

**REQUEST FOR PROPOSAL (HEREINAFTER REFERRED TO AS RFP)
FOR BIDDING PROCEDURE THROUGH ROOF RENT BASED
COMPETITIVE BIDDING FOR THE DEVELOPMENT OF ROOFTOP
SOLAR POWER PROJECTS IN NEW DELHI MUNICIPALITY AREA AND
THE PROCUREMENT OF ELECTRICITY GENERATED WHEREFROM
BY NDMC IN THE STATE OF DELHI.**



नई दिल्ली नगरपालिका परिषद्
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : SANSAD MARG
NEW DELHI - 110001
PABX No. 011-41501354-60

Issued by:

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Date: 4th August,2014

**REQUEST FOR PROPOSAL
NOTIFICATION INVITING TENDERS (NIT)
FOR ROOFTOP SOLAR POWER PROJECT**

1. The New Delhi Municipal Council hereby invites interested companies thereof (“**Bidders**”) to bid for the Request for Proposal (“**RFP**”) to participate in the bidding process for the selection of a Selected Bidder for development of rooftop solar PV power projects (“**Projects**”) and procurement by **NDMC**, (hereinafter also referred as “**Procurer**”) of power generated by such Project for 25 years through rent based competitive bidding process. The responsibility of each of the Selected Bidder(s) would be to identify roof, develop Projects in New Delhi Municipal Area and supply power to Procurer as per the terms and conditions of the RFP Documents.
2. **Bidding Process:** The NDMC seeks to qualify and select a Bidder for the development of Projects in New Delhi and supply of power as aforesaid through this bidding process. For the purpose of selection of the Selected Bidder(s), Bidders shall be required to submit both Technical Bid and Financial Bid simultaneously in a single stage bidding process as per the timelines mentioned in para 8 of this notification. Bidders who meet the Qualification Requirement as specified in the RFP will be Qualified Bidders and the Financial Bids of all such Qualified Bidders shall be opened and evaluated as per provisions of the RFP for the purpose of selection of Selected Bidder(s).
3. **Procurement of power:** Procurer intends to procure power from the multiple Projects to be delivered at the Interconnection Point for a period of years from the Scheduled Commercial Operation Date in accordance with the terms of the Relevant PPA
4. **Commencement of supply of power:** The Selected Bidder(s) shall have to commence the supply of power on the Scheduled Commercial Operation Date in accordance with the provisions of the Relevant PPA.
5. **Tariff:** NDMC will sign a PPA to procure the Power generated at DERC determined generic tariff.
6. **Documents:** For the benefit of the prospective Bidders, the NDMC has collected certain information and documents relevant to the Projects. Bidders can collect the information from NDMC office directly.
7. **Receipt and Opening of Bid:** Bid must be delivered to the address mentioned above on or before 1600 hours (IST) on **19th August, 2014** (last date of submission of Bid) and the Technical Bid will be opened on the same day at **1630 hours (IST)**, in the presence of Bidder’s representatives who wish to attend. If it is a public holiday on the last date for submission of the Bid, the submission and the receipt of the Bid shall be on the next working day at the place of submission of Bid, on which day the Technical Bid received shall be opened. Note that the bid date and time may be amended in accordance with the RFP and any such amendment shall be notified to the recipients of the bid documents.
8. **Nodal Person for enquiries and clarifications** All correspondence, clarifications in respect of the RFP and submission of the Bid shall be addressed to:

Name: Mr O P Mishra
Designation: Director - Projects
Address: Room No. 7008, Palika Kendra Building
Parliament Street, New Delhi – 110001
Phone: +011-41501383
Email: director.it@ndmcmail.com
Date: 4th August, 2014

9. All capitalized terms/words and expressions used in this notification but not defined herein shall have the same meaning as ascribed to them in the RFP.

DISCLAIMER

1. The information contained in this RFP or subsequently provided to Bidder(s), whether verbally or in documentary or in any other form by or on behalf of NDMC or the Government of Delhi or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
2. This RFP is not an agreement and is neither an offer nor invitation by NDMC to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their Bid. This RFP includes statements, which reflect various assumptions and assessments arrived at by NDMC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, their employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.
3. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. NDMC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
4. The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid stage.
5. NDMC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.
6. NDMC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
7. The issue of this RFP does not imply that NDMC is bound to select a Bidder or to appoint a sponsor or concessionaire, as the case may be, for the Project and

NDMC reserves the right to reject all or any of the Bidders or Bids or discontinue or cancel the bidding process without assigning any reason whatsoever.

8. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by NDMC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and NDMC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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DEFINITIONS

Any capitalized term, used but not defined in the RFP, shall have the meaning ascribed to such term in the RFP Documents. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, the CERC (Terms and Conditions of Tariff) Regulations 2009, the Grid Code or any other relevant electricity law, rule or regulation prevalent in India, as amended or re-enacted from time to time, in that order. **The following terms are defined for use in the RFP:**

“Affiliate” shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **“control”** means ownership by one company of at least fifty one percent (51%) of the voting rights of the other company

“Appropriate Commission” shall mean the New Delhi Electricity Regulatory Commission and the Central Electricity Regulatory Commission set up under the Electricity Act 2003;

“Bid” shall mean the Technical Bid and the Financial Bid(s) submitted by the Bidder, in response to the RFP, in accordance with the terms and conditions hereof;

“Bid Deadline” shall mean the last date and time for submission of Bid in response to the RFP as specified in the RFP as may have been extended in accordance with the RFP;

“Bidder” shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require”;

“Bidding Company” shall refer to such single company that has submitted the Bid in accordance with the provisions of the RFP;

“Bid Evaluator” or “NDMC” shall mean New Delhi Municipal Council, including its successors and permitted assigns;

“Bid Validity” shall have the meaning ascribed to it in Clause 2.9.1;

“Commercial Operation Date” shall have the meaning ascribed to it in the Relevant PPA;

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

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

“Contract Period” shall have the meaning ascribed to it in Clause 1.3.1;

“Contract Year” shall mean the period beginning on the Commercial Operation Date and ending on the

immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the Relevant PPA or the date of its early termination, whichever is earlier;

“Electricity” means the electrical energy in kilowatt hours;

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

“Financial Bid” shall mean for each Project, Envelope II of the Bid, containing the Bidder’s Quoted Tariff as per the Format 4.10 of the RFP for such Project;

“Financial Criteria” means the criteria specified in Clause 2.1.2.1;

“Financially Evaluated Entity” shall mean the Financial Member that has been evaluated for the satisfaction of the Financial Criteria;

“Financial Member” shall have the meaning set out in Clause 2.1.3;

“DERC” means the Delhi Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 for the State of New Delhi;

“DERC Tariff” shall mean the generic solar tariff announced by DERC;

“Lease Agreement” means the agreement to be entered into between the Solar Company and the different departments of the government or private players for the lease the roofs

“NDMC” shall mean New Delhi Municipal Council, which has been nominated by the Government of Delhi to enter into a PPA with the Solar Company to implement the Projects;

“Interconnection Points” shall for each Project mean the points where the power from each of the rooftop PV power generation installation of the Solar Company is injected into the distribution system of Procurer and will be mutually agreed by Solar Company and Procurer based on the interconnection scheme on the LT side;

“Law” shall mean (i) any law of Republic of India or (ii) unless otherwise specified, the law of any other applicable jurisdiction, in each case including all orders, rules, regulations, executive orders, decrees, policies, judicial decisions (including writ, injunction, decree or award), determinations or awards, notifications, or directives made pursuant thereto, issued or, (in case of treaties) entered into by a Statutory Entity, applicable to this RFP and the exercise, performance and discharge of the respective rights and obligations of the relevant parties hereunder, as may be in force and effect during the subsistence of this Agreement and as each may be amended or supplemented from time to time;;

“Letter of Intent” or **“LOI”** shall mean the letter to be issued by NDMC to the Selected Bidder(s) for supply of power pursuant to Clause 3.5 of the RFP;

“Member of a Bidding Consortium” or **“Member”** or **“Consortium Member”** shall mean each company in the Bidding Consortium which has executed the Consortium Agreement as provided in Format 4.3 of the RFP;

“Networth Company” shall have the meaning set out in Clause 2.1.5;

“Non Financial Bid” shall mean Envelope I of the Bid containing the documents as specified in Clause 2.4.1.1 of the RFP. If any Bidder wants to Bid for both the Projects, it is required to submit a single Envelope I for both the Projects;

“PPA” shall mean for each Project the agreement to be entered into between Procurer and the Solar Company pursuant to which the Solar Company shall supply power to Procurer.

“Procurer” shall mean NDMC, including its successors and permitted assigns;

“Project Company” shall mean the company, incorporated by the Bidder as per Indian laws

“Qualification Requirements” shall mean the qualification requirements as set forth in Clause 2.1 of the RFP;

“Qualified Bidder(s)” shall mean the Bidder(s) who, after evaluation of their Non Financial Bid as per Clauses 3.2 and 3.3, are declared by the NDMC as qualified for opening and evaluation of their Financial Bid;

“Quoted Rent” shall mean the rent, in sq.ft quoted by the Bidder as per the prescribed Format 4.10 and shall be construed to be at the Interconnection Point;

“Relevant PPA” shall mean the PPA for each of the two Projects respectively, as relevant;

“Relevant Building” shall mean a commercial or government buildings located in the city of New Delhi Municipal Area, New Delhi, owned by government or private individual(s) and leased by the Selected Bidder or Project Company (as applicable) for the purpose of developing the Project awarded to it;

“RFP” shall mean this Request for Proposal dated 18th July 2014 along with all formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

“RFP Documents” shall mean the documents and agreements to be entered into by the parties to the respective agreements in connection with the project along with the PPA

“Scheduled Commercial Operation Date” or “SCOD” shall have the meaning ascribed to it in the Relevant PPA;

“Subsidy” shall mean 30% of the capital cost to be furnished from MNRE to the bidder

“Selected Bidder” shall mean with respect to each of the Projects the Bidder selected by the NDMC pursuant to the RFP for implementing the project for supply of power from the Project by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

“Solar Company” shall mean with respect to each of the Projects, the Selected Bidder/or the Project Company, as the case may be, who submits the . and Performance Guarantee and executes the Relevant PPA with Procurer and other RFP Documents with NDMC and the rooftop owners, and who shall be responsible for supplying power to Procurer at the Interconnection Points for the term of the Relevant PPA as per the terms and conditions specified therein;

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

“Technical Criteria” shall mean the criteria set out in Clause 2.1.2.2;

“Technically Evaluated Entity” shall mean the entity that has been evaluated for the satisfaction of the Technical Criteria; and

“Tie Bidder” shall have the meaning ascribed to it in Clause 3.5.4;

SECTION - 1

INTRODUCTION

INTRODUCTION

SECTION 1

- 1.1 NDMC hereby invites interested Bidders to participate in the bidding process for the selection of a Selected Bidder for the development multiple Solar Rooftop Projects and procurement of power for 25 years through rent-based competitive bidding process.
- 1.2 The NDMC proposes to select the Bidder(s) having the prescribed qualifications and whose Quoted rent is determined to be the Highest as per the provisions of Clause 3.5 to become the Solar Company in respect award of the project. The Selected Bidder shall enter into a PPA with NDMC to develop multiple Projects across New Delhi. The Solar Company shall supply power to NDMC from such Project pursuant to and as per the terms and conditions of the Relevant PPA to be signed between Procurer and Solar Company. The roof owner shall be entitled to the Quoted Rent as per the provisions of Pt. 8 of Clause 1.3.1 of this section titled Introduction of the RFP.
- 1.3 Power Procurement
- 1.3.1 Scope

Brief scope of power procurement is given as under:

The successful bidders will study, source and procure the rooftops in NDMC area a long term lease, generate solar power using the same rented roof & inject the same into NDMC grid at DERC's rate. This will include all the private rooftops which can be sourced by the successful bidder.

Sr. No	Scope	Details
1.	Contract Period (in years)	25 years.
2.	Project Capacity (MW)	Capacity ranging from of 10KWp to 1MWp on each individual roof for solar PV power generation.
3.	Maximum Bid Capacity	4MW(total capacity 8MW+)
4.	Scheduled Commercial Operation Dates	One year from Issue of LOI.
5.	Interconnection Point	Means the point of injection of the power from each of the rooftop installations comprising the Project which shall be mutually agreed by the Solar Company and Procurer based on the interconnection scheme annexed to the Relevant PPA.
6.	Arranging Interconnection Facility	The NDMC will arrange the Interconnection Facilities at its own cost and mutually agreed SLD/Schemes
7.	DERC Tariff	means the tariff determined by the DERC(CERC tariff, if DERC is not available) for the period of 25 years, 3 days before the bid date.

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|-----|------------------------------|---|
| 8. | Minimum Rent Liability (MRL) | As per NDMC norms, minimum rent payable to the roof owners will be INR 1.5/Sq.ft. |
| 9. | Lease Rent Liability(LRL) | The Quoted rent for the 25 year contract period will identically to the 1 st year with a maximum increment of 3% every year. |
| 10. | Subsidy | 30% Subsidy to be provided on average capital cost at as per benchmark self by MNRE for Rooftop Solar. |

1.3.2 Details of Procurer containing the following information may be accessed from NDMC

Last three years of the available audited accounts

SECTION - 2

INFORMATION AND INSTRUCTIONS FOR BIDDERS

SECTION -2

2. INFORMATION AND INSTRUCTIONS FOR BIDDERS

2.1 Qualification Requirements

- 2.1.1 The Bidder should be a corporate entity duly incorporated under the relevant laws of its jurisdiction. The Bidder must meet all the Qualification Requirements.
- 2.1.2 The Bidder must fulfill the following Qualification Requirements specified in Clause 2.1.2.1 and 2.1.2.2:
- 2.1.2.1 **Financial Criteria:** Networth should be equal to or greater than **Rs. 50 Crore or equivalent USD**. [*Calculated as per provisions mentioned in Note below*]. The computation of networth shall be based on unconsolidated audited annual accounts of most recent financial year preceding the Bid Deadline.

[**Note:** For the Qualification Requirements, if data is provided by the Bidders in foreign currency, equivalent rupees of Networth will be calculated using bills selling exchange rates (card rate) USD / INR of State Bank of India prevailing on the date of closing of the accounts for the respective financial year as certified by the Bidders' banker.

For currency other than USD, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion.

If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account.]

Networth shall be computed in the following manner by the Bidder: For the purposes of meeting financial requirements, only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidding Company or Member, as the case may be, may be used for the purpose of financial requirements provided the Bidding Company or Member, as the case may be, has at least twenty six percent (26%) equity in each Networth Company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such Networth Companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Networth

=	Paid up share capital
Add:	Reserves
Subtract:	Revaluation Reserves
Subtract:	Intangible Assets
Subtract:	Miscellaneous Expenditures to the extent not written off and Carry forward losses

Bidders shall furnish documentary evidence as per the Format 4.6 (A), duly certified by its Statutory Auditor in support of their financial capability.

2.1.2.2 Technical Criteria:

The Bidder must fulfill the following minimum technical requirements specified in A, B, C & D, in the aggregate.

- A. The Bidder or any Member of the Bidding Consortium must have experience of development and commissioning of solar photovoltaic power projects of at least 18 MW capacity at single location as a developer of the project or as an EPC provider.
- B. The Bidder is expected to have experience of installation and commissioning of at least 3 rooftop solar power projects above 75kWp capacity. Accordingly, the Bidder shall provide information of rooftop solar power projects commissioned. Supporting documents to be provided
- C. Bidder has to be SP1A rated MNRE Channel Partner.
- D. Bidder should be ISO 9001:2008 and ISO14001:2004

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

The determination of the relationship of Parent Company or Affiliate with the Bidding Company shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in form of a certification from a practicing Company Secretary or Statutory Auditor to establish such relationship shall be furnished by the Bidder along with the Bid.

2.1.6 A Bidder shall submit only one response to the RFP either individually as Bidding Company

2.1.7 Notwithstanding anything stated above, the NDMC reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information / documents. The NDMC reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.

2.1.8 (a) If at any stage of the bidding process, any order / ruling is found to have been passed in the last one (1) year preceding the Bid Deadline by an Appropriate Commission or a competent court of Law against any Bidder or its Affiliates for its material breach of any contract for supply of power having duration of contract in excess of one (1) year to any licensee in India, Bids from such Bidders shall be liable to be rejected.

2.2 Submission of Bid by the Bidder

2.2.1 The information and/or documents shall be submitted by the Bidder as per the formats specified in Section 4 (Formats for RFP) of this document.

2.2.2 The Bidding Company should designate one person to represent the Bidding Company in its dealings with the NDMC. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney in original (as per Format 4.2 (a)),

authorizing the signatory of the Bid.

2.2.6 Clarifications

2.2.6.1 The NDMC will not enter into any correspondence with the Bidders, except to furnish clarifications on the RFP and RFP Documents, if necessary. The Bidders may seek clarifications on the RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the NDMC at the address, date and time mentioned in Clause 2.8. For the avoidance of any doubt, it is hereby clarified that there shall be no extension in the Bid Deadline on account of clarifications sought in accordance with this Clause 2.2.6.

2.2.6.2 NDMC is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.

2.2.7 The draft of the PPA have been attached as Annexure;

The RFP Documents shall be signed in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

2.2.8 Payment of Project Development Fee, Performance Guarantee and Development Fee

(a) Within three (3) days of the issue of the Letter of Intent, the Selected Bidder/ Project Company, as the case may be, shall execute the Relevant PPA in required number of originals so as to ensure that one original is retained by each party to the agreement.

2.2.9 The cost of all stamp duties payable for executing the RFP Documents shall be borne by the Selected Bidder.

2.2.10 If the Selected Bidder(s) / Project Company fails or refuses to comply with any of its obligations under Clauses 2.2.9, and provided that Procurer(s) and / or other parties to the respective RFP Documents are willing to execute the said documents, such failure or refusal on the part of the Selected Bidder/ Project Company shall constitute sufficient grounds for cancellation of the Letter of Intent.

2.3 Amendment of RFP

2.3.1 In case bidder need any further clarifications not involving any amendments in respect of the final RFP and RFP Documents, they should ensure that written request for such clarification is delivered to Procurer / NDMC at least seven (7) days prior to the Bid Deadline as mentioned in Clause 2.8, the NDMC may issue clarifications only, at its sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RFP has been issued. Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received. There shall be no extension in Bid Deadline on account of clarifications sought as per this Clause.

2.4 Bidding Process

2.4.1 Bid Formats

2.4.1.1 The Bid in response to the RFP shall be submitted by the Bidders in the manner provided in Clause 2.10. The Bid shall comprise of the following:

(A) Envelope I – Technical Bid comprising of:

- i. Covering Letter as per prescribed Format 4.1
- ii. Original power of attorney issued by the Bidding Company, in favor of the authorized person signing the Bid, in the form attached hereto as Format 4.2.

Provided that in the event the Bidding Company is a foreign entity, it may submit Board resolutions in place of Power of Attorney for the purpose of fulfilling the above requirements;

Provided further that such Board resolutions, as specified above, in case of a foreign entity, 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. In the case of a foreign entity, in the event, any and/or all of the documents/resolutions are in any other language other than English, then a duly notarized copy of such translation shall also be required to be submitted.

- iii. Consortium Agreement as per prescribed Format 4.3;
- iv. Letter of Consent from the Consortium Members as per prescribed Format 4.4;
- v. Bidder's composition and ownership structure as per prescribed format
- vi. Details for meeting Qualification Requirement as per the prescribed format along with documentary evidence for the same as specified in Clause 2.1;
- vii. Bidders' Undertaking as per the prescribed Format 4.7 (A) and Undertakings from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company as per Format 4.7 (B);
- viii. Board Resolution of the Financially Evaluated Entity of the Bidding Company as per prescribed format, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire Performance Guarantee in the event of failure of the Bidding Company; or

Board Resolution of the Parent or Ultimate Parent of the Financially Evaluated Entity referred to above, as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire . and Performance Guarantee in the event of failure of the Bidding Company / Member of the Consortium to do so.

Provided that such Board resolutions, as specified above, in case of a foreign entity, 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.

- ix. Checklist for Bid submission requirements as prescribed in Format 4.10;
- x. Disclosure as per Format 4.11 regarding participation of any related companies in this bidding process;

- xii. Initialed RFP Documents as per format;

(B) Envelope II – Financial Bid as per Format 4.10.

Bidding Parameter: The bidding parameter is the Quoted Rent. The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid as per the prescribed Format 4.9, duly signed by an authorized signatory.

- The Bidder shall submit their Quoted Rent and shall specify the same in its Financial Bid as prescribed in Format 4.10 of the RFP.
- The Financial Bid will comprise of only one part: Quoted rent for the first Contract Year
- Bidders must take into account the 30% subsidy on the Capex suggested along with the DERC/CERC Tariff.
- The H1 bidder will need to pay the monthly lease rent to the owner during the lease period of 25 years at a escalation of 3% YoY.

2.5 The Bidder should note that:

- (a) If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of its Bid, the NDMC reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the date of signing the RFP Documents, consequences specified in the relevant RFP Document shall apply.
- (b) If for any reason the Bid of any Selected Bidder is rejected or Letter of Intent issued to such Selected Bidder is cancelled, Procurer/ NDMC may:
 - i. Consider the next lowest Financial Bid from Bidders other than the Selected Bidder(s) whose Bids are responsive and valid; or
 - ii. Annul the bid process; or
 - iii. Take any such measure as may be deemed fit in the sole discretion of Procurer/ NDMC, as applicable'
- (c) Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the NDMC and shall not be returned to the Bidders;
- (d) Language of the Bid shall be English only;
- (e) Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per Format 4.1;
- (f) The NDMC may, at its sole discretion, ask for additional information/ document and/ or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However, no change in the substance of the Quoted Rent shall be sought or permitted by Procurer/ NDMC;

- (g) Failure by the NDMC to require information from a Bidder that has not been properly provided shall not be construed as waiver on the part of the NDMC of the obligation of the Bidder to furnish the said data/information unless the waiver is in writing;
- (h) The NDMC may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary;
- (i) The Bidders shall satisfy themselves, on receipt of the RFP, that the RFP is complete in all respects. Intimation of any discrepancy shall be given to the NDMC at the address provided in Para 9 of the notification to the RFP immediately. If no intimation is received from any Bidder within seven (7) days from the date of issue of the RFP, it shall be considered that the issued document, complete in all respects, has been received by the Bidder; and
- (j) The RFP document includes statements, which reflect the various assumptions arrived at by the NDMC in order to give a reflection of the current status in the RFP. These assumptions may not be entirely relied upon by the Bidders in making their own assessments. The RFP does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in the RFP and obtain independent advice from appropriate sources.

2.6 Bidder to inform itself fully

- 2.6.1 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Selected Bidder, it shall not be relieved from any of its obligations under the RFP Documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever.
- 2.6.2 The Bidders should particularly acquaint themselves with the technical requirements of integrated grid operation as specified in the, the Delhi Grid Code and the Delhi Distribution Code.
- 2.6.3 In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act 1999, the Environment Protection Act 1986 and Forest (Conservation) Act 1980, the local laws affecting use of rooftop for solar PV installations the regulations framed by regulatory commissions and all other related acts, laws, rules and regulations prevalent in India, as amended from time to time. Procurer/ NDMC shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidder undertakes and agrees that, before submission of its Bid; all such factors as generally stated above, have been fully investigated and considered while submitting the Bid.
- 2.6.4 The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits required for the supply of power to Procurer. Procurer shall have no liability to obtain any of the Consents, Clearances and Permits required for setting up of the generation facilities and/ or supply of power.

2.7 Minimum Equity Holding Lock-in

The Lead Member shall continue to hold fifty one percent (51%) equity in the Project Company up to a period of two (2) years after Commercial Operation Date of the relevant Project and twenty six (26%) for a period of three (3) years thereafter as per provisions of the relevant RFP Documents. The Technical Member shall be required to maintain an equity stake of 26% in the Project Company for a period of at least two (2) years from the Commercial Operation Date of the relevant Project as per the provisions of the RFP Documents. The Financial Member shall be required to maintain an equity stake of 26% in the Project Company for a period of at least two (2) years from the Commercial Operation Date of the relevant Project as per the provisions of the RFP Documents. Provided that where a single Member claims both the Networth for meeting the Financial Criteria as well as relevant technical experience for meeting the technical criteria, then such Member shall be the Lead Member and shall be required to hold and maintain an aggregate equity stake required of the Lead Member as specified hereinabove in this Clause 2.7 in the Project Company.

In the event the Selected Bidder is a Bidding Company and it establishes the Project Company, then in such event the Bidding Company shall be required to hold fifty one percent (51%) equity in the Project Company up to a period of two (2) years after the Commercial Operation Date of the relevant Project and twenty six percent (26%) for a period of three (3) years thereafter.

2.8 Due Dates

- 2.8.1 The Bidders should submit the Bids so as to reach the address specified below by 1600 hrs (IST) on 19th August 2014 at the following address:

Mr O.P Mishra
Director - Projects
Room No. 7008, Pallika Kendra Building
Parliament Street, New Delhi – 110001

- 2.8.2 The following shall be the time schedule for completion of the bidding process

<u>Event</u>	<u>Schedule</u>
Date of Issue of RFP	Monday, 4 Aug 2014
Bid submission and opening of Technical Envelope	Tuesday, 19 Aug 2014
Opening of Financial Bid of Qualified bidders	Friday, 22 Aug 2014
Shortlisting of Selected Bidders (s) and issue of Letter of Intent	Monday, 25 Aug 2014
Receiving consent on LOI	5 days from issuance of LOI
Signing of PPA	30 days from acceptance of LOI

The timelines are indicative may be changed as per discretion of NDMC

2.9 Validity of the Bid

- 2.9.1 The Bidder shall submit the Bid which shall remain valid up to one hundred and twenty (120) days after the Bid Deadline (“**Bid Validity**”). NDMC reserve the right to reject any Bid which

does not meet the aforementioned validity requirement

2.9.2 NDMC may solicit the Bidders' consent for an extension of the period of validity of the Bid. The request and the response in this regard shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by the NDMC. A Bidder accepting the NDMC's request for validity extension shall not be permitted to modify its Bid.

2.10 Method of Submission

2.10.1 Bids are to be submitted in a single closed cover envelope (as mentioned in Clause 2.10.2) containing Envelope I (Technical Bid) and Envelope II (Financial Bid) each one duly closed separately. Envelope I (Technical Bid) and Envelope II (Financial Bid) should be transcript in the following way;

Envelope I (Technical Bid) superscript –

“Bid for selection of Solar Company for procurement of solar power from rooftops”

Name of the Bidder

Due for opening on

Envelope II: "Financial Bid"

Envelope II (Financial Bid) for Project -

[“Financial Bid for selection of Solar Company for procurement of solar power from rooftop Projects”]

Name of the Bidder

Due for opening on:

Envelope II: "Financial Bid"

2.10.2 Envelope I (Technical Bid) and Envelope II (Financial Bid) (mentioned in Clause 2.10.1) for the Bid to be submitted by Bidders should be packed in a single closed cover envelope, with the following superscript:

[“Bid for selection of Solar Company for procurement of solar power from rooftops”]

Due for opening on

Attention: Director - Projects
Room No. 7008, Pallika Kendra Building
Parliament Street, New Delhi – 110001

“Name of the Bidder”

2.10.3 The Bidders have the option of sending their Bid either by registered post; or speed post; or courier; or by hand delivery, so as to reach NDMC by the Bid Deadline. Bids submitted by telex / telegram / fax / e-mail shall not be considered under any circumstances. NDMC shall not be responsible for any delay in receipt of the Bid. Any Bid received after the Bid Deadline shall be returned unopened.

2.10.4 It may be noted that Technical Bid (Envelope I) shall not contain any information/document relating to Financial Bid. If Technical Bid contains any such information / documents, Procurer/ NDMC shall not be responsible for premature opening of the Financial Bid.

- 2.10.5 All pages of the Bid, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the authorized signatory at least on the first and last page of such document.
- 2.10.6 Bidders shall submit the Bid one (1) original plus (2) copies, duly signed by the authorized signatory of the Bidder. The original Bid shall be clearly marked "ORIGINAL", and all other copies are to be clearly marked "COPY OF BID". In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.
- 2.10.7 If the outer cover envelope or Envelope I (Technical Bid) or Envelope II (Financial Bid) is not closed and not transcript as per the specified requirement, Procurer/ NDMC will assume no responsibility for the Bid's misplacement or premature opening.

2.11 Preparation Cost

The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions and attending Pre-bid meetings, and finalization and execution of the RFP Documents, etc., Procurer/ NDMC shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid process.

2.12 Performance Guarantee

- 2.12.1 Within ninety days (90) days of signing of PPA, the Selected Bidder(s) either on his/their own behalf or on behalf of the Solar Company, shall provide to Procurer, the Performance Guarantee of Rs. 30.00 lakh/MW (Rupees thirty lacs) against Performance Ratio of minimum 70% in the first year as prescribed in Format
- 2.12.2 Non- submission of the Performance Guarantee by the Selected Bidder(s) as per the provisions of Clause 2.13 may lead to cancellation of the Letter of Intent of such Selected Bidder(s) by the NDMC, and thereafter, the provisions of Clause 2.5 (b) shall be applicable.

2.13 Right to withdraw the RFP and to reject any Bid

- 2.13.1 The RFP may be withdrawn or cancelled by the NDMC at any time without assigning any reasons thereof. The NDMC and the Government of New Delhi further reserve the right, at their complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

2.14 The NDMC reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of the RFP and make its own judgment regarding the interpretation of the same. In this regard the NDMC shall have no liability towards any Bidder and no Bidder shall have any recourse to the NDMC with respect to the selection process. The NDMC shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The NDMC's decision in this regard shall be final and binding on the Bidders.

2.15 Confidentiality

- 2.15.1 The parties undertake to hold in confidence the RFP and RFP Documents 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;
- c) disclosures required under applicable Law, without the prior written consent of the other parties of the concerned agreements.

Provided that the Selected Bidder(s) agrees and acknowledges that any of Procurers may at any time, disclose the terms and conditions of the RFP and RFP Documents to any person, to the extent stipulated under the applicable Law or the Bidding Guidelines.

2.16 Fraudulent and Corrupt Practices

- 2.16.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid process and subsequent to the issue of the Letter of Intent. Notwithstanding anything to the contrary contained herein, or in the Letter of Intent, the NDMC shall reject a Bid, withdraw the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process.
- 2.16.2 Without prejudice to the rights of the NDMC under Clause 2.16.1 hereinabove and the rights and remedies which the NDMC may have under the Letter of Intent, if a Bidder is found by the NDMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of the Letter of Intent, such Bidder shall not be eligible to participate in any tender or RFP issued by the NDMC, during a period of two (2) years from the date such Bidder is found by the NDMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

SECTION - 3

EVALUATION CRITERIA

SECTION 3

3. EVALUATION CRITERIA

3.1 Bid Evaluation The evaluation process comprises the following four steps.

- Step I – Qualification check of Technical
- Step II – Evaluation of Bidder’s fulfillment of Qualification Requirements as per Clause 2.1
- Step III - Evaluation of Financial Bid
- Step IV – Selected Bidder(s) selection

3.2 STEP I – Responsiveness check of Technical Bid

The Technical Bid submitted by Bidders shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. Subject to Clause 2.5(g), any of the following may cause the Bid to be considered “Non-responsive”, at the sole discretion of Procurer / NDMC:

- Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution as per Clause 2.4.1.1, applicable board resolutions, applicable undertakings, format for disclosure;
- Bid not signed by authorized signatory and / or stamped in the manner indicated in the RFP;
- Material inconsistencies in the information/documents submitted by the Bidder, affecting the Qualification Requirements;
- Information not submitted in the formats specified in the RFP;
- Bid validity being less than that required as per Clause 2.9 of the RFP;
- Bid being conditional in nature;
- Bid not received by the Bid Deadline;
- Bid having Conflict of Interest;
- Bidder delaying in submission of additional information or clarifications sought by NDMC as applicable;
- Bidder makes any misrepresentation as specified in Clause 2.5;

Each Bid shall be checked for compliance with the submission requirements set forth in the RFP before the evaluation of Bidder’s fulfillment of Qualification Requirement is taken up. Format 4.10 shall be used to check whether each Bidder meets the stipulated requirements.

3.3 STEP II– Evaluation of Bidder’s fulfillment of Qualification Requirements

- 3.3.1 Evaluation of Bidder's Qualification will be carried out based on the information furnished by the Bidder as per the prescribed Format 4.6 and related documentary evidence in support of meeting the Qualification Requirements as specified in Clause 2.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive. However, NDMC may seek further clarification, information and document from any Bidder as it may deem necessary. The Bidders shall be required to respond to any such request of the NDMC within the time permitted by NDMC for submission of such clarifications, information and documents. If any Bidder fails, refuses or avoids submission of any such clarification, information or documents within the permitted time, then such Bidders' Bid shall be evaluated in absence of such information and the NDMC shall not be responsible of any consequence thereof, including the rejection of the Bid.
- 3.3.2 The NDMC shall declare the Bidders that have qualified so that their Financial Bids can be opened.

Step III - Evaluation of Financial Bid

- 3.4.1 Financial Bids (Envelope II) of the Qualified Bidders shall be opened in presence of the representatives of such Qualified Bidders, who wish to be present. The evaluation of Financial Bid shall be carried out based on the information furnished in Envelope II (Financial Bid).
- 3.4.2 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.4.1.1 (B) of the RFP. Any Bid not meeting any of the requirements as per Clause 2.4.1.1 (B) of the RFP may cause the Bid to be considered "Non-responsive" at the sole decision of the NDMC.

Financial Bids of the Bidders submitting a Bid for both the Projects shall be evaluated separately for each of the Projects.

3.5 STEP IV – Selected Bidder(s) Selection

- 3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.
- 3.5.2 The Quoted Rent from the Financial Bids for each of the Project of all Qualified Bidders shall be ranked from the highest to the lowest.
- 3.5.3 Subject to Clause 3.6 the Bidder with the highest Quoted Rent for a Project shall be declared as the Selected Bidder for that Project.
- 3.5.4 In the event that two or more Bidders bid the same Quoted Tariff for a Project (the "**Tie Bidders**"), the NDMC shall identify the Selected Bidder based on the Networth of the Tie Bidders. Accordingly, out of the Tie Bidders, the Bidder whose Networth is highest shall be the Selected Bidder.
- 3.5.5 The Letter(s) of Intent shall be issued to a Selected Bidder for each Project selected as per the provisions of this Clause 3.5.
- 3.5.6 There shall be no negotiation on the Quoted rent between the NDMC and the Bidder(s) during the process of evaluation.
- 3.5.7 Each Selected Bidder shall unconditionally accept the Letter of Intent, and record on one (1) copy of the Letter of Intent, "Accepted Unconditionally", under the signature of the authorized signatory of the Selected Bidder and return such copy to the NDMC within one (1) days of issue of Letter of Intent.

SECTION - 4

FORMATS FOR BID SUBMISSION

SECTION – 4

4. FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section 2 and other Bid submission requirements specified in the RFP.

- i. Format of Covering Letter (Envelope I)
- ii. Formats for Power of Attorney (Envelope I)
- iii. Format for the Consortium Agreement (Envelope I)
- iv. Format for Letter of Consent from Consortium Members (Envelope I)
- v. Format for Bidder's composition and ownership structure (Envelope I)
- vi. Format for Qualification Requirement (Envelope I)
- vii. Format of Undertakings (Envelope I)
- viii. Format for Board Resolutions (Envelope I)
- ix. Format for Financial Bid (Envelope II)
- x. Format of checklist for Bid submission requirements (Envelope I)
- xi. Format for Disclosure (Envelope I)
- xii. Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member (Envelope I)
- xiii. Format for undertaking with respect to rooftop solar experience (Envelope-I)

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

4.1 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:

Attention: Director - Projects
Room No. 7008, Pallika Kendra Building
Parliament Street, New Delhi – 110001

Sub: Bid for supply of power on long term basis through Rent based competitive bidding process for rooftop solar PV project in New Delhi in response to RFP dated [Insert date in dd/mm/yyyy].

Dear Sir,

We, the undersigned [insert name of the „Bidder“] having read, examined and understood in detail the RFP and RFP Documents for development of the Projects in New Delhi and supply of power on long term basis through rent based competitive bidding process for meeting the requirements of Procurer hereby submit our Bid, comprising of Financial Bid(s) and Technical Bid. We confirm that neither we nor any of our Parent Company/ Affiliate/ Ultimate Parent Company has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

1 We give our unconditional acceptance to the RFP, dated [Insert date in dd/mm/yyyy] and RFP Documents attached thereto, issued by the NDMC, as amended. In token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid. We shall ensure that the Solar Company shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.

2. We have submitted our Financial Bid strictly as per Format 4.10 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

3. **Acceptance**

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

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to supply of power.

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

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Selected Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of the RFP have been fully examined and considered while submitting the Bid.

5. **Contact Person**

Details of the contact person are furnished as under:

Name :

Designation :

Company :

Address :

Phone Nos. :

Fax Nos.:.....

E-mail address:

7. We are enclosing herewith the Non Financial Bid (Envelope I) and separate Financial Bid (Envelope II) for the project containing duly signed formats, each one duly closed separately, in one (1) original + 2 (two copies (duly attested) as desired by you in the RFP for your consideration.
8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from NDMC.
9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.
10. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and twenty (120) days from the Bid Deadline.
11. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1 of the RFP.
12. We confirm that no order / ruling has been passed by an Appropriate Commission or a competent court against us or any of our Affiliates in the preceding one (1) year from the Bid Deadline for breach of any contract for supply of power having duration of contract in excess of one (1) year and that the bid security submitted by the us or any of our Affiliates has not been forfeited, either partly or wholly, in any bid process under Case-1 or Case -2 bidding procedure for procurement of power prescribed by Ministry of Power, Government of India, in the preceding one (1) year from the Bid Deadline to any licensee in India as per the provisions of Clause 2.1.8.

Dated the _____ day of __, 2014

Thanking you,

We remain,

Yours faithfully,

Name, Designation and Signature of Authorized Person in whose name Power of Attorney / Board Resolution as per Clause 2.4.1.1 is issued

4.2 Formats for Power of Attorney

POWER OF ATTORNEY

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bids are required to follow the applicable law in their country)

a) Power of Attorney to be provided by the Bidding Company/ Lead Member in favor of its representative as evidence of authorized signatory's authority.

Know all men by these presents, We(name and address of the registered office of the Bidding Company or Lead Member of the Bidding Consortium, as applicable) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for supply of power on long-term basis through rent based competitive bidding process for meeting the requirements of issued by New Delhi Municipal Corporation(NDMC), including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which NDMC may require us to submit. The aforesaid Attorney is further authorized for making representations to the NDMC, and providing information / responses to NDMC, representing us in all matters before the NDMC, and generally dealing with NDMC in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.

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

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

**Signed by the within named [Insert the name of the executant company]
through the hand of**

Mr.

duly authorized by the Board to issue such Power of Attorney

Dated this day of

Accepted

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

Attested

.....
(Signature of the executant) (Name, designation and address of the executant)

.....
Signature and stamp of Notary of the place of execution

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

WITNESS

1.
(Signature)

Name

Designation.....

2.
(Signature)

Name

Designation.....

Notes:

- (1) *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s).*
- (2) *In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.*
- (3) *Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).*

b) Power of Attorney to be provided by each of the Members of the Consortium (other than the Lead Member) in favor of the Lead Member

WHEREAS New Delhi Municipal Corporation (“NDMC”) have issued Request For Proposal (RFP) on [Insert Date] for inviting Bids in respect of supply of power to Procurer named in the RFP on the terms and contained in the RFP and the RFP Documents (as defined in RFP);

AND WHEREAS, and (Insert names of all Members of Consortium) the Members of the Consortium are desirous of submitting a Bid in response to the RFP, and if selected, undertaking the responsibility of supplying power to Procurer as per the terms of the RFP Documents;

AND WHEREAS all the Members of the Consortium have agreed under the Consortium Agreement dated, entered into between all the Members and submitted along with the Bid to appoint (Insert the name and address of the Lead Member) as Lead Member to represent all the Members of the Consortium for all matters regarding the RFP and the RFP documents and the Bid;

AND WHEREAS pursuant to the terms of the RFP and the Consortium Agreement, we, the Members of the Consortium hereby designate M/s (Insert name of the Lead Member) as the Lead Member to represent us in all matters regarding the Bid and the RFP, in the manner stated below:-

Know all men by these presents, We (Insert name and address of the registered office of the Member 1), (Insert name and address of the registered office of the Member 2) (Insert name and address of the registered office of the Member n) do hereby constitute, appoint and authorise(name and registered office address of the Lead Member), which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium’s Bid in response to the Request For Proposal dated, issued by the NDMC including signing and submission of the Bid and all documents related to the Bid as specified in the RFP, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document, which the NDMC may require us to submit. The aforesaid Attorney shall be further authorized for making representations to the NDMC named in the RFP, and providing information / responses to the NDMC, representing us and the Consortium in all matters before the NDMC named in the RFP, and generally dealing with the NDMC named in the RFP in all matters in connection with our Bid, till completion of the bidding process in accordance with the RFP.

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

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

**Signed by the within named[Insert the name of the executant company] through the hand of
Mr.
duly authorized by the Board to issue such Power of Attorney**

Dated this day of

Accepted

.....

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

Attested

.....

(Signature of the executant) (Name, designation and address of the executant)

.....

Signature and stamp of Notary of the place of execution

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

WITNESS:

1.
(Signature)

Name

Designation.....

2.
(Signature)

Name

Designation.....

Notes:

- (1)** *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s).*
- (2)** *In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.*
- (3)** *Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).*

4.3 Format for the Consortium Agreement

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country)

FORM OF CONSORTIUM AGREEMENT BETWEEN

M/S....., M/S....., M/S..... AND
M/S..... FOR (.....) AS PER CLAUSE 2.2.4

THIS Consortium Agreement (hereinafter referred to as “Agreement”) executed on this..... day ofTwo thousand..... between M/s..... a company incorporated under the laws of and having its Registered Office at (hereinafter called the "**Party 1**", 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 "**Party 2**", 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 "**Party n**", which expression shall include its successors, executors and permitted assigns) (The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members) for the purpose of submitting the Bid in response to the RFP and in the event of selection as Selected Bidder to comply with the requirements as specified in the RFP and ensure execution of the RFP Documents as may be required to be entered into with the NDMC .

Party 1, Party 2, and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS the Procurer desired to procure power for 25 years through tariff based competitive bidding process.

AND WHEREAS Clause 2.2.4 of the RFP stipulates that the Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment for the formation of a Project Company and undertake to submit the . and Performance Guarantee as required as per the provisions of the RFP, as specified herein.

NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:

In consideration of the above premises and agreement all the parties in this Consortium do hereby mutually agree as follows:

- 1 In consideration of the selection of the Consortium as the Selected Bidder by the NDMC, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... (Insert name of the Lead Member), shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of (the names of all the other Members of the Consortium to be filled in here).
- 2 The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members. [●] is designated as the Technical Member, whose credentials have been used for the Consortium to meet the Technical Criteria. [●] is designated as the Financial Member, whose credentials have been used for the Consortium to meet the Financial Criteria.

The Lead Member shall continue to hold [fifty one percent (51%)] equity in the Project Company up to a period of two (2) years after Commercial Operation Date of the relevant Project and [twenty six (26%)] for a period of three (3) years thereafter as per provisions of the relevant RFP Documents. The Technical Member shall be required to maintain an equity stake of 26% in the Project Company for a period of at least two (2) years from the Commercial Operation Date of the relevant Project as per the provisions of the RFP Documents. The Financial Member shall be required to maintain an equity stake of 26% in the Project Company for a period of at least two (2) years from the Commercial Operation Date of the relevant Project as per the provisions of the RFP Documents.

3. 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 their respective equity obligations. Each Consortium 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.
4. (Insert as applicable) The Consortium shall be responsible to incorporate a Project Company as a legal entity as per the provisions of the RFP, within fifteen (15) days of issue of Letter of Intent provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid.

OR

The Consortium has incorporated a Project Company by the name(Insert name of the Project Company) to undertake the responsibilities and obligations for supply of power as per the provisions of the RFP Documents.

The percentage of equity holding of each Member of the Consortium in the Project Company shall be/is as follows:

Name	Percentage of equity holding in the Project Company
Party 1
....
Party n
Total	100%

[Note: The percentage equity holding for any Consortium Member cannot be zero in the above table. Lead Member's percentage equity holding cannot be less than 51%.]

5. In case of any breach of any of the equity investment commitment as specified under Clause 4 above by any of the Consortium Members for the formation of the Project Company, the Lead Member shall be liable to meet the equity obligation.
6. 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.

7. It is further specifically agreed that the financial liability for equity contribution of 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 their scope of work or financial commitments.
8. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Delhi alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
9. It is hereby agreed that the Lead Member shall furnish the Performance Guarantee, as stipulated in the RFP, on behalf of the Consortium.
10. It is hereby agreed that in case of selection of Bidding Consortium as the Selected Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Performance Guarantee on behalf of the Solar Company in favor of NDMC, respectively, as stipulated in the RFP and PPA. The Lead Member shall be responsible for ensuring the submission of the Performance Guarantee on behalf of all the Consortium Members.
11. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, for the Selected Bidder, shall remain valid over the term of the PPA, unless expressly agreed to the contrary by NDMC and/or Procurer, as the case may be.
12. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid.
13. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated as annexed hereto as **Annexure 1** forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to the supply of power envisaged in the RFP Documents.
14. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.
15. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of Procurer.
16. This Consortium Agreement:
 - (a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,
 - (b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof; and
 - (c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of NDMC:

IN WITNESS WHEREOF, the Parties to the Consortium Agreement have executed

these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of	For and on behalf of	
has been affixed in my/our presence pursuant to the Board of Director's resolution dated	Consortium Member (party 1)	
	M/s.....	

.....
(Signature)

.....
(Signature of authorized representative)

Name:
Designation:
Place:

Name:
Designation:
Date:

Witness :

1
(Signature)

Name
Designation.....

2
(Signature)

Name
Designation.....

Common Seal of For and on behalf of has been affixed in my/our Consortium Member (Party n)

³ Separate witness for each Consortium Member should fill in the details.
presence pursuant to the M/s..... Board of Director's resolution dated

.....
(Signature)
Name:
Designation:
Place:

.....
(Signature of authorized representative)
Name:
Designation:
Date:

WITNESS¹

3
(Signature)

Name
Designation.....

4
(Signature)

Name
Designation.....

Attested:

..... (Signature) (Notary Public)

Place:

Date:

Annexure 1 to the Consortium Agreement

Role and Responsibility of each Member of the Consortium:

1. Role and Responsibility of Lead Member
2. Role and Responsibility of Technical Member
3. Role and Responsibility of Financial Member
4. Role and Responsibility of any other Member

4.4 Format for Letter of Consent from Consortium Members

(On the letter head of each Member of the Consortium including Lead Member)

Date: _____
From : _____

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

To:

Attention: Director-Project
Room 7008, Pallika Kendra, Parliament Street
New Delhi - 110001

Sub: Request for Proposal, dated [Insert Date] for

We, the undersigned Member of (Insert name of the Bidding Consortium) have read, examined and understood the RFP and RFP Documents for the selection of Bidder(s) as prospective Solar Company(s) of power through tariff based competitive bidding for supply to NDMC. We hereby confirm our concurrence with the RFP including in particular the Consortium Agreement and the Bid submitted by (Insert name of the Lead Member), in response to the RFP. We confirm that the Bid has been reviewed and each element of the Bid is agreed to including but not limited to the investment commitment in the Project Company.

The details of contact person are furnished as under:

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

Dated the day of of 20...

Thanking you,

Yours faithfully,

.....
(Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal)

Business Address:

Name and address of principal officer.

4.5 Format for Bidder's composition and ownership structure.

1. Corporate Details:

Please provide the following information for the Bidder.

- a. Company's Name, Address, Nationality and Director's details:

Name:

Registered/Principal Address:

Website Address:

Corporate Identification Number, if any:

Country of Origin:

Address for Correspondence:

- b. Year of Incorporation: _____

- c. Company's Business Activities:

- d. Name of the authorized representative:

Telephone Number: _____

Email Address: _____

Telefax Number: _____

- e. Status as a Bidder:

(i) Bidding Company

(ii) Lead Member of the Bidding Consortium

(iii) Member of the Bidding Consortium Note: (tick the applicable serial number)

- f. Company's Local Address in India (if incorporated outside India):
- g. Please provide the following documents:
- (i) Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable in the case of a foreign company), including their amendments, certified by the company secretary of the Bidding Company/each Member of the Consortium (as Attachment 1)
 - (ii) Authority letter in favor of "NDMC from the Bidding Company/each Member of the Consortium (as per format specified below) authorizing NDMC to seek reference from their respective bankers, lenders, financing institutions and any other person as given below in the Format for Authorization, as per Clause 2.1.7 of the RFP
- h. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder has already formed a Project Company:.....(Yes/No) If Yes, the details of the Project Company as follows:
- i) Name of the Project Company
 - ii) Name of the Equity Holder
 - iii) Type and No. of Shares owned
 - iv) % of equity holding
 - v) Extent of voting control(%)
 - vi) Date of incorporation

2. Details of Ownership Structure:

Details of persons owning 10% or more of the total paid up equity of the Bidding Company / each Member of the Consortium.

Name of the Bidding Company/ Member of the Consortium: Status of equity holding as on

Name of Equity Holder	Type and Number of Shares owned	% of Equity Holding	Extent of Voting Control (%)
1			
2			
3			
4			
5			
6			

Notes:

- 1 Status of equity holding should be provided not earlier than 30 (thirty) days prior to Bid Deadline.
- 2 The above table is to be filled in separately for each Consortium Member if applicable.

Documents submitted in support of establishing the relationship with the Parent Company /Affiliate with the Bidding Company or with the Member of the Bidding Consortium (including Lead Member) in terms of the provisions of Clause 2.1.5 of the RFP:

- 1
- 2
- 3
- 4

For and on behalf of Bidding Company/ Member of the Consortium

M/s.....

(Signature of Authorised Representative)

Name:.....

Designation:.....

Date:.....

Place:

FORMAT FOR AUTHORISATION

(On Non – judicial stamp paper duly attested by Notary Public)

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith as Annexure A hereto, including its subsidiaries and branches, any person, firm, Councilor authority to furnish pertinent information deemed necessary and requested by NDMC to verify the authenticity of the documents / information submitted by us for meeting the Qualification Requirements in respect of our Bid for supply of power for 25 years through rent based competitive bidding process for meeting the requirements of NDMC Power Limited and / or regarding our financial standing and general reputation.

For and on behalf of M/s..... (Insert Name of Bidding Company or Financial Member of the Consortium)

..... Signature and Name of the authorized representative of the Company

Company rubber stamp/seal

.....
(Signature of Notary Public)

(Name and Address of the Attorney)
Place:..... Date:.....

4.6 A : FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2)

To:

Attention: Director - Projects
Room No. 7008, Pallika Kendra Building
Parliament Street, New Delhi – 110001

Dear Sir,

Sub: Bid for supply of power for 25 years through rent based competitive bidding process for rooftop solar PV projects in New Delhi in response to RFP dated [Insert date in dd/mm/yyyy].

We submit our Bid / Bids for 4 MW project for which we submit details to satisfy the Qualification Requirements.

Technical Criteria

Project Development / EPC	Technically Evaluated Entity that undertook the Project	Capacity (developed or constructed under EPC Contract)	Role (Development / EPC)	Details of equity held in the relevant project (In case of developer)	Details of documents attached as per Clause 2.1.2.2*
----------------------------------	--	---	---------------------------------	--	---

(* Please attach the documents specified in Clause 2.1.2.2 to this letter.)

**

The column for “Relationship with Bidding Company or Technical Member” is to be filled in only in case technical capability of Parent Company and/ or Affiliate has been used for meeting Technical Criteria.

³ Delete whatever is not applicable.

Financial Criteria

[Note: Applicable in case of Bidding Company]

We certify that the Network Company had a Networth of Rs. Crore or equivalent USD* computed as per instructions provided in Clause 2.1.2 of the RFP based on unconsolidated audited annual accounts (refer Note-2 below) of the last financial year immediately preceding the Bid Deadline.

Name of Network Company whose networth is relied on **	Relationship with Bidding Company ***	Networth (Rs. Crore)	Financial Year
1			
2			
3			
Total Networth			

* Equivalent USD shall be calculated as per provisions of Clause 2.1.2

*** The Network Company may be the Bidding Company itself, i.e. the sole bidder

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

Rooftop Solar Power Experience (Clause 2.1.2.2(A))

Address of Rooftop Solar Power Project	installed capacity of the project	Name and address of the developer / EPC contractor	Date of commissioning (Provide documentary evidence)	Relationship of the Bidder/Member with the developer or EPC contractor

Yours faithfully

(Signature of Authorised Representative and rubber stamp of Bidding Company)

Name: Date: Place:

(Signature and Stamp (on each page) of Statutory Auditors of Bidding Company)

Name: Date: Place:

WITNESS:

1. **(Signature)**

Name

Designation.....

Date:

2. **(Signature)**

Name

Designation.....

Date:

Notes:

- 1 Along with the above format, in a separate sheet, please provide details of computation of Networth duly certified by Statutory Auditor.
- 2 Audited consolidated annual accounts of the Bidder may also be used for the purpose of financial criteria provided the Bidder has at least 51% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

4.7 Format of Undertaking

(A) Bidder's Undertaking

[On the Letter Head of the Bidding Company]

To:

Attention:

Sub: **Bid for supply of power for 25 years through rent based competitive bidding process from rooftop solar PV project in New Delhi in response to RFP dated**

Dear Sir,

- 1 We give our unconditional acceptance to the RFP and RFP Documents issued by NDMC as a part of the RFP dated and as amended. We shall ensure that the Solar Company (as defined in the PPA) shall execute such RFP Documents as per the provisions of the RFP.
- 2 We have submitted our Financial Bid(s) strictly as per Format 4.9 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.
- 3 We have submitted the Bid on the terms and conditions contained in the RFP.
- 4 Our Bid (including Financial Bid) is valid up to the period required under Clause 2.9 of the RFP.
- 5 Our Bid (including Financial Bid) has been duly signed by authorised signatory and closed in the manner and to the extent indicated in the RFP and the Power of Attorney/ Board Resolution as per Clause 2.4.1.1 in requisite format as per RFP has been enclosed in original with this undertaking.
6. We undertake that if we are selected as the Selected Bidder we shall transfer all Consents, Clearances and Permits in the name of the Project Company within the period specified in the PPA, if such Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company prior to the submission of our Bid⁴.
7. We have assumed that if we are selected as the Selected Bidder, the provisions of the Consortium Agreement submitted along with the Bid, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of Clause 2.7 of the RFP and the relevant RFP Documents. (Applicable only in case of a Bidding Consortium)
8. We confirm that our Bid meets the following conditions:
 - a) The Scheduled Commercial Operation Date is not later than the date specified in the RFP, subject to the provisions of the Relevant PPA.

⁴ Applicable to Bidding Consortium. Delete this in case of sole bidder.

9. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP. including:
- a) Financial Bid(s) is/are in the prescribed Format 4.9, and is submitted duly signed by the authorised signatory
 - b) Financial Bid(s) is/are unconditional
10. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Selected Bidder, we agree that the same would be treated as a Solar Company's event of default under the PPA, and consequent provisions of the PPA shall apply.

.....
Signature and name of authorized signatory in whose name Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is issued

Original Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is enclosed.

Rubber stamp of the Bidder to be affixed.

(B) Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company (On the Letter Head of the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company)

Name:
Full Address:
Telephone No.:
E-mail address:
Fax / No.:

To:

Attention: Director (Projects)
7th Floor, RoomNo.7008
New Delhi Municipal Council
Palika Kendra
New Delhi
011-41501383
mishraop@hotmail.com

Dear Sir,

We refer to the Request for Proposal dated.... *[Insert Date]* issued by you for procurement of power from rooftop solar PV projects in New Delhi on long term basis through rent based competitive bidding process for meeting the requirements of Procurer.

(Insert in case of Bidding Company: "We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7 (B).

We have also noted the amount of the Performance Guarantee required to be submitted as per Clause 2.12 of the RFP by the (Insert the name of the Bidding Company) for the supply of power in the event of it being selected as the Selected Bidder".

In view of the above, we hereby undertake to you and confirm that in the event of failure of (Insert name of the Bidding Company) to submit the Performance Guarantee in full or in part at any stage, as specified in the RFP, we shall submit the Performance Guarantee for the amount not submitted by (Insert name of the Bidding Company]".))

(Insert in case of Member of a Consortium: "We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7(B).

We confirm that M/s. (Insert name of Bidding Company / Consortium Member) has been authorized by us to use our financial capability for meeting the Qualification Requirements as specified in Clause 2.1 of the RFP referred to above.

In view of the above, we hereby undertake to you and confirm that we shall maintain the status of our relationship as a Parent/Affiliate/Ultimate Parent in [Insert name of the Bidding Company/Member] as was prevalent at seven (7) days prior to the Bid Deadline, up to a period of two (2) years from the Scheduled COD of the Solar PV Project.

We have also noted the amount of the Performance Guarantee required to be submitted as per Clause 2.12

of the RFP by the (Insert the name of the Consortium Member) for the supply of power in the event of it being selected as the Selected Bidder”).

In view of the above, we hereby undertake to you and confirm that in the event of failure of (Insert name of the Consortium Member) to submit the Performance Guarantee Security on behalf of the Solar Company in full or in part at any stage, as specified in the RFP, we shall submit the Performance Guarantee for the amount not submitted by (Insert name of the Consortium Member]”).

We have also noted the amount of the equity investment required to be made in the Project by the (Insert the name of the Bidding Company/Consortium Member) to be incorporated to undertake the obligations under the PPA for the supply of power.

In view of the above, we hereby undertake to you and confirm that in the event of failure of (Insert name of the Bidding Company/Member of the Consortium) to invest in full or in part, in the equity share capital of the Project as specified in the Bid, we shall invest the said amount not invested by (Insert name of the Bidding Company/Member of the Consortium).]”).

We have attached hereto certified true copy of the Board Resolution whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

Signature of Authorised Representative

WITNESS

- 1
(Signature)
Name
Designation.....
- 2
(Signature)
Name
Designation.....

4.8 Format for Board Resolution

Format for the Board resolution to be passed by each Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.

The Board, after discussion, at the duly convened Meeting on (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956, passed the following Resolution:

1. RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the NDMC, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to provide thepercent (... %) [Insert 100% in case of Bidding Company and percent of equity investment in the Project Company in case of Member of Consortium] of the Performance Guarantee, as per the terms and conditions of the RFP, representing the total amount of Performance Guarantee required to be provided by the (Insert the name of the Bidding Company / Consortium Member), in case of failure of the (Insert the name of the Bidding Company / Consortium Member) to provide such Performance Guarantee.

2. FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an undertaking to the NDMC whereby the company undertakes to invest equity in the Project Company to the extent ofpercent (... %), as per the terms and conditions of the RFP, representing the amount of equity required to be provided by (Insert the name of the Bidding Company / Consortium Member), in case of failure of (Insert the name of the Bidding Company / Consortium Member) to invest such equity.

3. FURTHER RESOLVED THAT Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to Procurer/ NDMC as part of the Bid or such other documents as may be necessary in this regard.

[Note: In the event the Bidder is a Bidding Consortium, the following Board resolution no. 4 also needs to be passed by the Lead Member of the Bidding Consortium]

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

[Note: The following resolution no. 5 is to be provided by the Bidding Company /Lead Member of the Consortium only]

5. FURTHER RESOLVED THAT Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to Procurer/ NDMC as part of the Bid or such other documents as may be necessary in this regard.

Certified True Copy

**Signature and stamp of Company Secretary / Managing Director of Financially Evaluated Entity/
its Parent Company /Ultimate Parent Company**

Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary / Managing Director of the Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) In case of the Board resolution being provided by a company incorporated in India, the Board resolution needs to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same needs to be duly notarized in its jurisdiction.
- 4) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

4.9 Format for Financial Bid

(The format 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:

Attention: NDMC address as mentioned

Sub: Bid for supply of power on long term basis through rent based competitive bidding process from rooftop solar PV project in New Delhi in response to RFP dated [Insert date in dd/mm/yyyy].

Dear Sir,

We, the undersigned [insert name of the „Bidder“] having read, examined and understood in detail the RFP and RFP Documents for development of the Projects in New Delhi and supply of power on long term basis through rent based competitive bidding process for meeting the requirements of Procurer hereby submit our Financial Bid(s). We hereby undertake and confirm that:

1. we have submitted our Financial Bid strictly in accordance with the RFP without any deviations or condition.
2. that our Financial Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Bid Process Coordinator.
3. Our Quoted rent for the surface to be rented is as below

Quoted Rent* (Rs/Sqft) –

4. Acceptance

We hereby unconditionally and irrevocably agree and accept that the decision made by the Bid Process Coordinator in respect of any matter concerning or arising out of the RFP and the selection of Selected Bidder thereof shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

Dated the _____ day of _____, 2014

Thanking you,

We remain,

Yours faithfully,

Name, Designation and Signature of Authorized Person in whose name Power of Attorney / Board Resolution as per Clause 2.4.1.1 is issued

4.10 Format of checklist for submission of Bid

	Response (Yes/No)
Submission of Bid requirements Covering Letter as per Format 4.1	
Original Power of Attorney as per Format 4.2	
Consortium Agreement as per Format 4.3 (if Bid is submitted by a Bidding Consortium)	
Letter of consent from Consortium Members as per Format 4.4 (if Bid is submitted by a Bidding Consortium)	
Bidder's composition and ownership structure as per Format 4.5	
Details of meeting Qualification Requirement. as per Format 4.6 (A) and (B)	
Documentary evidence for meeting the Qualification Requirement as per Format 4.6 (A)	
Bidder's Undertaking as per Format 4.7 (A)	
Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company as per Format 4.7 (B)	
Applicable Board Resolutions as per Format 4.8	
Financial Bid as per Format 4.9	
Checklist of submission of Bid as per this Format 4.10	

4.11 Format for Disclosure (On the Letter Head of Bidding Company / each Member in a Bidding Consortium) Disclosure

To:

Attention: Director (Projects)
7th Floor, RoomNo.7008
New Delhi Municipal Council
Palika Kendra, New Delhi
011-41501383
Mishraop@hotmail.com

Sub: Bidders' Disclosure for Bid for supply of power to Procurer in response to the RFP

dated ... [Insert date] We hereby declare that the following companies with which we have direct or indirect relationship are also separately participating in this bidding process as per following details

Sl. No.	Name of the Company	Relationship
1.		
2.		
3.		

Further we confirm that we don't have any Conflict of Interest with any other Bidder participating in this bid process.

.....
Signature of Authorised Representative

Notes:

1. In case there is no such company please fill in the column "Name of the Company" as Nil and under column of Relationship as "Not Applicable".

4.12 Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member.

To:

Attention: Director-Projects
7th Floor, RoomNo.7008
New Delhi Municipal Council
Palika Kendra, New Delhi
011-41501383
Mishraop@hotmail.com

Sub: Bid for procurement of power for 25 years through rent based competitive bidding process in response to the RFP dated

Dear Sir,

We hereby certify that M/s....., M/s.....,M/s are the Affiliate(s) / Parent Company of the Bidding Company/Member of the Bidding Consortium as per the definition of Affiliate/Parent Company as provided in the RFP and based on details of equity holding as on seven (7) days prior to the Bid Deadline.

The details of equity holding of the Bidding Company/Member of the Consortium in the Affiliate/Parent Company or vice versa as on seven (7) days prior to the Bid Deadline are given as below:

Name of Bidding Company / Member of Bidding Consortium	Name of the Affiliate of the Bidding Company / Member of the Bidding Consortium*	Name of the Parent Company of the Bidding Company / Member of Bidding Consortium	Name of the company having common control on the Affiliate and the Bidding Company / Member of Bidding Consortium
---	---	---	--

* Bidding Company / Member of Bidding Consortium to hold at least twenty six percent (26%) in such Affiliate as on seven (7) days prior to Bid Deadline

..... (Insert Name and Signature of Statutory Auditor of the Bidder or practicing Company Secretary)

Format 4.13

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

To:

Attention: 7th Floor, RoomNo.7008
New Delhi Municipal Council
Palika Kendra, New Delhi
011-41501383
Mishraop@hotmail.com

Dear Sir,

We refer to the Request for Proposal dated... *[Insert Date]* issued by you for procurement of power from Projects in New Delhi on long term basis through tariff based competitive bidding process for meeting the requirements of Procurer.

(Insert in case of Bidding Company: “We have carefully read and examined in detail the RFP, including in particular, Clause 2.1.2.2 (b) of the RFP, regarding experience in rooftop solar power projects and submission of an undertaking, as per the prescribed Format 4.14.

We confirm and undertake that we shall engage an EPC contractor or an independent technical expert having experience of installation and commissioning of rooftop solar power projects for the purpose of installation and commissioning of the Project.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

Signature of Authorised Representative

WITNESS

1.
(Signature)
Name
Designation.....

2.
(Signature)
Name
Designation.....

Format 4.14

Format for Authorisation from Technically Evaluated Entity (being the Parent/Affiliate of the Bidding Company or the Technical Member, as the case may be) whose technical capability has been used by the Bidding Company or the Technical Member

[On the Letterhead of the Technically Evaluated Entity]

To:

Attention: Director - Projects
7th Floor, RoomNo.7008
New Delhi Municipal Council
Palika Kendra, New Delhi
011-41501383
Mishraop@hotmail.com

Ref: Bid for procurement of power for 25 years through Rent based competitive bidding process in response to the RFP dated

Sub: Authorisation for use of technical capability of M/s..... (Insert name of TechnicallyEvaluated Entity) by M/s (Insert name of Bidding Company/Technical Member)

Dear Sir,

We refer to the RFP dated(Insert date) issued by you for procurement of power from Projects in New Delhi on long term basis through rent based competitive bidding process for meeting the requirements of Procurer.

We confirm that M/s. (Insert name of Bidding Company/ Technical Member) has been authorized by us to use our technical capability for meeting the Technical Criteria as specified in the RFP.

For and on behalf of M/s..... (Insert Name of Technically Evaluated Entity)

(Signature and stamp of any whole-time Director (supported by a specific Board Resolution) / Manager (refer Note 1 below) of Technically Evaluated Entity)

Name:

Date:

Place:

Note:

1. In case of Manager, the Parent/Affiliate should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956 for the purpose in question. The Company Secretary also certifies that the Technically Evaluated Entity does not have a Managing Director or CEO.

Director or CEO

POWER PURCHASE AGREEMENT

BETWEEN

NEW DELHI MUNICIPAL COUNCIL

AND

.....

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THIS **POWER PURCHASE AGREEMENT** (the “**Agreement**”) is made at [•] on [•] 2014

BETWEEN

....., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “**Solar Power Developer**” or “**SPD**”, which expression shall unless repugnant to or inconsistent with the context, means and includes its successors and assignees) of the **FIRST PART**;

AND

NEW DELHI MUNICIPAL COUNCIL, having its office at Pallika Kendra, Sansad Marg, New Delhi-110001 (hereinafter referred to as the “**Purchaser**”, which expression shall unless repugnant to or inconsistent with the context, means and includes its successors and permitted assigns) of the **SECOND PART**.

The SPD and the Purchaser shall hereinafter be collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS:

- A. Purchaser is a Municipal body
- B. SPD is a leading provider of solar energy in India and has requisite expertise to establish solar plants;
- C. Pursuant to discussions held between the Parties, the SPD has offered and the Purchaser has agreed that the SPD shall install and set-up the Solar Power Plant (as defined herein below) on build, own, operate, maintain and transfer basis at the sites situated in NDMC area and more particularly described in Schedule I(the “**Premises**”);
- D. The Parties have further agreed that the SPD shall sell to the Purchaser Solar Power and the Purchaser shall purchase such Solar Power generated from solar power plant from the SPD on Tariff in accordance with the terms and conditions of the Agreement; and
- E. The Parties are now desirous of entering into the Agreement to record the terms and conditions for sale and purchase of the Solar Power.

NOW, THEREFORE, in consideration of the representations, promises, mutual covenants and agreements set forth herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions:

“Affiliate”	in relation to any Person means any Person, who directly or indirectly (through one or more intermediaries) Controls, is Controlled by or is under common Control with that Person;
“Agreement”	means this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
“Applicable Permits”	means all authorisations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, clearances (including environmental clearances), and concessions, required to be obtained from or provided by any Competent Authority for the purpose of installing, commissioning, operating and transferring the Solar Power Plant;
“Bill Dispute Notice”	bears the meaning as ascribed to the term in Clause 6.3.2 of the Agreement;
“Business Day”	means any day (other than a Sunday or public holiday) on which banks are open for business in New Delhi;
“Commercial Operation Date”	means the actual commissioning date of the Solar Power Plant whereupon the SPD starts injecting Solar Power into the Injection Point;
“Control”	means, with respect to any Person: (i) the ownership of more than 50% (fifty percent) of the equity shares or other voting securities of such entity; or (ii) the possession of the power to direct the management and policies of such entity; or (iii) the power to appoint a majority of the directors, managers, partners or other individuals exercising similar authority with respect to such Person by virtue of ownership of voting securities or management or contract or in any other manner, whether directly or indirectly, including through one or more other entities;

“Coordination Committee”	shall mean the committee comprising of [one] senior official to be appointed by the SPD and [one] senior official to be appointed by the Purchaser;
“Due Date”	bears the meaning as ascribed to the term in Clause 6.2.1 of the Agreement;
“Effective Date”	means this date on which the Agreement is entered into between the Parties;
“Energy Charges”	means the value in INR charged by announced by DRC/CERC
“Encumbrances”	means any interest or equity of any Person (including, without limitation, any right to acquire, option or right of pre-emption or conversion) and any charge, mortgage, security interest, pledge, lien (including retention of title claims), assignment, power of sale or hypothecation or any other third party right or encumbrance of any nature whatsoever (whether or not perfected) and the term " encumber " shall be construed accordingly;
“Event of Default”	bears the meaning as ascribed to the term in Clause 15.1 of the Agreement;
“Force Majeure Event”	bears the meaning as ascribed to the term in Clause 14.2 of the Agreement;
“Injection Point”	means the Solar PV Panel Board nearest to the Solar Power plant which is the commercial metering point at the premises of the Purchaser where Solar Power is injected, as depicted in the plan set out in Schedule II.
“INR”	means Indian Rupees, the lawful currency of the Republic of India;
“Installed Capacity”	means the total capacity of the Solar Power Plant;
“Insurances”	means the insurance cover to be obtained and maintained

by the SPD in accordance with Clause 12 of the Agreement for the term of agreement ;

DERC	Delhi Electricity Regulatory Commission;
“kWh”	means Kilowatt-Hours;
“kWp”	means Kilowatt-peak;
“Late Payment Surcharge”	shall have the meaning ascribed to the term in Clause 6.2.3 of the Agreement;
“Law(s)”	means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, governmental approval or any requirement of such governmental authority having the force of law and which is binding on the Parties with respect to any of the transactions contemplated herein. Unless the context clearly requires otherwise, the term “Law” shall include each of the foregoing (and each provision thereof) as in effect at the time in question, including any amendments, supplements, replacements or other modifications thereto, and whether or not in effect at the Effective Date;
“License”	bears the meaning as ascribed to the term in Clause 7.1 of the Agreement;
“LT Panel”	means the panel in the Purchasers Premises in which control and distribution of electricity would happen as indicated in Schedule II.
‘Meter’	means a device suitable for measuring, indicating and recording the injection of Solar Power at the Injection Point;
“Person”	shall mean any natural person, firm, company, governmental authority, joint venture, partnership, association or other entity (whether or not having separate legal personality);
“Premises”	means the entire roof top of Evolve Building(s) owned by NDMC area where Solar Power Plant would be situated.

“Prudent Utility Practices”	means, those practices, methods, acts, techniques, procedures and standards and the exercise of a degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a first-class reputable, recognised, skilled and experienced solar power developer in the Solar PV power generation industry of the same or similar size and type as the SPD and the Solar Power Plant;
“SPD Reply Notice”	bears the meaning as ascribed to the term in Clause 6.3.5 of the Agreement;
“Solar Photovoltaic” or “Solar PV”	means solar photovoltaic technology that directly converts sun light into electricity;
“Solar Power”	means the electrical energy generated from the Solar Power Plant;
“Solar Power Plant”	shall mean the Solar Photo voltaic based Power generating system having facility to integrate diesel generating set, located at the Premises, and includes components like solar modules, mounting structures, inverters, cables, power management devices, related assets and ancillary equipment required for the operation of the solar power generation facility;
“Solar PV Panel Board”	Means the panel comprising of busbars, switches and electrical wires interconnecting the Solar Power Plant with the LT Panel and as indicated in Schedule III.
“Taxes”	means any and all statutory taxes, duties, levies and cess, or levy of any nature (whether central, state or local) whatsoever and wherever and whenever charged, levied or imposed on the sale of the Solar Power under the Agreement together with any interest and penalties in relation thereto other than interest and penalties imposed as a result of any act or omission of the SPD, its Affiliates,

servants or agents;

“Term ” bears the meaning as set out in Clause 2.1 of the Agreement; and

1.2. Interpretation

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

- 1.2.1. The Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors. Nothing contained herein shall be construed to provide any benefit to any Person not a Party to the Agreement except as expressly provided for herein;
- 1.2.2. The singular includes the plural and vice versa and, in particular (but without limiting the generality of the foregoing), any word or expression defined in the singular has the corresponding meaning when used in the plural and vice versa;
- 1.2.3. Any reference to any gender includes the other gender;
- 1.2.4. Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have the corresponding meanings;
- 1.2.5. Any reference to an article, section, appendix, clause, sub-clause, paragraph, sub-paragraph, Schedule or Recital is a reference to an article, section, appendix, clause, sub-clause, paragraph, sub-paragraph, Schedule or Recital of the Agreement;
- 1.2.6. Any reference to any agreement, instrument or other document (a) shall include all appendices, exhibits and schedules thereto and (b) shall be a reference to such agreement, instrument or other document as amended, supplemented, modified, suspended, restated or novated from time to time;
- 1.2.7. Any reference to any statute shall be construed as including all statutory provisions consolidating, amending or replacing such statute;
- 1.2.8. A reference to a party to any document includes that party's successors;
- 1.2.9. Any reference to “writing” includes printing, typing, lithography and other means of reproducing words in visible form;
- 1.2.10. The terms “hereof”, “hereby”, “hereto”, “hereunder” and similar terms shall refer to

the Agreement as a whole;

1.2.11. The term, "including" shall mean "including, without limitation";

1.2.12. Where the consent or approval of a Party to the Agreement is required hereunder to any act, deed, matter or thing such requirement shall in the absence of any express stipulation to the contrary herein mean, the prior consent or approval (as the case may be) in writing;

1.2.13. The headings of various Clauses, Articles and Sections in the Agreement are inserted for convenience and reference only and shall not affect the construction of the relative provisions;

1.2.14. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and amendments or re-enactments of any of them;

1.2.15. If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

1.2.16. A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 (twenty four) hours later.

2. TERM OF THE AGREEMENT

2.1. The Agreement shall be effective from the Effective Date. The term of the Agreement shall be 25 (Twenty Five) years from the date of Commercial Operation Date (the "Term"). The Agreement shall stand discharged before the expiry of the Term if either Party terminates the Agreement pursuant to Clause 17 below.

3. SALE AND PURCHASE OF SOLAR POWER

3.1. On and with effect from the Commercial Operation Date, the SPD shall sell and deliver Solar Power to the Purchaser at the Injection Point and the Purchaser shall purchase from the SPD Solar Power injected into the Injection Point by paying the Tariff in accordance with the terms and conditions of the Agreement including the Billing and Terms of Payment.

3.2. During the term of the Agreement, the Purchaser shall purchase the entire Solar Power injected into the Injection Point by the SPD.

4. DEEMED GENERATION AND DEEMED TARIFF

4.1. In the event (i) a shortfall in load has occurred due to any reason resulting in non-consumption of the Solar Power produced by the Solar Power Plant or (ii) No power is available at the LT Panel for synchronization due to any reason whatsoever or (iii) Purchaser fails to consume power produced by the Solar Power Plant due to any reason which is not attributable to the SPD

during any period, then, the Parties hereby agree that SPD shall be deemed to have injected Solar Power into the Injection Point ("**Deemed Generation**") for such period ("**Deemed Generation Period**").

- 4.2. The Deemed Generation shall be calculated using the weather data (reference cell for irradiation and temperature) existing during the Deemed Generation Period and incorporating the relevant system losses.
- 4.3. In case weather station data is not available, the average Solar Power billed to Purchaser in the 12-month period or lesser period as may be applicable preceding the onset of the Deemed Generation Period shall be deemed to be the Solar Power injected into the Injection Point during the Deemed Generation Period.

5. **TARIFF**

From the Commercial Operation Date, the Purchaser shall pay to the SPD, the Tariff provided for every kWh of Solar Power billed (the "**Tariff**") in accordance with the announced for 25 years by DERC/CERC with escalation of 2% YoY after 5 years and 3% YoY after 15 years.

6. **BILLING AND TERMS OF PAYMENT**

6.1. Monthly Electricity Bills

- 6.1.1. For the quantity of Solar Power billable, including solar power injected into the Injection Point (Metered Generation) and Deemed Generation, the SPD shall raise on the Purchaser an electricity bill each month based on the Tariff (as may be applicable), agreed between the Parties in accordance with Clause 4, Clause 5 and Clause 10 (the "**Monthly Bill**").
- 6.1.2. Each Monthly Bill shall state the Tariff and Taxes payable by the Purchaser calculated with reference to the aggregate of the Metered Generation and the Deemed Generation.
- 6.1.3. The SPD shall raise and send the Monthly Bill to Director(Power), NDMC on email address Director.power@ndmcm.com within first 3 (Three) Business Days from the end of the month for which the Monthly Bill pertains to, as scanned copy by email. The date on which bill has been sent by email to Director (Power),NDMC would be considered as the receipt of the Monthly Bill by the Purchaser

6.2. Terms of Payment

- 6.2.1. The Due Date of payment shall be 7 (seven) Business Days from receipt of the Monthly Bill by the Purchaser (the "**Due Date**").
- 6.2.2. The Purchaser shall make payment of the Monthly Bill to the Bank Account of the SPD as shall be specified by the SPD in the Monthly Bill.

6.2.3. In the event the Purchaser fails to make payment of a Monthly Bill on or before the Due Date, a Late Payment Surcharge shall be payable to the SPD at the rate of 2% per month on the outstanding amount calculated on a day-to-day basis. The Late Payment Surcharge shall be added by the SPD to the following Monthly Bill and it will become a payment due for that month.

6.3. Disputed Bill

6.3.1. If the Purchaser does not dispute a Monthly Bill raised by the SPD within the Due Date, then such Monthly Bill shall be taken as conclusive and accepted by the Purchaser.

6.3.2. If the Purchaser disputes the amount payable under a Monthly Bill then it shall within 5(five) Business Days of receiving such Monthly Bill, issue a written notice (the "**Bill Dispute Notice**") to the SPD setting out:

- (a) the details of the disputed amount; and
- (b) the reasons for disputing the amount including all written material in support of its claim.

6.3.3. The Purchaser shall pay the undisputed portion thereof to the SPD within the Due Date.

6.3.4. If the SPD agrees to any part of the claim raised in the Bill Dispute Notice issued pursuant to Clause 6.3.2 above, the SPD shall reduce that part of the claim from the following following Monthly Bill which shall be paid by the Purchaser in the usual course within the applicable Due Date.

6.3.5. If the SPD does not agree to the claim raised in the Bill Dispute Notice issued by the Purchaser pursuant to Clause 6.3.2 above, it shall, within 15 (fifteen) Business Days of receiving the Bill Dispute Notice, furnish a notice to the Purchaser providing:

- (a) reasons for its disagreement;
- (b) its estimate of what the correct amount should be; and
- (c) all written material in support of its counter-claim (the "**SPD Reply Notice**").

6.3.6. Upon receipt of the SPD Reply Notice, authorized representative of the SPD and the Purchaser shall meet and make best endeavours to amicably resolve such dispute within 15 (fifteen) Business Days of receipt of such notice.

6.3.7. If the Parties do not amicably resolve the dispute within 15 (fifteen) Business Days of receipt of the SPD Reply Notice, the matter shall be referred to dispute resolution in accordance with Clause 22 below.

- 6.3.8. In case the amounts disputed by the Purchaser are resolved in favour of the SPD, on such amounts, the Purchaser shall pay interest @ _____% p.a. from the due date of the respective Monthly Bills in respect of which the amounts have been disputed. Such interest shall be added to the following Monthly Bill and it will become a payment due for that month.
- 6.3.9. The Parties hereby agree that irrespective of any dispute regarding the Monthly Bill, the Purchaser shall, without prejudice to its right to dispute as specified above, be under an obligation to make payment of the undisputed amount provided in the disputed Monthly Bill by the Due Date.
- 6.3.10. The Parties further agree that irrespective of any unresolved disputes regarding any of the Monthly Bills, the SPD and the Purchaser shall continue to perform their obligations under the Agreement to the fullest extent, unless on the event of Termination of Agreement as per Clause 15 and except as per clause 6.3.9.
- 6.3.11. Notwithstanding anything else in the agreement, the SPD reserves its right to suspend its obligations under the agreement and remove the solar plant from the premises of the Purchasers in case of non-payment of bills and continuation of dispute resolution for a period of more than 3 months.

7. LICENSE OF THE PREMISES

- 7.1 The Purchaser hereby grants an irrevocable, exclusive license to the SPD over the Premises free from Encumbrances giving unrestricted access to SPD or their representatives at all times thereto as required for the installation, commissioning, operation and the maintenance of the Solar Power Plant at Zero cost to SPD (the “License”).
- 7.2 The Purchaser acknowledges that SPD’s performance under this Agreement is dependent on the validity of the License for the Term. The License shall be valid for the Term and shall be co-terminus with the Agreement.
- 7.3 In the event any loss and damage is inflicted on the Solar Power Plant, directly or indirectly, as a result of any act or omission attributable to the Purchaser, its personnel or agents, the Purchaser shall bear exclusively all costs incurred by the SPD as a result of such loss / damage including the Deemed Generation.
- 7.4 A copy of a plan depicting the portion of the Premises forming the subject-matter of the License is set out in Schedule III.

8. OBLIGATIONS OF THE PARTIES

- 8.1. Obligations of the SPD

During the Term, the SPD shall:

- 8.1.1. Undertake, the installation and commissioning, of the Solar Power Plant on the Premises at its own cost in accordance with the terms and conditions of the Agreement and the applicable Laws;
- 8.1.2. Install and operate and maintain all necessary infrastructure for delivery of Solar Power at Injection Point;
- 8.1.3. Continue supplying Solar Power for the term of the Agreement if the Purchaser is in compliance with the terms and conditions of the Agreement;
- 8.1.4. Operate and Maintain the Solar Power Plant in accordance with the terms and conditions of the Agreement and the applicable Laws during the Term;
- 8.1.5. The Solar Power Plant will have an Installed Capacity of 264KWp and the SPD shall ensure operation and maintenance of the Solar Power Plant to ensure smooth operation for the Term except normal wear and tear applicable to power plant using Solar PV; and at its own cost and expense obtain and maintain only such Applicable Permits as are necessary for installing, commissioning, operating and maintaining the Solar Power Plant

8.2. Obligations of the Purchaser

During the term of the Agreement, the Purchaser shall:

- 8.2.1. At its own cost and expense undertake, comply with and perform all its obligations set out in the Agreement;
- 8.2.2. Obtain all licences as may be required for installation and commissioning of the Solar Power Plant;
- 8.2.3. Provide all reasonable assistance necessary to the SPD during the period of installation and commissioning of the Solar Power Plant and entire term of agreement so that the SPD may perform its obligations without any hindrance;
- 8.2.4. Make timely payments of the Tariff and the Deemed Tariff to the SPD in the manner and in accordance with the terms and conditions set out in the Agreement;
- 8.2.5. Exercise best endeavours to provide assistance necessary to SPD for obtaining

Applicable Permits as set out in Clause 8.1.5 above;

- 8.2.6. Install, operate and maintain all necessary infrastructure for evacuation of Solar Power at receiving end i.e. LT Panel of Purchaser at their own cost
- 8.2.1. Not take any steps that may affect adversely the operation and performance of the Power Plant; In the event any loss or damage is inflicted on the Solar Power Plant, directly or indirectly, as a result of any act or omission attributable to the Purchaser, its personnel or agents, the Purchaser shall bear exclusively all costs incurred by the SPD as a result of such loss or damage to the equipment and subsequent loss in generation till replacement or rectification of equipment.
- 8.2.2. At its own cost and expense obtain and maintain only such Applicable Permits as are necessary for performing its obligations under the Agreement;
- 8.2.3. The Purchaser shall provide power and water at its own cost as required by the SPD during construction and installation of the Solar Power Plant;
- 8.2.4. The Purchaser should ensure that no permanent or temporary structure comes up which may cause obstruction to sun light falling on all solar modules forming part of Solar Power Plant;
- 8.2.5. The Purchaser shall provide treated water on a "free issue" basis to facilitate cleaning of modules on a weekly basis;
- 8.2.6. The Purchaser shall provide at its cost the security for the Premises and the Solar Power Plant however SPD and its representatives and employees shall at all times during the Term have access to the Premises and the Solar Power Plant; and
- 8.2.7. The Purchaser shall provide the SPD with a covered storage space with locking facility at or in reasonable proximity to the Premises for storage of material. The SPD alone shall exercise control and supervision over the said storage space from the Effective Date until completion of term of agreement.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. The SPD hereby represents and warrants to the Purchaser that as on the Effective Date;
 - 9.1.1. It is duly organized, validly existing and in good standing under the Laws of the Republic of India;
 - 9.1.2. It has taken all necessary corporate and other action under the Laws of the Republic of India to authorize such execution, delivery and performance of the Agreement;
 - 9.1.3. It has the financial standing and capacity to perform its obligations under the Agreement;

- 9.1.4. The Agreement when executed constitutes valid and binding obligations on the SPD and is enforceable against the SPD in accordance with the terms of the Agreement;
- 9.1.5. The execution, delivery and performance of its obligations under the Agreement does not and will not:
- (a) Contravene any Law; or
 - (b) Conflict with or result in any breach or default under any agreement, instrument, regulation, licence or authorisation binding upon it or any of their assets.
- 9.2. The Purchaser hereby represents and warrants to the SPD that as on the Effective Date:
- 9.2.1. It is duly organized, validly existing and in good standing under the Laws of the Republic of India;
- 9.2.2. It has taken all necessary corporate and other action under the Laws of the Republic of India to authorize such execution, delivery and performance of the Agreement;
- 9.2.3. The Agreement when executed constitutes valid and binding obligations on the Purchaser and is enforceable against the Purchaser in accordance with the terms of the Agreement;
- 9.2.4. It has the financial standing and capacity for payment of the Tariff to the SPD; and
- 9.2.5. The execution, delivery and performance of its obligations under the Agreement does not and will not:
- (a) contravene any Law; or
 - (b) conflict with or result in any breach or default under any agreement, instrument, regulation, licence or authorisation binding upon it or any of their assets.
- 9.3. Each of the representations and warranties mentioned in Clauses 9.1 and 9.2 above shall be construed as a separate warranty and (save as expressly provided to the contrary herein) shall not be limited or restricted by reference to or inference from the terms of any other warranty or any other term of the Agreement.

10. METERING

- 10.1. Metering shall be done on 1 (One) Multi Function Meter at each of the Injection Points, installed as part of the Solar PV Panel Board, and sealed in the presence of representatives of the SPD and the Purchaser.

- 10.2. The SPD shall issue to the Purchaser a monthly meter reading, which shall be the sum total of the readings from each of the Multi-Function Meters, certifying the Solar Power injected by the SPD and metered at the Injection Points ("**Metered Generation**").
- 10.3. A copy of proposed Electrical Interconnection plan indicating placement of Needs to be approved in advance.
- 10.4. The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, and repair of the Meter.

11. VARIABILITY IN GENERATION OF SOLAR POWER

- 11.1. Both parties agree and accept that Solar Power is infirm in nature. Generation of Solar Power is variable and subject to solar insolation levels received in the location of installation and actually incident on the solar panels. The solar power generation variability is both annual and diurnal. The Purchaser accepts that SPD's failure to supply power due to the variability of solar power generation due to solar insolation level variability will not be considered as an event of default in any condition.

12. INSURANCES

- 12.1. The SPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term , Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which are required as per the Prudent Utility Practices.
- 12.2. Save as expressly provided in the Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Solar Power Plant or any part of the Solar Power Plant shall be first applied to reinstatement, replacement or renewal of such loss or damage. Any surplus generated out of insurance claims shall accrue to the account of SPD.
- 12.3. If a Force Majeure Event renders the Power Plant no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the Purchaser shall have no claim on such proceeds of such Insurance.

13. OWNERSHIP OF THE POWER PLANT

- 13.1. The SPD shall be the legal and beneficial owner of the Solar Power Plant throughout the Term and the Solar Power Plant shall remain the property of the SPD and shall not attach to or be deemed a part of, or fixture to the Premises.
- 13.2. The Parties hereby agree that at the end of the Term, the SPD and the Purchaser shall mutually discuss and agree upon the future operations of the plant beyond the Term.
- 13.3. In the event the Agreement is terminated in accordance with Clause 15.2 below, the SPD shall

transfer the Solar Power Plant to the Purchaser at the Fair Market Value.

14. FORCE MAJEURE

14.1. For the purposes of this Clause, the term "Affected Party" means the SPD or the Purchaser whose performance has been affected by a Force Majeure Event.

14.2. Force Majeure

A Force Majeure Event shall mean any event or circumstance or combination of events stated below that wholly or partly prevents or delays unavoidably an Affected Party in the performance of its obligations under the Agreement, but only if and to the extent that such event or circumstance is 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:

14.2.1. Act of God, including, but not limited to fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado;

14.2.2. 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;

14.2.3. radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Solar Power Plant by the Affected Party or those employed or engaged by the Affected Party; and

14.2.4. Any act or event which is unforeseeable beyond the reasonable control of and has occurred without the fault or negligence of the Affected Party.

14.3. Force Majeure Exclusions

For avoidance of doubt, Force Majeure Event shall not include the following conditions (which list is not intended to be exhaustive or limitative and is indicative):

14.3.1. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Solar Power Plant;

14.3.2. Delay in the performance of any contractor, sub-contractor or their agents;

14.3.3. Non-performance resulting from normal wear and tear typically experienced in projects generating power using Solar PV;

14.3.4. Strikes at the facilities of the Affected Party;

14.3.5. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

14.3.6. Non-performance caused by, or connected with, the Affected Party's:

- (a) Negligent or intentional acts, errors or omissions;
- (b) Failure to comply with Laws; or
- (c) Breach of, or default under the Agreement.

14.4. Notice of Force Majeure Event

14.4.1. The Affected Party shall give notice to the other Party of any Force Majeure Event as soon as reasonably practicable, but not later than 7 (seven) Business Days after the date on which such Party knew or should reasonably have known of the commencement of the Force Majeure Event.

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

14.5. Duty to Perform and Duty to Mitigate

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

14.6. Available Relief for a Force Majeure Event

Subject to this Clause 16:

14.6.1. no Party shall be in breach of its obligations pursuant to the Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

14.6.2. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;

14.6.3. for avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under the Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

15. EVENTS OF DEFAULT AND TERMINATION

15.1. An Event of Default shall mean in respect to a Party ("**Defaulting Party**"), the occurrence of any one of the following, subject to the applicable opportunity to cure:

15.1.1. No Opportunity to Cure: Unless otherwise agreed to between the Parties an act of Insolvency with respect to a Party to the Agreement or such Party is adjudged bankrupt shall constitute an immediate Event of Default, without the opportunity to cure;

15.1.2. 30 (thirty) Day Opportunity to Cure: Unless otherwise agreed to between the Parties, any of the following shall constitute an immediate Event of Default, unless the Party shall have cured the same after 30 (thirty) days of receipt of notice of such Event of Default from the other Party:

- (a) The SPD's failure to supply power to the Purchaser for any reasons in accordance with the terms of the Agreement from Commercial Operation Date, subject to exceptions as per clause 11 of this agreement;
- (b) Revocation or cancellation or impairment of any license, approval or permit obtained by the Purchaser which has a material adverse effect on the Solar Power Plant;
- (c) Failure or refusal by either Party to perform its material obligations under the Agreement;
- (d) Failure or default by the Purchaser to provide SPD free access to the Premises;
- (e) Any representation or warranty made by such Party herein is false or misleading in any respect at the time it was made; and
- (f) Non Payment of undisputed bills by the Purchaser beyond a period of 30 (thirty) Business Days from the Due Date of the respective Monthly Bill raised by the SPD.

15.2. **Termination of the Agreement**

15.2.1. In case of occurrence of any Event of Default with no opportunity to cure as contained in Clause 15.1.1 above, the non-Defaulting Party may terminate the Agreement at its own discretion, immediately on happening of such Event of Default.

15.2.2. In case of occurrence of any Event of Default with 30 (thirty) Business Days opportunity to cure as contained in Clause 15.1.2 above, the non-Defaulting Party shall serve a notice in writing to the Defaulting Party giving 30 (thirty) Business Days from date of receipt of such notice, to cure the said default. Where the Defaulting Party fails to cure the said default within the said period of 30 (thirty) Business Days or any extended period that may be mutually agreed between the parties, the non-Defaulting Party at its sole discretion can terminate the Agreement.

15.2.3. In case of Termination of the Agreement for any reason, the Purchaser shall SPD for all the works carried out till the date of the termination and not billed to the Purchaser

within a period of 7 (seven) business days.

15.2.4. Termination of the Agreement due to any Event of Default shall be without prejudice to the accrued rights and liabilities of the Parties at the date of termination, unless waived in writing by the Parties

16. LIMITATIONS OF LIABILITY

- 16.1. Neither Party nor its directors, officers, shareholders, partners, members, agents, employees, subcontractors or suppliers shall be liable for any loss of revenue, loss of profit, loss of opportunities, loss of use, loss of production, loss of contracts or for any other financial or economic loss whatsoever nor for any indirect or consequential loss of any kind arising out of their performance or non-performance hereunder and under the law of torts, except those arising from any fraud, intentional or wilful misconduct or illegal or unlawful acts on its part.
- 16.2. The Parties hereby agree that the limitation of liability under Clause 18.1 above shall not affect the determination and payment of Fair Market Value under Clause 13.3 above.

17. INDEMNIFICATION

- 17.1. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party (the "**Indemnified Party**") and its Affiliates and their respective officers, directors, employees, agents, successors and assigns, from and against all claims, damages, liabilities, losses and costs including reasonable attorney's fees (the "**Losses**") in connection with or relating to, any claims or proceedings to the extent arising from:
- 17.1.1. the Indemnifying Party's negligence or intentional act or omissions;
 - 17.1.2. Any claims that the Indemnifying Party has acted in a manner that contravenes any Applicable Permits;
 - 17.1.3. The Indemnifying Party breaching any obligation with regard to Confidential Information as set out in Clause 19 below; and
 - 17.1.4. Any claims arising out of the Indemnifying Party's breach of its obligations and responsibilities under the Agreement.

18. INDEPENDENT CONTRACTOR

- 18.1. SPD acknowledges that it is acting as an independent contractor, that SPD is solely responsible for its actions or inactions, and that nothing in the Agreement shall be construed to create an agency or employment relationship between Purchaser and SPD or its employees. SPD is not authorized to enter into contracts or agreements on behalf of Purchaser or to otherwise create obligations of Purchaser to third parties. The Parties hereby acknowledge and agree that any workers or personnel engaged by SPD and provide services on-site at the Premises shall be employees of the SPD and not of Purchaser or any of its subsidiaries for all purposes, including workers' compensation, taxes, compensation and employee benefits. SPD agrees that SPD shall be solely responsible for payment of all applicable workers' compensation, disability benefits, employee benefits and unemployment insurance, and for withholding and paying such employment taxes and income withholding taxes as required.

19. CONFIDENTIALITY

19.1. General Obligation

Each Party undertakes that it shall not reveal, and shall use its reasonable efforts to ensure that its directors, officers, managers, partners, members, employees, legal, financial and professional advisors, consultants and bankers (collectively, the “**Representatives**”) do not reveal, to any third party any Confidential Information without the prior written consent of the other Party, as the case may be. The term “**Confidential Information**” as used in the Agreement means (a) any information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of the Parties or any of their respective Affiliates, directors, officers or employees (whether conveyed in written, oral or in any other form and whether such information is furnished before, on or after the date hereof), (b) the contents and the subject matter of the Agreement, (c) the negotiations relating to the Agreement, (d) any information or materials prepared by a Party or its Representatives that contains or otherwise reflects, or is generated from, Confidential Information.

19.2. Exception

The provisions of Clause 19.1 above shall not apply to:

- 19.2.1. the disclosure of information which the recipient can reasonably demonstrate is in the public domain through no fault of the recipient Party;
- 19.2.2. disclosure of Confidential Information that is or becomes generally available to the public other than as a result of disclosure by or at the direction of a Party or any of its Representatives in violation of the Agreement;
- 19.2.3. disclosure of Confidential Information by a Person to the extent that any such information is later acquired by a Party from a source not obligated to any other Party hereto, to keep such information confidential or such information was previously known or already in the lawful possession of the Party, prior to such disclosure;
- 19.2.4. disclosure of any information, materially similar to the Confidential Information, and such information shall have been independently developed by the Party without reference to any Confidential Information furnished by any other Party hereto;
- 19.2.5. disclosure by a Party to its Representatives provided such Representatives are bound by similar confidentiality obligations; or
- 19.2.6. disclosure, after giving prior notice to the other Parties to the extent practicable under the circumstances and subject to any practicable arrangements to protect confidentiality, to the extent required under the rules of any stock exchange or under

any Law or generally accepted accounting principles applicable to any Party or judicial or regulatory process or in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to the Agreement.

20. GOVERNING LAW AND DISPUTE RESOLUTION

20.1. Governing Law

The Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the Republic of India and shall be subject to the jurisdiction of courts at New Delhi.

20.2. Dispute Resolution

20.2.1. Any matter or dispute or difference arising at any time between the Parties hereto as to the interpretation or effect of the Agreement or any clause or matter herein contained or the rights or liabilities of the Parties hereto or otherwise howsoever in relation to the Agreement shall be first attempted to be resolved through conciliation by Coordination Committee.

20.2.2. In the event the Coordination Committee fails to resolve any matter or dispute or difference in accordance with Clause 20.2.1 above within 30 (thirty) days from the date of notifying the dispute to the Coordination Committee, such matter or dispute or difference shall be referred to arbitration in accordance with provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted by an arbitral tribunal consisting of sole arbitrator. The Parties may jointly appoint a person of repute, residing in India, who shall be an experienced person of repute from the power sector to act as an arbitrator or failing agreement the Confederation of Indian Industry will, on the application of either Party, appoint an independent engineer to act as the arbitrator.

20.2.3. Any arbitration under the Agreement shall be conducted in [New Delhi], in the English language. The Parties shall bear their respective costs of the arbitration unless the arbitral tribunal otherwise directs.

20.2.4. Notwithstanding any dispute referred to arbitration, the Parties shall continue to perform their obligations.

21. TAXES AND DUTIES

21.1. All Taxes as may be applicable in respect of the Tariff on the date of raising the Monthly Bill shall be charged by the SPD at actuals and shall be borne and paid exclusively by the Purchaser.

- 21.2. If, after the Effective Date, the rates of any Taxes are increased or decreased, or any new Tax is introduced, an existing Tax is abolished, or any change in the interpretation or application of any Tax occurs (each, a "**Change in Tax Law**"), in each case, with respect to the sale of Solar Power under the Agreement, the Purchaser shall bear exclusively the effect of such Change in Tax Law and be liable exclusively to make payment of such Taxes at actuals.
- 21.3. Subject to Clause 21.1 and 21.2, the adjustment in Tariff and the Monthly Bill shall be effective from the date on which the Change in Tax Law is brought into force.

22. NOTICES

22.1. All Monthly Bills, notices, requests, consent or other communication shall be addressed to the other Party at the addresses noted below or such other address as shall be notified by a Party in writing to the other Party. All such Monthly Bills, notices, requests, consent or other communication, unless otherwise specified herein, shall be in writing and may be delivered by e-mail, hand delivery, post, courier service or by facsimile.

22.2. The addresses referred to above are:

22.2.1. In case of notice to SPD

Attn: Mr.
Address:
Telephone no:
Facsimile number:
Email:

22.2.2. In case of notice to Purchaser

Attn: Mr. O P Mishra
Address:
Telephone no:
Facsimile number:
Email:

22.3. Unless there is evidence that it was received earlier, a Notice or Monthly Bill shall be deemed delivered if:

22.3.1. sent by mail, except air mail, 15 Business Days after posting it;

22.3.2. sent by air mail, 7 Business Days after posting it;

22.3.3. sent by e-mail, on the same Business Day as it was sent, provided the sender did not receive a delivery receipt failure notification or delivery receipt delay notification from the sender's internet service provider/e-mail hosting server; and

22.3.4. sent by hand delivery with date of confirmation stamp on receipt of documents; and

22.3.5. sent by facsimile, when confirmation of its transmission has been recorded by the sender's facsimile machine.

23. MISCELLANEOUS

23.1. Amendments

The Agreement shall not be changed or amended unless such change or amendment is made in writing and signed by authorized representatives of both Parties.

23.2. Entire Agreement

The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and shall supersede all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter of the Agreement.

23.3. Waiver

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with the Agreement shall not constitute a waiver as to that matter or any other matter. Any waiver by any Party of its rights with respect to a default under the Agreement or with respect to any other matters arising in connection with the Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to a subsequent default or other matter.

23.4. Captions; Construction

All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of the Agreement.

23.5. Assignment

Neither Party shall assign its rights or obligations under the Agreement to a third party without the prior written consent of the other Party;

The Agreement or any right or obligation hereunder or part hereof may be assigned by one Party to its Affiliate with prior consent to the other Party.

23.6. Security

The SPD may create security over the receivables and the assets owned by the SPD forming part of the Solar Power Plant for the purposes of providing collateral for any debt funding that it may raise for the purpose of installing, commissioning and operating and managing the Solar Power Plant.

23.7. Costs

Except as otherwise provided in the Agreement, each Party shall be responsible for its own costs, charges and expenses (including those of its affiliates) incurred in connection with the negotiation, preparation, entering into and completion of the Agreement and the consummation of the transactions contemplated herein.

The Parties hereby agree that the SPD shall not be liable to the Purchaser for any costs and/or fees levied by a Competent Authority on the Purchaser in connection with the Agreement and/or the SPD's performance of its obligations arising hereunder.

23.8. Counterparts

The Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

23.9. Severability

If any of the terms of the Agreement is finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; provided, however, that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Law and the intent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Power Purchase Agreement as of the day and year first written above.

Signed for and on behalf of

New Delhi Municipal Council

By : O P Mishra

Title : Director-Projects

Signed for and on behalf of

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By :

Title :