intimation to NHPC. NHPC may facilitate in identification of any discrepancy and assist the RPD / RE-PG for its early rectification without any liability on NHPC. The RPD/RE-PG shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- 5.8 Reactive power charges and charges against power drawn from grid as per CERC/SERC regulations, shall be payable by RPD / RE-PG as per provisions of PPA. The Buying Entity will be responsible for obtaining General Network Access (GNA), all transmission charges and losses and any other charges as applicable under the respective regulations beyond Delivery Point and up to the drawl point.
- 5.9 In case the ESS component is located separately from the Solar PV/Wind generating components of a Project, the charges for charging and discharging the ESS, as applicable under GNA regulations and other orders issued by MoP/CERC will be borne by the RPD/Buying Entities as applicable.
- 5.10 The RPDs/RE-PGs will be required to apply for connectivity at its identified substation(s), as mentioned in the Covering Letter (Format 6.1), within 30 days of issuance of LOAs, and shall furnish copies of the application, complete in all respect, to NHPC within 15 days of date of filing of application. RPD// RE-PG shall also have to provide the copy of in-principle grant of connectivity, final grant of connectivity, connectivity agreement within 15 days of issuance of letter by CTU / signing of connectivity agreement, as the case maybe, to NHPC.

The RPD/RE-PG has to follow the timelines mentioned in the GNA regulation with respect to connectivity. In case, connectivity has been revoked due to non-compliance of RPD/RE-PG, then the same may be considered as RPD's / RE-PGs Event of Default and shall be dealt as per the provision of PPA.

In case the RPD / RE-PG fails to obtain the full/part connectivity at a Substation identified by the Bidder, after fulfilling the compliances, the same shall be immediately notified by the RPD / RE-PG to NHPC. In such

case, the RPD / RE-PG will be allowed for another 30 days for applying connectivity from the date of rejection by the CTU.

## **6 Power Supply by the RE Power Developer**

### **6.1 Criteria for Power Supply**

- a. The procurement shall be in power (MW) terms. The RPD / RE-PG shall supply the contracted capacity of Firm and Dispatchable Power from ISTS- Connected Renewable Energy (RE) Power Projects based on generating system(s) including solar, wind or any other renewable resource as defined by MNRE for supply of RE Power combined with Energy Storage System keeping the availability of **minimum 90 % during peak hours** of contracted capacity in MW.
- b. The Bidders will declare the annual CUF for the contracted capacity at the time of submission of response to RfS, and the RPDs / RE-PGs will be allowed to revise the same once within first year after commencement of SCSD. Thereafter, the CUF for the contracted capacity shall remain unchanged for the entire term of the PPA. The declared **annual CUF shall in no case be less than 40%**. It shall be the responsibility of the RPDs/RE-PGs, entirely at its cost and expense set up adequate RE Capacity or ESS/tie up the capacity as may be necessary to achieve the required CUF. The RPDs/RE-PGs shall maintain generation so as to achieve annual CUF within (+) 10% and (-) 15% of the declared value till the end of the PPA duration of 25 years.
- c. The criteria as mentioned at (a)&(b) above will, however, be relaxable by NHPC to the extent of non-availability of grid for evacuation which is beyond the control of the RPDs / RE-PGs.
- d. It is mandated to make available the plant to the buying utility as per availability criteria mentioned above. The generated energy shall be dispatched through scheduling of power by the buying utility.
- e. For the first year of operation of the project, the annual CUF shall be calculated based on the first year after SCSD of contracted capacity. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March next year.
- f. Peak hours will be four (04) hours out of 24 hours as declared by the corresponding RLDC(s) of the respective Buying Entity(ies) as per relevant CERC regulations. For avoidance of doubt, in case of a Project being mapped to more than one Buying Entity falling under different RLDCs having separate hours designated as "Peak hours", the RPD / RE-PG shall have to meet the energy supply criteria for the sum of the peak hours in line with the provisions of the RfS/PPA. Illustration to this effect is provided in the PPA.
- g. In case of the power being re-mapped /diverted to some other buying-entities/ DISCOMs, the RPD / RE-PG will have to comply with the peak hour supply requirement for that RLDC under which new Buying Entities / DISCOM is. In case of change in Peak hours as notified by the RLDCs, same will have to be complied by the RPD / RE-PG.

- h. For calculation of peak hours availability shortfall, availability will be calculated at the end of each month for every Contract Year.
- i. RPD / RE-PG shall plan the dispatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Electricity Act, 2003.
- j. Unless otherwise notified by the RPD / RE-PG, the declared Availability shall be deemed to be 100% (one hundred per cent) thereof at all times. The RPD/RE-PG shall declare the Availability corresponding to the Project for each time-block within the timelines as per Applicable Laws and Regulations. It is to be noted that the summation of generation schedule of RE Power and Power from any other source cannot be more than the Contracted Capacity in any time block.
- k. The Buying Entity shall, in accordance with Applicable Laws & Regulations thereunder, issue instructions to the RPD / RE-PG through NHPC for production of electricity and dispatch thereof to the Grid during such period and in such volume as it may specify in its instructions. Provided that the Entity shall not ask for dispatch in excess of the declared Availability by the RPD / RE-PG, unless mutually agreed between the RPD / RE-PG and the Utility.
- l. It is to be noted that the summation of generation schedule of RE Power by the Procurer from multiple sources and/or locations cannot be more than the Contracted Capacity specified in the RfS or PPA, considering the applicable losses. The Generator may, however, apply for connectivity and access (if applicable), in accordance with extant Regulations.
- m. The RPD / RE-PG shall offer power such that 100% of the annual energy offered corresponds to RE power. The RPD / RE-PG can, however, source up to 5% RE power (in energy terms), on annual basis, from the green market sources/bilateral agreements outside the PPA, towards meeting the supply conditions including requisite availability stipulated in the RfS/PPA.
- n. The RE component (including Energy Storage System (ESS) component charged with RE sources) bought under this RfS shall be eligible for RPO compliance. The apportionment of RPO between the different RE components shall be on the lines of the principle adopted in case of hybrid plants. The ESS capacity used in the project can be used for fulfilling the Storage Power Obligations as per the GoI orders or notifications from time to time.

## 6.2 Shortfall in Firm and Dispatchable RE Power Offered

- a) Subsequent to commencement of SCSD, in case of shortfall in 90% availability during the Peak Hours (to be calculated on monthly basis) on account of reasons attributable to the RPD / RE-PG, such shortfall in

performance shall make the RPD / RE-PG liable to pay the liquidated damages provided in the PSA (Power Sale Agreement) as payable by NHPC to Buying Entity(ies) and shall duly pay such damages to NHPC to enable NHPC to remit the amount to Buying Entity(ies). The above damage shall be applied to the amount of shortfall in generation corresponding to the shortfall in availability during the peak hours to be calculated on monthly basis.

- b) If for any Contract Year, it is found that the RPD / RE-PG has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the RPD/RE-PG, on account of reasons primarily attributable to the RPD / RE-PG, such shortfall in performance shall make the RPD / RE-PG liable to pay the liquidated damages as per criteria mentioned below at Clause 6.2 (c).
- c) In case of shortfall in the availability of contracted capacity during peak hours and the supply of energy corresponding to minimum CUF as specified in Clauses 6.2 (a) and (b) respectively, for reasons attributable to RPD / RE-PG, the RPD / RE-PG shall be liable to pay to the Procurer, penalty for such shortfall in availability and supply of energy. Penalty for not meeting the stipulated availability and supply of energy shall be equal to **one and a half times the tariff** for the number of units not supplied. An illustration for determination of Liquidated Damages for the above-mentioned scenarios are mentioned in Annexure-1A of this RfS.
- d) The performance criteria as per Clause 6.1(a) above shall not be applicable for the Contract Year ending on 31st March immediately after SCSD of the contracted capacity.
- e) The detailed list of documents required for verification of energy supply and performance of the Projects will be intimated to the Developers subsequent to commissioning and commencement of supply of power. For each month in a Contract Year, the above data will be required to be submitted by the respective RPD/RE-PG to NHPC within 10 days after expiry of the previous month, for verification of the performance parameters for calculating applicable penalty on account of shortfall, if any. For each Contract Year, the above data will be required to be submitted by the respective Developers to NHPC within 30 days after expiry of the previous Contract Year, for verification of the performance parameters for calculating applicable compensation on account of shortfall.

It is clarified that if in a particular Contract Year, in case of shortfall in Peak availability of 90% and annual shortfall in supply of energy corresponding to minimum CUF as specified in Clauses 6.1(a) and 6.1(b) respectively, both damages shall be applicable.

- f) The reference to the liquidated damages for shortfall to enable NHPC to remit the amount to buying utility(ies) and the amount being equal to the damages payable by the buying utility(ies) for not meeting RPO is only a measure of damage. It shall not be construed that the damage is payable

by RPD / RE-PG only if the buying utility(ies) are required to pay damage for such not meeting of RPO or that the buying utility(ies) or the RPD / RE-PG shall be required to prove or establish such payment of damage for not meeting the RPO.

- g) RPD / RE-PG shall agree that the methodology specified herein above for calculation of liquidated damages payable by the RPD / RE-PG for shortfall in power offered is a genuine and accurate pre-estimation of the actual loss that will be suffered by NHPC. RPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this document is a genuine and reasonable pre- estimate of the damages that may be suffered by the NHPC in each case specified under the PPA.
- h) However, the shortfall in power supply will not be applicable in events of Force Majeure identified under the PPA with NHPC, affecting supply of power by the RPD / RE-PG.

### 6.3 Excess Power Supply

In order to allow optimization of operation of RE power plant, the RPD / RE-PG is allowed to supply power in excess of the Contracted Capacity in any time block, to any third party or power exchange, without requiring No Objection Certificate (NOC) from NHPC/Buying Entity. The RPD / RE-PG may also sell the power which was offered to the Buying Entity on day ahead basis (within the Contracted Capacity) but was not scheduled by the Buying Entity, to any third party or power exchange, without requiring NOC from the Buying Entity. However, it may be noted that at any instance of energy supply from the Project, priority shall be for meeting the capacity requirements as per PPA, before selling any quantum of energy in the open market. Any instance of third-party sale of power from the Project by the RPD / RE-PG, while the demand specified in the PPA remains unfulfilled, shall constitute a breach of RPD's/RE-PG's obligations under the PPA and make the RPD/RE-PG liable for penalty @1.5 times of extant market rate/kWh (reference rate being the applicable rate on the Indian Energy Exchange (IEX)) for the quantum of such sale).

The RPD/RE-PG can repower the Project at any stage, if required in order to meet the demandprofile requirement from the RE Project.

It is to be noted that the summation of generation schedule of RE Power to the Buying Entity from multiple sources and/or locations cannot be more than the Contracted Capacity specified in the PPA. The RPD/RE-PG may, however, apply for connectivity and access (if applicable), in accordance with extant regulations.

## 7 **Commencement of Power Supply**



Project commissioning and declaration of Commercial Operation Date (COD) shall be governed by the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time. It is clarified that NHPC shall bear no responsibility in declaration of commissioning/COD of the Project. NHPC's scope will be limited to verifying the installation of rated capacity(ies) of the Project, with respect to the committed Installed Capacity as part of the PPA. The date of onset of commercial offtake of power by NHPC/Buying Entity shall be determined as the date of commencement of power supply under the RfS/PPA. Prior to declaration of commencement power supply, the RPD / RE-PG shall submit COD certificate for the corresponding Installed Capacity to NHPC as part of the requisite documents.

7.1 Part Commencement of power supply

Part commencement of supply of power from the Project shall be accepted by NHPC subject to the condition that the minimum capacity for acceptance of first and subsequent part(s) shall be 50 MW (with the last part being the balance Contracted Capacity), without prejudice to the imposition of liquidated damages in terms of the PPA on the part which has not yet commenced supply of power.

However, the Scheduled Commencement of Supply Date will not get altered due to part commencement of supply. Irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for the period as specified in the bid i.e. 25 years from the Scheduled Commencement of Supply Date or the date of commencement of full contracted Capacity, whichever is later.

Further, in case of part-commencement of power supply, minimum rated installed capacities of the RE components supplying power (along with the ESS capacity) shall maintain the ratio of the Project configuration for the Contracted Capacity as per the PPA.

7.2 Commencement of Supply schedule and Penalty for Delay in Commencement of supply

- a. The Scheduled Commencement of Supply Date (SCSD) for supplying power from the full Project capacity shall be the date as on **24 months** from the date of execution of the PPA (for e.g., if the date of execution of the PPA is 01.01.2024, then SCSD shall be 01.01.2026).
- b. The maximum time period allowed for commencement of power supply from the full Project Capacity with applicable penalty, shall be limited to the date as on **6 months** from the SCSD or the extended SCSD (if applicable) (for e.g., if SCSD is 01.01.2026, then the above deadline / extended SCSD for commencement of power supply shall be 01.07.2026).
- c. In case of delay in commencement of power supply beyond the SCSD until the date as per **Clause 7.2(b)** above, as part of penalty, the PBG shall be encashed on per day basis and proportionate to the Contracted Capacity

that has not commenced supply of power. This encashment will be calculated for the Installed Capacity proportionate to the Contracted Capacity that has not commenced supply of power. For example, in case of a Contracted Capacity of 500 MW corresponding to an Installed Capacity of 800 MW, if commencement of power supply from 100 MW of Contracted Capacity gets delayed by 45 days beyond the SCSD, (proportionate Installed Capacity being 160 MW), then the penalty shall be calculated as: PBG amount X (160/800) X (45/180). For the purpose of calculations of penalty, 'month' shall be considered consisting of 30 days.

- d. For delay in commencement of power supply beyond the date as per **Clause 7.2(b)** above, the following shall be applicable:
  - i. The Contracted Capacity shall stand reduced/amended to the capacity corresponding to the Installed Capacity / Project capacity that has commenced supply of power until the date as per Clause 7.2(b) above and PPA for the balance Contracted Capacity will stand terminated. Further, in such case, the Bidder/RPD shall be debarred from participating in bids issued by any procurer or any intermediary procurer for the following period:
    - a. For one year in case of first default.
    - b. For not less than 2 years and not more than 3 years for second and any subsequent defaults.
  - ii. In case of part commencement of power supply, the proportionate ratio of the proposed installed capacity (Solar, Wind, ESS) shall be ensured and capacity accepted will be limited to the extant ratio fulfilled. Any installed capacity found above the ratio may be continued/taken out from the project as per RPD's discretion within 30 days from the proposed date of commencement of power supply.
- e. It is to be noted that in case, RPD / RE-PG set up new RE Project/ Energy Storage System to supply Firm and Dispatchable RE Power under this RfS, commencement of supply of power/part supply of power of the Project will not be declared until the RPD / RE-PG demonstrates possession of land in line with Clause 11, in addition to the other conditions as per the Commissioning Procedure. For part commencement of supply of power, portion of land on which the part of the project is commissioned should be under clear possession of the RPD/RE-PG in accordance with Clause 11 of the RfS.

## **8 Delay in Commencement of power supply on Account of Delay in GNA Operationalization**

The responsibility of obtaining General Network Access (GNA) shall be of the Buying Entity prior to commencement of supply of power from the Project. For sale of power to NHPC from SCSD, the GNA is required to be obtained by the Buying Entity. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at any Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:

- i. The RPD / RE-PG has complied with the complete application formalities as per Clause 5.4 above and as per the Detailed Procedure as issued by the CTU,
- ii. The RPD / RE-PG has adhered to the applicable regulations/ procedures in this regard as notified by the CERC/CEA, and
- iii. The delay in grant of connectivity/GNA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the RPD / RE-PG;

The above shall be treated as delays beyond the control of the RPD / RE-PG and SCSD for such Projects shall be revised as the date as on 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by NHPC.

In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the RPD / RE-PG, NHPC may extend the SCSD after examining the issue on a case-to-case basis. In case of change in Project location(s) by the RPD / RE-PG, extension requests under this clause shall be dealt by NHPC on case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Clause, the phrase "change in Project location" or its similar connotations, shall refer solely to change in Delivery Point(s) of the Project.

Further, in case of delay in commencement of power supply on account of reasons solely attributable to the RPD / RE-PG, resulting in any liquidated damages/penalty levied on the Buying Entity including Transmission charges under the GNA Regulations and/or applicable regulation as notified by CERC, such damages/penalty shall be passed on to the RPD / RE-PG.

## **9 Early Commencement of supply of power**

- 9.1 The RPD/RE-PG shall be permitted for full as well as part-commencement of power supply from the Project even prior to the SCSD, subject to availability of connectivity and General Network Access. Early commencement of power supply will be allowed solely at the risk and cost of the RPD / RE-PG, and first right of refusal for offtake of such power will vest with the Buying Entity. In case the Buying Entity refuses to buy such power, the right of refusal shall vest with NHPC. In case NHPC/Buying Entity agrees to purchase power from such early part/full commencement of power supply prior to SCSD, such power will be purchased at the PPA tariff plus NHPC's trading margin.

In case NHPC does not agree to purchase such energy, early part/full commencement of power supply shall still be allowed and the RPD / RE-

PG will be free to sell such energy to a third party until SCSD or the date of commencement of procurement of power from the Project as notified by NHPC, whichever is earlier. Such intimation regarding consent to procure energy from early commencement of supply shall be provided by NHPC/Buying Entity within 15 days of receipt of the request being made by the RPD/RE-PG, beyond which it would be considered as deemed refusal.

- 9.2 In case of multiple Project components, and if one or more such component (wind, solar PV / other RE power generating system) is/are ready for injection of power into the grid, but the remaining component(s) is/are unable to commence supply of power, the RPD / RE-PG will be allowed to commence power supply from such component which is ready, outside the ambit of PPA, with first right of refusal for such power being vested with the Buying Entity. Subsequent to refusal of such power by the Buying Entity, the right of refusal shall vest with NHPC. In case Buying Entity/NHPC decides to buy such discrete component's power outside the PPA, such power shall be purchased @ 50% of the PPA Tariff. Following should be noted under such a scenario:
- a. In case the Buying Entity procures such power through NHPC, trading margin of 7 paise/unit will be applicable on such power procurement.
  - b. The above scenario **does not** qualify under the provisions of Part/Early Commencement of power supply under the RfS, PPA and PSA. This is a special scenario wherein in case one or more project component(s) is/are ready, the power supply from such component is not wasted.
  - c. The terms "SCSD" and "Commencement of supply of power" as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations.
  - d. The above scenario will be applicable until the RPD / RE-PG is ready to commence power supply as per the provisions of **Clauses 7 and 9.1** of the RfS.

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

- 10.1 The Project(s) shall achieve Financial Closure within 18 (eighteen) months from the Effective Date of the PPA.
- 10.2 At the stage of financial closure, the RPDs / RE-PG shall report 100% tie-up of Financing Arrangements for the Projects. In this regard, the RPD / RE-PG shall submit a certificate/necessary document from all financing agencies regarding the tie-up of 100% of the funds indicated for the Project, including arrangements of funds in the form of Equity. The RPD/RE-PG shall also submit the DPR of the Project, detailing out project configuration and proposed commissioning schedule of the Project.
- 10.3 Checklist of documents to be submitted at this stage is provided at Annexure-2 of the RfS.
- 10.4 In case of default in achieving above condition as may be applicable within the stipulated time, NHPC shall be entitled to encash PBG/POI and shall remove the Project from the list of the selected Projects, unless the delay is on account of factors not owing to any action or inaction on the part of the RPD / RE-PG, or caused due to a Force Majeure as per PPA. An extension can however be considered, on the sole request of RPD / RE-PG, on advance payment of extension charges of INR 1,000/- per day per MW plus applicable GST. This extension will not have an impact on the obligation of RPD / RE-PG to achieve commissioning by the Scheduled Commissioning Date of the Project. Subsequent to the completion of deadline for achieving financial closure, NHPC shall issue notices to the RPDs / RE-PGs who are not meeting the requirements of Financial Closure as per the RfS deadlines. The notice shall provide a period of 7 business days to the respective RPDs / RE-PGs to either furnish the necessary documents or make the above mentioned payment of Rs. 1,000/MW/day plus applicable GST. In case of non- submission of either the requisite documents or the necessary amount upon expiry of the above mentioned notice period of 7 days, NHPC shall encash the PBG/POI of the corresponding RPDs / RE-PGs and terminate the PPA for the corresponding Project. The amount of Rs. 1,000/MW/day plus applicable GST shall be paid by the RPDs / RE-PGs in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the RPD / RE-PG. In case of the RPD / RE-PG meeting the requirements of Financial Closure before the last date of such proposed delay period, the remaining amount deposited by the RPD / RE-PG shall be returned by NHPC. Interest on account of delay in deposition of the above mentioned charges or on any subsequent extension sought, shall be levied @ one year SBI MCLR rate /annum on pro- rata basis. Any extension charges paid so, shall be returned to the RPD/RE-PG without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date.
- 10.5 The RPD / RE-PG will have to submit the required documents to NHPC at least 14 days prior to the scheduled Financial Closure date. In case of

delay in submission of documents mentioned above, NHPC shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

**11 Land Arrangements for the Project**

- 11.1 The RPD / RE-PG shall be entirely responsible for acquiring the land required for setting up the project and NHPC shall not in any manner be responsible for the same.
- 11.2 The RPD / RE-PG shall submit documents/Lease Agreements to establish possession/right to use 100% (hundred per cent) of the required land in the name of the RPD / RE-PG for a period not less than the complete term of the PPA, on or before the SCSD. Wherever leasing of private land is involved, the lease should allow transfer of land lease rights to the lenders or Procurer, in case of default of RE Power Generator.
- 11.3 The RPD / RE-PG shall submit a sworn affidavit from the authorized signatory of the RPD / RE-PG listing the details of the land and certifying that total land required for the Project is under clear possession of the RPD / RE-PG.
- 11.4 With respect to demonstration of land possession by the RPD / RE-PG, commissioning of the Project will not be allowed until the demonstration of land possession by the RPD / RE-PG in terms of this Clause. However, in case of delays in demonstrating land possession by the RPD / RE-PG on account of Government delay (including but not limited to delay in land use pattern change, and/or relaxation under respective State land ceiling Act, and/or land lease permission from State Government/Authorities) or delay caused due to a Force Majeure as per PPA, SCSD shall be suitably extended.

**Section 4**

**EVALUATION CRITERIA**

## Section 4

### **4.0 EVALUATION CRITERIA**

*The evaluation process comprises of the following three steps:*

1. Step I – Responsiveness check
2. Step II – Bid evaluation
3. Step III - Reverse Auction

#### **.1 Step I - Responsiveness check**

The electronic response to RfS submitted by the Bidder shall be scrutinized to establish "Responsiveness". Each Bidder's response to RfS shall be checked for compliance with the submission requirements set forth in this RfS.

Any of the following conditions shall cause the Bid to be "Non-responsive":

- i) Response to RfS not submitted by the due date and time.
- ii) Response to RfS submitted by a Bidding Consortium not including the requisite Consortium Agreement signed by all members.
- iii) Response to RfS having Conflict of Interest.
- iv) Non submission or incomplete submission of any or all of the requisite documents mentioned at Clause 3.15.
- v) In addition to above, any relevant document required as per RfS not submitted in prescribed format.

The determination of a bid's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by NHPC, and may not subsequently be made responsive by the Bidder by correction of the non-conformity or rectifying the cause for Non-responsive, However NHPC may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation and that does not prejudice or affect the relative ranking of any bidder, Non-responsive bids will be liable for rejection by NHPC. The EMD submitted against such Non-responsive bids shall be returned to the bidders.

#### **4.2 Step II - Bid evaluation**

Bid evaluation will be carried out considering the information furnished by Bidders as prescribed under **Section 6 - Formats**. This step would involve evaluation of the response to RfS of the Bidding Company/ Bidding Consortium as per the provisions specified in Section 3 of this RfS. First the evaluation of technical bid will be done. Then the financial bid (first round tariff bid) of all the qualified bidders will be opened.

After that Reverse Auction shall be conducted online for which all short-listed bidders as per methodology mentioned in Section-3 shall be invited to participate.

#### **4.3 Step III – Reverse Auction**

The reverse auction shall be conducted on the portal selected by NHPC as per detailed methodology mentioned in Section-3.

At the end of selection process, a Letter of Award (LOA) will be issued to all the selected Bidders only after getting written consent from the Discoms / Power Distribution Company of the States for purchase of power at discovered tariff.

- 4.4** At any stage of the bidding process if a bidder is found to be qualified or successful for less capacity of Projects than applied for, in such cases following provisions shall apply:



Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

- i) EMD shall not be refunded for excess project(s) applied for, until the selection process is completed or annulled or tender is cancelled. No such request for refund of EMD shall be entertained.
- ii) Even if the bidder is selected for less capacity of projects than initially applied for, EMD shall be refunded only after submission and acceptance of applicable Performance Bank Guarantee, signing of PPA and compliance to other provisions of bidding document.

**Section 5**

**OTHER PROVISIONS**

## Section 5

### **5.0 OTHER PROVISIONS**

#### **Clearances Required from the State Government and Other Local Bodies**

Obtaining all clearances, permits, licenses including arrangement of land and connectivity to the Grid and access (if applicable) prior to scheduled date of commencement of supply of power shall be the responsibility of the Generator and the Procurer shall not be responsible in case of delay in obtaining such clearances, permits, licenses etc. The RE Power Developer/RE Power Developers are required to obtain necessary clearances and permits as required for setting up the Solar Power Projects, including but not limited to the following:

- a. No Objection (NOC)/Environmental clearance (if applicable) for the Project.
- b. Forest Clearance (if applicable) for the land for the Project.
- c. Approval for water from the concerned authority (if applicable) required for the Project.
- d. In case of Projects being set up in the States of Gujarat & Rajasthan, the REPD shall abide by applicable Supreme Court Orders and MNRE's Guidelines on "Retrofitting of transmission lines and wind turbines to avoid bird collision in Great Indian Bustard (GIB) habitats of Rajasthan & Gujarat", vide OM No. 238/2/2019-Wind dated 22nd Feb 2019, and subsequent amendments and clarifications thereof.
- e. Any other clearances as may be legally required, in order to establish and operate the Project

The above clearances, as applicable for the Project, will be required to be submitted to NHPC prior to commissioning of the Project, if sought by NHPC. In case of any of the clearances as indicated above being not applicable for the said Project, the REPD shall submit an undertaking in this regard, and it shall be deemed that the REPD has obtained all the necessary clearances for establishing and operating the Project. Any consequences contrary to the above shall be the responsibility of the REPD. The REPD shall also comply with all the laws, regulations, orders and procedures issued by the appropriate authority, applicable for setting up and implementing the Project. The REPD shall be required to follow the applicable rules regarding project registration with the State Nodal Agency in line with the provisions of the applicable policies/regulations of the State where the Projects are being located. It shall be the responsibility of the REPD to remain updated about the applicable charges payable to the SNA under the respective State Solar Policy.

Note: The REPD should apply for all the necessary approvals, permits and clearances not more than 90 days from the Effective Date of PPA (in respect of approvals, permits and clearances those are required for initially establishing the project), which shall be complete in all respects, incorporating the clarifications/changes as required by the concerned authorities. The above timeline shall be adhered to, in order to examine cases where the REPD faces delay in grant of the necessary approvals and permits, for a period substantially greater than the standard period of grant of approval by the respective organizations.

**Section 6**

**FORMATS FOR BID SUBMISSION**

**&**

**ATTACHMENTS**

## **6.0 List of Formats, Appendices and Annexures**

- i. Covering Letter (Format 6.1)
- ii. Power of Attorney in favour of Lead Member (Format 6.2)
- iii. Earnest Money Deposit (EMD) BG/ POI (Format 6.3 A and 6.3 A(I))
- iv. Performance Bank Guarantee to be submitted with NHPC (Format 6.3 B and 6.3 B(I))
- v. Board Resolutions (Format 6.4)
- vi. Consortium Agreement (Format 6.5)
- vii. Financial Requirement (Format 6.6, 6.6 A)
- viii. Technical Criteria (Format 6.7)
- ix. Disclosure statement (Format 6.8)
- x. Declaration by the Bidding Company / Lead Member of Bidding Consortium for the Proposed Technology Tie Up (Format 6.9);
- xi. Format of Connectivity Letter (Format 6.10)
- xii. Financial Bid (Format 6.11)
- xiii. Integrity Pact (Format 6.12)
- xiv. Certificate for compliance (Format 6.13a and 6.13b)
- xv. Checklist for Bank Guarantee (Appendix – A);
- xvi. Annexure-1 Deleted
- xvii. Annexure - 2 – Check List for Financial Closure
- xviii. Copy of PPA and PSA (Annexure-3)
- xix. Special Instructions to Bidders for e-Tendering (Annexure-4)
- xx. Terms and Conditions of Reverse Auction (Annexure-5)
- xxi. Process Compliance Form for e-Reverse Auction (Annexure-6)
- xxii. Format for submitting Price Confirmation for e-Reverse Auction (Annexure-7)

**Format 6.1 – Format of Covering Letter**

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

**Date:** \_\_\_\_\_  
**From :** \_\_\_\_\_ [*Insert Name and Address of Bidding Company/ Lead Member of the Bidding Consortium*]  
**Tel.#:**  
**Fax#:**  
**E-mail address:**

**To**

**NHPC Limited**  
 NHPC OFFICE COMPLEX,  
 Sector-33, Faridabad-121003, Haryana, India

**Sub: Response to RfS No. \_\_\_\_\_ for development/supply of .....  
 [*Insert capacity of projects applied for*] of Grid Connected REProject(s) to be set up  
 anywhere in India under OPEN category**

**Dear Sir,**

We, the undersigned ..... [*insert name of the ‘Bidder’*] having read, examined and understood in detail the RfS including Qualification Requirements in particular and PPA for supply of solar power for 25 years to NHPC, hereby submit our response to RfS. We confirm that neither we nor any of our Parent Company/ Affiliate/ Group Company has submitted response to RfS other than this response to RfS, directly or indirectly, in response to the aforesaid RfS.

We also confirm that we including our Ultimate Parent Company/ Parent Company/ Affiliate/ Group Companies directly or indirectly have not submitted response to RfS for more than cumulative capacity of 750 MW, including this response to RfS.

We are submitting application for the development of solar projects as per following details:

<b>Project No.</b>	<b>Contracted Capacity offered (MW)</b>	<b>Firm &amp; Dispatchable RE Configuration (Break up of RE+ESS)</b>	<b>Location(s) (Village, Tehsil, Dist., State)</b>	<b>Inter-connection Point(s) Details</b>	<b>Project preference *</b>
1.		Solar PV component: ____MW (AC) .....MWp (DC) (DC/AC Ratio=.....)			
		Wind power component: ____MW			
		ESS component: ____MW/MWh			
		Any Other Component			

Request for Selection of 1500MW ‘Firm & Dispatchable’ power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

2.					
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Note: -

- a. Format-6.9 as per sl. no. (x) of section 6 is to be filled separately for each project.
  - b. The Bidder must ensure that Project Capacity mentioned should be minimum 50 MW and in multiples of 10 MW thereafter under OPEN category. The cumulative capacity offered should not exceed 750 MW. (Delete/Insert rows as applicable)(Delete/Insert rows as applicable).
1. We give our unconditional acceptance to the **RfS, No.** \_\_\_\_\_ and PPA attached thereto, issued by NHPC. In token of our acceptance to the RfS & PPA, the same have been digitally signed by us and submitted with the response to RfS. We confirm and undertake that the PPA shall be executed as per the provisions of the RfS and provisions of PPA shall be binding on us. Further, we confirm that the Project(s) shall be commissioned within the schedule stipulated in the RfS i.e. within **24 months** of the effective date of PPA for Projects.

2. **Earnest Money Deposit (EMD) :** - The details of BGs submitted towards EMD are as follows:

Sl. No.	Category	Contractor Capacity of the Project (MW)	Firm & Dispatchable RE Configuration (Break up of RE+ESS)	EMD BG Details	Amount of BG (Rs.)
1.	OPEN				

3. We have submitted our response to RfS strictly as per Section – 6 (Formats) of this RfS, without any deviations, conditions and without mentioning any assumptions or notes in the said Formats. We hereby withdraw any deviation, conditions whether mentioned explicitly or not in our response to this RfS without any cost to NHPC.
4. **Acceptance**  
We hereby unconditionally and irrevocably agree and accept that the decision made by the NHPC in respect of any matter regarding or arising out of the RfS shall be binding on us. We hereby expressly waive any and all claims in respect of this process.
5. **Familiarity with Relevant Indian Laws & Regulations**  
We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this response to RfS and execute the PPA and development of Grid Connected REProject(s) or supply of solar power in the event of our selection as Successful Bidder.
6. We are enclosing herewith our response to the RfS with formats duly digitally signed as desired by you in the RfS for your consideration.
7. It is confirmed that our response to the RfS is consistent with all the requirements of submission as stated in the RfS and subsequent communications from the NHPC.

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

We confirm that all the terms and conditions of our Bid are valid for a period of upto and including **one hundred and eighty (180) days** from the technical bid opening date unless extended by us on your request and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

- 9. We hereby understand and confirm that NHPC reserves its right to verify the documents furnished by us at the time of submission of RfS including availability of the Net Worth to the extent claimed in the RfS with the original documents and bank statements and the shareholding of the Project Company along with a copy of complete documentary evidence supported with originals at any stage from evaluation upto the expiry of PPA.

We understand and confirm that if the aforesaid documents furnished by us are found to be misleading or misrepresenting in any way, NHPC shall be free to take appropriate action including forfeiture of EMD and blacklisting us for an appropriate period decided by NHPC.

- 10. We, hereby, declare that only the persons or firms interested in this bid as named here and that no other persons or firms other than those mentioned herein have any interest in this bid or in the PPA to be entered into. We confirm that this bid is made without any connection with any other person, firm or party likewise submitting a bid. We further confirm that this bid is submitted in good faith and without collusion or fraud.

- 11. Contact Person

Details of the contact person are furnished as under:

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

- 12. We confirm that we have understood that we shall approach concerned authorities/departments directly for allotment of land, timelines for availability, possession and connectivity for the Project(s) allotted to us, if any and that NHPC shall not in any way, directly or indirectly, be responsible and liable for these matters. We also confirm that we shall be overall responsible to complete all the activities related to Project Development at our own risk and cost.

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

- 14. If a Project Company/SPV is formed to sign the PPA and execute the Project after we are selected as successful bidder, all terms and conditions of RfS document including PPA shall apply to Project Company also wherever applicable. Further we confirm that



Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

Project Company shall sign the Integrity pact with NHPC as per Format 6.12b and submit certificates as per format 6.13b of RfS document.

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

Thanking you,

Yours faithfully,

(Name, Designation and Signature of Person Authorized by the board as per Clause 3.15 A (3) (a))

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

**POWER OF ATTORNEY**

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

KNOW ALL MEN BY THESE PRESENTS THAT ..... *[Name of the Consortium member company]* having its registered office at....., .....and ..... *[Name of the Consortium member company]* having its registered office at ..... *(Insert names and registered offices of all Members of the Consortium)* the Members of Consortium have formed a Bidding Consortium named ..... *[Insert name of the Consortium if finalized]* (hereinafter called the 'Consortium') vide Consortium Agreement dated..... (copy enclosed) and having agreed to appoint .....*[Name & Address of the Lead Member Company]* as the Lead Member of the said Consortium do hereby constitute, nominate and appoint M/s.....a company incorporated under the laws of .....and having its Registered /Head Office at .....as our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the response to RfS and to participate in subsequent bidding process (in the event of short-listing as a qualified bidder). We also authorize the said Lead Member to undertake the following acts:

- i) To submit on behalf of Consortium Members response to RfS and if required, to participate in subsequent bidding process.
- ii) To do any other acts or submit any information and documents related to the above response to RfS, if required.

It is expressly understood that in the event of the Consortium being selected as Successful Bidder, this Power of Attorney shall remain valid, binding and irrevocable until the Bidding Consortium achieves execution of PPA.

We as the Member of the Consortium agree and undertake to ratify and confirm all whatsoever the said Attorney/Lead Member has done on behalf of the Consortium Members pursuant to this Power of Attorney and the same shall bind us and deemed to have been done by us.

IN WITNESS WHEREOF ..... *[Name of member consortium Company]*, as the Member of the Consortium have executed these presents on this..... day of .....under the Common Seal of our company.

For and on behalf of Consortium Member

M/s.....  
-----

(Signature of person authorized by the Board)

(Name

Designation

Place:

Date:

Accepted  
-----

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

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

Attested

-----

(Signature of the Executant)

-----

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

Place:-----

Date:-----

**Note:** - Lead Member in the Consortium shall have the controlling shareholding of more than 50% in the bidding Consortium.

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Format 6.3 A – Format for BG for Earnest Money Deposit**  
(To be on non-judicial stamp paper of appropriate value as per Stamp Act)  
**Bid Security Forms**  
**(Bank Guarantee)**

Bank Guarantee No. \_\_\_\_\_

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

(Name of Contract)

To: [NHPC Limited,  
Sector 33, Faridabad,  
Haryana 121003]

WHEREAS (name of Bidder) (hereinafter called "the Bidder") has submitted its bid dated (date of bid) for the performance of the above-named Contract (hereinafter called "the Bid")

KNOW ALL PERSONS by these present that WE (name of Bank) of (address of bank) (hereinafter called "the Bank"), are bound unto NHPC Limited (A Government of India Enterprises) for the sum of: (amount), for which payment well and truly to be made to the said NHPC Limited, Sector 33, Faridabad, Haryana 121003 hereinafter referred to as the 'NHPC Limited', the Bank binds itself, its successors and assigns by these presents.

THE CONDITIONS of this obligation are as follows:

1. If the Bidder (a) withdraws or modifies its Bid during the period of bid validity or (b) adopts corrupt or collusive or coercive or fraudulent practices or defaults under the Integrity pact.
2. If the Bidder, having been notified of the acceptance of its Bid by the NHPC Limited during the period of bid validity
  - a) fails or refuses to sign the Contract Agreement when required, or
  - b) fails or refuses to submit the performance security in accordance with the Tender documents.
3. If the Bidder fails to withdraw the deviations at the cost of withdrawal stated by him in the bid.

WE undertake to pay to the NHPC Limited up to the above amount upon receipt of its first written demand, without the NHPC Limited having to substantiate its demand, provided that in its demand the NHPC Limited will mention that the amount claimed by it is due, owing to the occurrence of any of the above-named CONDITIONS, and specifying the occurred condition or conditions.

The Bank declares that this Bank Guarantee is issued by the bank, utilizing the credit limit of M/s-----(Name of Contractor)

This guarantee will remain in force up to and including (date 12 months from the last date of Bid Submission), and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank \_\_\_\_\_

in the capacity of Common Seal of the Bank \_\_\_\_\_

Common Seal of the Bank with complete address including Tel/Fax Nos

Staff Authority No. of the officer of the Bank /Signatory

***INSTRUCTIONS FOR EXECUTION OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT***

1. Bank Guarantee for Earnest Money Deposit should be executed on non-judicial Stamp papers of requisite value in accordance with the stamp Act if applicable to that particular state of Indian Union country of executing Bank, where executed. In case the same is issued by a first class International bank, the law prevalent in the country of execution shall prevail for the purpose of Stamp Duty on the Bank Guarantee. However, in such a case, the Bank Guarantee for Earnest Money Deposit shall be got confirmed by the Bidder through any Indian Scheduled/Nationalized Bank.
2. The executing officers of the Bank Guarantee for Earnest Money/Bid Security shall clearly indicate in (block letters) his name, designation, Power of Attorney No. / Signing Power No. as well as telephone/ fax numbers with full correspondence address of the issuing Guarantee etc.
3. Each page of the Bank guarantee for Earnest Money Deposit shall be duly signed/initialed by the executing officers and the last page shall be signed in full, indicating the particulars as aforesaid (sub-para 2) under the seal of the Bank.
4. Stamp paper shall be purchased in the name of Bank issuing the Bank Guarantee, after the date 'Notice Inviting Tender', not more than six (6) months prior to execution/ issuance of the Bank Guarantee. The name of the purchaser should appear at the back side of stamp paper in the Vendors Stamp. The issuing Bank shall be requested independently for verification/confirmation of the Bank Guarantee issued, non-confirmation of which may lead to rejection of 'Bid Security'.
5. Irrevocable, valid and fully enforceable Bank Guarantee in favor of the NHPC Limited issued by any scheduled bank approved by the Reserve bank of India which is acceptable to the NHPC Limited. The Bank Guarantee issued by a Foreign Bank shall be routed through the corresponding branch of such scheduled foreign banks in India or any scheduled Bank, acceptable to the NHPC Limited.
6. Bank Guarantee for Bid security in original shall be submitted along with the Bid. However, the issuing Bank shall submit an unstamped duplicate copy of Bank Guarantee to the NHPC Limited (authority inviting tenders) with a forwarding letter.

\*\*\*\*\*

**Format 6.3 A(I)- Format for POI for Earnest Money Deposit**

**FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY IREDA/REC/PFC (IN LIEU OF BG TOWARDS EMD)**

No.  
NHPC

Date

\_\_\_\_\_,  
\_\_\_\_\_

**Reg: M/s \_\_\_\_\_ (insert name of the Bidder) – Issuance of Payment on Order Instrument for an amount of Rs. \_\_\_\_\_**

Dear Sir,

1. It is to be noted that M/s. \_\_\_\_\_ (*insert name of the POI issuing Agency*) ('IREDA/REC/PFC') has sanctioned a non-fund based limit loan of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to M/s \_\_\_\_\_ under the Loan Agreement executed on \_\_\_\_\_ to execute Renewable Energy Projects.
2. At the request of M/s \_\_\_\_\_, on behalf of \_\_\_\_\_ (*insert name of the Bidder*), this Payment on Order Instrument (POI) for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ (in words)). This Payment on Order Instrument comes into force immediately.
3. In consideration of the \_\_\_\_\_ [*Insert name of the Bidder*] (hereinafter referred to as 'Bidder') submitting the response to RfS inter alia for Setting up of 1500 MW ISTS-Connected REPower Projects of the cumulative capacity of ..... MW [*Insert cumulative Project capacity proposed*] for supply of power there from on long term basis, in response to the RfS No. \_\_\_\_\_ dated \_\_\_\_\_ issued by NHPC Limited (hereinafter referred to as NHPC) and NHPC considering such response to the RfS of ..... [*Insert the name of the Bidder*] as per the terms of the RfS, the \_\_\_\_\_ [*Insert name & address of IREDA/PFC/REC*] hereby agrees unequivocally, irrevocably and unconditionally to pay to NHPC at [*Insert Name of the Place from the address of NHPC*] forthwith without demur on demand in writing from NHPC or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees \_\_\_\_\_ [*Insert amount not less than that derived on the basis of Rs.6.25 Lakhs per MW of cumulative capacity proposed*], only, on behalf of M/s \_\_\_\_\_ [*Insert name of the Bidder*].
4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at \_\_\_\_\_, agrees to make payment for the sum of Rs. \_\_\_\_\_ lakhs (in words.....) to NHPC on the following conditions:-
  - (a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of \_\_\_\_\_ days of receipt of request from NHPC within the validity period of this letter as specified herein;
  - (b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against NHPC;
  - (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
  - (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

time or variation and alternation made given or agreed with or without knowledge or consent of the parties (NHPC and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc.;

- (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
  - (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by NHPC made in any format within the validity period. IREDA/REC/PFC shall not require NHPC to justify the invocation of the POI against the SPV/REPD, to make any claim against or any demand against the SPV/REPD or to give any notice to the SPV/REPD;
  - (g) The POI shall be the primary obligation of IREDA/REC/PFC and NHPC shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/REPD;
  - (h) Neither NHPC is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against NHPC in respect of the payment made under letter of undertaking;
5. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid up to \_\_\_\_\_ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs. .... and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

Thanking you,

Yours faithfully  
For and on behalf of

M/s. \_\_\_\_\_  
(Name of the POI issuing agency).

( )  
General Manager (TS)

Copy to:-  
M/s. \_\_\_\_\_

\_\_\_\_\_  
As per their request

( )  
General Manager (TS)

**Format 6.3 B – Format of BG for Performance Bank Guarantee**

(To be submitted by the REPower Developer/Generator (REPD))

**Bank Guarantee Format for Performance Security**

(To be executed on Non-Judicial Stamp Paper of Appropriate value)

Bank Guarantee No.....

Date.....

To,

[NHPC Limited,  
Sector 33, Faridabad,  
Haryana 121003]

Dear Sirs,

In consideration of the ... [NHPC Limited, Sector 33, Faridabad, Haryana 121003], hereinafter referred to as the 'NHPC Limited' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s .....[REPD's Name]..... with its Registered/Head Office at ..... (hereinafter referred to as the 'REPD', which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of NHPC Limited's Letter of Acceptance No..... dated..... and the same having been acknowledged by the REPD, for -----[Contract sum in figures and words] for .....[ Name of the work] and the REPD having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to .....(\*).....of the said value of the aforesaid work under the Contract to the NHPC Limited.

We .....[Name & Address of the Bank].....having its Head Office at..... (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the NHPC Limited, on demand any and all monies payable by the REPD to the extent of .....(\*)..... as aforesaid at any time upto .....(@)..... [days/month/year] without any demur, reservation, contest, recourse or protest and/or without any reference to the REPD. Any such demand made by the NHPC Limited on the Bank shall be conclusive and binding notwithstanding any difference between the NHPC Limited and the REPD or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the NHPC Limited and further agrees that the guarantees herein contained shall continue to be enforceable till the NHPC Limited discharges this guarantee or till .....(+). ..... [days/month/year] whichever is earlier.

(\*\*)

The NHPC Limited shall have the fullest liberty, without affecting in any way the liability of the Bank under this guarantee, from time to time to extend the time for performance of the Contract by the REPD. The NHPC Limited shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the REPD, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the NHPC Limited and the REPD or any other course or remedy or security available to the NHPC Limited. The Bank shall not be released of its obligations under these presents by any exercise by the NHPC Limited of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance



Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

or other acts of omission or commission on the part of the NHPC Limited or any other indulgence shown by the NHPC Limited or by any other matter or thing whatsoever which under the law would, but for this provision have the effect of relieving the Bank.

The Bank declare that this Bank Guarantee is issued by the bank, utilizing the credit limit of M/s ----- (Name of REPD) also agrees that the NHPC Limited at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the REPD and notwithstanding any security or other guarantee the NHPC Limited may have in relation to the REPD's liabilities.

i) Our liability under this Bank Guarantee shall not exceed \_\_\_\_\_(\*)\_\_\_\_\_.

ii) This Bank Guarantee shall be valid upto \_\_\_\_\_(+)

iii) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if NHPC Limited serves upon Bank a written claim or demand on or before ----- (@)\_\_\_\_\_

Dated this .....day of ..... 20.....at.....

WITNESS

.....  
.....  
(Signature) (Signature)  
.....  
(Name) (Name).

(Official Address) (Designation with Bank Stamp)/with staff Authority no.

Complete Address of the Bank with Tele-Fax

Notes :

- 1. (\*) This sum shall be five percent (5%) 31.25 Lacs Per MW of the Project.  
(@) This date will be:-  
-12 (Twelve) months beyond the Scheduled Commissioning Date of the Project.  
(+) This date will be 9(Nine) months beyond the Scheduled Commissioning Date of the Project.
- 2. Bank Guarantee should be executed on appropriate stamp paper of requisite value; such stamp paper should be purchased in the name of Issuing Bank, not more than six (6) months prior to execution / issuance of Bank Guarantee. The name of the purchaser should appear at the back side of stamp paper in the Vendors Stamp. Bank guarantee should contain rubber stamp of the authorized signatory of the bank indicating the name, designation and signature/ power of attorney number as well as telephone/ fax numbers with full correspondence address of the Bank.
- 3. Bank Guarantee is required to be submitted directly to the NHPC Limited by the issuing bank (on behalf of REPD). The REPD can submit an advance copy of Bank Guarantee to

the Engineer.

**Format 6.3 B(I) - Format for POI for Performance Bank Guarantee**

**FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY  
IREDA/REC/PFC (IN LIEU OF PBG)**

No.

Date

**NHPC**

\_\_\_\_\_.

**Reg: M/s \_\_\_\_\_ (insert name of the PPA signing entity) (Project No. \_\_\_\_\_ (insert project ID issued by NHPC) – Issuance of Payment on Order Instrument for an amount of Rs. \_\_\_\_\_**

Dear Sir,

1. It is to be noted that M/s. \_\_\_\_\_ (insert name of the POI issuing Agency) ('IREDA/REC/PFC') has sanctioned a non-fund based limit loan of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to M/s \_\_\_\_\_ under the Loan Agreement executed on \_\_\_\_\_ to execute Renewable Energy Projects.
2. At the request of M/s \_\_\_\_\_, on behalf of \_\_\_\_\_ (Insert name of the SPV), this Payment on Order Instrument (POI) for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ (in words)). This Payment on Order Instrument comes into force immediately.
3. In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Solar Power Generator') submitting the response to RfS inter alia for selection of Contracted Capacity of ..... MW, at ..... [Insert name of the place] under RfS for \_\_\_\_\_ (insert name of the RfS), for supply of power there from on long term basis, in response to the RfS dated..... issued by NHPC Limited (hereinafter referred to as NHPC) and NHPC considering such response to the RfS of ..... [insert the name of the selected Solar Power Generator] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Project of the Solar Power Generator (REPD) and issuing Letter of Award No ----- to (Insert Name of selected Solar Power Generator) as per terms of RfS and the same having been accepted by the selected REPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Generator or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ]. As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to NHPC at [Insert Name of the Place from the address of the NHPC] forthwith on demand in writing from NHPC or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees- ----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Solar Power Generator / Project Company].
4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at \_\_\_\_\_, agrees to make payment for the sum of Rs. \_\_\_\_\_ lakhs (in words.....) to NHPC on the following conditions:-
  - (a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of \_\_\_\_\_ days of receipt of request from NHPC within the validity period of this letter as specified herein;
  - (b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against NHPC;

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

- (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
  - (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (NHPC and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc.;
  - (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
  - (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by NHPC made in any format within the validity period. IREDA/REC/PFC shall not require NHPC to justify the invocation of the POI against the SPV/REPD, to make any claim against or any demand against the SPV/REPD or to give any notice to the SPV/REPD;
  - (g) The POI shall be the primary obligation of IREDA/REC/PFC and NHPC shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/REPD;
  - (h) Neither NHPC is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against NHPC in respect of the payment made under letter of undertaking;
5. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto \_\_\_\_\_ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs.....and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

Thanking you,

Yours faithfully  
For and on behalf of  
M/s. \_\_\_\_\_  
(name of the POI issuing agency).

( )  
General Manager (TS)

Copy to:-

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

\_\_\_\_\_ As per their request

( )  
General Manager (TS)

**Format 6.4 –Format for Board Resolutions**

The Board, after discussion, at the duly convened Meeting on ..... *[Insert date]*, with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956/ Companies Act, 2013 (*delete the other which is not applicable*), passed the following Resolution:

- 1. RESOLVED THAT** Mr./Ms. ...., be and is hereby authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to RfS for the Project, “GRID CONNECTED RE POWER coupled with energy storage system PROJECTS OF 1500 MW ” under OPEN Category in India, including signing and submission of all documents and providing information / response to RfS to NHPC, representing us in all matters before NHPC, and generally dealing with NHPC in all matters in connection with our bid including participation in Reverse Auction for the said Project. **(To be provided by the Bidding Company or the Lead Member of the Consortium)**
- 2. FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956/ Companies Act, 2013 (*delete the other which is not applicable*) and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded to invest total equity in the Project. **(To be provided by the Bidding Company)**

**[Note: In the event the Bidder is a Bidding Consortium, in place of the above resolution at Sl. No. 2, the following resolutions are to be provided by the each Member of the Bidding Consortium including Lead Member such that total equity commitment is 100%]**

**FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 / Companies Act, 2013 (*delete the other which is not applicable*) and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded to invest (----%) equity *[Insert the % equity commitment as specified in Consortium Agreement]* in the Project. **(To be provided by the each Member of the Bidding Consortium including Lead Member such that total equity commitment is 100%)**

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

And

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

- 3. FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to M/s. .... *[Insert name of Bidding Company/ Consortium Member(s)]* to use our financial capability for meeting the Qualification Requirements for “GRID CONNECTED RE

POWER coupled with energy storage system PROJECTS OF 1500 MW” under OPEN category *and confirm that all the equity investment obligations of M/s.....(Insert Name of Bidding Company/ Consortium Member(s))* for development of selected project(s), shall be deemed to be our equity investment obligations and in the event of any default the same shall be met by us. The Board also confirms and undertake that in case M/s.....*[Insert name of Bidding Company/ Consortium Member(s)]* fails to submit the requisite Performance Bank Guarantee in terms of Request for Selection Document, the same shall be submitted by us on its behalf. **[To be passed by the entity(s) whose financial credentials have been used i.e. Parent and / or its affiliate.]**

**Certified true copy**

-----

**(Signature, Name and stamp of Company Secretary / Director)**

**Notes:**

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary / Director.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) **This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 / Companies Act, 2013 (*delete the other which is not applicable*) may be suitably modified to refer to the laws applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.**
- 4) In case a Sub-Committee/Management Committee has been authorized by the Board of a Company for making the Resolution(s) mentioned here in above, these Resolution(s) can be passed by that Sub Committee and the same may be submitted along with Board Resolution in which the Sub Committee has been authorized By Board to pass such Resolution(s).
- 5) In case of a Consortium the respective Boards of all Consortium Members should pass the aforesaid Resolution before execution of Consortium Agreement.

**Format 6.5 – Format for Consortium Agreement**

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

This Consortium Agreement (“Agreement”) executed on this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand \_\_\_\_\_ between M/s [*insert name of Lead Member*] \_\_\_\_\_ a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “**Member-1**”, which expression shall include its successors, executors and permitted assigns) and M/s \_\_\_\_\_ a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “**Member-2**”, which expression shall include its successors, executors and permitted assigns), M/s \_\_\_\_\_ a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “**Member-n**”, which expression shall include its successors, executors and permitted assigns), [*The Bidding Consortium should list the details of all the Consortium Members*] for the purpose of submitting response to RfS, and execution of Power Purchase Agreement (in case of award), against RfS No. \_\_\_\_\_ dated \_\_\_\_\_ issued by NHPC Limited (hereinafter referred to as “NHPC”) a Company incorporated under the [Companies Act, 1956/ Companies Act, 2013 (*delete the other which is not applicable*)], and having its Registered Office at \_\_\_\_\_ or \_\_\_\_\_ constituted under \_\_\_\_\_

WHEREAS, each Member individually shall be referred to as the “**Member**” and all of the Members shall be collectively referred to as the “**Members**” in this Agreement.

WHEREAS, the NHPC had invited response to RfS vide its Request for Selection (RfS) No. \_\_\_\_\_ dated \_\_\_\_\_

WHEREAS the NHPC shall purchase power through Power Purchase Agreement;

WHEREAS the RfS stipulates that in case response to RfS is being submitted by a Bidding Consortium, the Members of the Consortium will have to submit a legally enforceable Consortium Agreement in a format specified by NHPC wherein the Consortium Members have to commit equity investment of a specific percentage for the Project.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

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

1. We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s \_\_\_\_\_), shall act as the Lead Member as defined in the RfS for self and agent for and on behalf of Member-2, ----, Member-n.
2. The Lead Member is hereby authorized by the Members of the Consortium and Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.
3. Notwithstanding anything contrary contained in this Agreement, the Lead Member shall always be liable for the equity (as well as total financing if committed to be met from internal financing) investment obligations of all the Consortium Members i.e. for both its own liability as well as the liability of other Members.
4. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective equity as well as other financing if committed to be met internally obligations. Each Member

further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.

5. Subject to the terms of this Agreement, the share of each Member of the Consortium in the issued equity share capital of the Project Company is/shall be in the following proportion:

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

We acknowledge that after execution of PPA, the controlling shareholding (more than 50%) in the Project Company developing the Project shall be maintained for a period of at-least **3 (Three)** years after SCSD.

6. The Lead Member, on behalf of the Consortium, shall *inter alia* undertake full responsibility for liasioning with Lenders or through internal accruals and mobilizing debt resources for the Project, and ensuring that the Seller achieves Financial Closure in terms of the PPA.
7. In case of any breach of any equity investment as well as other financing requirements commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences thereof.
8. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
9. It is further specifically agreed that the financial liability for equity contribution of the Lead Member shall not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of its scope of work or financial commitments.
10. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at [ ---- ] alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
11. It is hereby further agreed that in case of being selected as the Successful Bidder, the Members do hereby agree that they shall furnish the Performance Guarantee in favour of NHPC in terms of the RfS.
12. It is further expressly agreed that the Agreement shall be irrevocable and shall form an integral part of the Power Purchase Agreement (PPA) and shall remain valid until the expiration or early termination of the PPA in terms thereof, unless expressly agreed to the contrary by NHPC.
13. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the response to RfS.
14. It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under the PPA except with prior written consent of NHPC.
15. This Agreement

- (a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
  - (b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and
  - (c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of NHPC.
16. All the terms used in capitals in this Agreement but not defined herein shall have the meaning as per the RfS & PPA.

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

For M/s-----

- [Member 1]

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

Witnesses:

1) Signature-----

2) Signature-----

Name:

Name:

Address:

Address:

For M/s-----

- [Member 2]

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

Witnesses:

1) Signature-----

2) Signature-----

Name:

Name:

Address:

Address:

For M/s-----

- [Member n]

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

Witnesses:

1) Signature-----

(2) Signature-----

Name:

Name:

Address:

Address:

\_\_\_\_\_  
Signature and stamp of Notary of the place of execution



[on the letter head of Bidder]

**Format 6.6 – FORMAT FOR FINANCIAL REQUIREMENT – NET WORTH**

To,

**NHPC Limited  
NHPC Office Complex  
Sector-33, Faridabad  
Haryana-121003**

Date: -

Dear Sir,

**Sub: Response to RfS for Selection of Grid connected RE Power Projects of capacity \_\_MW under OPEN category.**

**(A) For meeting Qualification Requirement as per clause 3.8.3 (i)**

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

Sl. No.	Description	Select any one (whichever is applicable)
1.	<b>Audited Annual Accounts of Previous FY Or</b>	<b>Applicable / Not Applicable</b>
2.	<b>Networth as on day .....(dd/mm/yyyy) (not more than seven (07) days prior to the due date of bid submission)</b>	<b>Applicable / Not Applicable</b>

\* This Net Worth has been calculated in accordance with the instructions provided in Clause 3.8.3 of the RfS.

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

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

Name of Bidding Company	Name of Company / Parent/ Affiliate whose Net Worth is to be considered	Relationship with Bidding Company*	Indicate Financial Year Or the day not more than seven (07) days prior to the due date of bid submission	Net Worth (in Rs. Crore) of the Member Company
(1)	(2)	(3)	(4)	(5)
<b>Company 1</b>				
---				
---				

		<b>Total</b>	
--	--	--------------	--

Exchange Rates considered

USD to INR : I USD = INR .....

Other Currency..... (Bidder to specify the other currency) 1..... =INR.....

Certificate from the Banker in respect of the Exchange rate is enclosed at Appendix----

@ In cases where the Bidding Company is giving its own net worth only, the bidder has to fill its own company name in column (2), "Self" in column (3) and Net worth in column (5).

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

**Exhibit (ii): Applicable in case of Bidding Consortium**

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

**Name of Member: [Insert name of the Member]**

Net Worth Requirement to be met by Member in Proportion to the Equity Commitment:

Rs.----- Crore (Equity Commitment ( % ) x Rs. [ ] Crore)

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

Name of Consortium Member Company	Name of Company / Parent/ Affiliate/ Consortium Member whose Net Worth is to be considered	Relationship with Bidding Company * (if any)	Indicate Financial Year Or the day not more than seven (07) days prior to the due date of bid submission	Net Worth (in Rs. Crore) of the Consortium Member Company	Equity Commitment (in %age) in Bidding Consortium	Committed Net Worth (in Rs. Crore)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>Company 1</b>						
---						
<b>Total</b>						

Exchange Rates considered

USD to INR: / USD = INR.....

Other Currency..... (Bidder to specify the other currency) 1..... =INR.....

Certificate from the Banker in respect of the Exchange rate is enclosed at Appendix----

@ In cases where the Consortium member is giving its own net worth only, the Consortium member has to fill its company name in column (2), "Self" in column (3) and Net worth in column (5).

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

*documentary evidence to establish the relationship, duly certified by the company secretary/ statutory auditor is required to be attached with the format.*

*\* For the Qualification Requirements, if data is provided by the Bidder Company in foreign currency, equivalent rupees of Net Worth will be calculated as per Note 1 of Clause 3.8.3.*

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

**(Signature and Stamp of  
Statutory Auditor)**

**(B) For meeting Qualification Requirement as per clause 3.8.3 (ii)(a) Annual Turnover:**

We certify that the \*Bidding Company / \*Member in the Bidding Consortium \_\_\_\_\_ [Name of Bidding Company or Bidding Consortium] has an **Annual Turnover** of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) during previous Financial Year. (\*Strike out if not applicable).

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

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

<b>Name of Bidding Company</b>	<b>Name of Company / Parent/ Affiliate whose Turnover is to be considered</b>	<b>Relationship with Bidding Company*</b>	<b>Annual Turnover (in Rs. Crore) of the Member Company during Previous FY</b>
(1)	(2)	(3)	(4)
Company 1			
...			
		<b>Total</b>	

@ *In cases where the Bidding Company is giving its own Turnover, the bidder has to fill its own company name in column (2), "Self" in column (3) and Annual Turnover in column (4).*

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

**Exhibit (ii): Applicable in case of Bidding Consortium**

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

**Name of Member: [Insert name of the Member]**

Annual Turnover to be met by Member in Proportion to the Equity Commitment: Rs. -----  
Crore (Equity Commitment ( %) x Rs. [ ] Crore)

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

Name of Consortium Member Company	Name of Company / Parent/ Affiliate/ Consortium Member whose Turnover is to be considered	Relationship with Bidding Company * (if any)	Annual Turnover (in Rs. Crore) of the Consortium Member Company during Previous FY	Equity Commitment (in %age) in Bidding Consortium	Committed Annual turnover (in Rs. Crore)
(1)	(2)	(3)	(4)	(5)	(6)
Company 1					
---					
---					
		<b>Total</b>			

@ In cases where the Consortium member is giving its own Turnover only, the Consortium member has to fill its company name in column (2), "Self" in column (3) and Annual Turnover in column (4).

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

**(C) For meeting Qualification Requirement as per clause 3.8.3 (ii)(b) PBDIT:**

We certify that the \*Bidding Company/\*Member in the Bidding Consortium \_\_\_\_\_ [Name of Bidding Company or Bidding Consortium] has a **Profit Before Depreciation Interest and Taxes (PBDIT)** of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ in words) as on the last date of previous Financial Year. \*(Strike out if not applicable)

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

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

Name of Bidding Company	Name of Company / Parent/ Affiliate whose PBDIT is to be considered	Relationship with Bidding Company*	PBDIT (in Rs. Crore) of the Member Company during Previous FY
(1)	(2)	(3)	(4)
Company 1			
---			
<b>Total</b>			

@ In cases where the Bidding Company is giving its own PBDIT, the bidder has to fill its own company name in column (2), "Self" in column (3) and PBDIT in column (4).

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

**Exhibit (ii): Applicable in case of Bidding Consortium  
(To be filled by each Member in a Bidding Consortium separately)  
Name of Member: [Insert name of the Member]**

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

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

Name of Consortium Member Company	Name of Company / Parent/ Affiliate/ Consortium Member whose PBDIT is to be considered	Relationship with Bidding Company* (if any)	PBDIT (in Rs. Crore) of the Consortium Member Company during Previous FY	Equity Commitment (in %age) in Bidding Consortium	Committed PBDIT (in Rs. Crore)
(1)	(2)	(3)	(4)	(5)	(6)
Company 1					
---					
<b>Total</b>					

@ In cases where the Consortium member is giving its own PBDIT, the Consortium member has to fill its company name in column (2), "Self" in column (3) and PBDIT in column (4).

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

**D) For meeting Qualification Requirement as per clause 3.8.3 (ii)(c)**

We certify that the \*Bidding Company/\*Member in the Bidding Consortium \_\_\_\_\_ [Name of Bidding Company or Bidding Consortium] has In-principle sanction letter from our lending institutions/banks, committing a Line of Credit for Rs. \_\_\_\_\_ (in words) [insert amount which should be a minimum amount of Rs. 15.94 /MW of the quoted capacity], towards meeting the working capital requirement of the project quoted under this RfS.  
\*(Strike out if not applicable)

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

@ For the above calculations, we have considered the Line of Credit available to the Bidding Company and/ or its Parent / Affiliates as per following details:

Name of Bidding Company	Name of Company / Parent/	Relationship with	Line of Credit	
-------------------------	---------------------------	-------------------	----------------	--

	Affiliate to whom Sanction Letter issued	Bidding Company*	(in Rs. Crore) available to the Member Company	
(1)	(2)	(3)	(4)	
<b>Company 1</b>				Sanction Letter from lending institutions/banks enclosed at Annexure ..... of this Form 6.6.
---				
---				
		<b>Total</b>		

@ In cases where the Line of Credit is in favor of Bidding Company, the bidder has to fill its own company name in column (2), "Self" in column (3) and Line of Credit in column (4).

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

**Exhibit (ii): Applicable in case of Bidding Consortium  
(To be filled by each Member in a Bidding Consortium separately)  
Name of Member: [Insert name of the Member]**

Line of Credit requirement to be met by Member in Proportion to the Equity Commitment: Rs. -----  
----- Crore (Equity Commitment ( % ) \* Rs. [ ] Crore)

@ For the above calculations, we have considered Line of Credit available to Member in Bidding Consortium and/ or Parent/ Affiliate as per following details:

Name of Consortium Member Company	Name of Company / Parent/ Affiliate/ Consortium Member whose Line of Credit is to be considered	Relationship with Bidding Company * (if any)	Line of Credit (in Rs. Crore) of the Consortium Member Company	Equity Commitment (in %age) in Bidding Consortium	Committed Line of Credit (in Rs. Crore)	
(1)	(2)	(3)	(4)	(5)	(6)	
<b>Company</b>						Sanction

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

<b>1</b>						Letter from lending institutions/ banks enclosed at Annexure .....of this Form 6.6
---						
Total						

@ In cases where the Line of Credit is in favour of Consortium member, the Consortium member has to fill its company name in column (2), "Self" in column (3) and Line of Credit in column (4).

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

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

*(Signature and Stamp of  
Statutory Auditor)*

**Note: Since Bidder is required to meet any one of the requirements mentioned at Clause 3.8.3 (ii) (a), (b) or (c). Therefore, Bidder may fill either of sl. No. (B) or (C) or (D) above.**

We are submitting in a separate sheet, details of computation of Net Worth, Annual Turnover & PBDIT duly certified by Statutory Auditor. The detailed sheet is enclosed at Appendix\_\_\_\_\_.

We are enclosing the certified copies of Balance sheet, Profit & Loss Account, Schedules and Cash Flow Statements and Bank statement by bank and other documents in support thereof for confirmation of balance in cash & bank as per the stipulations of RfS as under:

S. No.	Document Description	Enclosed at Appendix
1		
2		
3.		

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

*(Signature and Stamp of  
Statutory Auditor)*

Date:

- Note: 1.** Bidders are advised in their own interest to furnish the detailed computation sheet by statutory auditor for determination of Net Worth/Turnover/PBDIT along with supporting documents referred therein as per the requirements of RfS without which no claim for Net worth shall be considered.
- 2.** For the Qualification Requirements, if data is provided by the Bidder Company in foreign currency, equivalent rupees of Net Worth will be calculated as per Note 1 of Clause 3.8.3.



**Format 6.6 A–UNDERTAKING FROM THE BIDDER IN ACCORDANCE WITH CLAUSE NO. 3.8.4 OF RFS**

**(To be submitted by Bidder along with the Technical Bid)**

Ref. :

Date:

To  
NHPC Limited,  
NHPC Office Complex,  
Sector-33, Faridabad  
Haryana-121003

**Dear Sir,**

We hereby undertake to certify in line with clause 3.8.4 of RFS that we or any of our Affiliates are not a willful defaulter to any lender, and that there is no major litigation pending or threatened against us or our Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project.

*(Signature & Name of the person Authorized by the Board)*

*Name of the Bidder*

*[on the letter head of Bidder]*

**Format 6.7 – FORMAT FOR TECHNICAL CRITERIA**

To,

Date:-

**NHPC Limited**

**NHPC Office Complex,  
Sector-33, Faridabad  
Haryana-121003**

**Sub: Response to RfS for selection of \_\_\_ MW of Grid connected RE Power Projects under OPEN category**

**Dear Sir,**

We hereby undertake to certify in line with clause 3.27 under the title "Financial Closure or Project Financing Arrangement" that the following details shall be furnished: -

- 1.0 Evidence of fulfillment of requisite technical criteria as per RfS document within 18 months from the effective date of PPA.
- 2.0 Evidence such as notarized copies of un-priced purchase orders / agreements entered into, for supply of plants and equipment for the project(s) within 18 months from the effective date of PPA.
- 3.0 Evidence of clear possession of the required land for the project(s) along with following documentary evidence: -
  - o Title of land through sale deed or lease hold rights to establish possession/right to use 100% of the required land for the project in the name of the REPD/Project Developer or our Affiliate for a period not less than the complete term of PPA, on or before the Scheduled Commissioning Date. In case the land is in the name of the Affiliate, the land should be transferred in the name of the REPD/Project Developer prior to Scheduled Commissioning Date. In case leasing of private land is involved, the lease should allow transfer of land lease rights to the lenders or Beneficiary(ies), in case of default of the Project Developer.
  - o Certificate by the concerned and competent revenue / registration authority for the acquisition / ownership/ vesting of the land in the name of the Project Developer.
  - o Sworn in Affidavit from the authorized person of the developer listing the details of the land and certifying total land acquired for the project under clear possession of the Project Developer

A certified English translation from an approved translator in case above land documents are in other than English or Hindi Languages.

We further confirm that the technology proposed to be used by us for Solar Power Project(s) is commercially established and operational technology.

We understand and confirm that failure or delay on our part in achieving the Financial Closure as per RfS documents shall constitute sufficient grounds for actions by NHPC as per the stipulations of RfS documents including but not limited to encashment of our Performance Bank Guarantee without giving any notice or intimation.

*(Signature & Name of the person Authorized by the Board)*



**Format 6.8A –Format for Disclosure**

(To be submitted on the Letter Head of the Bidding Company/ Each Member of Consortium)

*(To be submitted by all such bidders in which a common Company/companies directly/indirectly own(s) more than 10% but less than 26% shareholding)*

**DISCLOSURE**

Ref. No. \_\_\_\_\_

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

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

Tel. #: Fax#:

E-mail address#

To

**NHPC Limited,  
NHPC OFFICE COMPLEX,  
Sector-33, Faridabad-121003,  
Haryana, India.**

**Sub:** Response to RfS No. \_\_\_\_\_ dated \_\_\_\_\_ for \_\_\_\_\_.

Dear Sir/ Madam,

We hereby declare and confirm that in terms of the definitions of the RfS, M/s \_\_\_\_\_ (enter name of the common shareholder) is our Group Company, and has a direct/indirect shareholding of less than 26% in the bidding company. M/s \_\_\_\_\_ (enter name of the common shareholder) also holds directly/indirectly less than 26% shareholding in other Companies which may participate in this RfS, i.e. RfS No. \_\_\_\_\_.

We undertake that M/s \_\_\_\_\_ (enter name of the above common shareholder) is not a party to the decision-making process for submission of response to this RfS by M/s \_\_\_\_\_ (enter name of the bidding company/member in the consortium). We further undertake that while undertaking any action as part of our response to RfS, we are not complicit with other such bidders participating in this RfS, in which M/s \_\_\_\_\_ (enter name of the common shareholder) has less than 26% direct/indirect shareholding, if any.

We further declare and confirm that in terms of the definitions of the RfS, M/s \_\_\_\_\_ (enter name of the Promoter/Promoters) is/are our Promoter(s), and has/have a direct/indirect Control in the bidding company as per the Companies Act 2013. No other entity has a direct/indirect control in the bidding company except the entity(ies) mentioned above.

We further declare that the above statement is true & correct. We undertake that if at any stage it is found to be incorrect, in addition to actions applicable under the RfS/PPA including but not limited to cancellation of our response to this RfS and LoA/PPA as applicable, we, i.e. M/s \_\_\_\_\_ (enter name of the bidding company/member in a consortium), including our

Parent, Ultimate Parent, and our Affiliates shall be suspended/debarred from participating in any of the upcoming tenders issued by NHPC for a period of 2 years from the date of default as notified by NHPC.

We also understand that the above is in addition to the penal consequences that may follow from the relevant laws for the time being in force.

We further declare that we have read the provisions of Clause 37.4 of the RfS, and are complying with the requirements as per the referred OM dated 23.07.2020 except Sl. 11 of the OM, including subsequent amendments and clarifications thereto. Accordingly, we are also enclosing necessary certificates (Annexure to this format) in support of the above compliance under the RfS. We understand that in case of us being selected under this RfS, any of the above certificates is found false, NHPC shall take appropriate action as deemed necessary.

We further declare that we are fully aware of the binding provisions of the ALMM Order and the Lists(s) thereunder, while quoting the tariff in RfS for\_(Enter the name of the RfS).

We further understand that the List-I (Solar PV Modules) of ALMM Order, Annexure-I of the OM, issued by MNRE on 10th March, 2021 will be updated by MNRE from time to time. We also understand that the Modules to be procured for this project, shall be from the List-I of the ALMM Order applicable on the date of invoicing of such modules.

We also further understand and accept that we shall be liable for penal action, including but not limited to blacklisting and invocation of Performance Bank Guarantee, if we are found not complying with the provisions of ALMM Order, including those mentioned above.

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

Thanking you,

We remain,

Yours faithfully,

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration.

**Annexure to Format 6.8/6.8A**  
**DECLARATION**

**RESTRICTION ON PROCUREMENT FROM CERTAIN COUNTRIES: MoF OM No 6/18/2019-PPD dated 23.07.2020**

**(To be submitted on the Letter Head of the Bidding Company/ Each Member of Consortium)**

Ref. No. \_\_\_\_\_ Date: \_

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

\_\_\_\_\_  
\_\_\_\_\_

Tel#:

Fax#:

E-mail address#

To  
NHPC Limited,  
NHPC OFFICE COMPLEX,  
Sector-33, Faridabad-121003,  
Haryana, India.

Sub: Response to RfS No ..... dated for the tender  
for .....

Dear Sir/ Madam,

This is with reference to attached order No. OM no. 6/18/2019-PPD dated 23<sup>rd</sup> July 2020 issued by Department of Expenditure, MoF, Govt of India.

We are hereby submitting the following declaration in this regard:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. Where applicable, evidence of valid registration by the Competent Authority shall be attached."

We further declare that the above statement is true & correct. We are aware that if at any stage it is found to be incorrect, our response to the tender will be rejected.

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

We remain, Yours faithfully,

Encl: OM dated 23.07.2020, as referred above.

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration.

**FORMAT - 6.9**

**DECLARATION BY THE BIDDER FOR THE PROPOSED TECHNOLOGY TIE-UP**

(To be Submitted on the letterhead of the Bidder)

1	Name of Bidding Company/ Lead Member of Bidding Consortium	
2	Location(s) of Firm & Dispatchable RE components to be installed	
3	Contracted Capacity proposed	..... MW
4	Brief about the Firm & Dispatchable RE Configuration breakup (Installed capacity)	
(i)	Committed annual CUF for the offered capacity to be supplied (Minimum 40%)	..... %
(ii)	Peak Hours Availability on monthly basis (Minimum 90%)	..... %
(iii)	Break up of Solar / Wind / any other RE resource components	..... MW (for each component)
(iv)	Details of ESS Component	.....MW/MWh (Brief write-up to annexed with this Format)
5	Details to be submitted in case of tie-up with spare capacity of a RE Power Component	(To be enclosed as Annexure to this Format)
6	Power supply profile of offered capacity	(To be enclosed as Annexure to this Format)

Dated the day of , 20.... Thanking you,  
Yours faithfully,

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration.

Encl.:

Hourly generation profile for a representative day for a single year, indicating tentative energy (MWh) and power (MW) to be supplied under the PPA

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Format 6.10 – Format for Letter from CTU**

*(to be filled separately for individual projects)*

***DELETED***



**Format 6.11- Format of Financial Bid for Quoting “First Round Tariff Bid” under OPEN Category**

Sl. No.	Category	Indicative Tariff in Rupees per kWh (unit) of Electrical Power (single Tariff to be quoted for entire capacity applied for)	
		(In Figures)	(In Words)
1	OPEN		

We confirm that the first round quoted tariff as above shall be applicable for capacity of projects we are found to be qualified for, as per technical and commercial evaluation. The above quoted tariff shall hold good even if the capacity of projects qualified for/allotted, is less than the quoted capacity / number of projects.

(Signature of Authorized Representative of the Company)

Name of Organization: -

Date: -

(Company Seal)

Note: -

1. In case of any discrepancy between the values mentioned in figures and in words, the value mentioned in words will prevail.
2. Evaluation will be carried out based on tariff quoted by Bidders.
3. **No Financial information is to be submitted with Technical Bid. Only .xlsx file is to be uploaded with the Tender in Financial Bid.**

**Format 6.12**

**(Format of Integrity Pact)**

*(To be executed on plain paper at the time of submission of bid/ and on Non-judicial stamp paper of appropriate value by successful Bidder (Contractor) prior to signing of Contract Agreement)*

**(Format of Integrity Pact)**

**PRE CONTRACTINTEGRITY PACT**

**Between**

NHPC Limited, a company incorporated under the Companies Act 1956 and having its registered office at NHPC Office Complex, Sector-33, Faridabad-121003 (Haryana), hereinafter referred to as "The Employer" which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns of the **First Part**.

**And**

M/s \_\_\_\_\_, a company/ firm/ individual (status of the company) and having its registered office at \_\_\_\_\_ represented by Shri \_\_\_\_\_, hereinafter referred to as "The Bidder/Contractor" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns of the **Second Part**.

WHEREAS the Employer proposes to procure under laid down organizational procedures, contract/s for -----  
-(Name of the work/ goods/ services) and the Bidder/Contractor is willing to offer against NIT No. ....

WHEREAS the Bidder/Contractor is a private company / public company/Government undertaking/partnership/consortium/joint venture constituted in accordance with the relevant law in the matter and the Employer is a Public Sector Enterprise.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the Employer to obtain the desired said (work/ goods/ services) at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling the Bidder(s)/Contractor(s) to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the Employer will commit to prevent corruption, in any form, by its officials by following transparent procedures.

**1.0 Commitments of the Employer**

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

**3.0 Commitments of the Bidder(s)/Contractor(s)**

The Bidder(s)/Contractor(s) commits themselves to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit themselves to observe the following principles during participation in the tender process and during contract execution: -

- 3.1 The Bidder(s)/Contractor(s) will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Employer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The Bidder/Contractor further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Employer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with Employer for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with Employer.
- 3.3 The Bidder(s)/Contractor(s) shall disclose the name and address of agents and representatives and Indian Bidder(s)/Contractor(s) shall disclose their foreign principals or associates.

- 3.4 The Bidder(s)/Contractor(s) shall, when presenting their bid, disclose any /all payments made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with this bid/award of the contract
- 3.5 Deleted.
- 3.6 The Bidder, either while presenting their bid or during pre-contract negotiations or before signing the contract, shall disclose any payments made, is committed to or intends to make to officials of the Employer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The Bidder/Contractor will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The Bidder/Contractor will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The Bidder/Contractor shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Employer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in electronic data carrier. The Bidder/Contractor also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder(s)/Contractor(s) commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The Bidder(s)/Contractor(s) shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the Bidder/Contractor or any employee of the Bidder/Contractor or any person acting on behalf of the Bidder/Contractor, either directly or indirectly, is a relative of any of the officers of the Employer, or alternatively, if any relative of an officer of the Employer has financial interest/stake in the Bidder(s)/Contractor(s) firm(excluding Public Ltd. Company listed on Stock Exchange), the same shall be disclosed by the Bidder/Contractor at the time of filling of tender.  
  
The term 'relative' for this purpose would be as defined in Section 2(77) of the Companies Act 2013.
- 3.13 The Bidder(s)/Contractor(s) shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Employer.
- 3.14 The representative of the Bidders/Contractors signing Integrity Pact shall not approach the Courts while representing the matters to IEMs and he/she will wait their decision in the matter.
- 3.15 In case of Sub-Contracting, the bidder shall take the responsibility of the adoption of Integrity Pact by the Sub-Contractor.

#### **4.0 Previous Transgression**

- 4.1 The Bidder(s)/Contractor(s) declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in

any country in respect on any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India.

#### **5.0 Earnest Money (Security Deposit)**

The provision regarding Earnest Money/Security Deposit as detailed in the Notice Inviting Tender (NIT) and Instruction to Bidders (ITB) section of the Bid Document is to be referred.

#### **6.0 Sanctions for Violations**

- 6.1 Any breach of the aforesaid provisions, before award or during execution by the Bidder/Contractor or any one employed by it or acting on its behalf such as to put their reliability or credibility in question shall entitle the Employer to take action as per the procedure mentioned in the "**Guidelines on Banning of Business Dealings**" attached as **Annexure-2A** and initiate all or any one of the following actions, wherever required:-
- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the Bidder/Contractor. However, the proceedings with the other Bidder(s)/Contractor(s) would continue.
  - (ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is Signed) shall stand forfeited either fully or partially, as decided by the Employer and the Employer shall not be required to assign any reason thereof.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Contractor. The Bidder/Contractor shall be liable to pay compensation for any loss or damage to the Employer resulting from such cancellation/rescission and the Employer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder/Contractor.
  - (iv) Deleted.
  - (v) To encash the Bank guarantee, in order to recover the dues if any by the Employer, along with interest as per the provision of contract.
  - (vi) Deleted .
  - (vii) To debar the Bidder/Contractor from participating in future bidding processes of NHPC Ltd., as per provisions of "Guidelines on Banning of Business Dealings" of NHPC Ltd. (**Annexure-2A**), which may be further extended at the discretion of the Employer.
  - (viii) To recover all sums paid in violation of this Pact by Bidder(s)/Contractor(s) to any middleman or agent or broker with a view to securing the contract.
  - (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Employer with the Bidder/ Contractor, the same shall not be opened/operated.
  - (x) Forfeiture of Performance Security in case of a decision by the Employer to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

- 6.2 The Employer will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (x) of this Pact also on the Commission by the Bidder/Contractor or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder/Contractor), of an offence as defined in Chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the Employer to the effect that a breach of the provisions of this Pact has been committed by the Bidder/Contractor shall be final and conclusive on the Bidder/Contractor. However, the Bidder/Contractor can approach the Independent External Monitor(s) appointed for the purposes of this Pact.

#### **7.0 Independent External Monitor(s)**

- 7.1 The Employer has appointed Independent External Monitors (hereinafter referred to as monitors) for this Pact after approval by the Central Vigilance Commission.
- 7.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently. The Monitors report to CMD, NHPC.
- 7.4 Both the parties accept that the Monitors have the right to access all the Contract documents relating to the project/procurement, including minutes of meetings, whenever required. The right to access records should only be limited to the extent absolutely necessary to investigate the issue related to the subject tender /contract.
- 7.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he / she will so inform CMD, NHPC and request NHPC Ltd. to discontinue or take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- 7.6 The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction, to all Project documentation of the Employer including that provided by the Bidder/Contractor. The Bidder/Contractor will also grant the Monitor, upon his / her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Subcontractor(s). The Monitor shall be under contractual obligation to treat the information and documents of the Bidder/Contractor/Subcontractor(s) with confidentiality. The Monitor has also signed declaration on 'Non-Disclosure Agreement' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform CMD, NHPC and recuse himself / herself from that case.
- 7.7 The Employer will provide to the Monitor sufficient information about all meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings as and when required.
- 7.8 The Monitor will submit a written report to the CMD, NHPC Ltd., within 8 to 10 weeks from the date of reference or intimation to him by the Employer/Bidder and should the occasion arise, submit proposals for correcting problematic situations.
- 7.9 The word 'Monitor' would include both singular and plural.

## **8.0 Facilitation of Investigation**

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

## **9.0 Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the Registered Office of the Employer, i.e. Faridabad (Haryana). The arbitration clause provided in the tender document/contract shall not be applicable for any issue/dispute arising under Integrity Pact.

## **10.0 Other Legal Actions**

- 10.1 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.
- 10.2 Changes and supplements as well as termination notice need to be made in writing.
- 10.3 If the Contractor is a partnership or a consortium or a joint venture, this pact must be signed by all partners of the consortium/joint venture.

## **11.0 Validity**

- 11.1 The validity of this Integrity Pact shall be from date of its signing and expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from business dealings.
- 11.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intention.
- 11.3 Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
- 11.4 In the event of any contradiction between Integrity Pact and its Annexure, the clause in the Integrity Pact will prevail.

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

For & On behalf of the Employer

For & On behalf of the Bidder / Contractor

(Office Seal)

(Office Seal)

Place-----

Place-----

Date-----

Date-----

Witness1. \_\_\_\_\_

Witness1. \_\_\_\_\_

(Name and address)

(Name and address)

2. \_\_\_\_\_

2. \_\_\_\_\_

(Name and address)

(Name and address)



## Annexure – 6.12A

### Guidelines on Banning Business Dealings

#### 1. Introduction

NHPC Limited (NHPC) deals with Agencies viz. parties/ contractors/ suppliers/ bidders, who are expected to adopt ethics of highest standards and a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of NHPC to deal with Agencies who commit deception, fraud or other misconduct in the tendering process and/or during execution of work undertaken. NHPC is committed for timely completion of the Projects within the awarded value without compromising on quality.

- 1.2 Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

#### 2.0 Scope

- 2.1 NHPC reserves its rights to remove from list of approved suppliers / contractors (if such list exists) or to Suspend/Ban Business Dealings if any Agency has been found to be non / poor performing or have committed misconduct or fraud or anything unethical or any of its action(s) which falls into any such grounds as laid down in this policy.
- 2.2 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors; (ii) Suspension and (iii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 2.3 These guidelines shall apply to all the units of NHPC.
- 2.4 These guidelines shall not be applicable in Joint Venture, Subsidiary Companies of NHPC unless they are assignees, successors or executor.
- 2.5 The suspension/banning except suspension/banning under Integrity Pact shall be with prospective effect, i.e. future Business Dealing.

#### 3.0 Definitions

*In these Guidelines, unless the context otherwise requires:*

- i) **“Agency/Party / Contractor / Supplier / Bidders/Vendors”** shall mean and include a public limited company or a private limited company, a joint Venture, Consortium, HUF, a firm whether registered or not, an individual, cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. “Party / Contractor/ Supplier / Bidder/Vendor” in the context of these guidelines is indicated as ‘Agency’.
- ii) **“Unit”** shall mean the Corporate Office, Project/ Power Station/ Regional Office/ Liaison Office or any other office of NHPC.
- iii) **“Competent Authority”** and **‘Appellate Authority’** shall mean the following:
- a) For works awarded/under Tendering from corporate office (falling in the competency of CMD /Board of Directors)
- Competent Authority: CMD
  - Appellate Authority : Board of Directors
- b) For works awarded/under Tendering from Corporate Office/Projects/ Power Stations/ Regional Offices/Liaison Offices (falling in the competency of Director /Executive Director)

- Competent Authority: Concerned Director/Executive Director as the case may be
  - Appellate Authority: CMD /Concerned Director as the case may be
- c) For works awarded/under tendering from Corporate Office / Regional Offices / Projects/ Power Stations/ Liaison Offices (falling in the competency of CGM and below)
- Competent Authority in case of works awarded/under tendering from Corporate Office/Regional office shall be CGM or GM of the concerned division as the case may be.
  - Competent Authority: Head of the Unit not below the rank of General Manager
  - Appellate Authority: Next higher authority
- iv) **“Investigating Committee”** shall mean a Committee appointed by Competent Authority to conduct investigation.

#### **4.0 Initiation of Suspension /Banning**

Action for Suspension / Banning Business Dealings with any Agency shall be initiated by the department responsible for invitation of Bids/Engineer-in-charge after noticing the irregularities or misconduct on the part of Agency concerned. Besides the concerned department, Vigilance Department of each Unit/ Corporate Vigilance may also be competent to initiate such action.

#### **5.0 Suspension of Business Dealings.**

- 5.1 If the conduct of any Agency dealing with NHPC is under investigation, the Competent Authority may consider whether the allegations (under investigation) are of a serious nature and whether pending investigation, it would be advisable to continue business dealing with the Agency. If the Competent Authority, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Committee. The Investigating Committee may ensure that their investigation is completed and whole process of final order is over within such period. However if the investigations are not completed within six months ,the investigation committee shall put up the proposal to the competent authority for approval of extension of time maximum up to further three months with in which the committee shall conclude the proceedings .
- 5.2 The order of suspension shall be effective throughout NHPC in case of work falling in the Competency of CMD/ Board of Directors/Directors, in case of work falling in the competency of Executive Director suspension shall be effective throughout Region /Corporate office (in case the works awarded/under Tendering from Corporate office) .In case of work falling in the competency of HOP or below suspension shall be effective throughout the Project/Power Station and attached liaison offices/units and in case of work

falling under the competency of CGM and below at Corporate office suspension shall be effective at Corporate office. During the period of suspension, no business dealing shall be held with the Agency.

- 5.3 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.
- 5.4 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension.
- 5.5 The format for intimation of suspension of business dealing is placed at **Annexure-2B.**

**6.0 Ground on which Banning of Business Dealings can be initiated**

- 6.1 If the security consideration, including questions of loyalty of the Agency to NHPC so warrants;
- 6.2 If the director /owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises, during the last five years;
- 6.3 If the Agency has resorted to Corrupt, Fraudulent, Collusive, Coercive practices including misrepresentation of facts and violation of the any provisions of the Integrity Pact provided in the Contract.
- 6.4 If the Agency uses intimidation / threatening or brings undue outside pressure on NHPC or its official for acceptance / performances of the job under the contract;
- 6.5 If the Agency misuses the premises or facilities of NHPC, forcefully occupies or damages the NHPC's properties including land, water resources, forests / trees or tampers with documents/records etc.
- 6.6 If the Agency does not fulfill the obligations as required under the Contract and Violates terms & conditions of the contract which has serious affect for continuation of the Contract.
- 6.7 If the work awarded to the agency has been terminated by NHPC due to poor performance of the contract in the preceding 5 years.
- 6.8 If the Central Vigilance Commission, Central Bureau of Investigation or any other Central Government investigation Agency recommends such a course in respect of a case under investigation or improper conduct on agency's part in matters relating to the Company (NHPC) or even otherwise;
- 6.9 On any other ground upon which business dealings with the Agency is not in the public interest.
- 6.10 If business dealings with the Agency have been banned by the Ministry of Power, Government of India OR any PSU/ any other authority under the MOP if intimated to NHPC or available on MOP Website, the business dealing with such agencies shall be banned with immediate effect for future business dealing except banning under Integrity Pact without any further investigation.

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

## 7.0 Procedure for Banning of Business Dealings

- 7.1 An Investigating Committee shall be constituted by the authority competent to Ban the dealing comprising members from Engineering/Indenting department (convener), Finance, Law and Contract. The level of the committee members shall be CGM and above for works falling in the competency of CMD/Board of Directors, General Manager and above for the works falling in the competency of Director/ Executive Director and DGM/SM with at least one member of the level of General Manager for works falling in the competency of CGM and below.
- 7.2 The order of Banning of Business Dealings shall be effective throughout the NHPC. During the period of Banning of Business Dealings, no Business Dealing shall be held with the Agency.
- 7.3 The functions of Investigating Committee in each Unit to be appointed by the competent authority in line with para 3 (iii) shall, inter-alia include:
  - a) To study the report of the department responsible for invitation of bids and decide if a prima-facie case for banning exists, if not, send back the case to the Competent Authority.
  - b) To recommend for issue of show-cause notice (after vetting by legal deptt.) to the Agency by the concerned department as per clause 7.4 "Show Cause Notice".
  - c) To examine the reply to show-cause notice and call the Agency for personal hearing, if required.
  - d) To submit final recommendations to the Competent Authority for banning or otherwise including the period for which the ban would be operative considering the implications for NHPC on account of the act/omission on the part of the agency, intention of the agency as established from the circumstances of the case etc.

## 7.4 SHOW CAUSE NOTICE

Once the proposal for issuance of Show Cause Notice is approved by the Competent Authority, a 'Show Cause Notice' (as per format at **Annexure - 2C** of these guidelines) shall be issued to the delinquent Agency by the Competent Authority or by a person authorized by the Competent Authority for the said purpose. The Agency shall be asked to submit the reply to the Show Cause Notice within 15 days of its issuance. Further, the Agency shall be given an opportunity for Oral hearing to present its case in person, if it so desires, and the date for Oral Hearing shall necessarily be indicated in the Show Cause Notice.

The purpose of issuing the Show Cause Notice is only that the Agency concerned shall be given an opportunity to explain their stand before any action is taken. The grounds on which action is proposed to be taken shall be disclosed to the Agency inviting representation and after considering that representation, orders may be passed. Such orders require only the satisfaction of the authority that passed the final orders.

If the Agency requests for inspection of any relevant document in possession of NHPC, necessary facility for inspection of documents may be provided.

During the conductance of oral hearing, only the regular duly authorized employees of Agency will be permitted to represent the Agency and no outsider shall be allowed to represent the Agency on its behalf.

Reply to the Show Cause Notice given by the Agency and their submissions in oral hearing, if any, will be processed by the Committee for obtaining final decision of the Competent Authority in the matter.

**7.5** In case, no reply to Show Cause Notice is received from the Agency within stipulated time, further reminder shall be given with further period of 10 days thereafter if no reply is received action for processing ex-parte against the concerned Agency shall be initiated.

### **Speaking Order**

The speaking order (reasoned order) for banning the business dealing with the Agency shall be issued by the Competent Authority or by a person authorized for the said purpose.

The decision regarding banning of business dealings taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto, shall be communicated to the Agency concerned along with a reasoned order. The fact that the representation has been considered shall invariably be mentioned in the communication. Also the fact that if no reply was received to the Show Cause Notice shall invariably be indicated in the final communication to the Agency. The format for intimation of banning of business dealing is placed at **Annexure-2D**.

### **7.6 Period of banning**

In case banning is processed for violation of provisions of Integrity pact or due to corrupt or fraudulent practices, the Competent Authority shall decide on the period of banning on case to case basis depending on the gravity of the case and considering the implications for NHPC on account of the act/omission on the part of the Agency, intention of the Agency as established from the circumstances of the case etc. The period of banning shall not be less than 6 months and shall not exceed 2 years and in case termination of contract due to poor performance the period of banning shall be for 5 years. For contracts awarded to JV/Consortium, a constituent of the JV shall be permitted to participate in the bidding process if it has not been banned on grounds of its role and responsibility in the tendering process for which the Joint Venture has been banned in Past. In case if the Joint Venture which has been banned does not indicate the roles and responsibility of individual Partner(s) then, the partner of the banned Joint Venture shall only be allowed to participate in the bidding process if its participation share is less than 35%.

In case the information/documents submitted by Agency in competing for the tender found to be false/forged then NHPC, without prejudice to any other rights or remedies it may possess, shall recover from Agency the cost incurred in carrying out physical assessment for establishing veracity of such information/documents. In case Agency refuses to reimburse such cost to NHPC then banning period of Agency shall be extended by another one year.

### **7.7 Effect of Banning**

As far as possible, the existing ongoing contract(s) with the Agency may continue unless the Competent Authority, having regard to the circumstances of the case, decides otherwise, keeping in view contractual and legal issues

which may arise thereof. In case the existing Contracts are allowed to continue, the suspension/Banning of Business Dealing along with default of the Contractor shall be recorded in the experience certificate issued for the work.

The Agency, (after issue of the order of banning of business dealings) would not be allowed to participate in any future tender enquiry and if the Agency has already participated in tender process as stand-alone OR constituent of joint venture and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of banning, bids of Agency shall not be rejected and tendering process shall be continued unless Competent Authority having regard to the circumstances of the case decides otherwise keeping in view the Contractual, Legal issues which may arise thereafter. However, in case the suspension /Banning is due to default of an Agency for the provisions under Integrity Pact and the Agency happens to be Lowest Bidder (L1), the tendering process shall be annulled and fresh tenders shall be invited.

During the Suspension/ Banning period, if it is found at any stage that Agency has participated in tender enquiry under a different name then such Agency would immediately be debarred from the tender/contract and its Bid Security/Performance Security would be forfeited. Payment, if any, made shall also be recovered.

After Suspension/ Banning order, the Suspended/ Banned Agency shall not be allowed to participate as Sub-Vendor/Sub-Contractor in the tenders.

Further, if the Suspended/ Banned agency is an approved Sub-Vendor under any Contract for such equipment/component/service, the Main Contractor shall not be permitted to place work order/Purchase order/Contract on the Suspended/ Banned agency as a Sub-Vendor /Sub-Contractor after the date of Suspension/ Banning even though the name of the party has been approved as a Sub-Vendor /Sub-Contractor earlier.

There would be no bar on procuring the spares and awarding Contracts towards Annual Maintenance (AMC)/ O&M/ Repair works on Agencies pertaining to the packages for which they have been banned provided the Equipment has been supplied by such Agency.

Banning of business dealing shall not be applicable to the Subsidiary Company of the Banned agency provided subsidiary company has not participated on the strength of the Banned agency. However, in case of a default by a Sub-Contractor, the banning shall be applicable to the Sub-Contractor as well as the Lead Partner of the concerned JV or the Sole bidder as the case may be.

#### **7.8 Hosting at NHPC website**

The concerned unit shall forward the name and details of the Agency (ies) banned along with period and reasons of banning to IT&C Division of Corporate Office for displaying the same on the NHPC website.

#### **8.0 Appeal against the Decision of the Competent Authority.**

The Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate Authority. Such an appeal shall be preferred within 30 (Thirty) Days from the date of receipt of

the order of banning of business dealing. Appellate Authority would consider the appeal if convinced may constitute another committee for further investigation. The investigation Committee constituted by the Appellate Authority shall study the report of the previous investigating committee and reply submitted by the Agency while filing its case for appeal and call the Agency for personal hearing , if requested by the Agency. Based on the recommendation of the committee Appellate Authority shall pass appropriate Speaking (Reasoned) order in line with Sub-Para 7.5 above which shall be communicated to the Agency as well as the Competent Authority (as per format enclosed as **Annexure-2E** with these guidelines).

**9.0 Circulation of the names of Agencies with whom Business Dealings have been banned**

The name of the concerned banned agency shall also be shared with MOP and other PSU in the sector and all the units of NHPC.

The provisions of this policy supersede and will have overriding effect on all earlier guidelines, procedures & system issued for the similar purpose.

**Annexure – 6.12B**

**(Format for Intimation of Suspension of business dealing)**

BY REGD. POST/SPEED POST/COURIER

No.....

Date.....

To

M/s .....

Attn.: Shri .....

**Sub:** Intimation of Suspension of Business Dealings

Dear Sir,

Whereas The work of ..... was awarded to your firm vide letter of award no ...dt.... amounting to Rs. .... OR In response to NHPC NIT (e-tender / physical tender) No .....dt. you have submitted your bid . (strike out whichever is not applicable )

Whereas the conduct of your firm in respect of the following is under investigation:

Brief of the default

“Whereas the Competent Authority prima facie considered the allegations (under investigation) are of a serious nature and decided pending investigation, it is not in the interest of the corporation to continue business dealing with your firm

This order shall have the following effects:

- (i) Further business dealings with your firm is Suspended within Region/Project/Unit/wide NHPC. The order of Suspension is effective with immediate effect and would operate for a period of six months or till the investigation is completed and whole process of final order is over within such period. However, if investigations are not completed in six months' time, the Competent Authority may extend the period of Suspension
- (ii) During the period of Suspension, no business dealing shall be held with your firm. No enquiry / bid / tender shall be issued to your firm nor will the bids submitted by your firm be entertained.
- (iii) In cases where tenders have already been issued to you and price bids are yet to be opened, the Price Bid submitted by you shall not be opened and BG/EMD, if any, submitted by you shall be returned.
- (iv) In cases where tenders have already been issued to you and Price Bids have already been opened, the tendering process will be continued
- (v) In case of ongoing contracts between you & NHPC, (including cases where contract has already been awarded before the issue of Suspension order) you will be required to continue with the execution and perform as per terms of the contract.
- (vi) (a) In case the Firm is in Joint Venture the following would also be applicable:
  - i) **Participation of Agency in Joint Venture**  
Tenders in which your firm has been proposed as Joint Venture Partner by any of the bidders and price bids have been opened prior to Suspension of your firm in such cases the tendering process shall not be annulled on this



ground and the Agency shall be permitted to continue as Partner in the Joint Venture for such bidding. However where event of Price Bid opening has not taken place prior to Suspension/Banning of Agency then in such case Agency shall not be permitted to participate as Partner in the Joint Venture.

ii) **Banning of joint Venture:**

If the Joint Venture is Banned, your firm intends to bid as Partner(s) of Joint Venture in bidding process then it shall be permitted to participate in the bidding process if it has not been Banned on grounds of its role and responsibility in the tendering process for which the Joint Venture has been Banned in Past. In case if the Joint Venture which has been Banned does not indicate the roles and responsibility of individual Partner(s) then, the partner of the Banned Joint Venture shall only be allowed to participate in the bidding process if its participation share is less than 35%.

- (b) Your firm shall not be allowed to participate as Sub-Vendor/Sub-Contractor in the tenders.

Further if your firm is an approved Sub-vendor under any Contract for such equipment/component/service, the Main Contractor shall not be permitted to place work order/Purchase order/Contract on your agency as a Sub-Vendor/Sub-Contractor after the date of Suspension/ Banning even though the name of the party has been approved as a Sub-Vendor/Sub-Contractor earlier.

- (c) There would be no bar on procuring the spares and awarding Contracts towards Annual Maintenance (AMC)/ O&M/ Repair works on Agencies pertaining to the packages for which they have been Banned provided the Equipment has been supplied by such Agency.
- (d) Banning of business dealing shall not be applicable to the Subsidiary company of the Banned agency provided subsidiary company has not participated on the strength of the Banned agency.

On expiry of the above period of Suspension/Banning, you may approach... (Indicate the concerned procurement department), with request for revocation of the order mentioning inter-alia the steps taken by you to avoid recurrence of misconduct which has led to Suspension.

Yours faithfully,

For & On behalf of NHPC.

**Note:** Strike out whichever is not applicable

**Annexure – 6.12C**  
**(Format of Show Cause Notice)**

BY REGD. POST/SPEED POST/COURIER

No.....

Date.....

To

M/s .....

.....

Attn.: Shri .....

**Sub: Show Cause Notice**

Ref :

Dear Sir,

You are hereby required to Show Cause in writing within 15 days from the date hereof why Business Dealing with your firm should not be banned / your firm is placed in the Banning List (as the case may be) and be debarred from entering into any contracts with NHPC for the following reasons:

(Give Reasons)

Your reply (if any) should be supported by documents and documentary evidence which you wish to rely in support of your reply. In case, you desire to present your case in person to NHPC, a personal hearing shall be conducted on .....at ..... hours for which prior intimation be furnished to this office. Should you fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed accordingly.

Your reply, if any, and the documents / documentary evidence given in support shall be taken into consideration prior to arriving at a decision.

Yours faithfully,

For & On behalf of NHPC.

**Annexure – 6.12D**

**(Format for Intimation of Banning of Business Dealing)**

BY REGD. POST/SPEED POST/COURIER

No.....

Date.....

To

M/s .....

Attn.: Shri .....

**Sub:** Intimation of Suspension of Business Dealings

Dear Sir,

Whereas the work of ..... was awarded to your firm vide letter of award no ...dtd.... amounting to Rs. .... OR In response to NHPC NIT (e-tender / physical tender) no .....dt. you have submitted your bid .(strike whichever is not applicable)

Whereas the Competent Authority had prima facie considered the allegations as detailed below are of a serious nature and decided to conduct investigation.

“ Brief of the Default may be mentioned”

Whereas show cause notice vide no ... dtd.....was served upon you. (whereas in spite of the opportunity given to you, you failed to submit the reply to the show cause notice within the time period mentioned there upon or further extended period, if any).

Whereas you submitted the reply along with documents vide your letter no. \_\_\_\_\_dt. \_\_\_\_\_ and presented your case in the personal hearing dated ..... (if any) . After considering the allegations made in the show cause notice, your reply to the show cause notice documents/documentary evidence in support thereof and personal hearing dated .....(if any), it has been decided to Ban the Business Dealing with you and you are hereby debarred from entering into contracts with NHPC.

(In order to make the Intimation of Banning of Business Dealing Speaking Order (reasoned order), the issue of a Show Cause Notice and consideration of representation in reply to show cause notice , opportunity of personal hearing, if any, shall be communicated to the Agency concerned along with a reasoned order. The order for Banning should also contain the reasons with detailed justification for conclusion of decision to Ban the Agency. Also the fact that if no reply to the Show Cause Notice was received or request for personal hearing was not made shall invariably be indicated in the communication to the Agency. The above order shall mention the grounds considering violation of any provision of Integrity Pact, any ground mentioned in Guidelines of Banning of Business Dealings, default by the agency under fraudulent practice / or any unethical practice and/or violation of any provision of Tender/Contract Condition having serious implications.)

This order shall have the following effects:

- i) Further business dealings with your firm is banned with immediate effect . The order of Banning would operate for a period of .....years/month Competent Authority may extend the period of Banning.
- ii) During the period of Banning, no Business Dealing shall be held with your firm. No Enquiry / Bid / Tender shall be issued to your firm nor will the bids submitted by your firm be entertained.

- iii) In cases where tenders have already been issued to you and Price Bids are yet to be opened, the Price Bid submitted by you shall not be opened and BG/EMD, if any, submitted by you shall be returned.
- iv) In cases where tenders have already been issued to you and price bids have already been opened, the Tendering Process shall be continued.
- v) In case of ongoing contracts between you & NHPC, (including cases where contract has already been awarded before the issue of Banning order) you will be required to continue with the execution and perform as per terms of the contract.
- (vi) (a) In case the Firm is in Joint Venture the following would also be applicable:

**i) Participation of Agency in Joint Venture**

Tenders in which your firm has been proposed as Joint Venture Partner by any of the bidders and price bids have been opened prior to Banning of your firm in such cases the tendering process shall not be annulled on this ground and the Agency shall be permitted to continue as Partner in the Joint Venture for such bidding. However where event of price bid opening has not taken place prior to Banning of Agency then in such case Agency shall not be permitted to participate as Partner in Joint Venture.

**ii) Banning of joint Venture:**

As the Joint Venture is banned, your firm intends to bid as Partner(s) of Joint Venture in bidding process then it shall be permitted to participate in the bidding process if it has not been banned on grounds of its role and responsibility in the tendering process for which the Joint Venture has been banned in Past. In case if the Joint Venture which has been banned does not indicate the roles and responsibility of individual Partner(s) then, the partner of the banned Joint Venture shall only be allowed to participate in the bidding process if its participation share is less than 35%.

(b) Your firm shall not be allowed to participate as Sub-Vendor/Sub-Contractor in the tenders.

Further if your firm is an approved Sub-vendor under any Contract for such equipment/component/service, the Main Contractor shall not be permitted to place work Order/Purchase Order/Contract on your agency as a Sub-Vendor/Sub-Contractor after the date of Banning even though the name of the party has been approved as a Sub-Vendor/Sub-Contractor earlier.

(c) There would be no bar on procuring the spares and awarding Contracts towards Annual Maintenance (AMC)/ O&M/ Repair works on Agencies pertaining to the packages for which they have been banned provided the Equipment has been supplied by such Agency.

(d) Banning of Business Dealing shall not be applicable to the Subsidiary company of the Banned Agency provided subsidiary company has not participated on the strength of the Banned Agency. However, in case of a default by a Sub-Contractor, the banning shall be applicable to the Sub-Contractor as well as the Lead Partner of the concerned JV or the Sole bidder as the case may be.

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

On expiry of the above period of Banning, you may approach..... (Indicate the concerned procurement department), with request for revocation of the order mentioning inter-alia the steps taken by you to avoid recurrence of misconduct which has led to Banning.

Further if you desire to appeal against this order you may do so within 30 days from the date of issue of this order to the appellate authority as here under:

Appellate Authority: .....

Designation:

Address:.....

Ph . no.

e-mail :

Yours faithfully,

For & On behalf of NHPC.

**Note:** Strikeout whichever is not applicable

**Annexure – 6.12E**

**(Format for communication of Appellate Decision on Suspension/Banning Order)**

BY REGD. POST/SPEED POST/COURIER

No.....

Date.....

To, M/s .....

Attn.: Shri .....

**Sub:** Suspension Banning of Business Dealings - Intimation of decision of Appellate Authority

**Ref:** 1. Order dated ..... Placing M/s ..... on Suspension/B by NHPC

2. Your Appeal reference ..... Dt.....

Dear Sir,

[

This has reference to the order dt..... placing you on Suspension/Banning List and your appeal petition reference ..... dt.... on the same.

After considering the findings of the Original Authority in order and submissions made by you in your appeal, and the documents/documentary evidences available on record, it has been decided finally that :

- \* There is no infirmity in the order of the Original Authority, and the allegations stand substantiated and the Suspension/Banning for the period of ..... years/month from the date of order, as ordered by the original Authority is upheld,
- \* Considering your submissions, the order of Suspension/Banning passed by the original authority is upheld, but with a reduction in period of Suspension/Banning for ..... years/months from the date of order of original authority;
- \* Considering your submissions and the evidence available on record, there is enough justification to annul the order of the original authority.

(\*\*\* Incorporate any one of the above as applicable

- ## In order to make the Communication of Appellate Authority on Banning of Business Dealing Speaking Order (reasoned order), the fact that the representation of the agency has been considered and reference of grounds brought forward by the Agency in his defense and if any opportunity of personal hearing has been given to the Agency as a part of principle of natural justice shall invariably be mentioned in the communication, The order for Banning should also contain the reasons with detailed justification for conclusion of decision to Ban the Agency. Also the fact that if no sufficient ground has been furnished shall invariably be indicated in the final communication to the Agency. In case the option for Banning of Agency or reduction of Time Period for Banning of Agency is exercised then the above order shall mention the grounds considering violation of any provision of Integrity Pact, any ground mentioned in Guidelines of Banning of Business Dealings, default by the agency under fraudulent or any unethical practices and/or violation of any provision of Tender/Contract Condition having serious implications.)

Yours faithfully,

For & On behalf of NHPC

**Format 6.13 a – CERTIFICATE FOR COMPLIANCE TO ALL PROVISIONS OF RfS DOCUMENT**

**(Certificate of Compliance to All Provisions of RfS Document / "NIL" Deviation Certificate)**

**[To be submitted offline in a separate sealed envelope along with EMD and others]**

Bidder's Name and Address :

**To,  
General Manager (Civil Contracts-III)  
NHPC Ltd., Room No.218,  
2nd Floor, Jyoti Sadan  
NHPC OFFICE COMPLEX,  
Sector-33, Faridabad-121003,  
Haryana, India**

**Dear Sir,**

1. With reference to our Bid dated..... for **"Selection of RE Power DeveloperRE Power Developers for Setting up Grid Connected REPower Projects, RfS No. \_\_\_\_\_**, we hereby confirm that we have read the provisions of RfS document along with its subsequent Amendment(s) / Clarification(s) / Addenda/Errata and further confirm that our Bids (i.e. both Technical Bid and Financial Bid) are strictly in conformity with the provisions of the RfS Document including its Amendments / Clarifications / Errata / Revisions thereof and we have **not taken any deviation** to any of the provisions of the aforesaid RfS document.
2. Further, we agree that the entire work for development of Solar Power Project(s) shall be performed as per the provisions of RfS document including Technical Requirements as per Annexure-1.
3. We confirm that any deviation/ variation / additional conditions to the provisions of RfS Document read in conjunction with its Amendment(s)/Clarification(s)/ Addenda / Errata found anywhere in our Technical Bid and Financial Bid, implicit or explicit, save those pertaining to rebates offered, stands unconditionally withdrawn, without any cost implication whatsoever to the NHPC, failing which the EMD be forfeited.
4. We hereby confirm that our Technical Bid does not contain any Financial/Price content entry. However if anything is contained, we shall be solely responsible for any implication.
5. Further, we confirm that our Financial Bid does not contain any matter in respect of Technical and / or Commercial aspects other than the details specifically sought in the Financial Bid.

Date :

Signature of Authorized signatory.....

(Name of Authorized Signatory).....

Place

(Designation).....

(Company Seal) .....

**Format 6.13 b- Draft for CERTIFICATE FOR COMPLIANCE TO ALL PROVISIONS OF RfS DOCUMENT**

**(Certificate of Compliance to All Provisions of RfS Document)**

(to be submitted by Project Company formed by Bidding Company/Bidding Consortium)

Project Company's Name and Address :

**To,  
General Manager (Civil Contracts-III)  
NHPC Ltd.  
Room No.218, 2nd Floor, Jyoti Sadan  
NHPC OFFICE COMPLEX, Sector-33,  
Faridabad-121003, Haryana, India**

**Dear Sirs,**

1. NHPC invited the bids from all the eligible bidders against tender “Request for Selection (RfS) document for Selection of RE Power Developer/RE Power Developers for -----MW of Grid-connected RE Power Projects to be setup in----- in the state of -----(RfS document No. -----dated -----). In this bidding process M/s -----has been selected as the successful bidder vide LOI No. \_\_\_\_\_ dated \_\_\_\_\_ for setting up -----MW of Solar Power Project under ----- category in -----in the state of -----. As per the provisions of RfS documents, M/s -----has formed a Project Company/Special Purpose Vehicle (SPV) namely M/s----- for development of \_\_\_ MW Solar Power Project (hereinafter called as “Project”), generation and sale of solar power from this Project and has accordingly entered into a Power Purchase Agreement bearing ref. no..... (hereinafter referred to as “PPA”) dated \_\_\_\_\_ with NHPC. We hereby confirm that we have read the provisions of RfS document along with its subsequent Amendment(s) / Clarification(s) / Addenda/Errata.
2. Further, we agree that the entire work for development of Project, generation and sale of solar power from this Project shall be performed as per the provisions of RfS document including Technical Requirements as per Annexure-1 of RfS document.

Signature of Authorized signatory.....

Date :

(Name of Authorized Signatory).....

Place :

(Designation).....

(Company Seal) .....



**Appendix – A**

**CHECK LIST FOR BANK GUARANTEES**

<b>S. No.</b>	<b>Details of checks</b>	<b>YES/NO.</b>
a	Is the BG on non-judicial Stamp paper / e-stamp paper of appropriate value, as per Stamp Act?	
b	Whether date, purpose of purchase and name of the purchaser are indicated on the Stamp paper? (The date of purchase of stamp paper should be of any date on or before the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. The stamp papers (other than e-stamp paper should be duly signed by the stamp vendor.)	
c	In case of BGs from Banks abroad, has the BG been executed on Letter Head of the Bank endorsed by SBI, India	
d	Has the executing Officer of BG indicated his name, designation and Power of Attorney No./Signing Power no. on the BG?	
e	Is each page of BG duly signed / initialed by executant and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed Proforma?	
f	Does the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents?	
g	Are the factual details such as Bid Document No. / Specification No., / LOI No. (if applicable) / Amount of BG and Validity of BG correctly mentioned in the BG	
h	Whether overwriting/cutting if any on the BG have been properly authenticated under signature & seal of executant?	
i	Whether the BG has been issued by a Bank in line with the provisions of Bidding documents?	
j	Is the BG confirmed by a Bank in India acceptable as per Bidding documents?	

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**Annexure – 2**

**CHECK LIST FOR FINANCIAL CLOSURE**

*(To be signed by the Authorized signatory of the REPD)*

**(RfS No. \_\_\_\_\_ dated \_\_\_\_\_)**

**Last Date for submission of documents related to Financial Closure – \_\_\_\_\_  
(18 months from Effective Date of PPA)**

Project Company Name \_\_\_\_\_ Project ID:- \_\_\_\_\_

LOA No. - \_\_\_\_\_ Dtd. - \_\_\_\_\_ Effective Date of PPA - \_\_\_\_\_

Scheduled Commissioning Date: - \_\_\_\_\_

**1.0 Financial Closure - (Clause 3.27 of the RfS, including subsequent amendments & clarifications)**

Details	Presently given in PPA
<b>Location</b>	
<b>Technology</b>	
<b>Certificate from all financial institutions</b>	<p><b><u>In case of tie up through Bank / Financial Institutions: -</u></b></p> <p>Document from Bank / Financial Institutions certifying arrangement of necessary funds by way of sanction of Loan (to be enclosed as <b><u>Annexure-I</u></b>).</p> <p><b><u>In case of Internal Resources: -</u></b></p> <p>Copy of Board Resolution, Audited/Certified Balance sheet, Profit &amp; Loss Account Statement, Bank Statement and Cash Flow Statement in support of availability of Internal resources of the Project Company and of the Company other than Project Company (in case the required funding will be raised from Company other than Project Company) (to be enclosed as <b><u>Annexure-I</u></b>).</p> <p><i>Performa for the cases where funding will be from Company other than Project Company is at 'A-I'.</i></p>

**Note:-**

- (i) Copy of Final Detailed Project Report (DPR) is to be enclosed as **Annexure – II A**.
- (ii) Undertaking by the Project Company that all Consents, clearances and permits required for supply of Power to NHPC as per the terms of PPA have been obtained is to be enclosed as **Annexure – II B**

**2.0** Copy of Agreement/ MOU entered into / Purchase Order with acceptance, for the supply of Plants and Equipment (to be enclosed as **Annexure-III**)

### 3.0 Technical Parameters of the Project

**3.0.1** Certificate from Project Company that Technical specifications and directives given in

Annexure-A of the RfS will be adhered to (to be enclosed as **Annexure-IV A**)

**3.0.2** Proposed Project configuration as part of DPR of the Project (to be enclosed as **Annexure-IV B**)

**3.0.3** Copy of Connectivity Agreement with CTU confirming technical feasibility of connectivity of the plant to CTU substation at the indicated location

**4.0 Ownership of the REPD:** Latest Shareholding Pattern of the Project Company (including Compulsorily Convertible Debentures (CCDs), Compulsorily Convertible Preferential Shares (CCPS) of the Project Company certified by Chartered Accountant (to be enclosed as **Annexure V A**)

Shareholding pattern is not required to be submitted by a Listed Company.

**Note:** Declaration of Shareholding Pattern of the Project Company is to be submitted to NHPC on monthly basis, i.e., by the 10<sup>th</sup> day of every month for shareholding status of the Company upto the end of the previous month, till 3 years from the date of commissioning of the project.

**5.0** The above checklist is to facilitate financial closure of projects. For any interpretation the respective provision of RfS / PPA shall prevail.

**Performa 'A-1**

**'For cases where funding will be from a Company other than Project Company**

**Board Resolution from \_\_\_\_\_ (Name of the Company from where therequired funding will be raised)**

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE COMPANY AT THEIR MEETING HELD ON \_\_\_\_\_ AT THE REGISTERED OFFICE OF THE COMPANY

RESOLVED that approval of the Board be and is hereby accorded to the company extending unconditional and full financial support whether by way of equity, debt, or a combination thereof, towards meeting the full project cost of Rs. \_\_\_\_\_ (in words and figures) to M/s \_\_\_\_\_ (Name of Project Company), a company within the meaning of The Companies Act, 1956 and/or The Companies Act, 2013, and having its registered office at \_\_\_\_\_ which was selected by NHPC to develop the.....MW Solar Power Project for generation and sale of Solar Power under the RfS No. \_\_\_\_\_ in respect of which Power Purchase Agreement (PPA) was signed between NHPC and \_\_\_\_\_ (Name of Project Company). Funds will be released for the project as per the request of \_\_\_\_\_ (Name of Project Company) to meet the financial requirement for the said Project.

**Board Resolution from \_\_\_\_\_ (Project Company)**

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE COMPANY AT THEIR MEETING HELD ON \_\_\_\_\_ AT THE REGISTERED OFFICE OF THE COMPANY

RESOLVED that approval of the Board be and is hereby accorded to the Company which was selected by NHPC to develop the.....MW Solar Power Project for generation and sale of Solar Power under the RfS No. \_\_\_ in respect of which Power Purchase Agreement (PPA) was signed between NHPC and the Company, to request and undertake to accept unconditional and full financial support and getting release of funds for project as per requirement from the Company

i.e. \_\_\_\_\_, a Company within the meaning of The Companies Act, 1956 and/or The Companies Act, 2013, and having its registered office at \_\_ whether by way of equity, debt, or a combination thereof for meeting the financial requirements of the project being developed by the Project Company.

Further Resolved that in the event the Company i.e. \_\_\_\_\_, agrees to extend full financial support as sought above, Sh. \_\_\_\_\_, Director, Sh. \_\_\_\_\_, Director.... be and are hereby severally or collectively authorized to accept any terms and conditions that may be imposed by \_\_\_\_\_ (Name of the Company), for extending such support and that they are also severally or collectively authorized to sign such documents, writings as may be necessary in this connection.

**Annexure – 3**

**COPY OF PPA and PSA**

**POWER PURCHASE AGREEMENT**  
**FOR**  
**PROCUREMENT OF .....MW ISTS CONNECTED 'FIRM & DISPATCHABLE' RE**  
**POWER WITH ENERGY STORAGE SYSTEMS (ESS)**

**ON LONG TERM BASIS**

**Between**  
**-{Insert Name of RE Power Generator}**  
**And**  
**NHPC Limited**

..... { Insert Month and Year}

## INDEX

1	ARTICLE 1: DEFINITIONS AND INTERPRETATION
2	ARTICLE 2: TERM OF AGREEMENT
3	ARTICLE 3: CONDITIONS SUBSEQUENT
4	ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT
5	ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMENCEMENT OF SUPPLY
6	ARTICLE 6: DISPATCH AND SCHEDULING
7	ARTICLE 7: METERING
8	ARTICLE 8: INSURANCES
9	ARTICLE 9: APPLICABLE TARIFF
10	ARTICLE 10: BILLING AND PAYMENT
11	ARTICLE 11: FORCE MAJEURE
12	ARTICLE 12: CHANGE IN LAW
13	ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION
14	ARTICLE 14: LIABILITY AND INDEMNIFICATION
15	ARTICLE 15: ASSIGNMENTS AND CHARGES
16	ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION
17	ARTICLE 17: MISCELLANEOUS PROVISIONS
	APPENDIX-A: DETAILS OF TIE UP FOR POWER FROM ANY OTHER SOURCE/ESS BY RPD/RE-PG (AS PER <b>ARTICLE E</b> ) (IF APPLICABLE)
	APPENDIX-B: COPY OF AGREEMENTS BETWEEN RPD/RE-PG & ANY OTHER SOURCE GENERATOR/ESS (AS PER <b>ARTICLE F</b> ) (IF APPLICABLE)
	SCHEDULE 1: POWER SALE AGREEMENT (PSA)
	SCHEDULE 2:FORMAT OF PERFORMANCE BANK GUARANTEE (PBG) & PAYMENT ON ORDER INSTRUMENT (POI)
	SCHEDULE 3: COMMISSIONING PROCEDURE
	SCHEDULE 4: ILLUSTRATIVE CALCULATION - PENALTY FOR NOT MEETING THE STIPULATED AVAILABILITY AND SUPPLY OF ENERGY



This Power Purchase Agreement is made on the [Insert date] day of [Insert Month] of [Insert Year] at Faridabad.

Between

**-(Insert name of RE Power Generator)** a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [Insert Registered Office Address] (hereinafter referred to as “RE Power Generator or RE-PG ” or RE Power Developer or RPD, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the First Part;

And

**NHPC Limited**, a company incorporated under the Companies Act 1956, having its registered office at NHPC Office Complex, Sector-33, Faridabad, Haryana-121003 (hereinafter referred to as “NHPC” or Intermediary procurer, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the Second part.

The RE-PG or RPD and NHPC are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. **NHPC** is a Government of India Undertaking and intends to facilitate the development of ISTS connected Renewable Energy Power projects coupled with Energy Storage Systems (hereinafter referred to as ESS) in India for sale of Firm & Dispatchable RE Power generated to the Distribution Licensees in the States to enable them to procure RE Power coupled with storage for due fulfillment of their Renewable Purchase

Obligations (RPO) / Storage Power Obligations (SPO) specified under the Electricity Act, 2003 / Gol orders or notifications;

- B. **NHPC**, as an Intermediary Procurer and in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems, issued by Ministry of Power, Government of India, vide resolution no. 23/03/2023-R&R dated 09.06.2023 (including subsequent amendments and clarifications thereof) if any, read with Electricity (Amendment) Rules 2022 dated 29th December 2022 and its subsequent amendments, issued until \_\_\_\_\_ [Enter the last date of bid submission of the RfS] has issued the Request for Selection (hereinafter referred to as RfS) No.....dated... including its subsequent amendments and clarifications for selection of RE-PGs / RPDs for development of 1500 MW firm & dispatchable grid connected RE power projects coupled with ESS on anywhere in India basis under Tariff Based Competitive Bidding (TBCB) process.
- C. NHPC has been designated as a Renewable Energy Implementing Agency (REIA) for developing and facilitating the establishment of the Grid connected RE Power capacity in India in terms of the above Policy of the Government of India.
- D. The .....(Name of RPD/RE-PG) has been declared as 'successful bidder' in the Competitive Bidding Process (against the RfS No. [Insert RfS No.] dated [XX.XX.XXXX] issued by **NHPC**), for supply of Contracted Capacity of .....MW Firm and Dispatchable RE (FDRE) Power from ISTS- Connected Renewable Energy (RE) Power Projects with ESS through development, generation and supply of electricity from the..... [Insert proposed combined RE Capacity] MW RE Power Project to be established by RPD/RE-PG at .....district of .....(State) in India with an obligation on the RPD/RE-PG to arrange for and ensure the Power generation and supply from ISTS-connected Renewable Energy Power Projects with ESS (generally referred to as RE Power project) ensuring Firm and Dispatchable RE (FDRE) Power supply to NHPC as an Intermediary Procurer to enable the onward supply of such electricity by NHPC to the Buying Utility(ies) [as defined] on back to back basis under Power Sale Agreement(s).
- E. The RPD/RE-PG vide its Agreement(s) dated ..., (if applicable) has tied up for power from any other source/ESS for complementing the RE Power for the Firm and Dispatchable RE (FDRE) Power supply under this Agreement. However, such tie-up for the power from any other source has been carried out by the RPD/RE-PG at its own risk and cost and holding NHPC indemnified and harmless. Irrespective of the contractual arrangement between the RE-PG and Power Generator of any other source/ESS, all the generator related liabilities, under the Guidelines and the PPA

hereunder, shall be of the RPD/RE-PG. The details of such tie-ups are annexed in Appendix A to this Agreement (Appendix A to give full details of each of such generators including the location of the project, MW capacity contracted, concerned RLDCs to schedule etc.).

- F. The RPD/RE-PG has executed independent bilateral agreements on the dates and as per the details mentioned in Appendix A with the other RE Source Generator(s) for confirmation of their binding obligations to complement the RE Power Generation in the manner specified in this Agreement (read along with RfS Documents) with the required Power to ensure the Firm and Dispatchable RE (FDRE) Power availability and the agreement is attached to this Agreement as Appendix B.
- G. NHPC, based on the above, has issued the Letter of Award (LoA) vide No..... dated.....in favour of the RPD/RE-PG for the development and establishment RE Project in the State(s) of ..... and in the territory [Insert name of the RLDCs] and supply of Firm and Dispatchable RE (FDRE) Power for a Contracted Capacity of .....MW as per the terms and conditions contained in the RfS including amendments and clarifications thereto, the standard draft of this Power Purchase Agreement circulated at the time of the bidding and other bidding documents as well as the conditions contained in the aforementioned Letter of Award;
- H. Pursuant to the issuance of LOA by **NHPC** to the RPD/RE-PG, the RPD/RE-PG has agreed to set up the RE Power Project of ..... MW capacity in the state of .....
- I. **NHPC** has agreed to purchase such ISTS connected Firm & Dispatchable RE Power from RPD/RE-PG as an Intermediary Procurer and sell the quantum of contracted capacity to the State Distribution Licensees in the State of ..... (hereinafter referred to as the 'Discom(s)') on back to back basis as per a binding and enforceable Power Sale Agreement (hereinafter referred to as PSA) to be entered into / already entered with Discom(s) as per the provisions of the said guidelines of MoP and RfS.
- J. **NHPC**, in pursuance of the Letter of Intent issued to the RPD/RE-PG, has signed the PSA dated .....with the Discom(s) with due regulatory approvals required to be taken by the Buying Utility(ies), as per the Conditions Precedent contained in this Agreement and to sell such power as per the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects with Energy Storage Systems, issued by Ministry of Power, Government of India, vide resolution no. 23/03/2023-R&R dated 09.06.2023 (including subsequent amendments and clarifications thereof );

- K. **NHPC** agrees to procure power from the RPD/RE-PG and the RPD/RE-PG has agreed to sell power to NHPC up to the contracted capacity @Rs ...../kWh at the levelized Tariff offered by RPD/RE-PG as per the terms of this agreement.
- L. The Parties have agreed to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by RPD/RE-PG to **NHPC**, as per the terms and conditions of this Agreement.
- M. The RPD/RE-PG has submitted the Performance Bank Guarantee (PBG)/ 'Payment on order instrument' as per provisions of RfS to **NHPC** amounting to Rs ..... with a validity of ..... months
- N. **NHPC** shall be the trading licensee to Act on behalf of ..... to undertake trading of such purchase of RE Power from RPD/RE-PG and resell the Power to Discom(s) for fulfilling the obligations assumed by **NHPC** in this agreement.

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

**1 ARTICLE 1: DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed thereunder, including those issued / framed by the Central 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”	:	shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 and wherever the context so requires the State Electricity Regulatory Commission referred to in section 82 / or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
“Availability”	:	Availability of the Contracted Capacity to its full capacity shall, in respect of any 15-minute period or any duration as directed by CERC from time to time (time-block), mean the capacity of the Power (in MW) to the extent it is offered by the RPD / RE-PG to generate and supply electrical power equal to a maximum of Contracted Capacity at the Delivery Point, after accounting for auxiliary consumption, and

		<p>transmission losses upto the Delivery Point, and for any month, the total such time block during that month or Contract Year. In case of multiple points of injection comprising the Delivery Point, Availability shall be reckoned to the extent of electrical power offered at each point of injection, subject to a maximum capacity equal to Contracted Capacity.</p> <p>For avoidance of doubt, the Parties agree that Availability shall, during the month and the Contract Year when part commencement of supply occurs, be determined with reference to the number of remaining time blocks in such month / Contract Year corresponding to such full / part Contracted Capacity for which supply has commenced and shall be determined likewise for any single day of operation.</p> <p>It shall be the obligation of the RPD to arrange for the declaration of a composite availability of the RE Power and the Energy Storage System as per configuration as specified under Appendix A to ensure Firm and Dispatchable RE Power supply of the declared availability of the total quantum of power in MW, as per provisions of this Agreement.</p> <p>The Parties also agree that the determination of Availability here under shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and dispatch of electricity under Applicable Laws and the rules and regulations thereunder.</p>
“Awarded Capacity”	:	Shall mean ..... MW [enter the capacity as awarded by NHPC as per the LoA]
“Backdown”	:	Means part of Contracted capacity available for scheduling but not scheduled based on instructions from / Buying Utility/SLDC /RLDC, as the case may be;
“Bill Dispute Notice”	:	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Bulk Consumer”	:	shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulations, 2023 as amended from time to time;
“Business Day”	:	shall mean with respect to RPD/RE-PG and NHPC, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi and [insert name of State where RPD/RE-PG Registered Office is located] both;
“Buying Entity” or “Buying Utilities” or “End procurer”	:	shall mean any Discom/distribution licensee(s)/consuming entities/open access consumers that requires RE Power to fulfil its RPO under respective RPO regulations / Energy Storage Obligations as per the Government of India’s orders or notifications.; unless otherwise intimated in writing separately;
“Capacity Utilization Factor” or “CUF”	:	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 as amended from time to time. However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted

		<p>Capacity at the “Delivery / Inter- connection /Metering Point”;</p> <p>In any Contract Year, if ‘X’ MWh of energy has been metered at the Delivery Point for ‘Y’ MW Project capacity, <math>CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%</math>;</p> <p>Declared annual CUF for this Project shall be _..... % (to be revised as applicable).</p>
“CERC”	:	shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“Change in Law”	:	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commissioning”	:	The Project will be considered as commissioned if all equipment as per rated Project Capacity along with proportionate capacity from any other source (as detailed under Appendix-A) as declared in the Firm and Dispatchable Power configuration, has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA read along with RfS and shall have the meaning ascribed thereto in Article 5 of this Agreement;
“Commercial Operation Date (COD)”		<p>shall mean the date on which the commissioning certificate is issued by the commissioning committee constituted by [insert name of appropriate agency] upon successful commissioning of the full capacity of the RE Project or the last part capacity of the RE Project as the case may be; Such date of the issuance of Commissioning Certificate shall</p> <p>be deemed to be the date on which RPD/RE-PG has successfully demonstrated the compliance of the all requirements for the commissioning as well as commercial operation for the entire Contracted Capacity and commencement of supply of Firm and Dispatchable power of full contracted capacity as per provisions of PPA read along with provisions of the RfS.</p>
“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;
“Commencement of Supply Date (CSD)”	:	shall mean the actual date of supply of power of the contracted capacity subsequent to COD.
“Consents, Clearances and Permits”	:	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the 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 RPD/RE-PG Preliminary Default Notice or NHPC 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: in the financial year in which the CSD would occur, the Contract Year shall end on the date immediately before the CSD and a new Contract Year shall commence once again from the CSD 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 ISTS connected..... MW (AC) contracted with NHPC for supply by the RPD/RE-PG to NHPC at the Interconnection point/Delivery Point from the RE Power Project for onward sale to Discom(s) namely ..... (.....) who have signed the PSA (s) with NHPC for purchase of such Power;
"Cumulative Availability"	:	Shall mean for any period, the average of the daily Availability for all the time blocks during the such period / Month / Contract Year (as applicable) expressed as percentage of the Contracted capacity in MW.
"Day"	:	shall mean a day, if not a Business Day, the immediately succeeding Business Day;
"Declared Capacity" or "Offered Capacity" or "Offered Power"	:	<u>shall mean the schedule (in MW) as declared by the developer at the Delivery Point (ISTS Substation) for any time-block of the day as defined in the Grid Code.</u>
"Delivery / Inter-connection / Metering Point"	∴	Shall mean the point at 220 kV or above at the CTU Sub Station where the power from the RE Power Project is injected into the Inter State Transmission System (ISTS). Any cost of building transmission line from RE Project to/ Inter-connection / Metering Point/ delivery point, Transmission losses/charges up to Inter-connection / Metering Point/ delivery point shall be borne by RPD/RE-PG. The RPD/RE-PGs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised or substituted from time to time. "Delivery Point" for the supply of power from any other source/ESS (as detailed under Appendix-A) shall mean the interconnection point at ISTS network, as detailed under Appendix-A. Pursuant to Article 4.2.7, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the RPD/RE-PG and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Utilities. In case it is paid by NHPC on behalf of Buying Utilities /

		RPD/RE-PG, the same shall be recovered from the Buying Utilities / RPD/RE-PG (as applicable);
“Discom(s)” or power distribution company of the State	:	shall mean the distribution utility of the ..... State namely .....(.....) who have signed the back to back PSA (s) with <b>NHPC</b> for purchase of RE Power to be generated and supplied by the RPD/RE-PG as per this Agreement. It is clarified that all obligations of NHPC under this Agreement shall be deemed to be the obligations of Discoms / Buying Entities with which NHPC has signed/will sign PSA (s).
“Dispute”	:	shall mean any dispute or difference of any kind between <b>NHPC</b> and the RPD/RE-PG, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
“Due Date”	:	shall have the same meaning ascribed thereto in Article 10 of this Agreement;
“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 regulation (s) made thereunder from time to time along with amendments there to and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Energy Accounts”	:	shall mean the Regional Energy Accounts/State Energy Accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; NHPC reserves the right to choose for many of the above, i.e. JMR/SEA/REA, based on the acceptance of same by the Discom(s).
“Event of Default”	:	shall mean the events as defined in Article 13 of this Agreement;
“Energy Storage Systems” or “ESS”	:	shall mean the system(s) installed in addition to the RE power capacity as part of the Project, that can capture energy produced at one time for use at a later time;
“Expiry Date”	:	shall mean the date occurring twenty-five (25) years from the Scheduled Commencement of Supply Date (SCSD) or the date of commissioning of full project capacity, whichever is later, unless extended by the Parties as per this Agreement;
“Financing Agreements”	:	shall mean the agreements pursuant to which the RPD/RE-PG has got financing for the Power Project including the loan agreements, 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 <b>NHPC</b> ;
“Firm and Dispatchable RE power”	:	shall mean the power profile configuration that is defined in the RfS, which matches the demand profile specified by the Buying Entity for the particular time-block of the day, to be met by RE power sources and will include Supply of



		contracted capacity of Firm and Dispatchable Power from ISTS- Connected Renewable Energy (RE) Power Projects based on generating system(s) including RE, wind or any other renewable resource as defined by MNRE for supply of RE Power combined with Energy Storage System (ESS).
“Firm and Dispatchable RE power configuration”	:	Shall mean the rated capacities of the various Project components for achieving the Contracted capacity and shall be as follows: RE PV component: .....MW (AC) and .....MWp (DC) (DC/AC Ratio:.....) Wind power component: .....MW ESS component: .....MW/MWh Power from any other sources .....MW (if applicable) (to be filled as per project configuration) Annual CUF from the contracted capacity:.....
“Force Majeure” or “Force Majeure Event”	:	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines” or “Scheme”	:	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems issued vide Gazette Resolution no. 23/03/2023-R&R dated 09.06.2023, including subsequent amendments and clarifications issued / notified till the last date of Bid submission against the referred RfS;
"Grid Code" / “IEGC” or “State Grid Code”	:	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Intermediary Procurer” or “Intermediary Agency”	:	shall mean <b>NHPC Limited (NHPC)</b>
“Invoice” or “Bill”	:	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Interconnection Facilities”	:	shall mean the facilities on RPD/RE-PG’s side and/or the power generator(s) of any other source/ESS (as under Appendix-A), as the case may be, 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;
“Insurances”	:	shall mean the insurance cover to be obtained and maintained by the RPD/RE-PG in accordance with Article 8 of this Agreement;
Implementation Support		Shall mean the agreement to be entered into by the RPD/RE-PG as provided in Article 8.1.1 of this Agreement

Agreement"		
"Indian Governmental Instrumentality"	:	shall mean the Government of India, Governments of [insert name of State] and also any other State Government or Union Territory and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above State Government(s) or both, any political subdivision of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Letter of Credit" or "L/C"	:	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Law"	:	shall mean in relation to this Agreement, all laws in force in India including Electricity Laws of 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;
"Late Payment Surcharge"	:	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"MNRE"	:	Shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	:	shall mean a period of thirty (30) days from (and excluding) the date of the event, where specified, else a calendar month;
"National Solar Mission or NSM"	:	shall mean the National Solar Mission launched by the Government of India vide resolution No.5/14/2008-P&C dated 11 <sup>th</sup> January 2010, as amended from time to time;
"Operating Period"	:	shall mean the period commencing from the first part commissioning /SCSD (as applicable), until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Open Access Charges"	:	shall mean the charges levied by the CTU/ RLDC of the State wherein the RE Power Project is located for the grant of Open Access as defined in Electricity Act 2003 and amended time to time;
"Party" and "Parties"	:	shall have the meaning ascribed thereto in the recital to this Agreement;
"Part Commencement of Supply of Power"	:	Shall mean Part Commencement of Supply of Power of the Project (accepted by the Procurer / buying entity) subject to the condition that the Minimum Capacity for acceptance of first and subsequent part(s) shall be 50 MW AC (with the last part being the balance Contracted Capacity), without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. However, the SCSD will not get altered due to part-commencement of supply of power. Further, irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for the period specified in the RfS.

“Payment Security Mechanism”	:	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee”	:	shall mean the irrevocable unconditional bank guarantee, submitted by the RPD/RE-PG to <b>NHPC</b> as per Rfs;
“Payment on order instrument” or “POI”	:	shall mean Letter of Undertaking from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC) [the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP)], to pay in case situation of default of generator in terms of PPA arises. Such Letter(s) will have same effect as that of a Bank Guarantee issued by any public sector bank. Such "Payment on Order instrument" would have terms and conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the Procurer on demand within stipulated time.
“Pooling Substation / Pooling Point”	:	shall mean a point / substation as identified by the Discom(s) where more than one RE project may connect to a common transmission system. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the RPD(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV or above. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual Projects. The losses in the common transmission system up to the Delivery point shall be apportioned to the individual projects for the purpose of billing, based on generation side meter reading i.e. at the interconnection point of the pooling substation. In such case, it shall be responsibility of the RPD/RE-PG to obtain and furnish the meter reading jointly by the RPD/RE-PG(s), and any competent authority (State Government or Central Government) as applicable.
“Power Project” or “Project” or “RE Power Project”	:	shall mean the renewable energy generation facility owned by the RPD/RE-PG, comprising RE Power Generating systems, Wind Power Generating systems, or a combination thereof, for supply of RE power, including ESS (which may be leased/tied-up from a third party), having single or multiple point(s) of injection into the grid at Interconnection/ Delivery/ Metering Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control systems and metering. This shall include all units and auxiliaries such as water supply, treatment or storage facilities; bays for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this

		<p>Agreement.</p> <p>It may be noted that the sources of generation and ESS, if any, may be co-located, or may be located at different locations, to be considered a single Project. However, it is clarified that ESS charged using a source other than RE power would not qualify as RE power. Further, the ESS offered with a project under this RfS should only be charged from RE power capacity. The same RE power shall either be considered for getting compensation in case of curtailment or for charging of ESS;</p>
“Project Capacity or Installed Capacity”	:	<p>shall mean the rated capacity of the installed Project components, i.e. RE PV and Wind Power generating components, along with ESS Components of the Project, as committed in the PPA (mentioned under Appendix-A). This shall be equal to the “installed capacity” for which connectivity is sought by the RPD/RE-PG under the GNA Regulations.</p> <p>It is clarified that arithmetic summation of the rated capacities of Wind and/or RE PV components of the Project and from any other sources/ESS can be more than the Contracted Capacity.</p> <p>It is further clarified that the summation of generation schedule of RE Power and Power from any other source/ESS cannot be more than the Contracted Capacity in any time block.</p>
“Peak Hours”	:	shall mean the four hours of scheduling hours of a Day as declared by RLDCs of the respective Buying Entity(ies) as per the relevant CERC regulations.
“Power Sale Agreement” or “PSA”	:	shall mean the back to back power sale agreement entered between the Buying Entity / Discoms and NHPC for onward sale of power being procured under this Agreement as per the provisions of Guidelines and RfS;
“Preliminary Default Notice”	:	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Financing Arrangements/ Financial Closure”	:	shall mean arrangement of necessary funds by the Project Developer either by way of commitment of funds by the company from its internal resources and/or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance;
“Prudent Utility Practices”	:	<p>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:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</p> <p>b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;</p>
“RBI”	:	shall mean the Reserve Bank of India;
“RPC”	:	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating

		integrated operation of the power system in that region;
“RLDC”	:	shall mean the concerned Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
“Request for Selection” or RfS or “Bidding Documents”	:	shall mean Request for Selection Documents issued by NHPC vide No.....dated.....including subsequent clarifications, amendments and addenda thereto.
“RE Power” or “Renewable Power” or Renewable Energy Power”	:	shall refer to power from RE Power Generating Systems, Wind Power Generating Systems, Wind RE hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS) commissioned in pursuance of bidding process as per guidelines. It is clarified that ESS charged using a source other than RE power would not qualify as RE power.
“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;
Scheduled Commencement of Supply Date (SCSD)	:	<b>Scheduled Commencement of Supply Date (SCSD)</b> shall mean [Insert a date as on <b>24</b> months from the Effective Date]
“SERC”		“SERC” shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
“SLDC”	:	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“Solar Photovoltaic” or “Solar PV”	:	shall mean the Solar Photo Voltaic power project / Generating Systems with or without Energy Storage Systems (ESS), as the case may be. ;
“State Transmission Utility” or “STU”	:	shall mean the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Electricity Act 2003
“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”	:	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“Trading Margin”	:	Shall mean margin payable towards the services provided by <b>NHPC</b> for sale of RE power to Discom(s) or any other entity, which shall be <b>Rs. 0.07/kWh</b>

"Unit Scheduled Commencement of Supply Date (USCSD)"	:	"Unit Scheduled Commencement of Supply Date (USCSD)" shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Power Project to the Delivery Point and availability / installation of 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;
"Week"	:	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wind Power Project"	:	shall mean the wind power project that uses wind energy for conversion into electricity through wind turbine generator;

## 1.2 Interpretation

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" / "Lac" means a reference to one tenth of a million (1, 00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous

proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 For avoidance of any doubt, it is clarified that irrespective of the contractual arrangement between the RPD /RE-PG and Power Generator of any other source/ESS, all the generator related liabilities, under the Guidelines and the PPA hereunder, shall be of the entity signing the PPA, and recognized as ‘RE Power Generator’ (RE-PG). Further, subject to the provisions of this Agreement, NHPCs liability is limited to RPD/RE-PG only and NHPC shall not be responsible for any dispute between RPD/RE-PG & any other source generator(s).

1.2.19 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:

1. Power Purchase Agreement
2. RfS Documents

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

### **2.1 Effective Date and Condition Precedent**

2.1.1 This Agreement shall come into effect from the date of signing of this PPA by both the parties i.e. .... and such date shall be the Effective Date for the purpose of this Agreement.

2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and NHPC's trading margin, and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 60 days from the date of submission of petition to the Appropriate Commission or within 120 days from the date of Power Sale Agreement (PSA), whichever is more, tariff will be adopted by the Appropriate Commission and all requisite approval including approval of PSA (including adoption of tariff) from its State Electricity Regulatory Commission and /or CERC (as applicable) shall be obtained by Discom(s),, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between NHPC and the Discom(s). The Parties agree that in the event, the order of adoption of tariff and the approval of PPA & PSA, as mentioned above is not issued by the SERC and/ or CERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply.

2.1.4 Pursuant to Article 4.2.7, If parties have mutually extended the time period as stipulated under Article 2.1.3 and the order from the SERC and/ or CERC (as applicable) is issued within 60 days of submissions before Appropriate Commission or within 120 days from the date of Power Sale Agreement (PSA) whichever is more, no extension for Financial Closure or Scheduled Commencement of Supply Date (SCSD) Scheduled Commencement of Supply Date shall be given. However, if SERC and/ or CERC (as applicable) order is obtained after 60 days of submission of the petition, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commencement of Supply Date (SCSD) Scheduled Commencement of Supply Date



for equal number of days for which the SERC and / or CERC order has been delayed beyond such 60 days of submission or within 120 days from the date of Power Sale Agreement (PSA) whichever is more,

In case of any difference between the date of signing of PPA and the Effective Date of the PPA, which is attributable to the RPD/RE-PG, such duration between the two dates (in terms of days), will be deducted from the above extension in the corresponding milestones.

Provided further that in case, the order of adoption of Tariff from CERC and/or SERC as required under Article 2.1.3 above is not received or delayed, either Party shall not be liable for payment of any compensation to other Party for any loss or damage on account of such delay in availability or non-availability of the approval of CERC/SERC, as the case may be.

## **2.2 Term of Agreement**

2.2.1 Subject to Article 2.1, 2.3 and 2.4, 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 agreed terms and conditions between the RE Power Developer (RPD/RE-PG), NHPC and the Discom(s).

2.2.2 The RPD/RE-PG 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 NHPC, NHPC 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 NHPC or RPD/RE-PG terminates the Agreement, pursuant to Article 13 of this Agreement or if the terms of Conditions Precedent mentioned in Article 2.1.2 are not satisfied.

2.3.2 In case the PSA corresponding to the Contracted Capacity is terminated or modified for a reduced capacity during the Term of this Agreement, the event will result in Termination of this Agreement or pro-rata reduction in Contracted Capacity of this Agreement, as the case may be. In such scenario, any termination compensation payable by the respective Buying Entity, will be passed on to the RPD/RE-PG, after deducting NHPC's costs, if any.

## **2.4 Survival**

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

### **3 ARTICLE 3: CONDITIONS SUBSEQUENT**

#### **3.1 Satisfaction of conditions subsequent by the RPD/RE-PG**

The RPD/RE-PG agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the RPD/RE-PG's own cost and risk within [Insert date as per RfS conditions] from the Effective Date (or extensions, if any) except at sl. No. (d) below, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by NHPC:

- a) The RPD/RE-PG shall obtain all Consents, Clearances and Permits required for supply of power to NHPC as per the terms of this Agreement. NHPC shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the RE Power project. The RE Power Developer shall, on his own, obtain permissions/sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by..... or NHPC in regard to grant of such consents and permits or any other approval to be taken by the RPD/RE-PG shall only be a voluntary endeavor with no intention of being bound by any legal or binding obligation.
- b) The RPD/RE-PG shall make Project Financing Arrangements for its Projects(s) and shall provide necessary documents to NHPC in this regard;
- c) The RPD/RE-PG shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the CTU System for confirming the evacuation of power by the Scheduled Commencement of Supply DateSCSD;
- d) The RPD/RE-PG shall furnish the necessary documents to establish possession in the name of the Project Developer of the required land/ Lease Agreement for a

period not less than the complete term of PPA on or before the Scheduled Commencement of Supply Date SCSD;

- e) The RPD/RE-PG shall fulfill the technical requirements according to criteria mentioned under Annexure A of Rfs – Technical parameter of PV module and various other components for use in grid connected solar power plants under Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected RE Power Projects with Energy Storage Systems, issued by Ministry of Power, vide resolution no. 23/03/2023-R&R dated 09.06.2023 (including subsequent amendments and clarifications thereof).
- f) The RPD/RE-PG shall submit to **NHPC** the relevant documents as stated above, complying with the Conditions Subsequent, within \_\_\_\_\_ days period from the Effective Date.
- g) The RPD/RE-PG shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point
- h) The RPD/RE-PG shall furnish the location of the projects at the time of financial closure. At this stage, RPD/RE-PG shall also be required to furnish letter from CTU confirming technical feasibility of connectivity of the plant to CTU substation at the indicated location. The change of location of the project shall not be permitted after Financial Closure.
- i) Any other details sought as per the checklist communicated by NHPC in line with Annexure-C of the RfS.

### **3.2 Consequences of non-fulfillment of conditions subsequent**

- 3.2.1 In case of a failure to fulfill the conditions subsequent and/or submit the documents as above, NHPC shall encash the Performance Bank Guarantee /Payment on Order Instrument submitted by the RPD/RE-PG, terminate this Agreement by giving a prior notice to the RPD/RE-PG in writing of at least seven (7) days unless due to Force Majeure Event. The termination of the Agreement shall take effect upon the expiry of the 7<sup>th</sup> day of the above notice. Provided that the RPD/RE-PG can seek an extension of time for fulfilling the conditions subsequent without there being any impact on the Scheduled Commencement of Supply Date, by making advance payment of an amount of **Rs. 1,000/- per day per MW + 18% GST to NHPC**. In case of any delay in depositing the extension charge, RPD/RE-PG shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to NHPC is

more than 7 days, the termination of the Agreement shall take effect upon the expiry of such 7th day. The extension given in terms of this Article will not have any impact on the obligation of the RPD/RE-PG to achieve Commencement of Supply of Power by the Scheduled Commencement of Supply Date. Any such amount paid by the RPD/RE-PG, shall be returned to the RPD/RE-PG without any interest on achievement of successful commissioning within the Scheduled Commencement of Supply Date on pro-rata basis, based on the Contracted Capacity for supply of power has commenced as on Scheduled Commencement of Supply Date (SCSD). In case of any delay in commissioning of the project beyond the Scheduled Commencement of Supply Date, the amount as deposited along with the Performance Guarantee shall be subject to appropriation by NHPC towards liquidated damages for delay under this Agreement.

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

3.2.3 In case of the inability of the RPD/RE-PG to fulfil any one or more of the conditions specified in Article 3.2.1 due to any Force Majeure event the time period for fulfilment of the Conditions Subsequent as mentioned in Article 3.2.1, shall be extended for the period of such Force Majeure event and shall also lead to an equal extension in the Scheduled Commencement of Supply Date.

### **3.3 Performance Bank Guarantee /Payment on Order Instrument**

3.3.1 The Performance Bank Guarantee /Payment on Order Instrument having validity of up to (& including) the date as on 9 months after the Scheduled Commencement of Supply Date of the Project, and of @ INR ..... Lakhs/MW (Rs. ....../MW) furnished by RPD/RE-PG under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity by the Scheduled Commencement of Supply Date.

3.3.2 The failure on the part of the RPD/RE-PG to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the RPD/RE-PG.

3.3.3 If the RPD/RE-PG fails to commence supply of power from the Scheduled Commencement of Supply Date (SCSD) specified in this Agreement or any further extension thereof in terms of this Agreement, subject to conditions mentioned in Article 4.5, NHPC shall be entitled encash the Performance Bank Guarantee/ Payment on Order Instrument (POI) and appropriate the amount together with any amount deposited in terms of Article 3.2.1 towards the liquidated damages payable by RPD/RE-PG, without prejudice to the other rights of NHPC under this Agreement.

In addition to the other remedies, this PBG/POI can be encashed to recover any damages/dues of the generator in terms of the PPA. It is hereby clarified that the damages/dues recovered by NHPC by encashing the PBG/POI, upon the default of the

generator under the PPA, shall be credited to the Payment Security Fund to be maintained by NHPC as per Article 10.4.9.

### **3.4 Return of Performance Bank Guarantee/ Payment on Order Instrument:**

3.4.1 Subject to Article 3.3, NHPC shall return / release the Performance Bank Guarantee/ Payment on Order Instrument within 45 days of the SCSD of the Project after adjustment of any liquidated damages / penalties due to delays in commencement of supply of power as per provisions stipulated in this Agreement

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

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

### **4.1 RPD/RE-PG's Obligations**

4.1.1 The RPD/RE-PG undertakes to be responsible, at RPD/RE-PG's own cost and risk, for:

- a) Land & associated infrastructure for development of the Project, Connectivity with the CTU System and all clearances related thereto; The RPD/RE-PG shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the CTU System for confirming the evacuation of power by the Scheduled Commencement of Supply Date and all clearances related thereto. On or before Scheduled Commencement of Supply Date, the RPD/RE-PG shall demonstrate possession of 100% (Hundred Percent) of the land identified for the Project in its name for a period not less than the complete Term of this Agreement. In this regard, the RPD/RE-PG shall submit documents/ Lease Agreement to establish possession/ right to use 100% of the required land in the name of the RPD/RE-PG. Whenever leasing of private land is involved, the lease should allow creation of a charge/ mortgage/ security interest in favour of the Project lenders/ investors/ third party investors in case of default of the RPD/RE-PG in relation to the PPA or loan agreement. The RPD/RE-PG shall submit a sworn affidavit from the authorized signatory of the RPD/RE-PG listing the details of the land and certifying that total land required for the Project is under clear possession of the RPD/RE-PG. and
- b) obtaining solely at its cost and responsibility all Consents, Clearances and Permits other than those obtained under Article 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; NHPC shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the RE Power project. The RPD/RE-PG shall, on his own, obtain

permissions/ sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by NHPC in regard to grant of such consents and permits or any other approval to be taken by the RPD/RE-PG shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation. and

- c) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices; and
- d) If applicable, RPD/RE-PG shall arrange for the power from any other sources (as detailed under Appendix-A) as per FDRE Configuration and make necessary binding arrangement providing absolute indemnity to NHPC from such Contract / Contractual Arrangement with such generator(s). The source and quantum of tied up capacity from any other source / ESS cannot change during the PPA tenure.
- e) the commencement of supply of power up to the Contracted Capacity to NHPC not later than the Scheduled Commencement of Supply Date and continuance of the supply of power throughout the term of the Agreement;
- e) connecting the Power Project switchyard with the ISTS connected Interconnection Facilities at the Interconnection/Delivery/Metering Point;
- f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- g) Maintaining its controlling shareholding (controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital) prevalent on the Effective Date of PPA in the Company/Consortium developing the project up to a period of 1 (One ) year after the Commencement of Supply Date (CSD) . However, transfer of shareholding within the same Group Companies of RPD/RE-PG may be agreed to by NHPC after the COD if NHPC is satisfied that there is no change in the controlling interest; and
- h) Obtaining Connectivity and executing connectivity agreement as per provision of GNA regulation issued by CERC, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities (RPD/RE-PG and Buying Entity) as indicated in the Detailed Procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, will be responsible for their respective obligation as notified in the Detailed Procedure irrespective of the provisions of the RfS, PPA and PSA. Transmission losses and charges up to Interconnection/ Metering point shall be borne by the RPD/RE-PG.

- i) The RPD/RE-PG shall be responsible for directly coordinating and dealing with Discom(s), Load Dispatch Centers, Regional Power Committees, and other authorities in all respects with regard to declaration of availability, scheduling and dispatch of RE Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the RPD/RE-PG and Discom(s) are the Grid connected entities and NHPC as intermediary procurers/trading licensee is not a Grid connected entity in respect of the RE Power contracted under this Agreement; and
- j) Fulfilling all obligations undertaken by the RPD/RE-PG under this Agreement.
- k) The RPD/RE-PG shall fulfil the technical requirements according to criteria mentioned under Annexure A of RfS –Technical requirement for Grid Connected Solar PV Power Projects under the Guidelines. The modules used in the Project shall be sourced only from the models and manufacturers included in List-I under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of invoicing of such modules. In case of wind capacity, the type-certified wind turbine models listed in Revised List of Models and Manufactures (RLMM) issued by MNRE as updated until the date of commissioning of the project will be allowed for deployment under the RfS. Further, the RPD/RE-PG shall also fulfill the “Technical Criteria of BESS/ESS” and any other applicable criteria (if any).
- l) Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.
- m) The scheduling and its punching thereof at different Regional Load Dispatch Centers (RLDCs)/ State Load Dispatch Centers (SLDCs) (including the injecting, intervening and buyer SLDCs/RLDCs) shall be the responsibility of Generator only. As part of scheduling of power from the Project, the RPD/RE-PG will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/ Discom, as per the Regulations in force, under intimation to NHPC. NHPC may facilitate in identification of any discrepancy and assist the RPD/RE-PG for its early rectification without any liability on NHPC. The RPD/RE-PG shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- n) Deviation Settlement Mechanism (DSM): For deviations from schedule, the DSM (Deviation Settlement Mechanism) shall be applicable as per the prevailing regulations. The DSM charges at the generator end shall be settled by the RE Power Generator.

- o) Making Payment Security Mechanism (PSM) Charges [Insert amount @ Rs. 0.02/kWh] as per clause 18.2 of the RfS, which states that: “As part of the Payment Security Mechanism as brought out in the PPA, the RPD/RE-PG shall undertake to pay PSM Charges @ Rs. 0.02/kWh to NHPC, by offering a commensurate discount in the monthly tariff payment being made by NHPC. Modalities of operationalization of the Payment Security Deposit will be notified by NHPC at appropriate stage, through necessary guidelines/orders.”
- p) After signing of PPA, the RPD/RE-PG shall apply for drawl NOC(s) from the respective STU(s) of the State as per the power mapping provided by NHPC.

#### **4.2 Information regarding Interconnection Facilities**

- 4.2.1 The RPD/RE-PG shall be required to obtain all information from CTU / STU / concerned authority with regard to the ISTS connected Interconnection Facilities necessary to enable it to design, install and operate Plant and all interconnecting apparatus/ equipment on the RPD/RE-PG’s side of the Delivery Point to enable delivery of electricity at the Interconnection/ Metering/Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the RPD/RE-PG at its own cost. It is to be noted that the summation of generation schedule of RE Power and Power from any other source cannot be more than the Contracted Capacity in any time block.
- 4.2.2 The responsibility of getting connectivity with the transmission system up to interconnection /Metering/Delivery point will entirely be of the RPD/RE-PG at its cost and responsibility. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall also be the responsibility of the RPD/RE-PG at his own cost. The maintenance of Transmission system upto the interconnection /Metering/Delivery point shall be the responsibility of the RPD/RE-PG.
- 4.2.3 The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the interconnection /Metering/Delivery Point shall be borne by the RPD/RE-PG and the same will not be reimbursed by NHPC or met by the Discom(s). In case of any delay in connectivity to the Project and non- availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the RPD/RE-PG, provisions of Article 4.9 shall be applicable.
- 4.2.4 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the RPD/RE-PG to the extent the delay is attributable to the RPD/RE-PG.
- 4.2.5 All costs and charges including but not limited to the wheeling charges and losses up to the interconnection /Metering/Delivery Point associated with this arrangement will also be borne by the RPD/RE-PG.



- 4.2.6 In case of RE parks, the metering point is the ISTS /In-STS pooling station with which the internal transmission from all the pooling sub-stations is connected. All expenses including wheeling charges and losses between the project and the metering point shall be paid by the RPD/RE-PG without any reimbursement by the Procurer /Buying entity /DISCOM.
- 4.2.7 ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of RE power till a certain date. In case the commencement of supply from the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, NHPC shall not bear any liability with respect to transmission charges and losses levied, if any. However, in case the commencement of supply from the Project gets delayed beyond the applicable date of ISTS waiver/extended SCSD as above, due to reasons attributable to the RPD/RE-PG, the liability of transmission charges and losses would be to the account of the RPD/RE-PG. Delay in Project commissioning beyond the deadline as stipulated by the Government of India, and treatment of ISTS charges and losses thereof, shall be dealt in line with the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (First Amendment) Regulations, 2023 dated 07.02.2023, and subsequent amendments and clarifications thereto, as applicable.
- 4.2.8 Treatment of power supplied from the ESS component, with respect to waiver of ISTS charges and losses, shall be governed by the applicable Rules/Orders issued by Ministry of Power/MNRE, read in conjunction with CERC's Orders and Regulations notified in this regard. Further, it is clarified that in case commissioning of the ESS component of the FDRE configuration gets delayed beyond the applicable date of waiver of ISTS charges and losses due to reasons solely attributable to the RPD/RE-PG, the liability of inter-state transmission charges and losses will be borne by the RPD/RE-PG.

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

- 4.3.1 Subject to the terms and conditions of this Agreement, the RPD/RE-PG undertakes to sell RE power (FDRE Configuration) to NHPC and NHPC undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.
- 4.3.2 Energy procured from the Project under this Agreement shall on back to back basis be allocated on a pro-rata basis, to all the Buying Entities which have signed their respective Power Sale Agreements with NHPC under the referred RfS. Any obligation

of NHPC being intermediary Procurer shall be deemed to be the obligation of Buying Entity(ies) with which NHPC has executed Power Sale Agreement.

#### **4.4 Right to Contracted Capacity, Energy & Availability**

4.4.1 Under this Agreement, procurement of contracted capacity shall be in power (MW) terms.

The RPD/RE-PG shall offer the Contracted Capacity for supply of Firm and Dispatchable RE (FDRE) power in a manner as specified under FDRE Configuration, for scheduling and procurement of power by the Buying Utility as per provisions of this Agreement. The RPD/RE-PG shall deliver the power to the Buying Utility as scheduled by the Buying Utility on a day ahead basis, as detailed out in Article 6.2 below. Further, the RPD/RE-PG shall be required to offer RE power during the peak hours as well as during off-peak hours in a manner such that the peak hour availability is minimum.....% on monthly basis and Annual CUF is minimum.....%. The RPD/RE-PG also commits to supply a minimum annual energy of.....MUs corresponding to annual CUF of -----% from RE sources as part of this Agreement. The Buying Utility shall be entitled to use the power from this Project for fulfillment of its RPO/SPO in the proportion of contracted capacity of each component in the Project respectively.

4.4.2 The RPD/RE-PG shall also be obliged to supply the Contracted Capacity with the Firm and Dispatchable RE Power configuration, keeping at least 90% Availability during the Peak Hours on monthly basis with minimum annual CUF of 40%. Peak hours will be four hours out of 24 hours as declared by RLDCs of the respective Buying Entity(ies) as per the relevant CERC regulation. For avoidance of doubt, in case of a Project being mapped to more than one Buying Entity falling under different RLDCs having separate hours designated as “Peak Hours”, the RPD/RE-PG shall have to meet the energy supply criteria for the sum of the peak hours in line with the provisions of the RfS/PPA. An illustration to this effect is brought out as follows:

Assuming the power is mapped to 3 Discoms, A, B, C with 100 MW being supplied to A, 200 MW being supplied to B and 300 MW being supplied to C, and having the following peak hours as per the respective RLDC regulations:

Peak hours for Discom A: 16:00 hrs. to 20:00 hrs.

Peak hours for Discom B: 08:00 hrs. to 10:00 hrs. and 20:00 hrs. to 22:00 hrs.

Peak hours for Discom C: 17:00 hrs. to 21:00 hrs.

The total power supply during the peak hours applicable for the RPD/RE-PG as per the above mapping will be required as follows (assuming 100% availability during peak hours):

Peak power supply during 08:00 hrs. to 10:00 hrs. = 200 MW

Peak power supply during 16:00 hrs. to 17:00 hrs. = 100 MW

Peak power supply during 17:00 hrs. to 20:00 hrs. = 400 MW

Peak power supply during 20:00 hrs. to 21:00 hrs. = 500 MW

Peak power supply during 21:00 hrs. to 22:00 hrs. = 200 MW

- 4.4.3 In case of the power being re-mapped /diverted to some other buying entities / Discoms, the RPD/RE-PG will have to comply with the peak hour supply requirement for that RLDC under which new Buying Entities / Discom is. In case of change in Peak hours as notified by the RLDCs, same will have to be complied by the RPD/RE-PG.
- 4.4.4 The performance criteria as per above shall not be applicable for the Contract Year ending on 31st March immediately after Commencement of Supply Date of the contracted capacity.
- 4.4.5 Any excess generation over and above the quantum specified under Article 4.4.1, may be purchased by NHPC at a tariff as per Article 9.4, only if Discom(s) consents to purchase such power. In order to allow optimization of operation of RE, the RPD/RE-PG is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer. The RPD/RE-PG may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer as per applicable regulations. However, it may be noted that at any instance of energy supply from the Project, priority shall be accorded to meet the energy requirements as per PPA, before selling any quantum of energy in the open market. Any instance of third-party sale of power from the Project by the RPD / RE-PG, while the demand specified in the PPA remains unfulfilled, shall constitute a breach of RPD's/RE-PG's obligations under the PPA and make the RPD/RE-PG liable for penalty @1.5 times of extant market rate/kWh (reference rate being the applicable rate on the Indian Energy Exchange (IEX)) for the quantum of such sale). The RPD/RE-PG may repower the Project at any stage, if required in order to meet the generation or availability requirement of this Project. In case at any point of time, the peak power from the Firm and Dispatchable Power configuration reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the RPD/RE-PG will have to forego the excess generation and reduce the output to the Contracted Capacity to ensure compliance with grid requirement and shall further be liable to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /RLDC/SLDC or any other competent agency.
- 4.4.6 Any energy produced and flowing into the grid before Scheduled Commencement of Supply Date (SCSD) shall not be to the account of or at the cost of NHPC / Buying

Entity(ies). NHPC may however agree to buy such power at a tariff as agreed to between NHPC and the Buying Entity (including NHPC's trading margin) as per the PSA, provided the Buying Utility consents for purchase of such power. Further, any addition to the installed capacity (including but not limited to solar panels and/or wind turbines) subsequent to commencement of supply of power for the full capacity/part capacity of the Project (as applicable), shall not be eligible for any future claims made by the RPD/RE-PG, seeking compensation on account of any changes in the applicable provisions covered under Change in Law as defined in this Agreement.

4.4.7 In case of multiple Project components, and if one or more such component (wind, or solar PV / other RE power generating system) is/are ready for injection of power into the grid, but the remaining component(s) is/are unable to commence supply of power, the RPD/RE-PG will be allowed to commence power supply from such component which is ready, outside the ambit of PPA, with first right of refusal for such power being vested with the Buying Entity. Subsequent to refusal of such power by the Buying Entity, the right of refusal shall vest with NHPC. In case Buying Entity/ NHPC decides to buy such discrete component's power outside the PPA, such power shall be purchased @ 50% of the PPA Tariff. In case the Buying Entity procures such power through NHPC, trading margin of 7 paise/unit will be applicable on such power procurement. The terms "SCSD" and "commissioning" as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations. The above scenario will be applicable until the RPD/RE-PG is ready to commence the supply of power as per the provisions of "Early and/or Part Commencement of Supply of Power" of the contracted capacity.

**4.4.8 Consequences of Shortfall in supplying / offering the Contracted Capacity -**

i) Subsequent to commencement of supply of power of first part capacity of the Contracted Capacity, if for any Contract year subsequent to commencement of SCSD, in case of shortfall in 90% availability during the Peak Hours (to be calculated on monthly basis) on account of reasons attributable to the RPD/RE-PG (such reasons could be any reason other than Force Majeure, Grid Non - Availability beyond control of the RPD/RE-PG (as applicable)), such shortfall in performance shall make the RPD/RE-PG liable to pay the liquidated damage provided in the PSA (Power Sale Agreement) as payable by NHPC to Buying Entity(ies) and shall duly pay such damages to NHPC to enable NHPC to remit the amount to Buying Entity(ies). The above damage shall be applied to the amount of shortfall in generation corresponding to the shortfall in availability during the peak hours to be calculated on monthly basis.

ii) If for any Contract Year, it is found that the RPD/RE-PG has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the RPD/RE-PG, on account of reasons primarily attributable to the RPD/RE-PG, such shortfall in performance shall also make the RPD/RE-PG liable to pay the liquidated damages.

iii) In case of shortfall in the availability of contracted capacity during peak hours and the supply of energy corresponding to minimum CUF as specified in Clauses 4.4.8 (i) and 4.4.8 (ii) respectively, for reasons attributable to RPD/RE-PG, the RPD/RE-PG shall be liable to pay to the Procurer, penalty for such shortfall in availability and supply of energy. Penalty for not meeting the stipulated availability and supply of energy shall be equal to one and a half times the tariff for the number of units not supplied. An illustration to this effect is attached at Schedule-4.

iv) The performance criteria as per Clause 4.4.8 (i) & (ii) above shall not be applicable for the Contract Year ending on 31st March immediately after SCSD of the contracted capacity.

v) It is clarified that if in a particular Contract Year, in case of shortfall in Peak availability of 90% and annual shortfall in supply of energy corresponding to minimum CUF as specified in Clauses 4.4.8 (i) & 4.4.8 (ii) respectively, both damages shall be applicable.

4.4.9 The detailed list of documents required for verification of energy supply and performance of the Projects will be intimated to the Developers subsequent to commissioning. For each month in a Contract Year, the above data will be required to be submitted by the respective RPD to NHPC within 10 days after expiry of the previous month for verification of the performance parameters for calculating applicable penalty on account of shortfall, if any. Similarly, for each Contract Year, the above data will be required to be submitted by the respective Developers to NHPC within 30 days after expiry of the previous Contract Year, for verification of the performance parameters for calculating applicable compensation on account of shortfall.

4.4.10 The RPD/RE-PG agrees that the methodology specified hereinabove for calculation of compensation in the form of liquidated damages payable by the RPD/RE-PG for shortfall in generation, annual availability, peak-hour availability and/or the shortfall in RE power is a genuine and accurate pre-estimation of the actual loss that will be suffered by NHPC / Buying Entities. RPD/RE-PG shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the damages or the method of calculating the damages specified in this document is

a genuine and reasonable pre-estimate of the damages that may be suffered by the NHPC / Buying Entities in each case specified under this Agreement.

- 4.4.11 The parties agree that damages shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of power by the RPD/RE-PG. RPD/RE-PG shall not be liable to pay any damages whatsoever including consequential damages for any shortfall in generation in excess of what becomes payable under Article 4.4.8.

#### **4.5 Extensions of Time**

- 4.5.1 In the event that the RPD/RE-PG is prevented from performing its obligations under Article 4.1 by the Scheduled Commencement of Supply Date (SCSD) due to:

- a) any NHPC Event of Default; or
- b) Force Majeure Events affecting NHPC/Buying Entities, or
- c) Force Majeure Events affecting the RPD/RE-PG,

the Scheduled Commencement of Supply Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a reasonable period but not less than 'day for day' basis, to permit the RPD/RE-PG or NHPC/Buying Entities through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the RPD/RE-PG or NHPC/Buying Entities, or till such time such Event of Default is rectified by NHPC

- 4.5.2 Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:
- (i) The RPD/RE-PG has complied with the complete application formalities as per RfS,
  - (ii) The RPD/RE-PG has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and
  - (iii) The delay in grant of connectivity/GNA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the RPD/RE-PG;

The above shall be treated as delays beyond the control of the RPD/RE-PG and SCSD for such Projects shall be revised as the date as on 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA.

Decision on requisite extension on account of the above factor shall be taken by NHPC.

Further, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission of petition to Commission or 120 days from the date of Power Sale Agreement (PSA) whichever is more, shall entail a corresponding extension in Scheduled Commencement Supply Date(SCSD).

Further, in case of delay in Project commissioning on account of reasons solely attributable to the RPD/RE-PG, resulting in any liquidated damages/penalty levied on the Buying Entity including Transmission charges under the GNA Regulations and/or applicable regulation as notified by CERC, such damages/penalty shall be passed on to the RPD/RE-PG.

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days, 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.
- 4.5.4 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 Commencement of Supply Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5 As a result of such extension, the Scheduled Commencement of Supply Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commencement of Supply Date (SCSD) and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Not Used.
- 4.5.7 Delay in Commencement of Supply of the project beyond the scheduled Commencement of Supply date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the RPD/RE-PG and shall be subject to the consequences specified in the Article 4.6.

#### **4.6 Liquidated Damages for delay in commencement of supply of power to NHPC**

- 4.6.1 The Project shall be fully commissioned within the Scheduled Commencement of Supply Date as defined in this Agreement. If the RPD/RE-PG is unable to commence supply of power to NHPC by the Scheduled Commencement of Supply Date other than for the reasons specified in Article 4.5.1 and Article 4.5.2, the RPD/RE-PG shall pay to NHPC, damages for the delay in such commencement of supply of power and making

the Contracted Capacity available for dispatch by the Scheduled Commencement of Supply Date as per the following:

a) **For Delay in commencement of supply of power up to 6 (six) months from the Scheduled Commencement of Supply Date SCSD ) or the extended SCSD (if applicable):**

NHPC will encash the Performance BG/POI on per day basis and proportionate to the contracted capacity that has not commenced supply of power. This encashment will be calculated for the Installed Capacity (based on FDRE configuration) proportionate to the Contracted Capacity that has not commenced supply of power. For example, in case of a Contracted Capacity of 500 MW corresponding to an Installed Capacity of 800 MW and if commencement of power supply from 100 MW of Contracted Capacity gets delayed by 45 days beyond the SCSD, (proportionate Installed Capacity being 160 MW), then the penalty shall be calculated as: PBG amount x (160/800) x (45/180). For the purpose of calculations of penalty, 'month' shall be considered consisting of 30 days. For avoidance of doubt, it is clarified that provisions of this Article will be applicable even in cases where no capacity (i.e. 0 MW) is commissioned.

b) **For Delay in commencement of supply of power beyond 6 (six) months from the Scheduled commencement Supply Date(SCSD) or the extended SCSD (if applicable):**

- I. Event of Default shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity that has commenced supply of power within the period of SCSD plus 6 (six) months or the extended SCD (if any). The PPA for the balance contracted capacity that has not commenced supply of power shall stand terminated.
- II. The RPD/RE-PG shall be debarred from participating in bids issued by any procurer or any Intermediary Procurer for the following period:
  - i) For one year in case of first default.
  - ii) For not less than 2 years and not more than 3 years for second and any subsequent defaults.

4.6.2 The maximum time period allowed for Commencement of Supply of the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 6 months after the SCSD or the extended SCSD (if applicable) of the Project. However, NHPC has the full right to give extension to RPD/RE-PGs beyond the time line as mentioned above in case reason of delay is beyond the reasonable control of RPD/RE-PG. In case, the Commencement of Supply



from the Project is delayed beyond 6 months after the SCSD or the extended SCSD (if applicable), it shall be considered as an RPD/RE-PG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity commenced for supply within 6 months after the SCSD or the extended SCSD (if applicable) and the PPA for the balance Capacity will stand terminated and shall be reduced from the contracted capacity.

4.6.3 Deleted.

4.6.4 The RPD/RE-PG further acknowledge that the amount of the liquidated damages fixed 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 NHPC/ Discom(s) in each case specified under this Agreement.

#### **4.7 Acceptance/Performance Test**

4.7.1 Prior to synchronization of the Power Project, the RPD/RE-PG shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the RE power projects and / or ESS (if applicable)

#### **4.8 Third Party Verification**

4.8.1 The RPD/RE-PG 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 NHPC and a third Party nominated by NHPC/MNRE or any other concerned statutory agency / any Indian Governmental Instrumentality for inspection and verification of the works being carried out, operations/performance by the RPD/RE-PG at the site of the Power Project.

4.8.2 The third party may verify the construction works/operation/performance of the Power Project being carried out by the RPD/RE-PG 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 RPD/RE-PG or require the works to be stopped or to comply with the instructions of such third party.

#### **4.9 Offtake constraints due to Transmission Infrastructure / Grid Unavailability & Backdown:**

Where the buying entity /Discom may be constrained not to schedule power on account of unavailability of the transmission infrastructure / Grid or in the eventuality, of a Back down in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules 2021, as amended from time to time.

##### **4.9.1 Generation Compensation in offtake constraints due to Grid Unavailability:**

During the operation of the Project, there can be some periods where the plant can generate power but due to temporary transmission unavailability the power is not

evacuated, for the reasons not attributable to the RPD/RE-PG/Generator. In such cases the generation compensation shall be addressed by the Buying entity /DISCOM in following Manner:

Duration of Grid Unavailability	Provision for Generation Compensation
Grid unavailability beyond 175 hours in a year	<p>Generation compensation =            (Tariff x RE power (MW) offered but not scheduled by Procurer) X 1000 X No. of hours of grid unavailability</p> <p>Tariff shall be the Tariff as per Article 9.</p> <p>However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

4.9.2 (a) **Payment in case of Reduced offtake:** The RPD/RE-PG and the Procurer shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In case the plant is available to supply power but the off take of power is not done by procurer, including non-dispatch of power due to non-compliance with “Electricity (Late Payment Surcharge and related Matters) Rules ,2022 notified by Ministry of power vide Gazette notification dated 3<sup>rd</sup> June 2022” and any clarifications or amendments thereto , considering the principle of “must run“ status for RE power, the buying entity /Discom shall pay to the RPD/RE-PG, corresponding to the reduced off take , in terms of following manner:

Reduced Off take	Provision for Generation Compensation
Reduced off take beyond 175 hours in a year	<p>Generation compensation = (Tariff x RE PV power (MW) offered but not scheduled by Procurer) X 1000 X No. of hours of reduced off take.</p> <p><i>Tariff shall be the Tariff as per Article 9.</i></p> <p>However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realised, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

(b) The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA). No Trading Margin shall be applicable on this Generation Compensation.

(c) No back-down/curtailment to be ordered without giving formal/written instruction for the same.

(d) The details of back-down/curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre.

(e) For claiming compensation, the RPD/RE-PG must sell their power in the power exchange as price taker. Thus, the compensation would be limited to the difference of the actual generation up to the declared capacity subject to a maximum up to the contracted capacity and the quantum of power scheduled by the procurer.

**Note:** The RPD/RE-PG 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 or Force Majeure.

## **5 ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMENCEMENT OF SUPPLY OF POWER**

### **5.1 Synchronization, Commissioning and Commencement of Supply of power**

5.1.1 The RPD/RE-PG shall give the concerned RLDC/SLDC, NHPC & Discom(s) at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System. Further, to the extent of ESS Source Component as per the provisions of this Agreement, the RPD/RE-PG shall be required to make necessary arrangement for the demonstration of such tied-up capacity.

5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the RPD/RE-PG 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. Further, to the extent of any other Source Component including ESS as per the provisions of this Agreement, the RPD/RE-PG shall have demonstrated such tied up capacity.

5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project including power generated from Project (s) of ESS component and transmission of data to the concerned authority as per applicable regulation shall be installed by the RPD/RE-PG at its generation facility of the Power Project at its own cost. The RPD/RE-PG shall synchronize its system with the Grid System only after the approval of synchronization scheme is

granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System.

- 5.1.4 The RPD/RE-PG shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project & ESS component is electrically connected and all other concerned authorities in accordance with applicable Grid Code under intimation to NHPC and Discom(s). In- addition the RPD/RE-PG will inject power to grid time to time to carry out operational/ functional test prior to commencement of supply of power subject to applicable laws and regulations at the project site. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not be considered as Commencement of supply of power from the Project. NHPC shall not be liable to pay any price to RPD/RE-PG for such infirm power injected.
- 5.1.5 The RPD/RE-PG shall commence the supply of power from the Project as detailed in “Schedule 2: Commissioning Procedure” within Twenty Four (24 ) Months of the Effective Date of PPA. Declaration of Commencement of Supply Date (CSD) / UCSD shall only be done subject to the demonstration of the compliances as per Schedule-3. It is clarified that in case the Detailed Procedure under the GNA regulations are not enforced until the Project commissioning, the RPD/RE-PG and the Buying Entity(ies) shall abide by the current Procedure under applicable CERC regulations. In such a scenario, the responsibility of obtaining LTA will be that of the RPD/RE-PG. In the alternate scenario, no such requirement will be applicable on the RPD/RE-PG.
- 5.1.6 There can be part commencement of supply of power from the project. Part commencement of supply of power from the project shall mean that all equipment corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid as well as compliances of all requirements as per provisions of this Agreement read along with the RfS has been complied and demonstrated. Part commencement of supply of power shall be accepted by procurer subject to the condition that the minimum capacity for acceptance of first and subsequent parts (s) shall be 50 MW (with the last part being the balance Contracted Capacity), without prejudice to the imposition of penalty, in terms of PPA on the part which has not commenced supply of power. It may be noted that part commissioning/ Part commencement of supply of the capacity will be admissible subject to the condition that “Firm and Dispatchable” supply of power is achieved by the commissioned part-capacity, in line with RfS and PPA conditions including Commissioning Procedure as provided under this Agreement. In case of part- commissioning/Part commencement of supply of the Contracted Capacity, land corresponding to the such part RE capacity being commissioned, shall be required to

be demonstrated by the RPD/RE-PG prior to declaration of commissioning of the said part capacity.

5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by RPD/RE-PG to NHPC, liquidated damages for delay etc., the Scheduled Commencement of Supply Date (SCSD) as defined in this Agreement shall be the relevant date. The SCSD is relevant for considering the duration of the Agreement and for the period upto which the Performance Bank Guarantee/POI shall be required to be maintained by the RPD/RE-PG under this Agreement.

**5.1.8 Early Commencement of supply of power:**

The RPD/RE-PG shall be permitted for full commencement of supply of power as well as part commencement of supply of power from the Project even prior to the SCSD, subject to availability of transmission connectivity and General Network Access (GNA). In case of part commencement of power supply, the proportionate ratio of the proposed installed capacity (Solar, Wind, other RE sources, ESS) for fulfillment of the FDRE configuration shall be ensured and capacity accepted will be limited to the extant ratio fulfilled. Early commencement of supply of power from the Project will be allowed solely at the risk and cost of the RPD/RE-PG, and NHPC shall purchase the generated energy from such part / full capacity prior to SCSD at the PPA tariff, only in the case Discom / Buying utility agrees to purchase power from the Project at an earlier date, and at the PPA tariff plus applicable trading margin.. Such intimation for early commencement of supply of power shall be provided to NHPC at least 15 days before the proposed date of commencement of supply of power. In case there is no response provided by NHPC within 7 days from the receipt of such intimation, it shall be treated as deemed refusal. In case NHPC does not agree to purchase such energy, early part/full commencement of supply of power from the Project shall still be allowed and the RPD/RE-PG will be free to sell such energy to a third party without any requirement of NOC from NHPC; subject to transmission connectivity & operationalization of GNA, until SCSD or the date of commencement of procurement of power from the Project as notified by NHPC, whichever is earlier. In such cases, a Provisional Commissioning Certificate will be issued to RPD/RE-PG for period up to SCSD or date of commencement of Power Procurement (whichever is earlier).. USCSD /SCSD of the Project under the PPA will be the date on which the commissioning certificate is issued upon successful commissioning of the part/full capacity of the Project. Even in case of early part commissioning or early full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the SCSD/extended SCSD, whichever is later.

In order to facilitate early completion of the RE Project, the RPD/RE-PG is allowed to inject power from the RE components prior to commissioning of the ESS component(s). Such commissioning/injection of power from the RE component will be allowed in line with the provisions of Article 4.2 & 4.4.7 above, and will not be treated as Project commissioning as per the provisions of the RfS, PPA and PSA.

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

### **6.1 Dispatch and Scheduling**

6.1.1 The RPD/RE-PG shall be required to Schedule its power from the RE project along with power from ESS and arrange for dispatch of Contracted Capacity in a composite manner under this Agreement as per the applicable regulations / requirements / guidelines of CERC / SERC / RLDC /SLDC or any other competent agency and same being recognized by the RLDC /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 RLDC / SLDC from time to time. For deviation from schedule, the DSM (Deviation Settlement Mechanism) shall be applicable as per the prevailing regulations. The DSM charges at the RPD/RE-PG end shall be settled by RPD/RE-PG only.

6.1.2 The RPD/RE-PG shall be responsible for directly coordinating and dealing with the Generator for the generating capacity tied up (if any), Buying Entity(ies), Regional Load Dispatch Centres, State Load Dispatch Centres, Regional Power Committees, 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 Regulations, acknowledging that the RPD/RE-PG and Buying Entity are the Grid connected entities and NHPC as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement..

6.1.3 Auxiliary power consumption will be treated as per the concerned Central/ State regulations and it is to be noted that the summation of generation schedule of RE and Power from ESS source(s) cannot be more than the Contracted capacity in any 15 minutes' time-block.

### **6.2 Dispatch of Contracted Capacity**

6.2.1 RPD/RE-PG agrees and undertakes that the fundamental and mandatory obligation of the RPD/RE-PG under this Agreement is to make available the Contracted Capacity in the manner specified under this Agreement to provide 'Firm and Dispatchable' RE Power (Peak Hour basis & Annual basis) to the buying utility during each Contract Year for the entire Term of this Agreement. The RPD/RE-PG shall plan the production and

Dispatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and other applicable rules / regulations.

- 6.2.2 Unless otherwise notified by the RPD/RE-PG, the declared Availability shall be deemed to be 100% (one hundred per cent) thereof at all times. The RPD/RE-PG shall confirm the Availability from the RE Project as well as power from any other source component including ESS as per Applicable Regulations/Guidelines prevalent from time to time. The Generator can, however, source up to 5% RE power (on energy terms) on annual basis

From the green market sources / bi-lateral agreements towards meeting the supply conditions stipulated in the RfS.

- 6.2.3 The Buying Utility shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the RPD/RE-PG for schedule of electricity and dispatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the "Dispatch"). Provided that the Buying Utility shall not ask for dispatch in excess of the declared Availability by the RPD/RE-PG, unless mutually agreed between the RPD/RE-PG and the Buying Utility(ies).

### **6.3 Supply Obligation of RPD/RE-PG**

- 6.3.1 In case the RPD/RE-PG fails to offer the contracted power as per this Agreement to NHPC/Buying Entity and sells the contracted power without the consent of NHPC/Buying Entity to any other party, the RPD/RE-PG, on a complaint to this effect by NHPC/Buying Entity to the load dispatch center concerned, shall be debarred from participating in Power Exchanges and on the Discovery of Efficient Electricity Pricing portal and scheduling of any new short-term contracts from the Project for a period of three months from the date on which the default has been taken cognizance by the concerned load dispatch center. The period of debarment shall increase to six months for second default and shall be one year for each successive default. Such debarment of the RPD/RE-PG shall be without prejudice to the rights of NHPC/Buying Entity for seeking compensation for the default by the RPD/RE-PG under this Agreement.

## **7 ARTICLE 7: METERING**

### **7.1 Meters**

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the RPD/RE-PG and NHPC 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. The metering point, which is the point at which energy supplied to the procurer shall be measured, shall be low voltage side of CTU sub station In case of RE parks, the metering point is the ISTS

pooling station with which the internal transmission from all the pooling substations is connected. All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the RPDs/RE-PGs/Generators without any reimbursement by the Procurer. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurers as per the regulation notified by the Commission from time to time.

- 7.1.2 The RPD/RE-PG shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at RPD/RE-PG's side of Delivery Point. The RPD/RE-PG shall be responsible for regular downloading and transmission of metered data to the concerned agencies.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the RPD/RE-PG shall install Main & Check meters as well as Stand-by meter(s) at Delivery Point, as per the applicable regulations of the State where the Project is located. Further, it shall be the obligation and responsibility of the RPD/RE-PG, to ensure metering arrangement at any other source component in compliance with the Applicable Regulations, Guidelines & Laws and as per the requirement of this Agreement.
- 7.1.4 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters as per relevant regulation/approvals are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in Article 7.1.3.

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

- 7.2.1 The grid connected RE power plants will install necessary equipment for regular monitoring of Solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters simultaneously for monitoring of the electric power (both DC and AC) generated from the RE Project.
- 7.2.2 Online arrangement would have to be made by the RE power developer at its own cost for submission of above data regularly for the entire period of this Power Purchase Agreement to the RLDC, NHPC Limited and the concerned Ministry or concerned agency as per applicable regulation / directions. Further, RPD/RE-PG shall also be responsible for ensuring online arrangement for submission of all required data for the Contracted Capacity as per provisions of this Agreement during entire Term of this Agreement as per applicable guidelines, regulations, laws to RLDC, SLDC, NHPC and the concerned Ministry or concerned agency.



7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the RE power developer to MNRE and to NHPC for entire period of PPA.

## **8 ARTICLE 8: INSURANCES**

### **8.1 Insurance**

8.1.1 The RPD/RE-PG 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 RE Project in good condition and shall take Industrial All Risk insurance policy /Mega /any Suitable Insurance policy as per Market practices / as deemed fit by RPD/RE-PG 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, Implementation and Support Agreement (if applicable) and under the applicable laws. Further, RPD/RE-PG shall also ensure that necessary Insurance coverage is also maintained for the Project(s) of ESS source component as per the Prudent Utility Practices and in line with the requirement and compliances of applicable laws.

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

8.2.1 In case of the RE 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 RE 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 RE Power Project or any part of the RE 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, NHPC shall have claim on such proceeds of such Insurance limited to outstanding dues of NHPC against Discom(s) as per PSA entered into and any other dues of Discom(s) against RPD/RE-PG

### **8.3 Effect on liability of NHPC**

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 RPD/RE-PG can claim compensation, under any Insurance shall not be charged to or payable by NHPC/Buying Entities. It is for the RPD/RE-PG 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.

## **9 ARTICLE 9: APPLICABLE TARIFF**

9.1 The RPD/RE-PG shall be entitled to receive the levelised Tariff of Rs. [Insert applicable tariff discovered through bidding process]/ kWh fixed for the entire term of this Agreement, with effect from the SCSD/Extended SCSD/actual commencement of supply date subject to the Article 4.6 of this Agreement for the power sold to the Buying Entity for the scheduled energy as reflected in the Energy Accounts. In cases of early part- or full Commencement of supply of power, till SCSD, subject to the consent for such purchase by the Discom(s), NHPC may purchase the generation at the Applicable tariff subject to provisions of Article 5.1.6, 5.1.7 & 5.1.8 of this Agreement..

9.2 In case of multiple Project components, and if one or more such component (wind, or solar PV / other RE power generating system including ESS) is/are ready for injection of power into the grid, but the remaining component(s) is/are unable to commence supply of power, the RPD/RE-PG will be allowed to commence power supply from such component which is ready, outside the ambit of PPA, with first right of refusal for such power being vested with the Buying Entity. Subsequent to refusal of such power by the Buying Entity, the right of refusal shall vest with NHPC. In case Buying Entity/ NHPC decides to buy such discrete component's power outside the PPA, such power shall be purchased @ 50% of the Applicable Tariff with applicable trading margin subject to provisions of Article 4.4.7 till part or full commencement of supply of power, whichever is earlier. While calculating the above value of 50% of the PPA tariff, the digits after 2 decimal places will be ignored. Following should be noted under such a scenario:

- a. In case the Buying Entity procures such power through NHPC, trading margin of 7 paise/unit will be applicable on such power procurement.
- b. The above scenario does not qualify under the provisions of Part/Early Commencement of power supply under the RfS, PPA and PSA. This is a special scenario wherein in case one or more project component(s) is/are ready, the power supply from such component is not wasted.
- c. The terms "SCSD" and "Commencement of supply of power" as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from

such component will be allowed only if the same is allowed as per the applicable regulations.

d. The above scenario will be applicable until the RPD / RE-PG is ready to commence power supply as per the provisions of Clauses 9 and 11.1 of the RfS.

9.3 Deleted.

9.4 Subject to adjustment for shortfall in generation provided in Article 4.9.1, the excess generation over and above energy specified in Article 4.4.1 read with Article 4.9.1, may be purchased by NHPC at the applicable tariff as per Article 9.1, provided Discom(s) consent for purchase of such excess generation. Excess Generation by RPD/RE-PG if any may be procured by NHPC on advance consent of Beneficiary Discom(s), which shall be calculated only on Annual basis over committed CUF, under advanced written intimation of possible excess generation by RPD/RE-PG at the applicable tariff. Any energy produced and flowing into the grid before SCSD shall not be at the cost of NHPC. NHPC may however agree to purchase such power provided Discom(s) consent to purchase such energy. RPD/RE-PG will not be entitled to sell energy generated prior to SCSD or excess energy during any Contract Year to any other entity without offering such quantum to NHPC and only if Discom(s) decide to purchase such energy, NHPC shall purchase such quantum of excess energy at the same Tariff as applicable to the contracted capacity. In case of refusal of NHPC to purchase such excess energy, the RE Power Generator will be free to sell it to any other third party / power exchange subject to the provisions of Article 4.4.5.

In order to allow optimization of operation of RE, the RPD/RE-PG is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No Objection Certificate (NOC) from NHPC/procurer (First right of refusal shall however vest with NHPC). The RPD/RE-PG may also sell the power which was offered on day ahead basis to the procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in the power exchange without requiring NOC from NHPC/ procurer. **However, it may be noted that at any instance of energy supply from the Project, priority shall be accorded to meet the energy requirements as per PPA, before selling any quantum of energy in the open market.**

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

### **10.1 General**

10.1.1 Pursuant to Article 4.1.1(o) and subject to the funds being made available by Discoms/RPD/RE-PG to NHPC under PSA, NHPC shall set up Payment Security Fund in order to ensure timely payment to the developers. This fund will have a corpus to cover 3 months payment.

10.1.2 From the commencement of supply of power, NHPC shall pay to the RPD/RE-PG the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with this Article and Article 9. All Tariff Payments by NHPC shall be in Indian Rupees.

10.1.3 For the purpose of payment of bills raised by the RPD/RE-PG(s), in case Energy Account is published on cumulative basis, payment to the RPD/RE-PG(s) for the energy delivered shall be apportioned based on REA/SEA/JMR taken for the RPD/RE-PG's Project at the Pooling substation/metering point.

10.1.4 The RPD/RE-PG shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations of [insert name of the State] separately.

10.1.5 The obligation of NHPC shall be to pay the Applicable Tariff to RPD/RE-PG and it shall be entirely for the RPD/RE-PG to deal with and discharge the charges payable to any other source generator(s) and ESS used for supply of contracted FDRE power.

10.1.6 The parties acknowledge and accept that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 [hereinafter referred to as '**Rules**'] notified by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this Agreement in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism-its operations and consequences, actions of Defaulting Entities, supply obligation of RPD/RE-PG, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the PSA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this PPA and the PSA which are inconsistent or contrary to the provisions of the Rules.

10.1.7 The Parties acknowledge and accept that the Electricity (Promotion of Generation of Electricity from Must-Run Power Plants) Rules, 2021 notified by the Central Government in exercise of the power conferred under Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply in regard to the Must-Run Power Plants forming part of this Agreement, including in regard to curtailment, the regulation of power supply and sale of power to the power exchange and consequential adjustment of the recoveries. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the PSA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this Agreement and the PSA which are inconsistent or contrary to the provisions of the Rules.

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

10.2.1 The RPD/RE-PG shall issue to NHPC hard copy of signed Monthly Bill/Supplementary Bill for the immediately preceding Month between the 5<sup>th</sup> day & up to the 15<sup>th</sup> day of the

next Month duly supported by REA/SEA/signed JMR along with all relevant documents (payments made by RPD/RE-PG for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable). In case the Monthly Bill/Supplementary Bill for the immediately preceding Month is issued after the 15<sup>th</sup> day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed at Article 10.3.1 below.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month/period based on Energy Accounts issued by RLDC /RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy metered and the applicable tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

10.2.2 As per applicable regulation(s) of the Appropriate Commission(s)/respective SERC(s), all charges pertaining to obtaining open access and scheduling of power, if any, shall be borne by the RPD/RE-PG

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

10.3.1 NHPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Forty Fifth (45) day (Due Date) from the date of presentation of bill to such account of the RPD/RE-PG, as shall have been previously notified by the RPD/RE-PG in accordance with Article 10.3.2 below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15<sup>th</sup> day of the next month, the date of presentation would be (fifth) 5<sup>th</sup> day of the next succeeding month.

**'Due Date'** means the date by which the bill is to be paid i.e. forty-five days from the date of presentation of the bill. Provided that if due date for payment of any bill falls on a bank non working day, the next bank working day shall be considered as due date for payment.

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

- iii) The RPD/RE-PG shall open a bank account at [Insert name of place] (the "RPD/RE-PG's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by NHPC to the RPD/RE-PG, and notify NHPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NHPC shall also designate a bank account at [Insert name of place] ("NHPC's Designated Account") for payments to be made by the RPD/RE-PG to NHPC, if any, and notify the RPD/RE-PG of the details of such account ninety (90) Days before the SCSD. NHPC and the RPD/RE-PG shall instruct their respective bankers to make all payments under this Agreement to the RPD/RE-PG' Designated Account or NHPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### **10.3.3 Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by NHPC beyond the Due Date, a Late Payment Surcharge shall be payable by NHPC to the RPD/RE-PG on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

"Base rate of Late Payment Surcharge" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent (500 bps) and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify. The Late Payment Surcharge shall be claimed by the RPD/RE-PG through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years. The above payment will be made by NHPC subject to such late payment surcharge being duly received by NHPC under the PSA from the Discom.

- 10.3.4 In the event of early commencement of supply of power from the Project and subject to acceptance by NHPC, the payment for the power fed to the grid may be accounted from the date of USCSD, and RPD/RE-PG would be allowed to raise Bills against such power as per Article 10.2.1, subject to the conditions as stipulated in Article 9. However, payment against the 1st such bill raised by the RPD/RE-PG, will be made subject to acceptance of the bill by the Discom/Buying Entity.

### 10.3.5 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the RPD/RE-PG to NHPC in the following manner.

- a. A rebate of 1.5 % shall be payable to NHPC for the payments made within a period of 5 days of the date of presentation of Bills along with required supporting documents acceptable to NHPC at NHPC office.

Explanation: In case of computation of '5 days', the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5th day is official holiday, the 5th day for the purpose of Rebate shall be construed as the immediate succeeding working day (as per the official State Government's calendar, where the Office of the Authorized Signatory of Discom, for the purpose of receipt or acknowledgement of Bill is situated).

The day of receipt of bill in NHPC upto 2.00 PM will be the zero date. If the bill is received after 2.00 PM the next working day will be zero date for determination of date of presentation of bills.

- b. Where payments are made on any day after 5 days and within a period of 30 days of presentation of bills, a rebate of 1% shall be allowed to NHPC.
- c. No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

### 10.4 Payment Security Mechanism Letter of Credit (LC):

10.4.1 NHPC shall provide to the RPD/RE-PG, 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 RPD/RE-PG in accordance with this Article. .

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NHPC through a scheduled bank shall extend a Letter of Credit in favour of the RPD/RE-PG, 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 The RPD/RE-PG shall not draw upon such Letter of Credit before thirty days from 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 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, NHPC shall restore such shortfall within seven (7) days.

10.4.5 NHPC shall cause the scheduled bank issuing the Letter of Credit to intimate the RPD/RE-PG, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NHPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NHPC.

10.4.8 If NHPC fails to pay undisputed Monthly Bill or Supplementary Bill or part thereof within and after thirty days from Due Date, then, subject to Article 10.4.6, the RPD/RE-PG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NHPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 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 RPD/RE-PG and;
- ii) a certificate from the RPD/RE-PG to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

#### **10.4.9 Payment Security Fund**

NHPC shall maintain a Payment Security Fund. To be eligible for coverage from this fund, RPD/RE-PG shall pay PSM Charges at the rate of 2 paise per unit to NHPC, by offering a commensurate discount in the monthly tariff payment being made by NHPC.

#### **10.5 Disputed Bill**

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

10.5.2 If NHPC disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount (subject to adjustment of applicable rebate for the said 95% payment) 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;
- iii) and all written material in support of its claim.



- 10.5.3 If the RPD/RE-PG agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the RPD/RE-PG 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 RPD/RE-PG 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 NHPC 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 NHPC under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the NHPC and RPD/RE-PG shall meet and make best endeavors 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. Notwithstanding the above in the event, NHPC is of the view that the amount claimed by RPD/RE-PG is excessively high and the payment of 95% of the disputed bill will be onerous, NHPC shall be entitled to raise immediate dispute and take the action for adjudication by CERC as per the Article 16 and further seek interim orders in such proceedings to restrain the enforcement of such disputed bills. The parties agree to be bound by the orders and directions of the CERC.

## **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 RPD/RE-PG and NHPC shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the RPD/RE-PG 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 RPD/RE-PG may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 4.9

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

10.7.2 NHPC shall remit all amounts due under a Supplementary Bill raised by the RPD/RE-PG to the RPD/RE-PG's Designated Account by the Due Date. For such payments by NHPC, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply, except in the case of payment of Late Payment Surcharges??. If any claim is being raised by the Discom(s) pursuant to the Article 4.4.1, NHPC shall make adjustment in the payment made to the RPD/RE-PG. Except for payment under Article 10.7.1 (i), Payment will be made after realization of the same from the Buying Utility under the Power Sale Agreement.

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.

## **11 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 NHPC or the RPD/RE-PG whose performance has been affected by an event of Force Majeure.

### **11.3 Force Majeure**

11.3.1 A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly, or partly prevents or unavoidably delays the performance by the Party (the **Affected Party**) of its obligations under the relevant Power Purchase 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.

### **11.3.2 Categorization of Force Majeure Events:**

#### **11.3.2.1 Natural Force Majeure Event**

- a)** war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;
- b)** rebellion, revolution, insurrection, military or usurped power and civil war;
- c)** ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- d)** riot, commotion or disorder, except where solely restricted to employees of the Contractor.
- e)** Acts of God such as earthquake (above magnitude of 7 of Richter Scale), lightening, unprecedented floods, spread of Pandemic where lock down/ movement restrictions are declared by Government.

#### **11.3.2.2 Non Natural Force Majeure Event**

- a)** 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;
- b)** nation/state-wide, strike lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c)** nationalization or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of the their rights or entitlements under the Power purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Generator or the Generator related parties;
- d)** action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of the Guidelines; any unlawful or unauthorized or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, license, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or

revocation did not result from the Generator's or any Contractors inability or failure or comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, license, authorization, as the case may be.

e) The phrase "Change in Law" would include changes brought out through change in Law, Rules, Regulations or orders of competent authorities."

#### **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.

g) Any pre-existing dispute on project land/substation and/or right-of-way or other project related issues.

#### **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 Fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement and the other party shall respond within 15 days of the receipt of such intimation 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 weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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

## **11.6 Performance Excused**

11.6.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

11.6.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commencement of Supply Period or the PPA period, as the case may be. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

11.6.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

11.6.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

## **11.7 No Liability for other Losses**

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

## **11.8 Resumption of Performance**

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PPA. The affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall

notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

## **11.9 Duty to Perform and Duty to Mitigate**

11.9.1 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.

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

### **11.10.1 Subject to this Article 11:**

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

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

### **12.1 Definitions**

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the RPD/RE-PG or any income to the RPD/RE-PG:

- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;

- d. unless specifically excluded in the agreement, a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the RPD/RE-PG;
- e. any statutory change in tax structure (including but not limited to duty, levy, cess, charge or surcharge) or introduction of any new tax made applicable for setting up of RE Power Project and supply of power by the RPD/RE-PG after the date of submission of Bid, shall be treated as per the terms of this Agreement. For the purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid under this part, the date of the submission of the bid shall be considered as effective date and not the date of the signing of the PPA as applicable to other changes dealt in other parts of this Article 12.1. The change in rates of any taxes includes change in rates of taxes, duties & cess.
- f. but the above shall not however include;
  - (i) any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the RPD/RE-PG, or
  - (ii) any change on account of regulatory measures by the Appropriate Commission.

12.1.2 The term “law” in this Article includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

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

12.2.1 In the event of occurrence of any of the events as provided under Article 12.1.1 which results in any adverse financial loss/ gain to the RPD/RE-PG/Buying Entity then, in order to ensure that the RPD/RE-PG/Buying Entity 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 RPD/RE-PG/ Buying Entity shall be entitled to compensation by the other party, as the case may be. Compensation payment on account of such ‘Change in Law’ shall be determined in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by Ministry of power vide notification dated 22<sup>nd</sup> October’2021 including amendments and clarifications thereof issued from time to time and shall be effective from such date as may be decided by the Appropriate Commission. These rules shall be applicable on both the parties.

12.2.2 On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the

affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

- 12.2.3 For the purposes of Article 12.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days' prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.
- 12.2.4 The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of 21 days from the date of the notice referred to in Clause 12.2.3 above, whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.
- 12.2.5 The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.
- 12.2.6 The amount of the impact of change in law to be adjusted and recovered, shall be calculated in accordance with the formula given here under to calculate adjustment in the monthly tariff due to impact of change in law, which is non-recurring in nature.

Let financial impact of change in law = P

Then the modification in the monthly tariff (MT) for compensating the financial impact is given by  $MT = (Y/X)$

Where X = estimated monthly electricity generation in kWh =  $(1/12) \times [\text{Contracted Capacity of the power plant as per the Agreement (in MW)} \times \text{CUF in \%} \times 8760 \text{ hours} \times 10]$  &

$$= \frac{(P \times M_r)(1+M_r)^n}{(1+M_r)^n - 1}$$

Where, -

n = No. of months over which the financial impact has to be paid (subject to maximum of 180 months in case of the non-recurring fixed amount but in case of recurring impact it will be till the impact persists);

Mr = monthly rate of interest =  $R/(12 \times 100)$  and

CUF = declared or revised annual CUF as indicated in the Agreement;

R = annual rate of interest on loan component (in %) as considered by the CERC in its order for Tariff Determination from Conventional or Renewable Energy Sources (Whichever is applicable) for the year in which the Project is commissioned. In absence of relevant orders of CERC for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India marginal cost of funds based lending rate, of one-year tenor, prevalent during the last available six months for such period.



Further, RPD/RE-PG/NHPC shall true up the MT annually based on actual generation of the year so as to ensure that the payment to the affected party is capped at the yearly annuity amount.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh

- 12.2.7 The recovery of the impacted amount, in case of the fixed amount shall be,  
a. In case of generation project, within a period of one-hundred eighty months; or  
b. In case of recurring impact, until the impact persists.
- 12.2.8 The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under clause 12.3.1.
- 12.2.9 After the adjustment of the amount of the impact in the monthly tariff or charges under clause 12.2.8, the RPD/RE-PG, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.
- 12.2.10 If the event of any decrease in the project cost by the RPD/RE-PG or any income to the RPD/RE-PG on account of any of the events as indicated above, RPD/RE-PG shall pass on the benefit of such reduction at a rate as provided in Article 12.2.5 to NHPC which shall be further passed on to the Buying Entity. In the event of RPD/RE-PG failing to comply with the above requirement, NHPC shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, RPD/RE-PG shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Change in Law under Article 12.

### **12.3 Notification of Change in Law:**

- 12.3.1 The RPD/RE-PG shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.
- 12.3.2. Any notice service pursuant to this Article 12.3.1, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.
- 12.3.3 "Project Cost" wherever applicable under this Article, shall mean the cost incurred by the RPD/RE-PG towards supply and services only for the Project concerned, upto the Actual date of commencement of supply of power for the last part capacity or Scheduled commencement of supply Date / extended Scheduled commencement of supply Date, whichever is earlier. For example, in case the Actual commencement of supply Date of the last part capacity is 15.04.2022, Scheduled Commencement of Supply Date is 15.03.2022 and extended Scheduled

commencement of supply Date is 01.04.2022, the Project Cost shall be determined as the cost incurred by the RPD/RE-PG upto 01.04.2022.

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

#### **13.1 RPD/RE-PG Event of Default**

13.1.1 The occurrence and / or continuation of any of the events subject to Article 4.1 or / and following events, unless any such event occurs as a result of a Force Majeure Event or a breach by NHPC or Discom(s) of its obligations under this Agreement, shall constitute a RPD/RE-PG Event of Default:

- (i) the failure to commence supply of power to NHPC beyond six months from SCSD (or extended SCSD, if any) and consequences shall be in accordance with Article 4.6.
- (ii) non continuance of the supply of contracted power / failure on the part of RPD/RE-PG to maintain minimum availability (peak as well as annual availability) continuously throughout the terms of the agreements by the end of the period specified in Article 4, or if
  - a) the RPD/RE-PG 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 RPD/RE-PG transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement except where such transfer
    - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
    - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (iii) if
  - a) the RPD/RE-PG becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain un contested for a period of thirty (30) days, or
  - b) any winding up or bankruptcy or insolvency order is passed against the RPD/RE-PG, or
  - c) the RPD/RE-PG 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 RPD/RE-PG will not be a RPD/RE-PG 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 RPD/RE-PG and expressly assumes all obligations of the RPD/RE-PG under this Agreement and is in a position to perform them;

#### RPD/RE-PG

- (iv) the RPD/RE-PG repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NHPC in this regard; or
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the RPD/RE-PG.
- (vii) except where due to any NHPC's failure to comply with its material obligations, the RPD/RE-PG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPD/RE-PG within thirty (30) days of receipt of first notice in this regard given by NHPC.
- (viii) Revoking of connectivity of the RPD/RE-PG on account of non-compliance by the RPD/RE-PG.

#### RPD/RE-PGRPD/RE-PGRPD/RE-PG

### 13.2 NHPC 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 RPD/RE-PG of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting NHPC:

- (i) NHPC 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 RPD/RE-PG is unable to recover the amount outstanding to the RPD/RE-PG through the Letter of Credit/,
- (ii) NHPC repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the RPD/RE-PG in this regard; or
- (iii) except where due to any RPD/RE-PG's failure to comply with its obligations, NHPC is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NHPC within thirty (30) days of receipt of notice in this regard from the RPD/RE-PG to NHPC; or if

- a. NHPC 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 NHPC, or
- c. NHPC 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 NHPC Event of Default, where such dissolution or liquidation of NHPC 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 NHPC and expressly assumes all obligations of NHPC and is in a position to perform them; or;

- (iv) If Discom(s) are subject to any of the above defaults and NHPC does not designate another or other Discom(s) for purchase of Power.
- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of NHPC.

### **13.3 Procedure for cases of RPD/RE-PG Event of Default**

13.3.1 Upon the occurrence and continuation of any RPD/RE-PG Event of Default under Article 13.1, NHPC shall have the right to {but not an obligation} deliver to the RPD/RE-PG, with a copy to the representative of the lenders of RPD/RE-PG with whom the RPD/RE-PG has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (NHPC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

Following the issue of a NHPC 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.

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

**Note:** In the event the RPD/RE-PG fails to maintain energy supply corresponding to the minimum CUF / failure on the part of RPD/RE-PG to maintain minimum availability (peak as well as annual availability), the RPD/RE-PG shall be in default and the PPA shall be liable to be terminated. Further, the RPD/RE-PG shall be liable to pay to the Procurer, damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of tariff for its contracted capacity with the stipulated availability.

NHPC shall have the right to recover the said damages by way of forfeiture of bank guarantee/POI, if any, without prejudice to resorting to any other legal course or remedy.

13.3.2 Within a period of fifteen (15) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the RPD/RE-PG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NHPC shall have the right (but not an obligation) to terminate this Agreement by giving a written Termination Notice to the RPD/RE-PG.

13.3.3 Subject to the terms of this Agreement, upon occurrence of a RPD/RE-PG Event of Default under this Agreement, the RPD/RE-PG shall be liable to pay to NHPC, liquidated damages, as provided in Article 4.6 of the PPA for failure to commence supply of power of contracted capacity within stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the RPD/RE-PG shall be liable pay to Buying Entity(ies), damages, equivalent to 24 (twenty four) months, or balance PPA period whichever is less, of charges calculated at Applicable Tariff for its Contracted Capacity with stipulated availability. NHPC shall have the right to recover the said damages by way of forfeiture of bank guarantee/POI, if any, without prejudice to resorting to any other legal course or remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with the Discom (s) and NHPC, if any, under Financing Agreements, to seek substitution of the RPD/RE-PG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the RPD/RE-PG and performing the obligations of the RPD/RE-PG. However, in the event the lenders are unable to substitute the defaulting RPD/RE-PG within the stipulated period, the NHPC may terminate the PPA Any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by NHPC.

13.3.4 The lenders, in concurrence with the Discom(s) and NHPC, may seek to exercise right of substitution under Article 13.3.3 by an amendment or novation of the PPA in favour of the selectee. The RPD/RE-PG shall cooperate with the NHPC 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. 10 Lakh +18% GST per Project per Transaction as Facilitation Fee (non-refundable) shall be deposited by the developer to NHPC.

13.3.5 Notwithstanding above, in the event that the RPD/RE-PG assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the RPD/RE-PG shall pay to the Procurer, damages, equivalent to 24 (twenty four) months, or balance PPA period whichever is less, of tariff for its contracted capacity with the stipulated minimum CUF / Availability. NHPC shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.

In addition to the levy of damages as aforesaid, in the event of a default by the RPD/RE-PG, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution provisions provided in the PPA above and in concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting Generator within the stipulated period, the Procurer may terminate the PPA.

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

13.4.1 Upon the occurrence and continuation of any NHPC Event of Default specified in Article 13.2 the RPD/RE-PG shall have the right to deliver to NHPC, a RPD/RE-PG 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 RPD/RE-PG 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 NHPC Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NHPC under intimation to the Buying entity and the RPD/RE-PG shall, subject to the prior consent of the RPD/RE-PG, 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 RPD/RE-PG, RPD/RE-PG may terminate the PPA and at its discretion at the end of three (3) months period from the period mentioned in this Article.

In case of termination of PPA, NHPC / Buying Entities shall pay to the RPD/RE-PG, damages equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of charges for its contracted capacity with the stipulated minimum CUF / Availability. Payment from NHPC to RPD/RE-PG shall be subject to receipt of the same from Buying entity /Discom.

In the event of termination of PPA, any damages or charges payable to the STU / CTU, for the connectivity of the plant, shall be borne by the Discom(s).

### **13.5 Termination Due to Force Majeure Event**

#### **13.5.1 Termination due to Natural Force Majeure Event**

- a) If prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in Pursuance of Article 11.6 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 13.5.1 (a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 13.5.1 (b);
  - (i) no Termination Compensation shall be payable to the RPD/RE-PG/generator.
  - (ii) the RPD/RE-PG/Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

#### **13.5.2 Termination due to Non-Natural Force Majeure Event**

- a) Upon occurrence of a Non-Natural Force Majeure Event, the Generator shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
  - (i) Notwithstanding anything in Article 11.7, on termination of the PPA pursuant to Article 13.5.2(a), the RPD/RE-PG/Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

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

### **14. Indemnity**

14.1.1 The RPD/RE-PG shall indemnify, defend and hold NHPC harmless against:

- a) any and all third party claims against NHPC 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 RPD/RE-PG 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 NHPC from third party claims arising by reason of a breach by the RPD/RE-PG of any of its obligations under this Agreement,
- c) All actions or inactions on part of the any other source generator(s) in regard to the performance of their obligations provided under this Agreement or having consequential effect on NHPC by reason of non-performance or breach on part of the other RE /ESS Generator under the bilateral independent agreements entered into between RPD/RE-PG of the one part and the concerned other RE /ESS Generators of the other part;

14.1.2 NHPC shall cause the Discom(s) to indemnify, defend and hold the RPD/RE-PG harmless against:

- a) any and all third party claims against the RPD/RE-PG, 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 Buying Entity / Discom(s) 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 RPD/RE-PG from third party claims arising by reason of a breach by Buying Entity / Discom(s) of any of its obligations. NHPC shall incorporate appropriate covenants in the PSA for the above obligations of Buying Entity / Discom(s). In so far as indemnity to RPD/RE-PG is concerned, Buying Entity / Discom(s) shall be the indemnifying party and not NHPC.

Provided that notwithstanding anything contained in sub-clause a) and b) above, NHPC's obligation of indemnification under this Article shall be restricted only to the RPD/RE-PG and NHPC will not in any manner be responsible to indemnify the any other source Generator(s). The rights and claims of the such Generators shall be restricted to RPD/RE-PG in terms of the independent bilateral agreements between RPD/RE-PG and the other RE /ESS Generator(s).

## **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 seeking adjudication of the Central Commission 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 defense 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 defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### **14.3 Indemnifiable Losses**

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

losses after a valid notice under this Article14, such event shall constitute a payment default under Article13.

#### **14.4 Limitation on Liability**

14.4.1 Except as expressly provided in this Agreement, neither the RPD/RE-PG nor NHPC nor Discom(s) 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 Buying Entity(ies), the RPD/RE-PG or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 NHPC shall have no recourse against any officer, director or shareholder of the RPD/RE-PG or any Affiliate of the RPD/RE-PG or any of its officers, directors or shareholders for such claims excluded under this Article. The RPD/RE-PG shall have no recourse against any officer, director or shareholder of NHPC or Discom(s), or any affiliate of NHPC or any of its officers, directors or shareholders for such claims excluded under this Article.

#### **14.5 Liability**

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the NHPC is an Intermediary Company to purchase and re-sell the electricity to Buying Entities/Discom(s) to enable them to fulfill the Renewable Purchase Obligations (RPO) / Storage Power Obligations (SPO) and, therefore, the performance of the obligations of the NHPC under this Agreement shall be subject to the ability of NHPC to enforce the corresponding obligations assumed by the Discom(s) on re-sale under the Power Sale Agreement to be entered into / entered by the Discom(s) with NHPC. It is however, specifically agreed that the payment of money becoming due from the NHPC to the RPD/RE-PG under this Agreement for supply of FDRE Power to the extent of the Contracted Capacity shall not be on a back to back basis. NHPC shall discharge the tariff payment obligation in terms of the provision of this Agreement;

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation

specifically mentioned herein above, in the event the RPD/RE-PG has any claim against the NHPC in regard to the performance of any obligation of the NHPC under this Agreement or enforcement of any right of the RPD/RE-PG against the NHPC under this Agreement, the same shall be subject to the ability of the NHPC to enforce the corresponding obligations assumed by the Discom(s) under the Power Sale Agreement to be entered into / entered between the NHPC and the Discom(s) on re-sale on mutatis mutandis basis and not otherwise.

#### **14.6 Duty to Mitigate**

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

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

#### **15. 1 Assignments**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by NHPC 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 SCSD. The enforcement of the rights and obligation between the RPD/RE-PG and Discom(s) provided in this Agreement and in the PPA shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement provided that, NHPC shall permit assignment of any of RPD/RE-PGs rights and obligations under this Agreement in favour of the lenders to the RPD/RE-PG, if required under the Financing Agreements. An amount of Rs. Five Lakh per transaction as Facilitation Fee (non-refundable) shall be deposited by the RPD/RE-PG to NHPC for this purpose. Provided further that, such consent shall not be withheld by the RPD/RE-PG, if NHPC seeks to transfer to any affiliate all of its rights and obligations under this Agreement. Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

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. 10 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the RPD/RE-PG to NHPC.

## **15.2 Permitted charges**

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

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

### **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 Delhi.

### **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 (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 16.2.1(i) if the other Party does not furnish any counter claim or defense under Article 16.2.1(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**

- (i) Where any Dispute (a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (b) relates to any matter agreed to be referred to the Central Commission, , such Dispute shall be submitted to adjudication by the Central Commission. All other disputes shall be resolved by the Dispute

Resolution Committee set up by the Government, failing which by arbitration under the Indian Arbitration and Conciliation Act, 1996.

- (ii) NHPC shall be entitled to co-opt Discom(s) and/or the lenders (if any) as a supporting party in such proceedings before the Central Commission.
- (iii) MNRE vide its Order No.283/56/2019-GRID SOLAR/Pt. dated 07.06.2023 has set up a Dispute Resolution Mechanism (DRM). The said order and its subsequent amendments (if any) will be binding on the parties under this Agreement.

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

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Central Commission as provided in Article 16.3 and save as the Central Commission or the Arbitration Tribunal to which the dispute may be referred by the Central 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.

### **17 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, with the approval of the Central Commission, where necessary. Subject to the provisions of RfS Document and Article 3.1(e) of this Agreement and keep this Agreement as principal Agreement, both Parties may execute further Agreement on similar terms and conditions.

#### **17.2 Third Party Beneficiaries**

17.2.1 This Agreement is solely for the benefit of the Parties, Discom(s) 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 authorized 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 RPD/RE-PG, 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 NHPC, 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 RPD/RE-PG shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the RPD/RE-PG, contractors or their employees that are required to be paid by the RPD/RE-PG 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 NHPC shall be indemnified and held harmless by the RPD/RE-PG against any claims that may be made against NHPC in relation to the matters set out in Article 17.9.1.

17.9.3 NHPC shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the RPD/RE-PG by NHPC on behalf of RPD/RE-PG.

## **17.10 Independent Entity**

17.10.1 The RPD/RE-PG shall be an independent entity performing its obligations pursuant to the Agreement.

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

## **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.

17.12. The duly executed Power Sale Agreement between NHPC and Discom(s) shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for Generation and supply of electricity for Discom(s) to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

### **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.

### **17.14 Order of priority in application:**

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below: i. applicable Law, rules and regulations framed thereunder; ii. the Grid Code; and iii. the terms and conditions of 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

[NHPC Ltd]  
For and on behalf of

[Insert the Name of the RPD/RE-PG]

Name, Designation and Address  
(Signature with Seal)

Witness:

1.

Name, Designation and Address  
(Signature with Seal)



Witness:

APPENDIX-A: DETAILS OF TIE UP FOR POWER FROM ANY OTHER SOURCE/ESS BY RPD/RE-PG (AS PER ARTICLE E) (IF APPLICABLE)

RPD/RE-PG to submit full details of tie ups with any other source generators / ESS for supply of FDRE power including the location of the project, MW capacity contracted, delivery point, concerned RLDCs to schedule, details of independent bilateral agreements executed and any other information as deemed necessary but not limited to the above.

APPENDIX-B: COPY OF AGREEMENTS BETWEEN RPD/RE-PG & ANY OTHER SOURCE GENERATOR/ESS (AS PER ARTICLE F) (IF APPLICABLE)

Copy of all the independent bilateral agreements executed between RPD/RE-PG and any other source generators / ESS (If applicable).

SCHEDULE 1 1. PSA



**POWER SALE AGREEMENT**  
**FOR**  
**SALE OF ISTS CONNECTED 'FIRM & DISPATCHABLE' RE POWER WITH**  
**ENERGY STORAGE SYSTEMS (ESS) ON LONG TERM BASIS**  
**Between**  
**NHPC Limited**  
**And**  
**..... Power Distribution Co. Ltd.**

This Power Sale Agreement is made on the ..... day of ..... of 20\_\_ at .....,

Between

NHPC Limited, a company incorporated under the Companies Act 1956, having its registered office at FARIDABAD (hereinafter referred to as “.....”, 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

[Insert the name of State] Power Distribution Co. Ltd., a company incorporated under the Companies Act 1956 / the Companies Act 2013, having its registered office at ....., ..... (hereinafter referred to as “.....” or “Buying Utility” or “End Procuree” or “Discom” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

And

..... and Discom are individually referred to as ‘Party’ and collectively referred to as ‘Parties’

**WHEREAS:**

- A. **NHPC** is a Government of India Undertaking and intends to facilitate the development of ISTS connected Renewable Energy Power projects coupled with Energy Storage Systems (hereinafter referred to as ESS) in India for sale of Firm & Dispatchable RE (FDRE) Power generated to the Distribution Licensees in the States to enable them to procure RE Power coupled with storage for due fulfillment of their Renewable Purchase Obligations (RPO) / Storage Power Obligations (SPO) specified under the Electricity Act, 2003 / Gol orders or notifications;
- B. NHPC has agreed to facilitate the development of the RE Power in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems, issued by Ministry of Power, vide resolution no. 23/03/2023-R&R dated 09.06.2023 including its subsequent amendments and clarifications thereof issued until the last date of bid submission against RfS No.....dated .....
- C. NHPC being a Renewable Energy Implementing Agency (REIA) of MNRE, Gol has agreed to act as an intermediary Agency / Procuree for the procurement of power from the RE Power Projects to be established, operated and maintained by the RE Power Developers / Generator(s) (hereinafter referred to as RPD/RE-PG) on Built, Own and Operate (BOO) basis in pursuance to a Tariff Based Competitive Bidding (TBCB) process for selection of RE-PGs / RPDs for development of 1500 MW firm & dispatchable grid connected RE power projects coupled with ESS on anywhere in India

basis and the Distribution Licensees desirous of purchasing RE Power for the purpose of fulfilling the Renewable Purchase Obligations in accordance with the scheme and objective of the Electricity Act, 2003, the Policies of the Government of India and the Policies of the State Governments.

- D. NHPC had initiated a Tariff Based Competitive Bid Process for Selection of RE Power Developers for Supply of 1500 MW Firm and Dispatchable RE (FDRE) Power from ISTS- Connected RE Power Projects with ESS in India under TBCB on the terms and conditions contained in the Request for Selection (hereinafter referred to as 'RfS') issued by NHPC vide RfS No.....dated..... including its subsequent amendments and clarifications, if any;
- E. [Insert Name of the RPD/RE-PG], a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [Insert Registered Office Address] (hereinafter referred to as "RE Power Developer or RPD/RE-PG"), has been selected in a Tariff Based Competitive Bid Process initiated by NHPC inviting proposal from all interested entities and on the basis that the tariff terms and conditions quoted by the RPD/RE-PG in comparison to others, were the most economical and least cost;
- F. The RPD/RE-PG has agreed to establish a RE Power Project for supply of FDRE power with an installed capacity of ..... MW on built, own and operate basis on the land admeasuring.....located in the [insert name of State] and agreed to sell the power generated from the project to NHPC to enable onward sale to the distribution licensees of [insert State] i.e. Discom on the terms and conditions contained in the PPA, finalized and initialed / to be initialed between NHPC and RPD/RE-PG, (hereinafter referred to as 'NHPC- RPD/RE-PG PPA') a copy of the said initialed PPA is attached hereto and marked as **Schedule 'A'** to this PSA and shall become an integral part of this Agreement
- G. Discom has examined the entire process by which RPD/RE-PG was selected, the Letter of Award was issued by NHPC to the RPD/RE-PG and the PPA has come to be initialed between NHPC and the RPD/RE-PG and to be entered into providing for the purchase of electricity generated at the project and resale of the same to ..... Discom including the terms and conditions for such purchase, rights and obligations assumed by NHPC and the RPD/RE-PG under the PPA and the consequences of the default by either of parties to the PPA;
- H. Discom acknowledges and accepts that NHPC is only an Intermediary Company and is facilitating the purchase of sale of electricity generated from the RE Project and, therefore, cannot assume independently, any obligation, financial or otherwise, either to

the RPD/RE-PG or to Discom, (unless specifically provided otherwise in the PPA), except on a back to back basis, namely, that whatever obligation is enforced by the RPD/RE-PG under the PPA against NHPC, Discom shall be bound to fulfil the obligation on a back to back basis towards NHPC and similarly, whatever rights that Discom may claim under this Agreement against NHPC, shall be subject to due enforcement of the corresponding rights on a back to back basis by NHPC against RPD/RE-PG, without an independent obligation on the part of NHPC.

- I. Further, the Buying Entity / Discom shall be responsible for directly coordinating and dealing with the RPDs/RE-PGs, Regional Load Dispatch Centers, State Load Dispatch Centers, Regional Power Committees and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Grid Connected Renewable Energy Power Projects with Energy Storage Systems ensuring Firm and Dispatchable RE (FDRE) Power supply and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the RPD/RE-PG and Buying Entity are the Grid connected entities and NHPC as intermediary procurer/ trading licensee is not a Grid connected entity in respect of the Power contracted under this Agreement.
- J. Discom further acknowledges and accepts that NHPC shall proceed to sign the PPA with RPD/RE-PG solely on the basis of the agreement reached with Discom for signing of this Agreement;
- K. NHPC has agreed to sell and make available to Discom the entire agreed Contracted Capacity agreed to between NHPC and the RPD/RE-PG which is ..... MW entirely on a back to back basis of the terms and conditions contained in the PPA to be entered into between NHPC and RPD/RE-PG;
- L. NHPC will be the trading licensee for the purchase of RE Power from RPD/RE-PG and resale of such Power to Discom. Further, NHPC will facilitate billing, realisation, data submission, and other associated day to day activities for fulfilling the obligations of NHPC as assigned in this agreement.
- M. The Parties had agreed that the execution of the PSA between NHPC and the Discoms is a pre-condition for NHPC to sign the PPA with the RPD/RE-PG.
- N. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Sale Agreement ("PSA") i.e. a definitive agreement, regarding purchase of Power under above mentioned RfS Documents. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PSA setting out the respective obligations of the



Parties and the steps necessary to complete the transactions contemplated herein. The Parties have accordingly agreed to enter into this PSA to record their understanding and agreement with regard to the purchase of power to be generated from the RE Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below:

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

- I. This Agreement shall come into effect from date of signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement. The maximum time period allowed for Commencement of Supply of the full Project Capacity / contracted capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 6 months after the SCSD/extended SCSD of the Project. In case, the Commencement of Supply of power is delayed beyond 6 months after the SCSD/extended SCSD, the Contracted Capacity under the NHPC-RPD/RE-PG PPA shall stand reduced / amended to the capacity that has commenced supply of power within 6 months after the SCSD/extended SCSD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity under the NHPC-RPD/RE-PG PPA.
- II. The Parties agree that decisions pertaining to adoption of the Tariff and NHPC's trading margin, and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.
- III. Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 60 days from the date of submission of petition to the Appropriate Commission or within 120 days from the date of Power Sale Agreement (PSA), whichever is more, tariff will be adopted by the Appropriate Commission and all requisite approval including approval of PSA (including adoption of tariff) from its State Electricity Regulatory Commission and /or CERC (as applicable) shall be obtained by Discom(s), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between NHPC and the Discom(s). The Parties agree that in the event, the order of adoption of tariff and the approval of PPA & PSA, as mentioned above is not issued by the SERC and/ or CERC (as applicable) within the time specified above, the provisions of Article IV shall apply.

- IV. If parties have mutually extended the time period as stipulated under Article III and the order from the SERC and/ or CERC (as applicable) is within 60 days of submissions before Appropriate Commission or within 120 days from the date of Power Sale Agreement (PSA), whichever is more,, no extension for Financial Closure or Scheduled Commencement of Supply Date shall be given. However, if SERC and/ or CERC (as applicable) order is obtained after 60 days of submission of the petition or within 120 days from date of Power Sale Agreement (PSA) whichever is more, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commencement of Supply Date (SCSD) for equal number of days for which the SERC and / or CERC order has been delayed beyond such 60 days period or 120 days from date of PSA whichever is more.
- V. The duration of this Agreement shall be coextensive with the duration of the Power Purchase Agreement to be entered into between the NHPC and the RPD/RE-PG for all intent and purposes.
- VI. Subject to the terms and conditions contained herein, ..... hereby agrees to sell and make available the Firm & Dispatchable electricity procured by ..... from the ..... MW RE Power Project to be set up by the RPD/RE-PG at [insert name, place district, state] on the terms and conditions contained in the PPA to be entered into between NHPC and the RPD/RE-PG, as per the initialed PPA (Schedule "A") on a back to back basis, to Discom.
- VII. Discom hereby acknowledges and accepts that NHPC is an Intermediary to facilitate the promotion of RE Power Projects and to purchase and re-sell the Firm & Dispatchable electricity to the distribution licensees to enable them to fulfill the Renewable Purchase Obligation and, therefore, the sale of electricity by NHPC to Discom under this Agreement shall be entirely on a back to back basis to the purchase of electricity by NHPC from the RPD/RE-PGs under the NHPC - RPD/RE-PG PPA, with the intent that there shall be no residual liability on NHPC towards the RPD/RE-PG which will not be fulfilled by the Discom. NHPC shall be offering RE power during the peak hours as well as during off-peak hours in a manner such that the peak hour availability is minimum.....% on monthly basis and Annual CUF is minimum.....% as stipulated in the PPA. NHPC also commits to supply a minimum annual energy of.....MUs corresponding to annual CUF of -----% from RE sources as part of this Agreement and PPA on back to back basis. The Buying Utility / Discom shall be entitled to use the power from this Project for fulfillment of its RPO/SPO in the proportion of contracted capacity of each component in the Project respectively. Further, the Discom is entitled for first right of refusal for offtake of power from the RE project in conditions of early part commissioning prior to SCSD / excess generation beyond contracted capacity subject to the conditions stipulated in the PPA.

- VIII. In accordance with the above and except as otherwise specifically provided in this agreement, the rights and obligations of Discom under this agreement shall be available and enforceable entirely and effectively on a back to back basis to the rights and obligations of the NHPC in the NHPC-RPD/RE-PG PPA and in the event NHPC is not in a position to enforce its rights against the RPD/RE-PG or is subject to any obligation to be performed towards RPD/RE-PG, Discom shall be liable to perform such obligation or shall be entitled to such rights only on a mutatis mutandi basis, without any additional or independent exposure whatsoever to NHPC.
- IX. Except as otherwise specifically provided in this agreement, Discom acknowledges and accepts that the terms and conditions of the NHPC - RPD/RE-PG PPA shall mutatis mutandi apply to this Agreement between the parties. Discom agrees to correspondingly fulfill, on back to back basis, all the obligations assumed by NHPC towards RPD/RE-PG. Discom further agree, acknowledge and accept that as an Intermediary, NHPC is not assuming any obligation to Discom over and above the obligation which the RPD/RE-PG shall duly performs under the NHPC – RPD/RE-PG PPA.
- X. NHPC has agreed with the RPD/RE-PG in regard to the payment of money becoming due to RPD/RE-PG under the NHPC – RPD/RE-PG PPA and NHPC shall be liable to discharge the payment obligation in terms of the provisions of the NHPC- RPD/RE-PG PPA. Accordingly, Discom agrees to effectively securitize the payment of money becoming due from Discom to NHPC as detailed in this Agreement.
- XI. The parties agree that in respect of the obligations other than the payment obligation specifically mentioned herein above, in the event Discom has any claim against NHPC in regard to the performance of any obligation of NHPC under this Agreement or enforcement of any right of Discom against NHPC under this Agreement, the same shall be subject to the ability of NHPC to enforce the corresponding obligations assumed by RPD/RE-PG to NHPC under the NHPC-RPD/RE-PG PPA. NHPC shall not be required to perform and implement the obligations of NHPC or agree to the enforcement of the rights of Discom under this Agreement till such time the corresponding obligations under NHPC-RPD/RE-PG PPA is duly implemented by the RPD/RE-PG and in case of monetary obligations, the amount is received by NHPC from the RPD/RE-PG. In the event of any such claim arising at the instance of Discom, the parties shall discuss on the course of action to be initiated by NHPC against the RPD/RE-PG for enforcement of the corresponding obligation and all proceedings to be initiated by NHPC against the RPD/RE-PG for such enforcement shall be pursued by NHPC in consultation with Discom.

- XII. The parties hereby agrees that the Liquidated Damages are payable by RPD/RE-PG under the NHPC-RPD/RE-PG PPA for the delay in the Commencement of supply of power from the RE Projects and for short supply of the contracted capacity of the RE Power. The amount of such liquidated damages for delay shall be credited to the Payment Security Fund to be maintained as per terms of PPA. Discoms shall not be entitled to make any deductions towards the claim of liquidated damages against any payment due to NHPC and all such other payments shall be made by Discoms by the Due Dates, notwithstanding the status of the pending claims on liquidated damages. The Parties agree that as an intermediary, NHPC shall have no legal obligation to pay any amount towards liquidated damages except when the amount of such liquidated damages has been recovered from the RPD/RE-PG by NHPC without any conditions and encumbrances and the amount is available for appropriation by NHPC.
- XIII. The parties agree that the various terms contained in the NHPC–RPD/RE-PG PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commencement of supply of power , Operation and Maintenance, Purchase and Sale of RE Power, Metering and Dispatch of Power, Billing and Power Accounting and payments, Liabilities, Force Majeure, Events of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices and all other Miscellaneous Terms provided in the NHPC- RPD/RE-PG PPA shall mutatis mutandi apply to this agreement between NHPC and Discom.
- XIV. The Discom shall be responsible for directly coordinating and dealing with the RPD/RE-PG, State Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of RE Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the RPD/RE-PG and Discom are the Grid connected entities and ...../NHPC as intermediary procurers/trading licensee is not a Grid connected entity in respect of the RE Power contracted under this Agreement;
- XV. The Discom undertakes to file petition before SERC seeking necessary approval for procurement of electricity and contracted capacity from NHPC, under this PSA within 15 days from signing of PPA or PSA whichever is later.
- XVI. The Buying Entity shall coordinate with the respective STU and facilitate grant of necessary NOC for drawl of power, as required by the RPD/RE-PG.

- XVII. The Discom shall be responsible for obtaining Grid Access as per the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, and for obtaining any Grid Access/NOC/clearance from the respective State Transmission Utility (STU)/SLDC, at its own risk and cost. The Discom is required to file the GNA application and NOC application within 30 days of signing of PSA. It is clarified that in case the Detailed Procedure under the GNA regulations are not enforced until the Project commissioning, the RPD/RE-PG and the Discom shall abide by the current Procedure under applicable CERC regulations. In such a scenario, the responsibility of obtaining LTA will be that of the RPD/RE-PG. In the alternate scenario, no such requirement will be applicable on the RPD/RE-PG.
- XVIII. ISTS Charges and losses on transmission of power including waiver for RE power, shall be as per extant rules and regulations.
- XIX. This Agreement and other documents such as Request for Selection Documents, Letter of Award, Guidelines including subsequent clarifications, addenda, amendments and further clarifications in regard to the tender as well as Power Purchase Agreement shall be read in conjunction with each other and interpreted in harmonious manner.

### ***Article 1. APPLICABLE TARIFF***

- 1.1 The Tariff applicable for the sale of Firm & Dispatchable RE Power by NHPC to the Discom under this Agreement shall be the Tariff as applicable for payment by NHPC to RPD/RE-PG under the terms of the Power Purchase Agreement between NHPC and the RPD/RE-PG (Individual RPD/RE-PGs tariff as per schedule (B) fixed for entire term of agreement at delivery point, or the Tariff as determined under the Electricity (Amendment) Rules, 2022 issued by Ministry of Power vide Gazette Resolution dated 29.12.2022, including applicable procedure/rules issued thereof), and in addition thereto a **trading margin of Seven (7) paisa/kWh** shall be payable by the Discom / Buying Entity to NHPC which NHPC shall be entitled to appropriate as its income.

### ***Article 2: BILLING AND PAYMENT***

#### **2.1 General**

The parties acknowledge and accept that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 [hereinafter referred to as 'Rules'] notified by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this

Agreement (PSA) in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism-its operations and consequences, actions of Defaulting Entities, supply obligation of RPD/RE-PG, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the PPA. The Rules referred to herein above being statutory shall, to the extent applicable, supersede any provisions in this Agreement (PSA) and PPA which are inconsistent or contrary to the provisions of the Rules.

From the commencement of supply of power by NHPC, the Discom shall pay to NHPC the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 1. All Tariff Payments by the Discom shall be in Indian Rupees.

NHPC shall issue to the Discom a signed Monthly Bill on the last business day of the month prepared based on provisional RE energy of the preceding month (except for first month which shall be computed based on designed CUF and capacity of project) and shall also include the following:

- i) Adjustments bill against the Provisional Bills based on applicable energy account / JMR for the power supplied in the preceding months
- ii) Late Payment Surcharge if any
- iii) Taxes, duties Levies etc, as applicable
- iv) Impact of Change in Law if any, as applicable
- v) Losses and Transmission Charges as applicable, in accordance with CERC notification & amendments.

## **2.2. Payment of Monthly Bills**

2.2.1 The Discom shall pay the amount payable under the Monthly Bill on or before the Due Date to such account of NHPC, as shall have been previously notified to the Discom in accordance with Article 2.2.2 below.

Provided that the scanned copy of original Bill through Authorised/ notified email ID of the NHPC to authorized/notified email ID of Discom shall be considered as valid mode of presentation of bill. The day of receipt of bill through email to the Discom up to 5.00 PM will be the zero date. If the bill is received after 5.00 PM, the next working day will

be considered as zero date for the purpose of determination of 'date of presentation of bill'

'Due Date' means the date by which the bill is to be paid i.e. forty-five days from the date of presentation of the bill. Provided that if due date for payment of any bill falls on a bank non-working day, the next bank working day shall be considered as due date for payment.

2.2.2. NHPC shall open a bank account at **New Delhi** ("NHPC's Designated Account") for all Tariff Payments to be made by the Discom to NHPC, and notify the Discom of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Discom shall also designate a bank account at [insert the name of place]. (The Discom shall inform NHPC the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. NHPC and the Discom shall instruct their respective bankers to make all payments under this Agreement to the Discom' Designated Account or NHPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### **2.3 Late Payment Surcharge**

1. In the event of delay in payment of a Monthly Bill by Discom beyond the Due Date, a Late Payment Surcharge shall be payable by Discom to NHPC on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default.  
"Base rate of Late Payment Surcharge" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent (500 bps) and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify. The Late Payment Surcharge shall be claimed by the NHPC through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment at the base rate of Late Payment Surcharge applicable for the period for the first month of default.
2. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.
3. Provided further that all payments shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

4. The parties acknowledge and accept that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 [hereinafter referred to as 'Rules'] notified by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this Agreement in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism-its operations and consequences, actions of Defaulting Entities, supply obligation of RPD/RE-PG, power not requisitioned by the Discom, the order of payment and adjustment towards late payment surcharge and indemnification. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the PPA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this PSA and the PPA which are inconsistent or contrary to the provisions of the Rules.

5. The Late Payment Surcharge shall be claimed by NHPC through the next Monthly Bill.

#### **2.4 Rebate**

For payment of any Bill on or before Due Date, the following Rebate shall be paid by NHPC to Discom in the following manner subject to valid LC of requisite value as per Article 3 is established by Discom(s) in favour of NHPC.

a.) A rebate of 1.5% shall be payable to the Discom for the payments made within a period of 05 days of the date of presentation of Bills through email.

Explanation: In case of computation of '5 days', the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5th day is official holiday, the 5th day for the purpose of Rebate shall be construed as the immediate succeeding working day (as per the official State Government's calendar, where the office of the Authorized Signatory of Discom, for the purpose of receipt or acknowledgement of Bill is situated).

Provided that the scanned copy of original Bill through Authorised/notified email ID of the NHPC to authorized/notified email ID of Discom shall be considered as valid mode of presentation of bill. The day of receipt of bill through email in Discom up to 5.00 PM will be the zero date. If the bill is received after 5.00 PM the next working day will be zero date for the purpose of determination of 'date of presentation of bill'.

Any change in authorized/notified email-ID of any party shall be intimated immediately to other party.

b.) Where payments are made on any day after 5 days and within a period of 30 days of presentation of bill, a rebate of 1% shall be allowed.

c.) No rebate shall be payable on the bills raised on account of taxes, Duties, cess etc.

#### **2.5 Offtake constraints due to Transmission Infrastructure / Grid Unavailability & Backdown:**



Where the buying entity /Discom may be constrained not to schedule power on account of unavailability of the transmission infrastructure / Grid or in the eventuality, of a Back down in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules 2021, as amended from time to time.

### 2.5.1 Generation Compensation in offtake constraints due to Grid Unavailability

During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable to the RPD/RE-PG/Generator. In such cases the generation compensation shall be addressed by the Discom / Procurer in following manner. Further, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against NHPC:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability beyond 175 hours in a year, as defined in the PPA	<p>Generation Compensation =            (Tariff X RE power (MW) offered but not scheduled by Procurer) X 1000 X No. of hours of grid unavailability.</p> <p><i>Tariff shall be the Tariff as per Article 1 (excluding trading margin)</i></p> <p>However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realised, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis</p>

### 2.5.2 Payment in case of reduced off take:

The RPD/RE-PG and the Discom / Procurer shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India has notified Promotion of Generation of Electricity from Must-Run Power Plant Rules, 2021 which provides “must-run” status to RE power projects. Accordingly, no RE power plant, duly commissioned, should be directed to back down by a Discom/Load Dispatch Centre (**LDC**). In case the plant is available to supply power but the off take of power is not done by the Procurer, including non-dispatch of power due to non-compliance with Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by the Ministry of Power vide Gazette notification dated 3rd June 2022” and any clarifications or amendment thereto, considering the principle of must run’ status for RE Power, the procurer shall pay to the Generator, compensation corresponding to the reduced off take, in the following manner::

Reduced Off-take	Provision for Generation Compensation
Reduced off-take beyond 175 hours in a year, as defined in the PPA	<p>Generation Compensation =            (Tariff x RE power (MW) offered but not scheduled by Discom / Procurer) X 1000 X No. of hours of Reduced Offtake</p>

*Tariff shall be the Tariff as per Article 1 (excluding trading margin)*

However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realised, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.

- (b) The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA). No Trading Margin shall be applicable on this Generation Compensation.
- (c) No back-down/curtailment to be ordered without giving formal/written instruction for the same.
- (d) The details of back-down/curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre.
- (e) For claiming compensation, the RPD/RE-PG must sell their power in the power exchange as a price taker. Thus, the compensation would be limited to the difference of the actual generation up to declared capacity subject to a maximum up to the contracted capacity and the quantum of power scheduled by the procurer.
- (f) The RPD/RE-PG 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 or Force Majeure.

### **Article 3. Payment Security Mechanism**

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

- 3.1 The Discom shall provide to NHPC, in respect of payment of its Monthly Bills, a single, unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Discom, which may be drawn upon by NHPC in accordance with this Article. The Discom shall provide NHPC draft of the Letter of Credit proposed to be provided to NHPC two (2) months before the Scheduled Commencement of Supply Date.
- 3.2. Not later than one (1) Month before the Start of Supply, the Discom shall through a scheduled bank at [insert name of place] open a Letter of Credit in favour of NHPC, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every year, in the month of January and revised w.e.f. April for 105% of amount in the following manner:
  - (i) For the first Contract Year, equal to the estimated average monthly billing;

- ii) For each subsequent Contract Year, equal to the monthly average billing for the previous Year.
- 3.3 NHPC shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month provided that there are no outstanding dues.
- 3.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 3.2 due to any reason whatsoever, the Discom shall restore such shortfall within seven (7) days.
- 3.5 The Discom shall cause the scheduled bank issuing the Letter of Credit to intimate NHPC, in writing regarding establishing of such irrevocable Letter of Credit.
- 3.6 The Discom shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 3.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Discom.
- 3.8 If the Discom fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 4.1 and 4.2, NHPC may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Discom, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill which has remained unpaid by the Discom;
  - ii) a certificate from NHPC 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;

**(B) State Government Guarantee**

- 3.9 The Discom shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. NHPC shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the RPD/RE-PG(s), to the extent the payments to the RPD/RE-PG(s) in terms of the PPA are due.

It is hereby clarified that the State Government guarantee shall be invoked only after NHPC has been unable to recover its dues under the PSA by means of the Letter of Credit and the Payment Security Fund, if any.

**(C) Payment Security Fund**

3.9 In addition to provisions contained in Article 3(A) and (B) above, the Discoms may provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing.

**Third Party Sales by NHPC**

3.10 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), NHPC shall be entitled to {but not an obligation to} regulate power supply from any of the ..... Stations to the Discoms;

- i) Default in making payment by the 75<sup>th</sup> day from the date of presentation of Bill,
- ii) Non-recoupment of LC by the 7<sup>th</sup> day of its operation.
- iii) Non-availability of LC for operation and for its required value by the 7<sup>th</sup> day of the Due Date.

3.11 NHPC shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 2 days to start the regulation on the 3<sup>rd</sup> day.

3.12 Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill. In case of shortfall in amount of LC available, the right to regulate shall be in the ratio of shortfall in LC maintained /available to the total amount of LC required.

3.13 In order to avoid any doubts, it is illustrated that:

- i) In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, NHPC would have a right to regulate and sell Discoms's allocation of the power to third parties to the extent of 40% (i.e. 10/25x100).
- ii) If LC required to be opened/ maintained by Discoms is to the extent of Rs. 25 Crore and LC opened/maintained/available is to the extent of Rs. 15 Crore only i.e. LC available is short by Rs. 10 Crore, NHPC would have a right to regulate and sell Discoms's allocation of power to third parties to the extent of 40% (i.e. 10/25x100).

3.14 NHPC shall have the right to divert the Power or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or

- ii) Any licensee under the Act;

NHPC shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

Provided that such sale of power to third party shall not absolve the Discoms from its obligation to pay in full to NHPC for the RE power as per PPA.

- 3.15 The amount realized from the diversion and sale of power to third party over and above the Applicable Tariff, any charges including open access charges and other costs shall be adjusted first against the pending liability of the Discom. Deficit if any shall be made good by the Discom.
- 3.16 Sales to any third party shall cease and regular supply of electricity to the Discoms shall commence and be restored within thirty (30) days from the date of clearing all the outstanding dues payable to NHPC under this Agreement.
- 3.17 Further, that the liability of the Discoms to make the Tariff Payments to NHPC as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by NHPC and RPD/RE-PG for usage by the Discoms.

**Article 4 - Disputed Bill**

- 4.1 If the Discoms does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive and binding.
- 4.2 If the Discoms disputes the amount payable under a Monthly Bill it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
  - i) the details of the disputed amount;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its claim.
- 4.3 If the NHPC agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 4.2, the NHPC shall make appropriate adjustment in the next Monthly Bill.
- 4.4 If the NHPC does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 4.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
  - i) reasons for its disagreement;
  - ii) its estimate of what the correct amount should be; and

- iii) all written material in support of its counter-claim.
- 4.5 Upon receipt of the Bill Disagreement Notice by the Discoms under Article 4.4, authorized representative(s) or a director of the board of directors/ member of board of the Discoms and NHPC shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 4.4, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in PPA.
- 4.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Discoms shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 95% of the Disputed Amount in the Monthly Bill.

## **Article 5: EVENTS OF DEFAULT AND TERMINATION**

### **5.1 *Discom Event of Default***

- 5.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Discom Event of Default:
  - (i) Any amount subject to Article 4 remains outstanding beyond a period of sixty (60) days after the Due Date and NHPC is unable to recover the amount outstanding from the Discom through the Letter of Credit, Payment Security Fund and Default Escrow Account; or
  - (ii) The Discom fails to evacuate power from the Delivery Points for a continuous period of one day.
  - (iii) if (a) the Discom 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 Discom, or (c) the Discom 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 Discom will not be a Discom 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 Discom and expressly assumes all obligations of the Discom under this Agreement and is in a position to perform them; or

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

**5.2 Procedure for cases of Discom Event of Default**

- 5.2.1 Upon the occurrence and continuation of any Discom Event of Default under Article 5.1, NHPC shall have the right to deliver to the Discom a notice, stating its intention to terminate this Agreement (..... Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 5.2.2 Following the issue of ..... Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 5.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 5.2.4 Subject to the occurrence and continuation of default by as contained above,
  - 5.2.4.1 Subject to the prior consent of the NHPC, the Discom can novate its part of the PSA to any third party, including its Affiliates within the period of 30 days beyond the period of 30 days in which Discom may rectify the breach.
  - 5.2.4.2 In the event the aforesaid novation is not acceptable to the NHPC, or if no offer of novation is made by the defaulting Discom within the stipulated period then the NHPC may terminate the PSA at its discretion.  
In case of termination of PPA consequent to termination of PSA, Discom shall pay to the RPD/RE-PG/Generator, damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of charges for its contracted capacity with the stipulated minimum CUF/Availability.

Further, in the event of termination of PPA, any damages or charges payable to the STU / CTU, for the connectivity of the plant, shall be borne by the Discom.

**5.3 Termination of back to back agreements**

In case of termination of NHPC- RPD/RE-PG PPA, this Agreement shall automatically terminate, provided that in case of such termination as identified in this Article, any pending monetary liabilities of either Party shall survive on the termination of this

Agreement. In the event of termination of PPA/PSA, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the Discom.

## **ARTICLE 6: MISCELLANEOUS PROVISIONS**

### **6.1 Amendment**

6.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties, with the approval of the Central Commission, if necessary. Subject to the provisions of the RfS Document and keep this Agreement as principal Agreement, both Parties may execute further Agreement on similar terms and conditions.

### **6.2 Third Party Beneficiaries**

6.2.1 This Agreement is solely for the benefit of the Parties, RPD/RE-PG 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.

### **6.3 Waiver**

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

6.3.2 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.

### **6.4 Confidentiality**

6.4.1 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.

### **6.5 Severability**

6.5.1 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.



**6.6 Notices**

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

6.6.2 If to the Discoms, 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. : \_\_\_\_\_

6.6.3 If to NHPC, 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 : \_\_\_\_\_

**6.7 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.

**6.8** The duly executed Power Purchase Agreement between NHPC and RPD/RE-PG shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for Generation and supply of electricity to Discom to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

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  
[NHPC Limited]

For and on behalf of  
[..... Power Distribution Co Ltd.  
(.....)]

\_\_\_\_\_

\_\_\_\_\_

Signature with seal

Signature with seal

1. Witness

2. Witness

**SCHEDULE A**

1. PPA

**SCHEDULE B**

RPD/RE-PG	Source wise Project Capacity (MW) / Installed Capacity (MW) (Solar, Wind, Other RE, ESS etc.)	Availability / Energy (MUs)				Rate (Rs/kWh)
		Contracted capacity (MW)	Peak Availability in %* (>90%)	Annual CUF in % (>40%)	Minimum annual generation corresponding to contracted capacity & CUF	
<b>Total</b>						

\*Peak hours shall be any four hours in a day as declared by respective RLDCs/SLDCs.

SCHEDULE 2: FORMAT OF PERFORMANCE BANK GUARANTEE (PBG) & PAYMENT ON ORDER INSTRUMENT (POI)

FORMAT FOR PERFORMANCE BANK GUARANTEE (PBG)

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

Reference: .....

Bank Guarantee No.: .....

Date: .....

In consideration of the [Insert name of the Bidder] (hereinafter referred to as 'selected RE Power Developer' or 'RPD') submitting the response to RfS inter alia for ..... [Insert title of the RfS] of the Contracted Capacity of ..... MW [enter Contracted Capacity as per the PPA] through setting up of MW [Insert committed Installed Capacity as per the PPA] of Installed Capacity, at [Insert name of the Project location(s)], for supply of power there from on long term basis, in response to the RfS dated..... issued by NHPC Limited (hereinafter referred to as NHPC) and NHPC considering such response to the RfS of [Insert name of the Bidder] (which expression shall unless repugnant to the context or meaning thereof include its executers, administrators, successors and assignees) and selecting the Project of the RE Power Developer and issuing Letter of Award No. to

(Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE Power Developer or a Project Company, M/s {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable].

As per the terms of the RfS, the [Insert name & address of Bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to NHPC at [Insert Name of the Place from the address of the NHPC] forthwith on demand in writing from NHPC or any Officer authorised by it in this behalf, any amount up to and not exceeding Indian Rupees

[Total Value] only, on behalf of M/s

[Insert name of the selected RE Power Developer/ Project Company]

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

Our liability under this Guarantee is restricted to INR (Indian Rupees only).

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

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

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

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



FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY IREDA/REC/PFC (IN LIEU OF PBG)

No.      Date  
NHPC Limited,      Registered  
,

Reg: M/s (insert name of the PPA signing entity) (Project No. (insert project ID issued by NHPC) – Issuance of Payment on Order Instrument for an amount of Rs.

Dear Sir,

1. It is to be noted that M/s. (insert name of the POI issuing Agency) ('IREDA/REC/PFC') has sanctioned a non-fund based limit loan of Rs. (Rupees only) to M/s under the Loan Agreement executed on to execute Renewable Energy Projects.

2. At the request of M/s , on behalf of (insert name of the SPV), this Payment on Order Instrument (POI) is issued for an amount of Rs. (Rupees (in words)). This Payment on Order Instrument comes into force immediately.

3. In consideration of the [Insert name of the Bidder] (hereinafter referred to as selected RE Power Developer') submitting the response to RfS inter alia for selection of Contracted Capacity of ..... MW through an Installed Capacity of MW, at .....[Insert name of the Project location(s)] under RfS for (insert name of the RfS), for supply of power there from on long term basis, in response to the RfS dated... issued by NHPC Limited (hereinafter referred to as NHPC) and NHPC considering such response to the RfS of .....[insert the name of the selected RE Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the RE Power Project of the RE Power Developer (RPD) and issuing Letter of Award No ----- to (Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE Power Developer or a Project Company, M/s {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ]. As per the terms of the RfS, the [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to NHPC at [Insert Name of the Place from the address of the NHPC] forthwith on demand in writing from NHPC or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s [Insert name of the selected RE Power Developer / Project Company].

4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at , agrees to make payment for the sum of Rs. lakhs (in words ) to NHPC on the following conditions:-

(a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of days of receipt of request from NHPC within the validity period of this letter as specified herein;

(b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public

Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against NHPC;

(c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;

(d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (NHPC and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc.;

(e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;

(f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by NHPC made in any format within the validity period. IREDA/REC/PFC shall not require NHPC to justify the invocation of the POI against the SPV/RPD, to make any claim against or any demand against the SPV/RPD or to give any notice to the SPV/RPD;

(g) The POI shall be the primary obligation of IREDA/REC/PFC and NHPC shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/RPD;

(h) Neither NHPC is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against NHPC in respect of the payment made under letter of undertaking;

5. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

Thanking you,

Copy to:-  
M/s.

Yours faithfully For and on behalf of  
M/s. (Name of the POI issuing agency).

( )  
General Manager (TS)

As per their request

( )  
General Manager (TS)

### SCHEDULE 3: COMMISSIONING PROCEDURE

To be notified within 90 days (of signing of this Agreement) or any extended date but not later than 60 days prior to the Scheduled Commencement of supply Date.



SCHEDULE 4: ILLUSTRATIVE CALCULATION - PENALTY FOR NOT MEETING THE STIPULATED AVAILABILITY AND SUPPLY OF ENERGY (Ref: Article 4.4.8(iii))

**Assumptions**

- ❖ Availability during peak hours shall be calculated on monthly basis based on availability in each time block of 15 minutes.
- ❖ For each day, there shall be 16 time blocks each of 15 minutes duration (4 hours) as peak hrs as defined by RLDCs/DISCOMs
- ❖ Average daily peak hrs availability shall be calculated as illustrated in table below. Average daily peak hrs availability shall be calculated for every day in a month.
- ❖ Average monthly peak hrs availability shall be calculated after taking average of daily peak hours for all days in a month.
- ❖ Liquidated damages on account of shortfall in peak hrs availability shall be determined as illustrated below;

**Illustration**

- ❖ Contracted Capacity: 500 MW (for which LoA has been issued and PPA has been signed)
- ❖ Applicable Tariff: Rs. 3.50/kWh
- ❖ calculation of daily peak hrs availability :

Time Block	Duration (hrs)	Contracted Capacity (MW)	Offered Capacity (MW)	Peak Availability (%)
T1	00:15	500	500	100.00%
T2	00:15	500	450	90.00%
T3	00:15	500	500	100.00%
T4	00:15	500	450	90.00%
T5	00:15	500	450	90.00%
T6	00:15	500	450	90.00%
T7	00:15	500	450	90.00%
T8	00:15	500	450	90.00%
T9	00:15	500	400	80.00%
T10	00:15	500	350	70.00%
T11	00:15	500	400	80.00%
T12	00:15	500	350	70.00%
T13	00:15	500	400	80.00%
T14	00:15	500	450	90.00%
T15	00:15	500	500	100.00%
T16	00:15	500	500	100.00%
<b>Average Daily Peak Availability</b>		<b>8000</b>	<b>7050</b>	<b>88.13%</b>

Average monthly peak hrs availability after taking average of Average Daily Peak Availability all days in a month = **88.13 %**  
 (let us take average daily peak availability = average monthly peak availability for illustration purpose)

#### A. Shortfall in annual peak hour Availability

- ❖ Average Power offered in Peak Hour time block = (Average monthly Peak hour availability x Contracted capacity) =  $0.8813 \times 500 = 440.65$  MW
- ❖ Min. required average Power to be offered in Peak hour time block (@90%availability) =  $(0.90 \times \text{Contracted Capacity}) = 450$  MW
- ❖ Shortfall in monthly peak hour availability =  $450 - 440.65 = 9.35$  MW
- ❖ Damages on account of shortfall in Peak hours availability = INR (Shortfall in monthly peak hour availability x no. of days in the month x 4 x 1.5 x Applicable Tariff x 1000 =  $\text{INR } 9.35 \times 30 \times 4 \times 1.5 \times 3.50 \times 1000 = \text{INR } 58,90,500/-$

#### B. Shortfall in annual offering of energy from RE sources

- ❖ Total Firm and Dispatchable RE power offered (MWh) for the corresponding month = 1,36,800 MWh (Considering tentative CUF of 38 %)
- ❖ Total Firm and Dispatchable RE power offered (MWh) for the year = (Summation of Power (MWh) offered for each month) =  $1,36,800 \times 12 = 16,41,600$  MWh
- ❖ Minimum annual energy from Firm and Dispatchable RE power sources committed at the time of bid submission =  $500 \times 24 \times 365 \times 0.40 = 17,52,000$  MWh (at 40% availability)
- ❖ Thus, Shortfall in energy offered through Firm and Dispatchable RE power in the year =  $17,52,000 - 16,41,600 = 1,10,400$  MWh
- ❖ Damages due to shortfall in Firm and Dispatchable RE power offered for the year = (Annual shortfall x Applicable RE Tariff x 1000) =  $110400 \times 3.50 \times 1.5 \times 1000 = \text{Rs. } 57,96,00,000/-$

As per the provisions of the RfS and PPA, both damages will be levied on the developer for the corresponding Contract Year.

**Note:** The above illustration has been provided for a sample monthly data, based on assumptions as indicated. Actual calculations for liquidated damages will be made for the yearly data as per REA.

Request for Selection of 1500MW 'Firm & Dispatchable' power from ISTS connected Renewable Energy Power Projects coupled with energy storage system

**ANNEXURE-1A**

**ILLUSTRATION REGARDING APPLICABILITY OF LIQUIDATED DAMAGES ON ACCOUNT OF SHORTFALL IN POWER SUPPLY**

**(Clause 6, Section 3 of the RfS)**

**Assumptions**

- ❖ Availability during peak hours shall be calculated on monthly basis based on availability in each time block of 15 minutes.
- ❖ For each day, there shall be 16 time blocks each of 15 minutes duration (4 hours) as peak hrs as defined by RLDCs/DISCOMs
- ❖ Average daily peak hrs availability shall be calculated as illustrated in table below. Average daily peak hrs availability shall be calculated for every day in a month.
- ❖ Average monthly peak hrs availability shall be calculated after taking average of daily peak hours for all days in a month.
- ❖ Liquidated damages on account of shortfall in peak hrs availability shall be determined as illustrated below;

**Illustration**

- ❖ Contracted Capacity: 500 MW (for which LoA has been issued and PPA has been signed)
- ❖ Applicable Tariff: Rs. 3.50/kWh
- ❖ calculation of daily peak hrs availability :

<b>Time Block</b>	<b>Duration (hrs)</b>	<b>Contracted Capacity (MW)</b>	<b>Offered Capacity (MW)</b>	<b>Peak Availability (%)</b>
T1	00:15	500	500	100.00%
T2	00:15	500	450	90.00%
T3	00:15	500	500	100.00%
T4	00:15	500	450	90.00%
T5	00:15	500	450	90.00%
T6	00:15	500	450	90.00%
T7	00:15	500	450	90.00%
T8	00:15	500	450	90.00%
T9	00:15	500	400	80.00%
T10	00:15	500	350	70.00%
T11	00:15	500	400	80.00%
T12	00:15	500	350	70.00%
T13	00:15	500	400	80.00%
T14	00:15	500	450	90.00%
T15	00:15	500	500	100.00%
T16	00:15	500	500	100.00%
<b>Average Daily Peak Availability</b>		<b>8000</b>	<b>7050</b>	<b>88.13%</b>

Average monthly peak hrs availability after taking average of Average Daily Peak Availability all days in a month = 88.13 % (let us take average daily peak availability = average monthly peak availability for illustration purpose)

#### **A. Shortfall in annual peak hour Availability**

- ❖ Average Power offered in Peak Hour time block = (Average monthly Peak hour availability x Contracted capacity) =  $0.8813 \times 500 = 440.65$  MW
- ❖ Min. required average Power to be offered in Peak hour time block (@90%availability) = (0.90x Contracted Capacity) = 450 MW
- ❖ Shortfall in monthly peak hour availability=  $450-440.65= 9.35$  MW
- ❖ Damages on account of shortfall in Peak hours availability = INR (Shortfall in monthly peak hour availability x no. of days in the month x 4 x 1.5 x Applicable Tariff x 1000 = INR  $9.35 \times 30 \times 4 \times 1.5 \times 3.50 \times 1000=$  INR 58,90,500/-

#### **B. Shortfall in annual offering of energy from RE sources**

- ❖ Total Firm and Dispatchable RE power offered (MWh) for the corresponding month = 1,36,800 MWh (Considering tentative CUF of 38 %)
- ❖ Total Firm and Dispatchable RE power offered (MWh) for the year = (Summation of Power (MWh) offered for each month) =  $1,36,800 \times 12 = 16,41,600$  MWh
- ❖ Minimum annual energy from Firm and Dispatchable RE power sources committed at the time of bid submission =  $500 \times 24 \times 365 \times 0.40 = 17,52,000$  MWh (at 40% availability)
- ❖ Thus, Shortfall in energy offered through Firm and Dispatchable RE power in the year =  $17,52,000-16,41,600 = 1,10,400$ MWh
- ❖ Damages due to shortfall in Firm and Dispatchable RE power offered for the year = (Annual shortfall x Applicable RE Tariff x 1000) =  $110400 \times 3.50 \times 1.5 \times 1000 =$  Rs. 57,96,00,000/-

As per the provisions of the RfS and PPA, both damages will be levied on the developer for the corresponding Contract Year.

Note: The above illustration has been provided for a sample monthly data, based on assumptions as indicated. Actual calculations for liquidated damages will be made for the yearly data as per REA.

**Annexure - 4**

**IMPORTANT INSTRUCTIONS TO BIDDERS FOR ONLINE BIDDING**

The Techno-commercial Bid and Price Bid to be submitted on-line at Central Public Procurement e-Portal <http://eprocure.gov.in/eprocure/app>. The bidders are required to submit soft copies of their bids electronically on the Central Public Procurement (CPP) Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

**Registration:**

- i) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal by using the "Online Bidder Enrolment" option available on the home page. Enrolment on the CPP Portal is free of charge.
- ii) As part of the enrolment process, the bidders will be required to choose a unique username and assign a password for their accounts.
- iii) During enrolment/ registration, the bidders should provide the correct/true information including valid email-id & mobile no. All the correspondence shall be made directly with the Consultants/ bidders through email-id provided.
- iv) For e-tendering possession of valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) is mandatory which can be obtained from SIFY/ TCS/ nCode/ eMudra or any Certifying Authority recognized by CCA India one Token/ Smart Card.
- v) Upon enrolment on CPP Portal for e-tendering, the bidders shall register their valid Digital Signature Certificate with their profile.
- vi) Only one valid DSC should be registered by a bidder. Bidders are responsible to ensure that they do not lend their DSCs to others which may lead to misuse and should ensure safety of the same.
- vii) Bidders can then log into the site through the secured login by entering their user ID/password and the password of the DSC/ eToken.

**Searching for Tender documents:**

- a) There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keywords etc. to search for a tender published on the CPP Portal.
- b) Once the bidders have selected the tenders they are interested in, they may download the required documents/ tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the bidders through SMS/ e-mail in case there is any corrigendum issued to the tender document.
- c) The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification/ help from the Helpdesk.

**Preparation of Bids:**

- a) For preparation of bid, Bidders shall search the tender from published tender list available on site and download the complete tender document and should take into account corrigendum, if any, published before submitting their bids. After selecting the tender document same shall be moved to the '**My Favourite**' folder of bidders account from where bidder can view all the details of the tender document.
- b) Bidder shall go through the tender document carefully to understand the documents required to be submitted as part of the bid. Bidder shall note the number of covers in which the bid documents have to be submitted, the number of documents, including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.
- c) Any clarifications if required then same may be obtained online through the tender site, or through the contact details given in the tender document.
- d) Bidders should get ready in advance the bid documents to be submitted as indicated in the tender document/ schedule in PDF/ xls/ rar/ zip/ dwf formats. If there is more than one document, they can be clubbed together using zip format.
- e) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, Annual Reports, Auditor Certificates etc.) has been provided to the bidders. Bidders can use "My Space" or "Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" or "Other Important Documents" area as per tender requirements while submitting the bid, and need not be uploaded again and again. This will lead to reduction in the time required for bid submission process.

**Submission of Bids:**

- i) Bidder should log into the site well in advance for bid submission so that he/ she upload the bid in time i.e. on or before the bid submission time.
- ii) Bidder should prepare the Tender Fee and EMD as per the instructions specified in the NIT/ tender document. The originals should be submitted to the Tender Inviting Authority, on or before the last date & time of offline bid submission. The details of the DD/BC/BG, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise the uploaded bid will be rejected.
- iii) While submitting the bids online, the bidder shall read the terms & conditions (of CPP portal) and accepts the same in order to proceed further to submit their bid.
- iv) Bidder shall select the payment option as 'offline' to pay the Tender Fee/ EMD as applicable and enter details of the instrument.
- v) Bidder shall digitally sign and upload the required bid documents one by one as indicated in the tender document.
- vi) Bidders shall note that the very act of using DSC for downloading the tender document and uploading their offers is deemed to be a confirmation that they have read all sections and pages of the tender document without any exception and have understood the complete tender document and are clear about the requirements of the tender document.
- vii) Bidder shall note that each document to be uploaded for the tender should be less than 2 MB. If any document is more than 2MB, it can be reduced through zip/rar and the same can be uploaded. For the file size of less than 1 MB, the transaction uploading time will be very fast.

- viii) Utmost care shall be taken for uploading Schedule of Quantity & Price and any change/modification of the price schedule shall render it unfit for bidding. Bidders shall download the Schedule of Quantities & Prices in XLS format and save it without changing the name of the file. Bidder shall quote their rates in figures in white background cells, thereafter save and upload the file in financial bid cover (Price bid) only. If the Schedule of Quantity & Price file is found to be modified by the bidder, the bid will be rejected. The bidders are cautioned that uploading of financial bid elsewhere i.e. other than in cover 2 will result in rejection of the tender.
- ix) Bidders shall submit their bids through online e-tendering system to the Tender Inviting Authority (TIA) well before the bid submission end date & time (as per Server System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders at the eleventh hour.
- x) After the bid submission (i.e. after Clicking "Freeze Bid Submission" in the portal), the bidders shall take print out of system generated acknowledgement number, and keep it as a record of evidence for online submission of bid, which will also act as an entry pass to participate in the bid opening.
- xi) Bidder should follow the server time being displayed on bidder's dashboard at the top of the tender site, which shall be considered valid for all actions of requesting, bid submission, bid opening etc., in the e-tender system.
- xii) All the documents being submitted by the bidders would be encrypted using PKI (Public Key Infrastructure) encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology.

Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to 24x7 CPP Portal Helpdesk **Number Ph. Nos. +91-120-4711508, +91-120-4001002, +91-120-4001005, +91-120-6277787** Technical Email: support-eproc@nic.in

Any corrigendum, subsequent amendments and / or extension of date, if any, for submission of Bids shall be posted on the portal <http://eprocure.gov.in/eprocure/app>. Bidder(s) are advised to visit the portal regularly before the deadline for submission of Bids.

The employer reserves the right to accept or reject any Bid and to cancel the Bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidder(s). However, the Bidder(s) who wish to seek reasons for such decision of cancellation/rejection shall be informed of the same by Employer unless its disclosure reasonably could be expected to affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the state or lead to incitement of an offence.



**FOUR KEY INSTRUCTIONS FOR BIDDERS**

**Note** The following 'FOUR KEY INSTRUCTIONS for BIDDERS' must be assiduously adhered to:-

- i) Obtain individual Digital Signature Certificate (DSC or DC) well in advance of tender submission deadline.
- ii) Register your organization on CPPP well in advance of tender submission deadline.
- iii) Get your organization's concerned executives trained on CPPP well in advance of tender deadline.
- iv) Submit your bids well in advance of tender submission deadline on portal (There could be last minute problems due to internet timeout, breakdown, etc.) While the first three instructions mentioned above are especially relevant to first-time users of portal, the fourth instruction is relevant at all times.

**Note** Electronic procurement system will not allow any Bidder to place their bids after the expiry of scheduled date & time. NHPC/ NIC-CPPP shall not be responsible for any delays/ problems related to bandwidth, connectivity etc., which are beyond the control of the NHPC/NIC-CPPPP.

**Annexure – 5**

**TERMS & CONDITIONS OF REVERSE AUCTION**

After opening of Financial Bids and short-listing of bidders based on the First Round Quoted Tariff and capacity of qualified Project(s), NHPC shall resort to "REVERSE AUCTION PROCEDURE". Reverse Auction shall be conducted as per methodology specified in Section-3 and other provisions of Reverse Auction in RfS documents and their subsequent Addenda/Amendments. Bidders, in their own interest, are advised to go through the documents in entirety. The Terms & Conditions and Business Rules mentioned hereunder are in brief and may not give complete explanations. Further these are supplementary in nature.

1. Bidders shall ensure online submission of their 'Bid Price' within the auction period.
2. A portal selected by NHPC for Reverse Auction will provide all necessary training and assistance before commencement of reverse auction to the interested bidders.
3. Business rules for Reverse Auction like event date, time, bid decrement, extension etc. shall be as per the business rules, enumerated in the RfS document or intimated later on for compliance.
4. Reverse auction will be conducted on scheduled date & time, as informed to the bidders.
5. Bidders should acquaint themselves of the 'Business Rules of Reverse Auction', which are mentioned in the RfS document.
6. If the Bidder or any of his representatives are found to be involved in Price manipulation/ cartel formation of any kind, directly or indirectly by communicating with other bidders, action *as per extant NHPC guidelines* shall be initiated by NHPC.
7. The Bidder shall not divulge either his Bids or any other exclusive details of NHPC to any other party.
8. Period of validity of Prices received through Reverse Auction shall be same as that of the period of validity of bids offered.
9. Bidders should also note that:
  - a) Bidders may note that, although extension time is '10' minutes, there is a time lag between the actual placing the bid on the local computer of the bidder and the refreshing of the data on to the server for the visibility to the Owner. Considering the processing time for data exchange and the possible network congestion, bidders must avoid the last minute hosting of the Financial Bid.
  - b) Participating bidder will agree to non-disclosure of trade information regarding the purchase, identity of NHPC, bid process, bid technology, bid documentation and bid details.
  - c) It is brought to the attention of the bidders that the bid event will lead to the final price of bidders only.
  - d) Technical and other non-commercial queries (not impacting price) can only be routed to the NHPC contact personnel indicated in the RfS document.
  - e) Order finalization and post order activities such issue of LoA, signing of PPA etc would be transacted directly between successful bidder(s) and NHPC.
  - f) LoA may be placed outside the e-portal & further processing of the LoA may also be outside the system.
  - g) In case of any problem faced by the bidder during Reverse Auction and for all Bidding process related queries, bidders are advised to contact the persons indicated in Section – 3 of the RfS document.
  - h) Bidders are advised to visit the auction page login into the system well in advance to identify / rectify the problems to avoid last minute hitches.

- i) NHPC will not be responsible for any PC configuration/Java related issues, software/hardware related issues, telephone line glitches and breakdown / slow speed in internet connection of PC at Bidder's end.
- j) Bidders may note that it may not be possible to extend any help, during Reverse Auction, over phone or in person in relation to rectification of PC / Internet / Java related issues and Bidder may lose the chance of participation in the auction.

10. No queries shall be entertained while Reverse Auction is in progress.

#### **BUSINESS RULES OF REVERSE AUCTION**

- 1) A portal selected by NHPC will be NHPC's authorized Service Provider for e-Reverse Auction (e-RA). Please go through the guidelines given below and submit your acceptance to the same.
- 2) Bidders who are found technically and commercially acceptable and whose Price Bid is as per the Bid Condition after e-tender are eligible to participate in e-RA. The intimation of schedule date & time to conduct e-RA shall be sent to eligible bidders in advance. E-Reverse Auction (e-RA) shall be conducted by a portal selected by NHPC on scheduled date and time. Eligible bidders shall participate from their own offices / place of their choice. Internet connectivity shall be ensured by the respective bidders themselves. Designated officials i.e. Tender Inviting Authority of NHPC shall have access to portal and shall witness e-RA process.
- 3) A portal selected by NHPC for reverse auction shall arrange to demonstrate / train (if not trained earlier) bidders' nominated person(s), without any cost. They will also explain all the Rules related to e-Reverse Auction/Business Rules Document to be adopted along with training manual.

The Application Service Provider (ASP) shall arrange to demonstrate/ train (if not trained earlier) bidders' nominated person(s) through ONLINE training by ppts / Audio Visual file without any cost. These training materials shall remain available on the portal all the time whenever bidders access the portal for such purposes. If bidders require any explanation in regard to the Rules related to e-Reverse Auction / Business Rules Document to be adopted along with bid manual, the same shall be explained to the bidder through any means of communication i.e. telephonic/email.

- 4) Reverse Auction shall be conducted as per methodology specified in **Section-4** and other provisions of Reverse Auction in RfS documents and their subsequent Addenda/ Amendments. Bidders, in their own interest, are advised to go through the documents in entirety. The Business Rules mentioned hereunder are in brief and may not give complete explanations. Further these are supplementary in nature.
  - i. The 'Opening Price' of each bidder i.e. start price for RA will be the "First Round Tariff Bid" quoted by the respective bidder in its financial bid for the qualified Project(s).
  - ii. Bid Decrement shall be at least INR 0.01 i.e. 01 paisa and in multiples thereof.
- 5) Auction shall be for a period of **60 minutes**. The bidding continues with an auto extension of **10 min** time if any Bidder quotes a further lower price within final 10 minutes of specified closing time of auction.
- 6) Each Bidder shall be assigned **Unique User Name & Password** by a portal selected by NHPC for reverse auction. Bidders are advised to change the Password and edit the information in the Registration Page after the receipt of initial Password from a portal selected by NHPC for reverse auction to ensure confidentiality. All bids made from the Login ID given to the bidder will be deemed to have been made by the bidder.

- 7) After completion of the online Reverse Auction, the last quoted price of each bidder shall be available for further processing. If no bid is received in the auction system/ website within the specified time duration of the online RA, then NHPC may consider the "First Round Tariff" bid received through e-tendering for selection.
- 8) Online Reverse Auction shall be conducted by NHPC on pre-specified date and time, while the bidders shall be quoting from their own offices/ place of their choice. Internet connectivity shall have to be ensured by bidders themselves.
- 9) During the RA any requests for extension of time will not be considered by NHPC. Bidders are therefore requested to make all the necessary arrangements/ alternatives whatever required so that they are able to participate in the Reverse Auction successfully. Failure of power or loss of connectivity at the premises of bidders during the Reverse Auction cannot be the cause for not participating in the Reverse Auction. NHPC shall not be responsible for such eventualities.
- 10) Bidders are advised to get fully trained and clear all their doubts such as refreshing of Screen, capacity/number of Projects being auctioned, auction rules etc.
- 11) NHPC shall be at liberty to call the \*L1" bidder for further process/ negotiation/ cancel the e-reverse auction process/ re-tender at any time, without assigning any reason thereof.
- 12) NHPC/ Service Provider shall not have any liability to bidders for any interruption or delay in access to the site irrespective of the cause.
- 13) NHPC along with Service Provider can decide to reschedule or cancel any Auction; the bidders shall be informed accordingly.
- 14) The bidder shall not involve himself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other bidders. The bidder shall also not divulge either his bid or any other exclusive details of NHPC to any other party. If it has come to notice of NHPC/Service Provider that bidders have colluded while submitting price in e-RA, the same be dealt as per provision of Integrity Pact.
- 15) Any updation/ modification in the e-RA process brought out above shall be conveyed in advance to the bidders before e-RA.
- 16) Other terms and conditions shall be as per the bidding documents.

\*L1= *Lowest Evaluated Bidder after e-tendering and/or e-Reverse Auction (as the case may be)*

Within one (1) hour after conclusion of e-RA, successful bidders shall furnish confirmation through his registered e-mail id to the Tender Inviting Authority for present tender as per Annexure-6.

The bidder shall submit the Process Compliance Form as per Annexure-7.

## ANNEXURE-6

### **Process Compliance Form for e-Reverse Auction**

*(Bidders are required to submit this on their Company's Letter Head and sign & stamp)*

To,

\_\_\_\_**Name, Designation, Address of Tender Inviting Authority**\_\_\_\_

**Contact Person:** .....

**E-mail:** .....

Sub: Agreement to the Process related Terms and Conditions

Dear Sir,

This has reference to the Terms & Conditions for the e-Reverse Auction mentioned in the Business Rules for <.....Name of tender Package & Tender Specification No.: .....>

This letter is to confirm that:

1. The undersigned is authorized representative\* of the Company.
2. We have studied the e-Reverse Auction Terms & Conditions and the Business Rules governing the e-Reverse Auction as mentioned in the bid document and confirm our agreement to them.
3. We also confirm that we shall take the training on the auction tool and shall understand the functionality of the same thoroughly, before start of e-RA.
4. We also confirm that we will submit tariff confirmation within an hour of conclusion of e-Reverse Auction through company email ID.
5. Our registered email id is \_\_\_\_\_.

We hereby confirm that we will honor the Bids placed by us during the auction process.

With regards

**Signature with company seal**

**Name –**

Company / Organization –

Designation within Company / Organization –

Address of Company / Organization –

*\*Person having power of attorney for the subject package*

**ANNEXURE-7**

**Format for submitting Price Confirmation for e-Reverse Auction**

*(To be submitted on Company Letter Head duly signed and stamped)*

REF No. ....

Date: .....

To,

\_\_\_\_**Name, Designation, Address of Tender Inviting Authority**\_\_\_\_

**Contact Person:** .....

**E-mail:** .....

Re: Price Confirmation for the e-Reverse Auction of .....

Auction Notice Dated: .....

**For** Procurement of... [...Name of package.....].

For NHPC LIMITED E-Tender Id no.....

Reference above, we here by confirm that we have given our final offer in the e-Reverse Auction System as per the template, which is attached herewith duly signed and stamped from our end.

i) Final TARIFF

Signature:

Name:

Designation:

**Seal of the Company:**