



REQUEST FOR PROPOSAL
FOR
SUPPLY OF POWER UNDER OPEN ACCESS TO
BPCL, MUMBAI REFINERY

Tender No. : 1000271467

E-tender no. : 19894

Issued by
BHARAT PETROLEUM CORPORATION LIMITED

DGM (P & CS)
M/s Bharat Petroleum Corporation Limited,
Refinery Division, Mahul, Chembur,
Mumbai -400074

DISCLAIMER

1. This Request for Proposal (RFP) document is not an agreement or offer by the Procurer to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information to assist the formulation of their Bid. This RFP is based on material and information available in public domain.
2. This RFP, along with its Formats, is not transferable. The RFP and the information contained therein are to be used only by the person to whom it is issued. Save and except as provided in Clause 2.18 of the RFP, it shall not be copied or distributed by the recipient to third parties. In the event that the recipient does not continue with its involvement in the bidding process in accordance with this RFP, this RFP must be kept confidential.
3. While this RFP has been prepared in good faith, neither the Procurer, its employees nor advisors/consultants make any representation or warranty express or implied as to the accuracy, reliability or completeness of the information contained in this RFP.
4. Neither the Procurer, its employees nor its advisors / consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award for supply of power, the information supplied by or on behalf of Procurer or its employees, any advisors/consultants or otherwise arising in any way from the selection process for the said supply of power.

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DEFINITIONS

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Documents.

"Act" shall mean the Electricity Act, 2003, and include any modifications, amendments and substitution from time to time;

"Agreement" shall mean the Power Purchase Agreement (PPA);

"Appropriate Commission" shall mean the Maharashtra Electricity Regulatory Commission or Central Electricity Regulatory Commission as may be applicable as per Electricity Act 2003;

"Bid" shall mean the Non-Financial Bid and the Financial Bid submitted by the Bidder, in response to this RFP, in accordance with the terms and conditions hereof.

"Bidder" shall mean Bidding Company submitting the Bid. Any reference to the Bidder includes Bidding Company including its successors, executors and permitted assigns, as the context may require";

"Bidding Company" shall refer to corporate entity that has submitted the Bid in accordance with the provisions of this RFP;

"Bid Bond" shall mean the unconditional and irrevocable Bank Guarantee to be submitted along with the Bid by the Bidder under Clause 2.3 of this RFP, as per prescribed Format 4.7;

"Bid Deadline" shall mean the last date and time for submission of Bid in response to this RFP as specified in Clause 2.12.1 of this RFP;

"BPPA" shall mean the back to back Power Purchase Agreement to be entered into PTC India Limited and the Successful Bidder, a draft of which is attached hereto including all its schedules, annexure and all amendments or modifications;

"BPCL" shall mean Mumbai refinery of Bharat Petroleum Corporation Limited having its Registered Office at Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai - 400001 and its Mumbai Refinery located at Mahul, Chembur, Mumbai -400074, and shall be used interchangeably for Procurer in the context and relevance of this RFP;

"CERC" shall mean the Central Electricity Regulatory Commission of India constituted under sub – section (1) of Section-76 of the Electricity Act, 2003 or its successors;

"Consents" shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, NOC, concessions, concurrence or consent required to be obtained under Applicable Law for the purpose of delivering the Contracted Capacity at the Delivery Point under Open Access;

“Contracted Capacity” shall mean the power (in MW) contracted between the Seller and the Procurer at the Delivery Point defined in this RFP;

“Contract Performance Guarantee (CPG)” shall have the meaning as ascribed to herein in this RFP;

“Cross Subsidy Surcharge (CSS)” shall mean such surcharge leviable on a consumer availing Open Access as may be determined or notified by the Appropriate Commission from time to time;

“CTU” or “Central Transmission Utility” shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

“Delivery Point” shall mean the interconnection/metering point of the Procurer (i.e. BPCL’s Mumbai Refinery) with Discom interface operating at 22 kV voltage level in Maharashtra. It is clarified that for BPCL TEC #1 and #2 is at BPCL Refinery end (at 22KV), and TEC#3 is at Tata Trombay switchyard end (at 110KV) ;

“Discom” shall mean the power distribution company in the area of the Procurer which is presently Tata Power Company Limited (TPC-D) and includes its successors, executors and permitted assigns as the context may require;

“Effective Date” shall mean the date from which the PPA becomes effective;

“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 the Tariff quoted at Delivery Point submitted online by the Bidder as per Clause 2.7.1.1 (II);

“Generating Unit” shall mean any of the generating units of the power plant of the Seller, specified as generation source by Bidder in its Bid;

“Grid Code” / “IEGC” or “State Grid Code” shall mean the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

“Investment Agreement” shall mean the tripartite Investment Agreement to be entered into by Procurer, Seller and Promoters of the Seller Company, only if applicable;

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

“Letter of Intent” or “LOI” shall mean the letter to be issued by the Procurer to the Successful Bidder for supply of Contracted Capacity at Delivery Point in accordance with this RFP;

“MTOA” shall mean the Medium Term Open Access for any period exceeding three months but not exceeding three years;

“NOC” shall mean the No Objection Certificate/ Open Access permission/ Concurrence/ Approval issued by the concerned Distribution Licensee/ SLDC/ Transco/ any other relevant authority as may be applicable from time to time;

“Non-Financial Bid” shall mean the documents as specified in Clause 2.7.1.1 (I) of the RFP;

“Open Access” shall mean Open Access as defined in the Electricity Act 2003 and as may be amended from time to time;

“Parent Company” shall mean a company that holds at least twenty six percent (26%) of the paid - up equity capital directly or indirectly in the Bidding Company

“Party” shall mean either Seller or Procurer individually;

“Parties” shall mean Seller and Procurer collectively;

“PPA” shall mean the Power Purchase Agreement to be entered into between PTC and the Seller, a draft of which is attached hereto including all its schedules, annexure and all amendments or modifications;

“Procurer” shall mean the Bharat Petroleum Corporation Limited (BPCL) Refinery at Mahul, Chembur, which is carrying out this bidding process for selection of the Successful Bidder;

“PTC” shall mean PTC India Limited having its Registered Office 2nd Floor, NBCC Tower, 15 Bhikaji Cama Place, New Delhi – 110066;

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

“Qualified Bidder(s)” shall mean the Bidder(s) who, after evaluation of their Non-Financial Bid stand qualified for opening and evaluation of their Financial Bid;

“REA” shall have the same meaning as specified in Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each week and for each month, including the revisions and amendments thereof;

“Regulations” shall include the regulations and their amendments made or issued under Electricity Act 2003 and will also include but not limited to the Regulation made or issued by the Electricity Regulatory Commission and any circulars, directives, clarifications, policy matters issued by the Distribution Licensee, Transmission Licensee and SLDC relating to sale of electricity by the Seller to the Procurer under Open Access;

“RFP” shall mean this Request for Proposal vide No.1000271467 along with all formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

“RPC” means the Regional Power Committees set up by the Government of India under Section 55(2) of the Act for the Northern Region, Western Region, Southern Region, Eastern Region and North-eastern Region;

“Seller” shall mean the Successful Bidder who execute the PPA with PTC or BPCL, as the case may be and shall be responsible for supplying power at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

“SERC” shall mean the State Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under sub-section (1) of Section 83 of the Electricity Act 2003;

“STOA” shall mean the Short Term Open Access for any period not exceeding one month;

“STU” or **“State Transmission Utility”** shall mean the Board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

“Successful Bidder” shall mean the Bidder selected by the Procurer pursuant to this RFP for supply of power as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

“Tariff” shall mean the all-inclusive per kWh rate quoted by the Bidder at Delivery Point under the Financial Bid;

“Trading Licensee” shall mean the Bidder which is an Electricity Trader possessing Category-I Trading License issued by appropriate Commission and submits its Bid on the basis of an exclusive power purchase agreement executed with the generating entity from where the power is proposed to be supplied by the Bidder;

SECTION – 1

INTRODUCTION

SECTION 1

1. INTRODUCTION

- 1.1. BPCL Mumbai Refinery at Mahul, Mumbai, Maharashtra (hereinafter referred to as “**Procurer**”) invites interested Bidders to participate in the Bidding Process for selection of Successful Bidder for procurement of 12 MW power on short/medium term open access. The responsibility of the Successful Bidder would be to supply power to the Procurer as per the terms and conditions of the RFP Documents. BPCL has appointed PTC India Limited as the nodal agency for facilitating purchase and sale of the aforesaid power.
- 1.2. The Procurer proposes to select the Bidder having the prescribed qualifications and whose Tariff is found to be acceptable as per the provisions of Clause 3.4 to become Seller.

In case the Seller supplies the power under the Group Captive mode, then the Power Purchase Agreement (PPA) and other RFP Documents shall be signed between the Procurer and the Seller. The Procurer shall pay to the Seller the Tariff pursuant to and as per the terms and conditions of the Power Purchase Agreement.

In all other cases, PTC India Limited (PTC) shall sign the Power Purchase Agreement (PPA) with the Procurer and a back to back Power Purchase Agreement (“BPPA”) shall be signed between the PTC India Limited and the Seller. The terms and conditions of the PPA to be signed between the Procurer and PTC shall be applicable mutatis mutandis to the BPPA to be signed between PTC and the Seller. PTC shall pay to the Seller the Tariff pursuant to and as per the terms and conditions of the BPPA read along with the PPA.

1.3 Power Procurement

1.3.1 Scope

Brief scope of power procurement is given as under:

Sr. No	Scope	Details
1.	Procurer	Bharat Petroleum Corporation Limited (BPCL)
2.	Location	BPCL, Mumbai Refinery, Mahul, Chembur, Mumbai - 400074
3.	Contracted Capacity	Aggregate power of 12 MW* (net) on RTC basis made available by the Seller at the Delivery Point and in respect of each of the three 22 KV feeders of BPCL’s Mumbai Refinery shall mean 4 MW each.
4.	Minimum Bid capacity	12 MW on RTC (00:00-24:00)
5.	Contract Period	The contract/agreement shall be valid for a period

		from 01 st February, 2017 up to 31 st March 2018 The contract/agreement may be extended by BPCL with same Tariff, terms and conditions of agreement, for the period up to 31 st March 2019
7.	Scheduled Delivery Date	Shall be 01 st February, 2017.
8.	Delivery Point	Interconnection/ Metering points (three nos.) of BPCL's Refinery with Discom interface at 22KV level. Metering arrangements (three nos.) for Procurer is as follows, i. TEC#1 (Consumer No. 900000799917) & TEC#2 (Consumer No. 900000799918) is at BPCL Refinery end ii. TEC#3 (Consumer No. 900000001426) is at Switchyard of TPCL in Trombay, Chembur. The PPA/BPPA shall be signed between the Successful Bidder and Procurer/ PTC for the Contracted Capacity at the Delivery Point.
9.	Open Access	The Seller shall be responsible for arranging transmission access and open access including obtaining No Objection Certificates and other liaison works with all concerned statutory and non-statutory agencies like distribution companies, load despatch centers, etc. during the term of the contract. The Seller shall be responsible for scheduling of power at both ends.

**During the term of the Contract, Procurer may increase Contract Capacity up to 24 MW at Delivery Point on round-the-clock basis subject to capacity available with the Seller and approvals from authorized agency for grant of Open Access. In such case, the Seller shall revise the Contract Capacity up to 24 MW at same Tariff and Terms of Agreement entered into between Procurer and Seller as per Clause 1.3.2.*

1.3.2 The PPA and Investment Agreement, if applicable, sets forth the detailed terms and conditions for grant of the Contract to the Seller, including the scope of Seller's services and obligations (the "**Contract**").

1.3.3 **Evacuation of Power**

The responsibility for evacuation of power from the generation source bus bar up to the Delivery Point shall be to the account of Seller. The Procurer shall not be responsible for any issue whatsoever, including but not limited to issues related to network constraints, power generation and supply issues at Seller's end and before the Delivery Point, or any other issue, during the term of the contract.

1.3.4 **Medium Term Open Access (MTOA)**

It shall be the responsibility of the Seller to supply power on medium term basis. However, till the medium term open access is granted, the Seller is to supply power under short term open access as per applicable regulations.

The Seller has to apply for MTOA as well as STOA immediately on receipt of LOI/ PPA. In case of delay in applying open access, the penal action as per terms of PPA will be applicable.

1.3.5 **Quantum**

The Seller shall supply 100% of the Contracted Capacity (i.e. 12 MW) on RTC (00:00 hours to 24:00 hours) basis during the term as specified in this RFP. Non-supply of power at the Delivery Point due to any reason whatsoever shall be on the account of Seller and the Procurer shall be duly compensated as per the terms of the PPA.

1.3.6 **Tariff**

The Tariff quoted by Bidder shall be all inclusive rate per unit of electricity at Delivery Point for the entire term of contract. The tariff shall include all statutory/ regulatory charges and losses, transmission and wheeling charges & losses, scheduling and operational charges, taxes and electricity duties, and any other charges up to Delivery Point. The Tariff also include other charges including CSS (Cross Subsidy Surcharge), RAC (Regulatory Asset Charges), additional surcharge, and any other applicable charges, except for the RPO (Renewable Power Obligation) charges, which shall be borne by the Procurer itself.

If any duty/ taxes/ charges applicable to and paid by the Procurer, will be deducted from Tariff and deposited by Procurer accordingly and documentary proof of the same shall be submitted to the Seller.

SECTION - 2

**INFORMATION AND
INSTRUCTIONS FOR
BIDDERS**

SECTION – 2

2. INFORMATION AND INSTRUCTIONS FOR BIDDERS

2.1. Qualification Requirements

2.1.1. The Bidder must meet the Qualifying Requirements independently and will be declared as a Qualified Bidder based on meeting the Qualification Requirements specified below and as demonstrated based on the documentary evidence submitted by the Bidder in the Bid.

2.1.2. The Bidder should be a corporate entity duly incorporated under the relevant laws. The Bidder can be an independent power producer, or a captive power producer, or a distribution company or a Category-I Trading Licensee issued by Central Electricity Regulatory Authority (CERC) willing to participate in the bidding process for supply of power to BPCL.

2.1.3. The Bidders are to Bid for the Contracted Capacity specified in Clause 1.3.1.

2.1.4. The Bidder must fulfill the following Qualification Requirements

2.1.4.1. Financial Capacity

The Bidder shall have a minimum positive Net Worth (the “Financial Capacity”) equivalent to Rs. 1.5 Cr (Rupees One Crore Fifty Lacs only) per MW of Contracted Capacity, equating to Rs. 18 Cr (Rupees Eighteen Crores only) in each of the last three (3) financial years preceding the Bid Deadline. In case the Bidder is a trading licensee, the Financial Capacity may be either fulfilled jointly or severally by the trading licensee and power producer.

For the purposes of this RFP, Net Worth (the “Net Worth”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, intangible assets, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

Networth shall be computed in the following manner by the Bidder:

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

The Bidder may seek qualification on the basis of financial capability of its Parent Company for the purpose of meeting the Qualification Requirements. The financial capability of a particular Parent Company shall not be used by more than one Bidder. The determination of the relationship of Parent

Company 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. Further, the Bidding Company will have to submit a legally binding undertaking supported by a Board resolution from the Parent Company that the obligation of the Bidding Company to submit a Contract Performance Guarantee, if selected, shall be deemed to be the obligations of its Parent and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee, the same shall be submitted by its Parent Company.

It is further clarified that any of the Parent Company of the Bidding Company shall not separately participate directly or indirectly in the same bidding process. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same bidding process, the Bid of all such Bidder(s) shall be rejected.

2.1.4.2. **Technical Capacity**

For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder (in case the Bidder is a trading licensee, the Bidder shall ensure that the corporate entity owning the generating unit(s) fulfills the Technical Capacity and the Bidder shall submit documentary evidence regarding the same in its Bid) shall:

- a. have the capability to supply the Contracted Capacity at Delivery Point on round the clock basis to Procurer from a firm power source;
- b. own and operate generating unit(s) having an installed capacity equivalent to at least twice the Contracted Capacity specified in Clause 1.3.1;
- c. have fuel supply arrangement or agreement to supply firm power for the entire tenure of contract without any restriction for generation of power and supplying it to BPCL.
- d. own commissioned capacity and have available capacity to supply at least 12MW at delivery point under this contract. The unit(s) should have declared its Commercial Operating Date (COD) on or before 01st December’16 and shall provide the document(s) that plant has satisfactorily supplied at least 12MW on round the clock basis for at least 1 year;

2.1.4.3. In case the Bidder intends to supply power on medium term basis under group captive model, the Bidder shall ensure that generating unit(s) from which power is identified to be supplied shall either be currently certified as Captive Generating unit(s) by respective State Electricity Regulatory Commission (SERC) or any appropriate authority, wherein the unit(s) is located or Bidder agrees to get the unit certified as Captive Generating unit(s) by respective SERC or the appropriate authority not later than Bid Deadline, and shall absorb all charges in its Tariff as specified in Clause 1.3.6, applicable time-to-

time (as per regulations) to Procurer;

- 2.1.4.4. In case the Bidder intends to supply power on medium term basis under bilateral model, the Bidder shall absorb all charges in its Tariff as specified in Clause 1.3.6, applicable time-to-time to Procurer;
- 2.1.4.5. In case the Bidder is a Trading Licensee and intends to supply power on medium term basis under bilateral model (Trading Licensee is not permitted to supply power under group captive model), the Trading Licensee shall have executed exclusive Power Purchase Agreement pursuant to the RFP documents hereto, and shall provide a copy of the same as part of its Bid, and the Trading Licensee shall absorb all charges in its Tariff as specified in Clause 1.3.6, applicable time-to-time to Procurer;
- 2.1.4.6. In case Bidder is a Group captive and intends to supply power under group captive scheme then the Bidder has to enter a tripartite investment agreement, which will be between Procurer (BPCL), Seller and Promoters of the Seller Company. The Promoter has to agree to transfer the Equity Shares of the Seller to the Procurer. The Promoter has to provide a Bank Guarantee (as per Annexure attached in RFQ) to the Procurer, for a value equal to the Purchase Price of equity, and valid up to three months after completion of term of the PPA, as a security against the purchase of Equity Shares by the Procurer.
- 2.1.4.7. The Bidder shall undertake (as per Format 4.5) not to submit any other bid, on the basis of the same generation source and quantum of power from such source as mentioned in its Bid, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier subject to a maximum period of one hundred and twenty (120) days from the Bid Deadline. If the Bidder is a Trading Licensee, it shall undertake (as per Format 4.5) not to submit any bid, on the basis of the exclusive power purchase agreement submitted along with its Bid for the same quantum of power and generation source specified therein, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.
- 2.1.4.8. The Bidder should be in a position to operationalize the contract by actual injection of power by 1st February 2017.
- 2.1.4.9. During the term of the contract, BPCL may increase Contract Capacity up to 24 MW at Delivery Point on round-the-clock basis, subject to capacity available with the Seller, and provisions under open access regulations, Seller shall revise the Contract Capacity up to 24 MW at same Tariff and terms of agreement entered into between Procurer and Seller.

2.2. General

- 2.2.1. No Bidder shall submit more than one Bid in the same bidding process from

the same generation source.

- 2.2.2. The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.
- 2.2.3. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft PPA shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the PPA.
- 2.2.4. The draft PPA and the BPPA provided by Procurer as part of the Bidding Documents shall be deemed to be part of this RFP and shall be basis for PPA to be executed out of this RFP.

2.3. Bid Bond

- 2.3.1. Each Bidder shall submit the Bid accompanied by Bid Bond, as per format 4.7 of Bid Bond enclosed herewith in the RFP. In case the Bidder is offering power from more than one generation source, the Bid Bond shall be submitted separately for each source. The Bid Bond shall be valid for a period of thirty (30) days beyond the validity of the Bid.
- 2.3.2. The Bid Bond, may be invoked by the Procurer without any notice, demure, or any other legal process upon occurrence of any of the following:
 - 2.3.2.1. Failure to furnish the Contract Performance Guarantee as per Clause 2.14; or
 - 2.3.2.2. Failure to execute the RFP Documents; or
 - 2.3.2.3. Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 2.10;
 - 2.3.2.4. Bidder withdraw his Bid within its validity
 - 2.3.2.5. The Bid Bonds of all Bidders, whose Bids are declared non-responsive, shall be returned and released by the Procurer within thirty (30) days after the date on which the Financial Bids are opened.
- 2.3.3. The Bid Bonds of all unsuccessful Bidders shall be returned and released by the Procurer within a period of thirty (30) days of the occurrence of the earlier of the following:
 - 2.3.3.1. submission of the Contract Performance Guarantee as per Clause 2.14 of the RFP and the execution of the RFP Documents (as applicable) by the Successful Bidder; or
 - 2.3.3.2. Expiry of the Bid Validity/extended validity of Bid of unsuccessful Bidders;

- 2.3.4. In case of occurrence of the termination/cancellation of Bid process by the Procurer, the Bid Bonds of all Bidders shall be returned and released by the Procurer within a period of thirty (30) days.
- 2.3.5. The Bid Bond of the Successful Bidder(s) shall be returned on submission of Contract Performance Guarantee as per Clause **2.14** of the RFP.

2.4. Cost of Bidding

- 2.4.1. The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bid Process. BPCL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 2.4.2. Bidders are encouraged to submit their respective Bids after familiarizing themselves with the information and physical conditions relevant to supply of power to BPCL, including the transmission capacity, location, and any other matter considered relevant by them.
- 2.4.3. It shall be deemed that by submitting a Bid, the Bidder has:
- 2.4.3.1. made a complete and careful examination of the Bidding Documents;
- 2.4.3.2. received all relevant information requested from the BPCL;
- 2.4.3.3. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the BPCL relating to any of the matters referred to in Clause 2.4.2 above;
- 2.4.3.4. satisfied itself about all matters, things and information including matters referred to in Clause 2.4.2 hereinabove necessary and required for submitting an informed Bid, execution of the contract in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- 2.4.3.5. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.4.2 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the BPCL, or a ground for termination of the PPA by the Seller;
- 2.4.3.6. acknowledged that it does not have a conflict of interest; and
- 2.4.3.7. agreed to be bound by the undertakings provided by it under and in terms hereof
- 2.4.4. BPCL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by BPCL.

2.4.5. All stamp duties payable for executing the RFP Documents shall be borne by the Successful Bidder.

2.5. Verification and Disqualification

2.5.1. BPCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by BPCL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by BPCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of BPCL there under.

2.5.2. BPCL reserves the right to reject any Bid and appropriate the Bid Bond if:

2.5.2.1. at any time, a material misrepresentation is made or uncovered, or

2.5.2.2. the Bidder does not provide, within the time specified by BPCL, the supplemental information sought by BPCL for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then BPCL reserves the right to take any such measure as may be deemed fit in the sole discretion of BPCL, including annulment of the Bidding Process.

2.5.3. In case it is found during the evaluation or at any time before signing of the PPA or after its execution and during the period of subsistence thereof, including the Contract thereby granted by BPCL, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Seller either by issue of the LOI or entering into of the PPA, and if the Selected Bidder has already been issued the LOI or has entered into the PPA, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by BPCL to the Selected Bidder or the Seller, as the case may be, without BPCL being liable in any manner whatsoever to the Selected Bidder or Seller. In such an event, BPCL shall be entitled to forfeit and appropriate the Bid Bond or Contract Performance Guarantee, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to BPCL under the Bidding Documents and/or the PPA, or otherwise.

2.6. Clarifications and Pre-bid Meeting

2.6.1. The Procurer 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 or suggest amendments to RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Procurer at the address in Clause 2.7.2.2. 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 2.6.1.

- 2.6.2. The Bidder(s) or their authorized representative(s) is / are invited to attend pre-bid meeting, which will take place as per below schedule.

Date & Time : 10.01.2016 10:00 hrs

Venue : P&CS Conference Room, IInd Floor, Admin Building,
BPCL Mumbai Refinery, Mahul, Mumbai – 400 074.

Contact Person : Mr. Anant Gupta / Mr. K Suresh

Contact Nos. : + 91 22 2552 4188 / 2553 3297

Email ids : gupta1@bharatpetroleum.in / sureshk@bharatpetroleum.in

- 2.6.3. The purpose of the pre-bid meeting will be to clarify any issues regarding the RFP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.6.1.

- 2.6.4. The Procurer is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.

2.7. Submission of Bids

- 2.7.1. The Bids shall be submitted, online, in two envelopes.

2.7.1.1. Bid Formats

The Bid in response to this RFP shall be submitted by the Bidders in the manner provided in Clause 2.7.2.1. The Bid shall comprise of the following:

I. Envelope I – Non- Financial Bid comprising of:

- i. Scanned Copy of the Bid Bond as prescribed in Clause 2.3.
- ii. Covering Letter as per prescribed Format **4.1**
- iii. Scanned Copy of the Power of Attorney issued by the Bidder in favor of the authorized person signing the Bid, in the form attached hereto as Format **4.2**;
- iv. Bidder Information Sheet as per the prescribed Format 4.3;
- v. Scanned Copy of the Certificate(s) from statutory auditors of the Bidder specifying the Net Worth of the Bidder as per the prescribed Format 4.4, as at the closed of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.1.4.1;
- vi. For independent power producers:

- a. Relevant documentary evidence to be submitted as proof for COD of unit and that plant has satisfactorily supplied at least 12MW on round the clock basis for at least 1 (one) year
 - b. Copy of Fuel Supply Agreement/Arrangement confirming there are no restriction to supply of fuel for generation of power and supplying it to BPCL, or an undertaking (Format 4.8) for supply of uninterrupted fuel supply to meet its obligations under the agreement.
- vii. For captive power producers:
- a. Statement/Report from Chartered Accountant declaring the current shareholding pattern in the identified generating unit(s) and its compliance to rule no. 3(1)(a)(i & ii) and/or 3(1)(b) of Electricity Rule 2005 read in conjunction with Section 9 of The Electricity Act 2003.
 - b. Certificate/Proof of being CPP's for the unit(s) as per Electricity Rule 2005 and The Electricity Act 2003.
 - c. Relevant documentary evidence as proof of COD of unit and that plant has satisfactorily supplied at least 12MW on round the clock basis for at least 1 (one) year
 - d. Copy of Fuel Supply Agreement/Arrangement confirming there are no restriction to supply of fuel for generation of power and supplying it to BPCL, or an undertaking (Format 4.8) for supply of uninterrupted fuel supply to meet its obligations under the agreement
 - e. Details of shareholding as per Format 4.6;
- viii. For distribution company: Certificate/Relevant documentary evidence issued from respective regulatory body
- ix. For trading licensees:
- a. Valid Category-I Trading License issued by CERC as proof of legal trader
 - b. Copy of exclusive Power Purchase Agreement duly executed with an eligible corporate entity and following documentary evidence from the respective entity,
 - Copy of documentary evidence as proof of COD of unit and that plant has satisfactorily supplied at least 12MW on round the clock basis for at least 1 (one) year
 - Copy of Fuel Supply Agreement/Arrangement from power producer confirming there are no restriction to supply of fuel for generation of power and supplying it to BPCL, or an undertaking (Format 4.8) from power producer for supply of uninterrupted fuel supply to meet its obligations under the agreement
- x. Initialed RFP Documents;

II. Envelope II – Financial Bid

The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid online.

- i. The Bidder shall submit their Tariff at the Delivery Point;

- ii. The quoted Tariff shall be an all-inclusive Tariff up to the Delivery Point and no exclusions shall be allowed. The Bidder shall take into account all statutory/regulatory charges and losses, transmission and wheeling charges and losses, taxes, levies, duties, electricity duty, cross-subsidy surcharge, additional surcharge, regulatory asset charges, any other applicable charge, up to the Delivery Point while quoting such Tariff, except for the renewable purchase obligations which shall be borne by Procurer itself.

2.7.2. Submission of Bids

2.7.2.1. Bids shall be submitted, online, in two envelopes through single stage e-tendering.

2.7.2.2. Original/Hard Copy Submission of Bid Documents

Following documents of the Bid shall be submitted in original/ hard copies. These documents shall be submitted to BPCL on or before 23.01.2017 14:00 hrs at the address/tender drop box specified herein in the RFP.

- Bid Bond;
- Power of Attorney issued by the Bidder in favor of the authorized person signing the Bid, in the prescribed format attached hereto;
- Integrity Pact in the prescribed format in RFP;
- Initialed PPA, BPPA (if applicable) and Investment Agreement (if applicable).

All the documents, as mentioned above, should be kept in an envelope, properly sealed and appropriately marked as “*Documents for Bid for Open Power Access at BPCL Mumbai Refinery*” to BPCL, Mumbai Refinery, Tender No. 1000271467/ e-tender no. 19894 Date of submission: 23.01.2017 14:00 hrs.

The above mentioned envelope should be submitted to BPCL, at the below mentioned address, by the Bidders either through registered post/ speed post/ courier/ hand delivery.

DGM (P & CS)
M/s Bharat Petroleum Corporation Limited,
Refinery Division, Mahul, Chembur,
Mumbai -400074

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

2.7.2.4. All pages of the Bid, except for the Bid Bond, and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. 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.

2.7.2.5.No change or supplemental information to a Bid will be accepted after the Bid Deadline, unless the same is requested for by the Procurer as per Clause 2.5.1;

Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline. In cases where the Bid is withdrawn by the Bidder before the Bid Deadline, then such Bid shall not be opened.

2.8. Amendment of RFP

2.8.1. The Procurer, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder may modify the RFP, including the timelines specified in Clause 2.12.2, by issuance of addendum / modification / errata and / or a revised document. Such document shall be made available on the website <https://bpcleproc.in> / <https://bharatpetroleum.in/tenders/view-tenders.aspx> / <http://eprocure.gov.in/cppp>. The Procurer shall not be responsible for any delay in receipt of the addendum / modification / errata and / or revised document and receipt of the same by the Bidders shall be presumed by the Procurer upon taking all reasonable steps to notify the Bidders in accordance with the means mentioned in the preceding sentence. In order to provide reasonable time to the Bidders to take the modification into account in preparing their Bid, or for any other reasons, the Procurer may, at its discretion, extend the Bid Deadline. Late receipt of any addendum / modification / errata and / or revised document will not relieve the Bidder from being bound by that modification or the Bid Deadline.

2.9. Commencement of Supply of Power to Procurer

The Seller shall at all times be responsible, at its own cost and risk for the commencement of supply of power to the Procurer as per the terms of the LoI/PPA.

2.10. The Bidder should note that:

2.10.1. Wherever information has been sought in specified formats, the Bidders shall furnish the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

2.10.2. 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 Procurer reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the Effective Date, consequences specified in the PPA shall apply.

2.10.3. If for any reason the Bid of any Successful Bidder is rejected or Letter of Intent issued to such Successful Bidder is cancelled, the Procurer may annul the bid

process or take any such measure as may be deemed fit in the sole discretion of the Procurer.

2.10.4. Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the Procurer and shall not be returned to the Bidders;

2.10.5. Language of the Bid shall be English only;

2.10.6. The Procurer 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 Tariff shall be sought or permitted by the Procurer.

2.10.7. Non submission and / or submission of incomplete data / information required under the provisions of the RFP shall not be construed as waiver on the part of the Procurer of the obligation of the Bidders to furnish the said data / information unless the waiver is in writing.

2.10.8. The Procurer may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary.

2.10.9. 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 Procurer at the address provided in the notification to this RFP immediately. If no intimation is received from any Bidder within seven (7) days from the date of issue of this RFP or from the date on which it was made available on <https://bpcleproc.in> / <https://bharatpetroleum.in/tenders/view-tenders.aspx> / <http://eprocure.gov.in/cppp> it shall be considered that the issued document, complete in all respects, has been received by the Bidder.

2.11. **Bidder to inform itself fully**

2.11.1. The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions 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 Successful 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.

2.11.2. The technical requirements of integrated grid operation are specified in the Indian Electricity Grid Code (IEGC). The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised

to fully familiarize themselves with the real time grid conditions in India. The Procurer 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.

2.11.3. The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents required for the supply of power to Procurer. The Procurer shall have no liability to obtain any of the Consents required for supply of power.

2.12. **Due Dates**

2.12.1. The Bidders should submit the Bids online by 23.01.2017 14:00 hrs through our e-tender website <https://bpcleproc.in> only.

2.12.2. The following shall be the time schedule for completion of the bidding process

Event	Schedule
Date of issue of RFP	T0
RFP bid submission	T0 + 23 days
Evaluation of Bids and issue of LoI	T0+38 days
Signing of RFP Documents/PPA	T0 +48 days

2.13. **Validity of the Bid**

2.13.1. The Bidder shall submit the Bid which shall remain valid up to one hundred and twenty (120) days after the Bid Deadline (“**Bid Validity**”). The Procurer reserves the right to reject any Bid which does not meet the aforementioned validity requirement.

2.13.2. The Procurer 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 Procurer, the Procurer shall not be entitled to invoke the Bid Bond. A Bidder accepting the Procurer request for validity extension shall not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of the Bid Bond as requested by the Procurer and further undertake not to participate in any bid process as per Clause 2.1.4.7 within seven (7) days of such request, failing which the Bid shall not be considered as valid.

2.14. **Contract Performance Guarantee (CPG)**

2.14.1. Within seven (7) days of issue of Letter of Intent, the Successful Bidder shall provide the Contract Performance Guarantee as per the PPA. The Contract

Performance Guarantee shall be valid for Contract Period plus three (3) months. The Contract Performance Guarantee shall be issued by any of the banks listed in Schedule 7 of PPA.

2.14.2. Non submission of the CPG by the Successful Bidder(s) as per the provisions of Clause 2.14 may lead to the invocation of the Bid Bond, cancellation of the Letter of Intent of such Bidder(s), and thereafter, the provisions of Clause 2.10.3 shall be applicable.

2.15. Right to withdraw the RFP and to reject any Bid

2.15.1. This RFP may be withdrawn or cancelled by the Procurer at any time without assigning any reasons thereof. The Procurer further reserves the right, at its discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

2.16. Enquiries

2.16.1. Written clarifications on the RFP and RFP Documents as per Clause 2.6 may be sought from:

DGM (P & CS)
M/s Bharat Petroleum Corporation Limited,
Refinery Division, Mahul, Chembur,
Mumbai -400074

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

2.18. Confidentiality

2.18.1. The parties undertake to hold in confidence this 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 Successful Bidder agrees and acknowledges that the Procurer 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;

2.19. Fraudulent and Corrupt Practices

2.19.1. 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 LOI. Notwithstanding anything to the contrary contained herein, or in the LOI, the Procurer shall reject a Bid, withdraw the LOI, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer shall forfeit the Bid Bond, without prejudice to any other right or remedy that may be available to the Procurer hereunder or otherwise.

2.19.2. Without prejudice to the rights of the Procurer under Clause 2.19 hereinabove and the rights and remedies which the Procurer may have under the LOI, if a Bidder is found by the Procurer 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 LOI, such Bidder shall not be eligible to participate in any tender or RFP issued by the Procurer, during a period of two (2) years from the date such Bidder is found by the Procurer 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.

2.19.3. For the purposes of this Clause 2.19, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the project or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Procurer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid process;

SECTION - 3

EVALUATION CRITERIA

SECTION 3

3. EVALUATION CRITERIA

3.1. Opening of Bids

- 3.1.1. Envelope I (Non-Financial Bid) shall be opened at 23.01.2017 14:00 hrs or the last extended bid due date The Bid without the Bid Bond shall be summarily rejected without opening other parts of the Bid.
- 3.1.2. After examination of the Bid Bond, Procurer will subsequently examine and evaluate other parts of the Bid in accordance with the provisions set out in this Section 3.
- 3.1.3. To facilitate evaluation of Bids, BPCL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2. Tests of Responsiveness

3.2.1. The Non-Financial Bid submitted by Bidders shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. Subject to Clause 2.10.6, any of the following may cause the Bid to be considered “Non-responsive”, at the sole discretion of Procurer:

- Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney, documentary evidence as per Clause 2.7.1.1, Bidder undertaking, valid Bid Bond;
- Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP;
- Material inconsistencies in the information / documents submitted by the Bidder, affecting the Qualification Requirements;
- Information not submitted in the formats specified in this RFP;
- A Bidder submitting more than one Bid
- Bid validity being less than that required as per Clause 2.13 of this 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 Procurer as applicable;

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder’s fulfillment of Qualification Requirement is taken up.

3.3. 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 RFP and related documentary evidence in support of meeting the Qualification Requirements as specified in

Clause 2.7.1.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

3.3.2 BPCL's decision on compliance of Qualification Requirements shall be final.

3.4. **Evaluation of Financial Bid**

3.4.1 Financial Bid of the Qualified Bidders shall be opened on date that shall be intimated by Procurer to the Bidders only through email.

3.4.2 The Financial Bids received shall be studied in detail and a comparative statement of substantially responsive bids shall be prepared. The Bidders shall be evaluated based on the actual per unit landed rate at the Delivery Point, as detailed below.

Calculation of landed rate per kWh at Delivery Point for the Bidder supplying power under bilateral model:

$$(\text{Tariff} * 105 \text{ MUs}) / 105 \text{ MUs}$$

Calculation of landed rate per kWh at Delivery Point for the bidder supplying power under group captive model:

$$\{(\text{Tariff} * 105 \text{ MUs}) + (\text{Equity to be invested by Procurer} * \langle \text{cost of equity} \rangle)\} / 105 \text{ MUs}$$

Note:

- Expected units to be consumed by BPCL under OA has been computed as $\{(12\text{MW} * 1000\text{KW} * 24\text{hrs} * 365 \text{ days}) / (10^6)\} = \sim 105 \text{ MUs}$
- Rate used for computation of cost of equity has been taken as 14.05%.per annum.

3.4.3 Based on the comparative statement drawn for actual per unit landed rate, L1, L2, L3 shall be determined and quoted Tariff shall be ranked from the lowest to the highest.

3.4.4 The Bidder with the lowest quoted Tariff shall be declared as the Successful Bidder.

3.4.5 In case if lowest quoted Tariff is offered by two bidders, BPCL shall reserve to itself the right of awarding the contract to Bidder(s).

3.4.6 The Letter of Intent shall be issued to Successful Bidder selected as per the provisions of this Clause 3.4.

3.4.7 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, "Accepted Unconditionally", under the signature of

the authorized signatory of the Successful Bidder and return such copy to the Procurer within seven (7) days of issue of LOI.

3.4.8 The Procurer, in its own discretion, has the right to reject all Bids if the quoted Tariff are not aligned to the prevailing market prices.

SECTION – 4

**FORMATS FOR
BID SUBMISSION**

Format 4.1 for Covering Letter

COVERING LETTER FOR BID SUBMISSION

(The covering letter should be on the Letter Head of the Bidder)

Date: _____
From: _____ **(Insert name and address of Bidding Company)**
Tel.:
Fax:
E-mail address#

To;
< ----- >

Sub: Bid for Supplying power through Medium Term Open Access to BPCL's Mumbai Refinery

Dear Sir,

We, the undersigned [*insert name of the 'Bidder'*] having read, examined and understood in detail the RFP as mentioned in subject above and hereby submit our Bid.

1. We give our unconditional acceptance to the RFP, dated [Insert date in dd/mm/yyyy] and RFP Documents attached thereto, issued by the Procurer, as amended. As token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid.
2. We have submitted our Financial Bid strictly as per prescribed format of this 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 Procurer 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 under Open Access at Delivery Point.
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 Successful Bidder. We further undertake and agree that all such factors as mentioned in RFP have been fully examined and considered while submitting the Bid.

5. Contact Person

Details of the contact person are furnished in the Bidder Information Sheet as prescribed at Format 4.3.

6. Bid enclosures

We are enclosing herewith the required documents as sought in the RFP along with the Financial Bid.

7. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Procurer.
8. 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.
9. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one twenty (120) days from the date of submission of the Bid.
10. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in any of the provisions of this RFP.
11. 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 three (3) years from the Bid Deadline for breach of any contract for supply of power.

Dated the _____ day of _____, 20...

Thanking you,

We remain,

Yours faithfully,

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

Format 4.2 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.)

Know all men by these presents, We(name and address of the registered office of the Bidding Company) 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 through Open Access for meeting the requirements of the Procurer in the country of India in response to the RFP dated..... issued by Procurer, including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Procurer may require us to submit. The aforesaid Attorney is further authorized for making representations to the Procurer, and providing information / responses to Procurer, representing us in all matters before Procurer, and generally dealing with Procurer 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.....

Format 4.3 for Bidder Information Sheet

Bidder Information Sheet

Bidder:

- 1) Name of Bidder:
- 2) Country of Incorporation:
- 3) Corporate Identification Number (CIN):
- 4) Address of Incorporation Headquarters and its branch offices, if any:
- 5) Date of Incorporation and/or commencement of business:
- 6) Please provide the following documents:
 - i) Copy of the Memorandum and Articles of Association and certificate of incorporation, certified by the company secretary of the Bidding Company
 - ii) Audited Annual Report of last 3 (three) preceding years
- 7) Brief description of the Company including details of its main lines of business:
- 8) Details of individual(s) who will serve as the point of contact/communication for the Bid:
 - a) Name:
 - b) Designation:
 - c) Company:
 - d) Address:
 - e) Telephone and Mobile Number:
 - f) Email Address:
 - g) Fax Number:
- 9) Particulars of the Authorized Signatory of the Bidder:
 - a) Name:
 - b) Designation:
 - c) Company:
 - d) Address:
 - e) Telephone and Mobile Number:
 - f) Email Address:
 - g) Fax Number:

Generation Source

- 10) Plant Location (specify place, district and state):
- 11) Existing No. of Units and installed capacity of each Unit (in MW):

12) (For CPP) Generating Units from which power is intended to be supplied under group captive model:

13) Quantum of power contracted with other purchasers, if any (in MW):

14) Details of surplus capacity (in MW):

15) Source of Fuel and Status of assured supply of Fuel:

16) Project Cost:

17) COD of Project/Unit:

18) Equity shareholding (with period during which equity was held):

.....

Name & signature of the Authorized Signatory:

Designation:

Date:

Place:

Format 4.4 for Net Worth

Net Worth of the Bidder

This is to certify that the Net Worth of, having its Registered Office at, as per the audited Annual Accounts is as below:

	(Rs. in Crores)
Particulars	FY
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	
Total	

This Certificate is issued on the specific request by the Company for submission to Bharat Petroleum Corporation Limited (BPCL) as (Insert the name of Bidder) is submitting its application under the RFP for supply of 12MW power on medium term basis to BPCL.

For
Chartered Accountants
Firm Registration No.

Date:

Place:

Format 4.5 for Bidder Undertaking

Bidder's Undertaking

[On the Letter Head of the Bidding Company]

Dated:

To,

[The ***,

***]

Sub: Bidders' Undertakings for Bid for supply of power to Procurers in response to the RFP dated [Insert date]

Dear Sir;

We give our unconditional acceptance to the RFP and RFP Documents issued by Procurer as a part of the RFP dated [Insert date], and as amended. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP.

I/We agree that BPCL will be relying on the information provided in the Bid and the Bid documents accompanying such Bid for selection of Successful Bidder for the aforesaid subject, and we certify that all information provided in the Bid and its prescribed RFP formats; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

I/We declare that in the last three years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

I/We declare that the identified unit(s) generates firm power on round the clock basis using _____ as fuel, and I/We are capable to supply at least 12MW power on round the clock basis at Delivery Point.

(In case the Bidder is not a Trading Licensee) “We undertake that we shall not submit any bid, on the basis of the same generation source and quantum of power from such source as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.”

(In case the Bidder is a Trading Licensee) “We undertake that we shall not submit any bid, on the basis of power purchase agreement submitted along with our Bid for the same quantum of power and generation source specified therein, for any other bid

process till the selection of the Successful Bidder(s) and issue of LOI, or till the termination of the process, whichever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.

(In case the Bidder is a Trading Licensee) We undertake that the power purchase agreement submitted by us as part of the Non-Financial Bid is for the exclusive purpose of supplying power to the Procurers under this bid process.

I/We agree that for aforesaid subject, we will allow BPCL to visit the generating plant site and shall allow BPCL to conduct both technical & financial due-diligence (if needed).

I/We declare that in the event we are unable to get the identified unit(s) as captive generating plant as per applicable rules and regulations, we shall supply power by absorbing the cross subsidy surcharge applicable time-to-time as per applicable State and discom regulations.

I/We agree and undertake to abide by all the terms and conditions of the RFP document.

I/We offer a Capacity of 12MW from (Generating unit and related plant capacity, location of unit) which conforms to clause 1.3.1 of the RFP.

I/We certify that in terms of the RFP, my/our Net worth is Rs. ... crore (Rupees ... crore).

I/We confirm that we are in position to inject power on round the clock basis as per the Scheduled Delivery Date specified in the RFP, subject to the provisions of the PPA.

In witness thereof, I/ we submit this application under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder

Format 4.6 for Details of Shareholding

Details of Shareholding

(To be provided if the Bidder intends to sell power under Group Captive Model)

Generating Units and related plant capacity from which power is intended to be supplied under Group Captive Mode	Total no. of Equity Shares of the Plant (for Generating Units which are operating under Group Captive Mode)	% of Equity Shares to be purchased by Procurer	Total Number of Equity Shares to be purchased by Procurer	Value of Equity Share (INR/ per share)

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder

Format 4.7 for Bid Bond

FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR BID BOND

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

In consideration of the (Insert name of the Bidder) submitting the Bid *inter alia* for **supply of power on medium term basis for meeting the requirements of Procurer** in response to the RFP dated.....[Insert date of RFP] issued by Bharat Petroleum Corporation Limited (Mumbai Refinery) (hereinafter referred to as Procurer) and such Procurer agreeing to consider the Bid of [*Insert the name of the Bidder*] as per the terms of the RFP, the (Insert name and address of the bank issuing the Bid Bond, and address of the head office) (here in after referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at Mumbai forthwith on demand in writing from the Procurer or any representative authorized by it in this behalf an amount not exceeding Rupees (Rs.....) only [Insert amount equivalent to Rs. 5 Lacs (Rupees Five Lacs) per MW of Contracted Capacity i.e. Rs. 60 Lacs (Rupees Sixty Lacs only)], on behalf of M/s.[Insert name of the Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including..... (Insert date of validity of Bid Bond in accordance with Clause 2.3 of this RFP) and shall not be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to Rupees (Rs.....) only. Our Guarantee shall remain in force until [Date to be inserted by Procurer] shall be entitled to invoke this Guarantee until..... [Insert Date, which is 30 days after the date in the preceding sentence].

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall not require Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Mumbai shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly, the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder to enforce any security held by Procurer or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurers and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the RFP Documents.

The Guarantor Bank hereby agrees and acknowledges that Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs (Rs..... only) and it shall remain in force until [Date to be inserted on the basis of Clause 2.3 of RFP], with an additional claim period of thirty (30) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if Procurer serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Witness:

1.

Signature

Signature
Name and address.

Name:
Designation with

2.
Bank Stamp

Signature
Name and address

Attorney as per power of attorney

No.....

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this day of 20.....

Note: The Stamp Paper should be in the name of the Executing Bank.

Format 4.8 for Fuel Supply Undertaking

Fuel Supply Undertaking

[On the Letter Head of the Bidding Company]

I/We undertake that uninterrupted fuel supply shall be made available to generating unit(s) identified as source for supply of power to BPCL Mumbai Refinery and meeting our obligations under the Agreement.

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder

Format 4.9 for Price Bid

Price Bid Format

Particular	Tariff (Rs./KWh)
Tariff * at Delivery Point	

** The Tariff (per unit price of electricity) quoted by Bidder shall be all inclusive rate at Delivery Point for the entire term of contract. The tariff shall include all statutory/ regulatory charges and losses, transmission and wheeling charges & losses, scheduling and operational charges, taxes and electricity duties, and any other charges up to Delivery Point. The Tariff also include other charges including CSS (Cross Subsidy Surcharge), RAC (Regulatory Asset Charges), additional surcharge, and any other applicable charges, except for the RPO (Renewable Power Obligation) charges, which shall be borne by the Procurer itself.*

[Price Bid to be submitted Online in our e-tender portal <https://bpcleproc.in>]



BHARAT PETROLEUM CORPORATION LIMITED

INTEGRITY PACT

Between

Bharat Petroleum Corporation Limited (BPCL) hereinafter referred to as "The Principal",

And

.....hereinafter referred to as "The Bidder/Contractor/Supplier"

Preamble

The Principal intends to award, under laid down organization procedures, contract/s forThe Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder/s, Contractor/s and Supplier/s.

In order to achieve these goals, the Principal cooperates with the renowned International Non-Governmental Organisation "Transparency International" (TI). Following TI's national and international experience, the Principal will appoint an Independent External Monitor who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:
 - a) No employee of the Principal, personally or through family members, will in connection with the tender, or the execution of the contract, demand, take a promise for or accept, for himself/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
 - b) The Principal will, during the tender process, treat all Bidders with equity and reason. The Principal will, in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential / additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.
 - c) The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder / Contractor/Supplier

- (1) The Bidder / Contractor/Supplier commits itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - a) The Bidder / Contractor/Supplier will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person, any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange, any advantage of any kind whatsoever during the tender process or during the execution of the contract.

- b) The Bidder / Contractor/Supplier will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
 - c) The Bidder / Contractor/Supplier will not commit any offence under the relevant Anti-Corruption Laws of India; further the Bidder / Contractor/Supplier will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d) The Bidder / Contractor/Supplier will, when presenting his bid, disclose any and all payments he has made, is committed to, or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder / Contractor/Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder, before contract award, has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

- (1) If the Bidder/Contractor/Supplier has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is also entitled to exclude the Bidder / Contractor/Supplier from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.
- (2) A transgression is considered to have occurred if the Principal after due consideration of the available evidences, concludes that no reasonable doubt is possible.
- (3) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- (4) If the Bidder / Contractor/Supplier can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from the Bidder liquidated damages equivalent to Earnest Money Deposit/Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor/Supplier liquidated damages equivalent to Security Deposit / Performance Bank Guarantee.
- (3) The Bidder agrees and undertakes to pay the said amounts without protest or demur subject only to condition that if the Bidder / Contractor/Supplier can prove and establish that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder /

Contractor/Supplier shall compensate the Principal only to the extent of the damage in the amount proved.

Section 5 - Previous Transgression

- (1) The Bidder declares that no previous transgression occurred in the last 3 years with any other Company in any country conforming to the TI approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section 6 - Equal treatment of all Bidders / Contractors /Suppliers/ Subcontractors

- (1) The Bidder/Contractor/Supplier undertakes to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors/Suppliers and Subcontractors.
- (3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

Section 7 - Punitive Action against violating Bidders / Contractors / Suppliers/Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor, Supplier or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor, Supplier or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 - Independent External Monitors

- (1) The Principal has appointed competent and credible Independent External Monitors for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairperson of the Board of the Principal.
- (3) The Bidder/Contractor/Supplier accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Bidder/Contractor/Supplier. The Bidder/Contractor/Supplier will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to this project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/Contractor/Supplier/ Subcontractor with confidentiality.
- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/Supplier. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation, or to take other relevant action. The Monitor can in this regard submit non-binding recommendation. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action. However, the Independent External Monitor shall give an opportunity to the Bidder/Contractor/Supplier to present its case before making its recommendations to the Principal.

- (6) The Monitor will submit a written report to the Chairperson of the Board of the Principal within 8 to 10 weeks from the date of reference or intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) If the Monitor has reported to the Chairperson of the Board a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (8) The word 'Monitor' would include both singular and plural.


Section 9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor/Supplier 12 months after the last payment under the respective contract, and for all other Bidders 6 months after the contract has been awarded.

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

Section 10 - Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Mumbai. The Arbitration clause provided in the main tender document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Bidder/Contractor/Supplier is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.


 For the Principal
 U.S.N. BHAT
 Place: Mumbai (को. स्टड सी. एस्.)
 CHIEF MANAGER (P & CS)
 भारत पेट्रोलियम कॉर्पो. लि. (पु. रि.)
 HARAT PETROLEUM CORPN LTD. (M.R.)
 Date:

.....
 For the Bidder/Contractor/
 Supplier

Witness 1 :
 (Signature/Name/Address)

Witness 2 :
 (Signature/Name/Address)

Additional Information
Integrity Pact

- 1) Proforma of Integrity Pact (IP) shall be uploaded by the Bidder/s along with the unpriced bid documents duly signed (or digitally signed in case of e-tender) by the same signatory who is authorized to sign the bid documents. All the pages of the Integrity Pact shall be duly signed. Bidder's failure to upload the IP duly signed (Digitally) along with bid documents shall result in the bid not being considered for further evaluation
- 2) If the Bidder has been disqualified from the tender process prior to the award of the contract in accordance with the provisions of the IP, BPCL shall be entitled to demand & recovered from Bidder Liquidated Damages amount by forfeiting the EMD/Bid Security as per provisions of IP.
- 3) If the contract has been terminated according to the provisions of the IP, or if BPCL is entitled to terminate the contract according to the provisions of the IP, BPCL shall be entitled to demand & recovered from Contractor Liquidated Damages amount by forfeiting the Security Deposit/Performance Bank Guarantee as per provisions of the IP.
- 4) Bidders may raise disputes/complaints, if any, with the nominated Independent External Monitor (IEM). The IEM's name, address & contact number is given below:

Shri Brahm Dutt
A-1/8 Safdarjung Enclave
New-Delhi
110029
Mob:-0 98719 20282
e-mail ID: dutt.brahm@gmail.com

[NOTE: To be executed on an appropriate stamp paper]

INVESTMENT AGREEMENT

FOR

**INVESTMENT OF REQUIRED EQUITY TOWARDS
PROCUREMENT OF POWER THROUGH OPEN ACCESS
BY BPCL, MUMBAI REFINERY**

Between

**BHARAT PETROLEUM CORPORATION LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)
("Procurer / Procurer Company")**

AND

THE PROMOTER

AND

[Name of Successful Bidder]
("Seller Company")

Dated _____, 2016

Place: New Delhi / Mumbai

THIS INVESTMENT AGREEMENT IS MADE AT _____ ON THE [] DAY
OF [] 2016

BETWEEN:

1. Bharat Petroleum Corporation Limited, a Government of India Enterprise, having its registered office at Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai - 400001 and its Mumbai Refinery located at Mahul, Chembur, Mumbai -400074 (hereinafter referred to as the "**Procurer Company / Procurer**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns) of the **FIRST PART**

AND

2. **THE PROMOTERS**, whose names and particulars are listed in **Annexure** [1], (hereinafter collectively referred to as the "**Promoters**" and individually as a "**Promoter**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include their respective heirs, executors and administrators or successors in interest and permitted assigns (as the case may be)) of the **SECOND PART**;

AND

3. [●], a Company incorporated under the Companies Act, 1956, having its registered office at [●] (hereinafter referred to as the "**Seller**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns) of the **THIRD PART**

(The Procurer, the Promoters and the Seller Company are individually referred to as a "**Party**" and collectively as the "**Parties**").

WHEREAS

- A. The Procurer, had initiated a competitive bidding process through issue of Request for Proposal (RFP) for procurement of power through short/ medium term Open Access by BPCL, Mumbai Refinery;
- B. Pursuant to the said bidding process [*Insert name of the Successful Bidder*] has been selected by the Procurer as the Seller for sale and supply of electricity in bulk to the Procurer, for the Contracted Capacity of 12 MW, in accordance with

the terms of Power Purchase Agreement (PPA);

- C. The Successful Bidder (“Seller”) has offered, under its Bid and response to RFP, to supply power to Bharat Petroleum Corporation Limited (“Procurer”) under Group Captive mode;
- D. The Parties agreed to execute Power Purchase Agreement (PPA) setting out the terms and conditions for the sale of power up to the Contracted Capacity by the Seller to the Procurer;
- E. The Parties hereby also agreed to execute this Investment Agreement on the same date on which PPA shall be executed. The Procurer has also agreed to invest an amount equal to Rs. [●] for the purpose of purchasing Equity Shares from the Promoters as per the terms and conditions mentioned in this Investment Agreement;
- F. The Procurer agrees, on the terms and subject to the conditions of PPA, to procure power up to the Contracted Capacity and pay the Seller the Tariff (as defined in PPA);
- G. The Seller is promoted by the Promoters whose equity shares shall be utilized for the purpose of this Investment Agreement, as mentioned under Annexure 1
- H. The Seller has discussed with the Procurer, the sale, by the Seller to the Procurer, of some Equity Shares held by Promoters, as mentioned under Annexure [●];
- I. The Procurer recognizes that its adherence to the terms and conditions in this Investment Agreement is a fundamental requisite for the Seller to supply power to the Procurer;
- J. The Promoter has agreed to transfer the Equity Shares of the Seller to the Procurer. The Promoter has provided a Bank Guarantee (*as per Annexure 5*) to the Procurer, for a value equal to the Purchase Price, and valid up to three months after completion of term of the PPA, as a security against the purchase of Equity Shares by the Procurer.

If the Term of the PPA is extended by the Procurer, the Promoter shall submit a new Bank Guarantee (value to be mutually decided by the Procurer and Seller before expiration of existing Bank Guarantee) or extend validity of the existing

bank guarantee (if feasible), up to three months after such extended period of the PPA. The existing Bank Guarantee pertaining to the Term of the PPA shall be returned back to the Seller on submission of new Bank Guarantee;

- K. The Procurer further agrees that during the term of this Investment Agreement to hold the specified percentage of the shareholding in the issued and subscribed equity share capital of the Promoter based on the consumption by the Procurer of the gross power generated on an annual basis in the unit and in accordance with the Electricity Rules 2005;
- L. The Parties agree that the primary objective of this Investment Agreement is the sale of power by the Seller to the Procurer under the Group Captive mode under which the Procurer shall not be liable to pay the Cross Subsidy Surcharge (CSS) for procurement of power under Open Access;
- M. The Seller agrees that it had communicated to the Procurer, under its Bid, the number of Equity Shares to be purchased by the Procurer corresponding to its annual consumption as per the Equity Equivalent Capacity (EEC) of 12 MW;
- N. The Promoter and the Seller agree that they shall be responsible to maintain the adequate equity shareholding, in accordance with the Electricity Rules 2005, to avail the benefits under Group Captive mode including non-applicability of CSS.
- O. The Seller and the Promoters further agree that the Procurer shall not be held responsible and accountable for any change in equity shareholding of the Seller and the Seller shall indemnify the Procurer in all respects in any such eventualities including but not limited to any impact of Cross Subsidy Surcharge (CSS). If the CSS is levied upon the Procurer due to any reason, not attributable to the Procurer, by the Discom/ any other party, then it shall be on the account of Seller as per the provisions of this Investment Agreement ;
- P. The capital structure of the Seller, as on 30th November 2016, is as provided in Annexure [2] hereto;
- Q. Upon purchase of the Equity Shares of the Promoter, the Procurer will be a minority shareholder of the Seller Company, with certain rights as detailed in this Investment Agreement; and
- R. The Parties are entering into this Investment Agreement in order to set out the rights and obligations of the Parties in relation to the acquisition of the Equity Shares (*as defined hereinafter*) by the Procurer and other matters in connection

therewith, which they agree will be interpreted, acted upon and governed solely in accordance with the terms and conditions of this Investment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, Representations and Warranties and indemnities set forth in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

The terms used in this Investment Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the PPA, Companies Act, 1956, Companies Act, 2013, the Electricity Act, 2003, the CERC (Terms and Conditions of Tariff) Regulations 2009, applicable Grid Code and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (*as defined hereunder*), as amended or re-enacted from time to time.

"Act" means the Electricity Act, 2003, as amended from time to time and shall include any statutory replacement or re-enactment thereof;

"Affiliate" shall mean and include, in respect of a Party, any Person existing as of the date of this Investment Agreement or at any time in the future:

- (a) who Controls, is controlled by, or is under the common Control of, the relevant Party; or
- (b) where 50% or more of the voting securities of the Party are directly or indirectly owned, legally and beneficially, by such Person;

"Applicable Laws" means any Indian statute, law, regulation, ordinance, rule, judgment, order, notification, decree, by-law, approval from the concerned authority including MERC, MSEDCL, MSETCL or any other body dealing with matters pertaining to electricity, government resolution, order, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India including the Electricity Act, 2003 and the rules made thereunder including the Electricity Rules 2005;

"AoA" means the Article of Association of the Seller as amended from time to time;

"Bidder" means a Bidding Company submitting the Bid. Any reference to the Bidder includes Bidding Company including its successors, executors and permitted assigns as the context may require;

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

"Board" or "Board of Directors" or "BoD" means the board of directors of the Seller which shall be deemed to include any Committee of the Board;

"Business Day" means any day excluding Saturdays and Sundays and holidays declared under the provisions of the Negotiable Instruments Act, 1881;

"Captive Generating Plant (CGP)" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

"Charter Documents" mean the MoA and the AoA of the Seller, or equivalent under applicable law;

"Claim" shall have the meaning ascribed to it in Clause 9.1.1;

"Confidential Information" means any and all confidential or proprietary information and materials, as well as all trade secrets, belonging to a Party to this Investment Agreement and/or its Affiliates or customers which is furnished to the other Party(s) to this Investment Agreement, in relation to or pursuant to this Investment Agreement, with expectations of confidentiality to the extent the Receiving Party(s) knows or reasonably should know of such expectations, regardless of whether such information or material is expressly identified as confidential or proprietary or not or whether it is stored in any medium or not. Parties agree that such Confidential Information may include

- (a) business information and materials, including but not limited to financial information, business plans, business proposals, customer contract terms and conditions, pricing and bidding methodologies and

data, sales data, customer or Procurer lists, customer or contact information, customer preferences and other business information, supplier lists, supplier contact information, supplier preferences and other business information, vendor lists, vendor contact information, vendor preferences and other business information, business partner lists, business partner contact information, business partner preferences and other business information, and similar items;

- (b) information and materials relating to future plans, including but not limited to marketing strategies, new materials research, pending projects and proposals, proprietary production processes, research and development strategies, and similar items;
- (c) any information or material that gives the Seller (or other discloser of information, as applicable) an advantage with respect to its competitors by virtue of not being known by those competitors;
- (d) original information supplied by the Seller or the Promoters or the Procurer;
- (e) information relating to the Seller or the Promoters or the Procurer which is obtained whether (without limitation) in writing, pictorially, in machine-readable form, on floppy diskettes or orally, and whether or not marked "confidential" by any Party or its representatives from either the Seller or the Promoters or any of their respective representatives, in each case in connection with the business relationship between the Seller, the Promoters and the Procurer;
- (f) other valuable, confidential information and materials and/or trade secrets that are customarily treated as confidential or proprietary, whether or not specifically identified as confidential or proprietary;

Provided, however that, no information shall constitute a Confidential Information if it is independently developed by a Receiving Party or its Affiliates or was otherwise publicly known and/or is in the public domain at the time when it is disclosed to the Receiving Party(s), or comes into the public domain due to no fault of the Receiving Party(s);

"Contracted Capacity" (as also defined in PPA) shall mean the aggregate power of 12 MW (net) on Round the Clock basis made available by the Seller at the Delivery Point as per terms of PPA.

During the term of the Contract, Procurer may increase Contracted Capacity up to 24 MW at Delivery Point on round-the-clock basis subject to capacity available with the Seller and approvals from authorized agency for grant of Open Access. In such case, the Seller shall revise the Contracted Capacity up to 24 MW at the Tariff and Terms agreed between Procurer and Seller under the PPA. Appropriate revisions may be incorporated under Investment Agreement to accustom the increase in Contracted Capacity. Subsequent process of purchasing further Equity Shares, in accordance with the increase in Contracted Capacity, by the Procurer from the Seller shall take place on same terms as mentioned in this Investment Agreement.

"Control" together with its grammatical variations when used with respect to any Person, means and includes the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of the vote carrying securities, by contract or otherwise howsoever;

"Cross Subsidy Surcharge (CSS)" shall mean such surcharge leviable on a consumer availing Open Access as may from time to time be defined by Appropriate Commission;

"Discom" shall mean the incumbent power distribution company distributing electricity in the area of the Procurer, which is presently Tata Power Company Limited (TPC-D) and includes its successors, executors and permitted assigns as the context may require;

"Dispute" shall mean any dispute, controversy or claim between the Parties arising out of or in connection with this Investment Agreement, including the breach, termination or invalidity thereof;

"Electricity Rules 2005" means the Electricity Rules, 2005 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;

"Equity Shares" means the Class 'A' equity shares, of the Seller as held by its Promoters, issued and fully paid up, having a face value of [●] each and carrying voting rights;

'Equity Equivalent Capacity' (EEC) shall mean capacity of 12 MW of Seller, equivalent to which the Procurer has purchased Equity Shares of the Seller held by the Promoters in accordance with this Investment Agreement executed between the Parties pursuant to the PPA;

"Encumbrance" means any encumbrance including but not limited to any claim, mortgage, pledge, charge (fixed or floating), hypothecation, lien, deposit by way of security, bill of sale, option or right of pre-emption, beneficial ownership, right of retention of title or any form of security interest or any obligation (including any conditional obligation) to create any of the same, including without limitation, any discretion on the use, voting, transfer, receipt of income or other attributes of ownership;

"Final Closing" means Transfer of title of the Equity Shares in favour of the Procurer;

"Final Closing Date" shall have the same meaning ascribed to it in Clause 0 hereto;

"Financial Year" means the twelve month period commencing on April 1 of a calendar year and ending on March 31 of the immediately succeeding calendar year;

"Governmental Authority" means and includes the President of India, the Government of India, the Governor and the Government of any State in India, any Ministry or Department of any of the foregoing or any governmental or political subdivision thereof, any legislative, executive, governmental or administrative body or agency, municipality or any local or other authority, trade agency, regulatory authority, court, tribunal or arbitral tribunal, exercising powers conferred by law in India or any other applicable jurisdiction (including the jurisdictions in which the Seller and/or its Subsidiaries are incorporated and/or carry on any business or activities), and shall include, without limitation, the Registrar of Companies ("RoC"), Securities and Exchange Board of India ("SEBI"), the Reserve Bank of India ("RBI"), Electricity Regulatory Commissions ("ERCs"), and Appellate Tribunal ("APTEL");

"Government Approvals" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, registration, declaration, filing, report or notice, of, with or to any Governmental Authority;

"Initial Closing" means the deposit of the Equity Shares by the Promoters with the Procurer, and the deposit of Purchase Price by the Procurer with the Promoters;

"Initial Closing Date" shall have the meaning ascribed to it in Clause 3.2;

"Investment Agreement" means this Investment Agreement together with its annexures and schedules, as may be amended from time to time in accordance with the provisions contained herein;

"LOI" means Letter of Intent as defined under the PPA;

"Losses" means and includes all losses, claims, costs, and damages (whether direct, indirect, general or special, absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including interests and penalties with respect thereto and out-of-pocket expenses, including reasonable attorneys' and accountants' fees and disbursements;

"Material Adverse Effect" means any:

- (a) event, occurrence, fact, condition, change, development or effect that is or may be materially adverse to the business, operations, prospects, condition (financial or otherwise), substantial properties (whether tangible or intangible) or liabilities of the Seller or the Promoters; or
- (b) material impairment of the ability of the Seller or the Promoters to perform their obligations hereunder.

"Promoter's Bank Guarantee" means the irrevocable unconditional bank guarantee submitted or to be submitted by the Promoters to the Procurer from a bank mentioned in Schedule [7] of the PPA in the formats attached hereto as per Annexure [5] to this Investment Agreement, in accordance with the terms of this Agreement;

"PPA" shall mean Power Purchase Agreement as entered into between the Seller and the Procurer, pursuant to which this Investment Agreement is entered into between the Parties;

"Procurer" shall mean Bharat Petroleum Corporation Limited, a company registered under the provisions of the Companies Act, 1956 having its Registered Office at Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai – 400001 and its Mumbai Refinery located at Mahul, Chembur, Mumbai – 400074 and shall be considered used interchangeably for Procurer in the context and relevance of the RFP and PPA. The term

"Procurer" shall include Bharat Petroleum Corporation Limited and its successors and assigns;

"Person" means any individual, corporation, company, partnership, limited liability company, joint venture, association or trust or any other entity or organization;

'Promoter's Designated Bank Account' means the Designated Bank Accounts of each of the Promoters as stated in Annexure [1] and shall have the meaning ascribed to it in Clause 3.3.1;

"Promoters" means the Persons mentioned under Annexure [1] hereto;

"Purchase Price" means a sum of Rs. [●] only to be paid by the Procurer to the Seller as an aggregate consideration for the purchase of the Equity Shares;

"Open Access" shall mean Open Access (OA) as defined in the Electricity Act, 2003 and as may be amended from time to time;

"Rupees" or "Rs." means the lawful currency of the Republic of India;

"Receiving Party" means a Party which receives any information, communication or document from the other Party;

"Regulatory Asset Charges" means previously-incurred losses that are in the nature of deferred expenditure and that can be recovered from consumers in future provided allowed by concerned regulatory commission.

"RFP" means Request for Proposal and has the meaning ascribed to it in the PPA;

"Seller" shall mean [*Insert name of the Successful Bidder*], a special purpose vehicle with the main objective of operating the Power Station for supply of power. The term "Seller" shall include, unless repugnant to or inconsistent with the context and meaning thereof, its successors and assigns;

"Successful Bidder" means the Bidder selected by the Procurer pursuant to the RFP for supply of power to the Procurer as per the terms of Agreement and other RFP Documents, and to whom a Letter of Intent / PO/ Contract

has been issued by the Procurer.

"Tax" or "Taxation" means all forms of taxation, duties, levies, imposts and social security charges, including without limitation corporate income tax, wage withholding tax, stamp duties payable in any jurisdiction, fringe benefit tax, provident fund, employee state insurance and gratuity contributions, value added tax, customs and excise duties, and other legal transaction taxes, dividend withholding tax, real estate taxes, other municipal taxes and duties, environmental taxes and duties and any other type of taxes or duties in any relevant jurisdiction, together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction;

"Transfer" shall mean (in either the noun or the verb form including, with respect to the verb form, all conjugations thereof within their correlative meanings) with respect to any Equity Shares, the sale, assignment, transfer, conveyance, setting over, or delivery (whether for or without consideration, whether directly or indirectly, and whether voluntary, involuntary or by operation of law) of any such Equity Shares and all interest therein;

"Warranties" means the representations and warranties provided by the Seller and the Promoter, including those set out in Clause 8 (*Representations and Warranties*) and Annexure 4 hereto.

2. PURCHASE OF THE EQUITY SHARES

- 2.1 Upon the terms and subject to the conditions set forth in this Investment Agreement, in consideration of the mutual rights and obligations of the Parties hereunder and relying on the Warranties, undertakings and indemnities to and for the benefit of the Procurer under this Investment Agreement, the Procurer agrees to purchase, and the Seller agrees to facilitate transfer and deliver in accordance with share transfer form at Annexure 9, the Equity Shares of the Promoters, free and clear of all Encumbrances and with all attached and accrued rights, for the consideration of, as full and final payment for the Equity Shares of the Promoters, the Purchase Price, to the Procurer;
- 2.2 The Equity Shares transferred to the Procurer by the Promoters shall rank *pari passu* with the Equity Shares of all other group captive users of the Seller, who are procuring power from the Seller under Group Captive Mode, in all respects, including, entitlement to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity

capital of the Seller.

3. CLOSING AND DELIVERIES

- 3.1 Initial Closing: Subject to the terms and conditions of this Investment Agreement, the Initial Closing shall take place at 10 A.M. (Indian Standard Time) on the Initial Closing Date at Mumbai or such other place as the Parties may mutually agree.
- 3.2 Initial Closing Date: Subject to the terms and conditions of this Investment Agreement, the Initial Closing shall occur on a date (the "**Initial Closing Date**") which shall be within 5 (five) Business Days after the fulfillment of three conditions, (i) date of issue of LOI; (ii) submission of Promoter's Bank Guarantee (as per Annexure 5), in accordance with the Recital J of this Investment Agreement, by the Promoters to the Procurer, for a value equal to the Purchase Price,; and (iii) Confirmation from the Procurer's Bank regarding the originality of the Promoter's Bank Guarantee, as discussed above, submitted by the Promoters;
- 3.3 Initial Closing Agenda: On the Initial Closing Date, the following events shall take place:
- 3.3.1 Procurer shall transfer the Purchase Price by electronic transfer to Promoters Designated Bank Account at least 7 (seven) Business Days prior to the Initial Closing Date that has been notified to the Procurer in writing as Promoter's Designated Bank Account on the corporate letterhead of the Promoter;
The Promoters and the Seller do hereby agree, declare and confirm that the Purchase Price shall not be deemed to have absolutely vested in the Promoters till the Final Closing occurs.
- 3.3.2 The Promoters shall transfer the Equity Shares to the Procurer.
The Procurer does hereby agree, declare and confirm that the Equity Shares shall not be deemed to have absolutely vested in the Procurer till the Final Closing occurs.
- 3.3.3 The Procurer shall provide to the Promoters and the Seller, an acknowledgement receipt evidencing receipt by the Procurer of the Equity Shares;
- 3.3.4 The Seller and the Promoters shall provide to the Procurer, an acknowledgement receipt, in a form and manner acceptable to the Procurer,

evidencing receipt by the Promoter of the Purchase Price in the Promoter's Designated Bank Account paid towards transfer of Equity Shares of the Seller;

- 3.4 Final Closing: the Final Closing shall be deemed to have taken place immediately on date of receipt of intimation from the Seller by the Procurer that all required documents have been submitted to concerned Government Authority for record and necessary action, which shall, in no case, be later than 1 (one) day before the first date of commencement of power supply ("**Final Closing Date**"). For the sake of clarification, the Seller, the Promoters and the Procurer hereby agree and confirm that till the Final Closing has happened, the legal and beneficial title to the Equity Shares shall not be deemed to have been transferred in favour of the Procurer, nor shall the Promoters be entitled to the Purchase Price.

4. CONDITIONS PRECEDENT

Initial Condition Precedent:

- 4.1 This Investment Agreement and the obligation of the Promoters to deposit the Equity Shares with the Procurer and the Procurer to deposit the Purchase Price with the Promoters is subject to the Parties having met the conditions precedent set out in the following Sub-Clauses ("**Initial Condition Precedent**") in a form and substance reasonably satisfactory to the Procurer, unless otherwise expressly waived by the Procurer in its sole discretion:
- 4.1.1 Receipt of all corporate approvals and sanctions, including without limitation approval by the Board or shareholders, as may be required, of the Seller, for sale of the Equity Shares of the Promoters of the Seller to the Procurer for the Purchase Price agreed upon;
- 4.1.2 Receipt by the Procurer and the Seller of all the approvals to the extent required, for the Procurer to acquire the Equity Shares of the Promoters and to exercise its right and perform its obligations respectively under this Investment Agreement;
- 4.1.3 Receipt by the Procurer of the audited accounts of the Seller for the year ended 31st March 2016.
- 4.1.4 The proposed Transfer of the Equity Shares being determined as in compliance with all applicable laws, including without limitation, any proposed law or regulation as considered applicable;

- 4.1.5 No Governmental Authority in India,
- (i) having, or having indicated an intention to,
 - (ii) having requested (in writing or by way of any oral communication), any information in connection with, or instituting or threatening, any action or investigation which could, restrain, prohibit or otherwise challenge or adversely affect the Transfer of Equity Shares in a manner as contemplated under this Investment Agreement, the ownership of the Equity Shares or any similar transactions or ownership;
- 4.1.6 The Seller and the Promoter, to the extent applicable, having performed and complied in all material respects with all covenants and undertakings required to be performed or complied with by it at or prior to the Initial Closing Date;
- 4.1.7 The Seller having delivered an incumbency certificate/ Power of Attorney of the officer(s) of the Seller executing this Investment Agreement and any other documents furnished to the Procurer hereunder or pursuant hereto;
- 4.1.8 The Seller having delivered to the Procurer a certificate, in a form and manner acceptable to the Procurer, that the Seller have conducted their business in the normal course and have complied with the obligations imposed under Clause 5.1 and Clause 5.2, and that there has been no Material Adverse Effect on the Seller until the Initial Closing Date; and
- 4.1.9 The Seller having delivered certificate (s), in a form and manner acceptable to the Procurer, certifying that the Warranties and representations, by whatever name called and howsoever described, made under this Investment Agreement are true and complete in all respects as of the Initial Closing Date.
- 4.1.10 The Promoters having delivered certificate (s), in a form and manner acceptable to the Procurer, certifying that the Warranties and representations, by whatever name called and howsoever described, made under this Investment Agreement are true and complete in all respects as of the Initial Closing Date.

Final Condition Precedent:

- 4.2 The Transfer of title of the Equity Shares of the Promoters in favour of the Procurer and absolute vesting of the Purchase Price in favour of the Promoters shall take place subject to the condition that the Seller and the Promoters has completed all necessary formalities as required by relevant laws of the land ("**Final Conditions Precedent**").

5 COVENANTS AND UNDERTAKINGS OF THE PROMOTERS AND THE SELLER

5.1 Conduct before Final Closing: The Seller and the Promoters agree, undertake and covenant that during the period between the signing of this Investment Agreement and the Final Closing Date, the Seller and the Promoters will not, without the prior written consent of the Procurer:

5.1.1.1 enter into any commitment or transaction that could potentially adversely impact the Transfer of the Equity Shares or have a Material Adverse Effect; or

5.1.1.2 do or permit to do anything which would constitute a breach of any of the Warranties or covenants;

5.2 Notification of Material Event: If, during the period between the signing of this Investment Agreement and the Final Closing Date, the Seller or the Promoters becomes aware that:

5.2.1 there has been or there is likely to be a Material Adverse Effect; or

5.2.2 the Seller and /or the Promoters are involved in, or has been threatened with, any material litigation filed or threatened to be filed against the Seller and/or the Promoters; or

5.2.3 there has been or is likely to be any breach of any of the Warranties;

then the Seller and the Promoters shall immediately notify the Procurer of that fact or event, as the case may be, in writing and shall provide all information in their possession in relation to such fact and/or event to the Procurer.

5.3 Amendment of the Charter Documents: The Seller shall amend its Charter Documents appropriately, if required, within three (3) Business Days of the Final Closing Date, so as to incorporate the terms of this Investment Agreement therein.

5.4 No Favorable Terms: The Seller shall not provide any new or potential procurer, desirous of making an investment in the equity shares of the Seller with (a) a purchase or investment price per equity share, which is less than the price of an Equity Share as agreed under this Investment Agreement; and (b) rights which are more favorable than those granted to the Procurer under this Investment Agreement, including without limitation, rights relating to voting and entitlement to dividend.

5.5 Post Final Closing Obligations:

- 5.5.1 The Seller shall, not later than 1 (one) day before the Final Closing Date, file all forms, declarations and reports with such Government Authority as may be required under applicable laws, in relation to or pursuant to the Transfer of the Equity Shares in a manner contemplated under this Investment Agreement and shall provide the Procurer with documentary evidence thereof;
- 5.5.2 The Seller shall, no later than thirty (30) days from the Final Closing Date, provide to the Procurer a statement of the shareholding pattern of the Seller reflecting the Equity Shares held by the Procurer, which shall be duly certified by its Company Secretary;
- 5.6 Taxes: The Seller shall be responsible for the payment of all stamp duty charges attributable to the execution of this Investment Agreement;
- 5.7 Exercise of Voting Rights: The Seller agrees and undertakes that it shall exercise its voting rights in a meeting of its shareholders, so as to cause the Seller to give full legal effect to the terms of this Investment Agreement, including but not limited to, for the purposes of amending the Charter Documents of the Seller, if required, to incorporate the terms of this Investment Agreement.

6 COVENANTS AND UNDERTAKINGS OF THE PROCURER

- 6.1 The Procurer shall not be entitled to transfer the Equity Shares held by him to any person in any manner except to Promoters, upon expiry of the term of the PPA and this Investment Agreement unless the term of this Investment Agreement is extended with the term of the PPA, in the manner provided in Clauses 6.3 (Put Option), 6.4 (Buy-Back) or 6.5 (Third Party Sale) below, and where the Procurer is unable to exercise any of the manners so described, for failure on the part of the Seller or the Promoters, then the provisions of Clause 6.6 and 6.7 shall apply.
- 6.2 The Equity Shares shall have the same rights and obligations, in accordance with Clause 0 of this Investment Agreement, that are set out in the AoA of the Seller as amended from time to time.
- 6.3 **Put Option:**
- (a) The Procurer shall, subject to the terms and conditions herein contained, be entitled (at its sole option) to require the Promoters to purchase all or any number of Equity Shares held by the Procurer in the Seller company ("Put Securities"), and the Promoters shall be obliged to purchase, the Put Securities ("Put Option") at a price which would give the Procurer a consideration equal to at least the Purchase Price of the Equity Shares held by the Procurer (the "Put Price").

- (b) The Procurer shall exercise the Put Option by giving a written notice to the Promoters of its intention to exercise the Put Option (“Put Notice”). The Promoters shall be obliged to purchase, all the Put Securities, prior to the expiry of 30 (thirty) days from the date of the Put Notice (“Put Purchase Period”) at the Put Price.
- (c) The sale and transfer of the Put Securities shall be completed in accordance with the provisions of this Agreement, to the extent applicable. All stamp duties and other costs and expenses in connection with the transfer of the Put Securities of the Procurer shall be borne and paid in full by the Promoters.
- (d) In the event any consent is required from any Governmental Authority for the consummation of the Put Option, such Consent shall be obtained by the Seller Company and/ or the Promoters, as the case may be.

6.4 Buy Back:

- (a) The Procurer shall be entitled to call upon the Seller, by sending a written notice (“Buy Back Notice”), to purchase/complete a buy- back of all or part of the Equity Shares held by the Procurer (“Buy Back Shares”) for an amount equal to at least the Purchase Price of the Equity Shares held by the Procurer;
- (b) Upon exercise of the aforesaid right by the Procurer, the Seller and the Promoters shall do all acts and execute all deeds and documents as may be necessary to complete the purchase of the Buy Back Shares by the Seller;
- (c) If due to Applicable Laws, the Seller is unable to purchase the Buy Back Shares in a Financial Year, the Seller company undertakes that the buyback obligation of the Seller shall be repeated for such number of years till the Seller has purchased all the Buy Back Shares, if so required by the Procurer; and
- (d) In the event any Consent is required from any Governmental Authority for the consummation of the purchase of the Buy Back Shares, such Consent shall be obtained by the Seller.

6.5 Third Party Rights

- (a) If the Promoters and the Seller fail for any reason whatsoever, to complete the purchase of shares from the Procurer in accordance with the provisions of Clause 6.3 and Clause 6.4 within the period specified therein, the Promoters shall within ([1]) months of the expiry of the said period identify a third party purchaser for the transfer of Equity Shares by the Procurer at a price which

provides the Procurer a consideration equal to at least the Purchase Price of the Equity Shares held by the Procurer;

- (b) Upon receipt of an offer to purchase the Equity Shares of the Procurer, the Promoters shall give a written notice ("Sale Notice") to the Procurer calling upon the Procurer to sell all but not less than all their Equity Shares in the Seller to the Proposed Purchaser ("Sale Along Securities") at the Proposed Purchase Price.
- (c) In the event any consent is required from any Governmental Authority for the consummation of the sale of the Sale Along Securities to the Proposed Purchaser, such consent shall be obtained by the Seller or the Promoter, as the case may be, to the extent legally permissible.

6.6 Drag Along Right:

- (a) Notwithstanding anything to the contrary contained elsewhere in this Investment Agreement, if the Procurer continues to hold any Equity Shares after the expiry of Completion Date, then the Procurer shall be entitled to sell any or all of the Equity Shares held by it to any third party including a competitor on such terms and conditions as the Procurer may deem fit ("Trade Sale"). The Promoters, the Seller shall provide all the necessary assistance and co-operation to the Procurer and its agents to enable the Procurer to complete the Trade Sale.
- (b) The Procurer shall issue a notice in writing to the Promoter indicating the price per Equity Share, the name of the Person to whom the Equity Shares have to be transferred, the number of Equity Shares to be transferred by the Promoters and the rights to be assigned/ granted to the third party ("Drag Notice").
- (c) The Promoters and the Seller shall provide all customary representations and warranties regarding the Seller, the business and its operations to the third party.

6.7 Assisting Procurers Exit: The Seller shall, and the Promoters shall provide all co-operation required by the Procurer in connection with the events specified in Clause 6.3, 6.4 and 6.5 through, including but not limited to giving to the Procurer and to such Persons as the Procurer may direct, access to all the records and accounts of the Seller and providing further information and clarification upon request, for the purpose of carrying out detailed legal, business and financial due diligence. If after the exercise of the rights specified above, the Procurer continues to hold any Equity Shares in the Company, the Procurer shall be entitled to exercise any of its rights under this Clause 6.3 to 6.5 singly or in combination with its other rights without any

priority and such number of times until the Procurer is able to sell all the Equity Shares of the Seller.

7 RIGHTS OF THE PROCURER

7.1 Access Rights: The Seller shall ensure reasonable access to the Procurer through its authorized representatives (including lawyers, accountants, auditors and other professional advisors) to visit and inspect all properties, assets, corporate, financial and other records, reports, books, contracts and commitments of the Seller, and to discuss and consult its business, actions plans, budgets and finances with the directors and executive officers of the Seller, upon reasonable notice.

8 REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE PROMOTERS

8.1 The Seller and the Promoters, for themselves represent and warrant to, and for the benefit of the Procurer, on the date of this Investment Agreement which Representations and Warranties shall be deemed repeated and be true, complete and accurate in all respects on a continuing basis, that:

8.1.1 It has been duly organized, and is validly existing and in good standing under the laws of India;

8.1.2 It has the power to execute, deliver and perform its obligations under this Investment Agreement and all necessary corporate, shareholder and other approvals (where applicable) have been validly obtained to authorize such execution, delivery and performance, and this Investment Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

8.1.3 The execution, delivery and performance of any of their obligations under this Investment Agreement does not and will not:

8.1.3.1 contravene any law or breach or constitute a default under its Charter Documents;

8.1.3.2 result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which it is a party or by which any of its properties or assets may be bound; or

8.1.3.3 conflict with or violate any permit, concession, franchise, license,

judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Seller or any of its properties or assets;

- 8.1.4 There are no pending actions, investigations, suits or proceedings against it or affecting any of its assets and there has been no event or occurrence, which in each case, might reasonably be expected to give rise to a Material Adverse Effect;
- 8.1.5 Any factual information provided by it or on its behalf for the purposes of this Investment Agreement is true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- 8.1.6 No Governmental Authority in India has:
- (i) indicated an intention to,
 - (ii) requested (in writing or by way of any oral communication), any information in connection with, or instituting or threatening, any action or investigation which could,
- restrain, prohibit or otherwise challenge or adversely affect Transfer of the Equity Shares in a manner as contemplated under this Investment Agreement, the ownership of the Equity Shares or any similar transactions or ownership;
- 8.1.7 The representations and Warranties set out under Annexure (4) are true and correct;
- 8.1.8 After the Final Closing Date, the Equity Shares shall be entitled to the same voting rights and shall be voted on together with the Equity Shares and not as a separate class.
- 8.2 The Seller and the Promoters agrees and acknowledges that each of the Warranties is separate and independent and none of the Warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Procurer or any of its agents, representatives, officers, employees or advisers.
- 8.3 The Seller and the Promoters agrees and acknowledges that the Procurer would not proceed with the investment contemplated herein but for the Warranties and covenants hereunder including to ensure the protection of the value of the Seller.
- 8.4 The Seller and the Promoters undertake to notify the Procurer in writing promptly if any of them become aware of any fact, matter or circumstance (whether existing on or before the date of this Investment Agreement or arising afterwards) which would cause any of the Warranties given by it, to become untrue or inaccurate or misleading in any respect.

9 INDEMNIFICATION

- 9.1 Indemnification Obligation: The Seller and / or the Promoters shall severally and jointly indemnify, defend and hold harmless, the Procurer, its Affiliates, directors, officers, representatives, employees and agents (collectively the "Indemnified Parties"), promptly upon demand at any time and from time to time, against any and all Losses relating to or arising out of or in connection with:
- 9.1.1 any actual or threatened claim, legal action, proceeding, pending suit, litigation, prosecution, mediation, arbitration or enquiry (together, a "Claim") by or against any Indemnified Parties arising out of or in connection with (collectively referred to as "Indemnification Events"):
- 9.1.1.1 an inaccuracy, misrepresentation or any breach of any Representation or Warranty;
- 9.1.1.2 a breach of any covenant or obligation of the Seller and/ or the Promoters contained herein; and/or
- 9.1.1.3 any liabilities (including contingent liabilities, whether or not known or contemplated at the time of execution of this Investment Agreement) of the Seller and / or the Promoter not completely disclosed to the Procurer in writing prior to the Initial Closing Date; and/or
- 9.1.2 any pending or threatened claims against the Seller and / or the Promoter or any claims which may be made against the Seller and or the Promoters and which relate to or arise out of, the period prior to the Initial Closing Date not completely disclosed to the Procurer in writing prior to the Initial Closing Date.
- 9.1.3 a breach of any representation or Warranty or undertaking or covenant made by the Seller and / or the Promoter in this Investment Agreement;
- 9.1.4 the non-performance (in whole or in part) by the Seller and / or the Promoters of any of its covenants or agreements contained in this Investment Agreement;
- 9.2 The Procurer shall be entitled, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any Claim (including without limitation, making claims or counterclaims against third parties).
- 9.3 Indemnification rights of the Procurer under this Investment Agreement are independent of, and in addition to, such other rights and remedies as the Procurer may have at law or in equity or otherwise, including the right to seek specific performance, rescission, restitution or other injunctive relief against the Promoters and / or the Seller, as the case may be, and none of which rights or

remedies shall be affected or diminished thereby.

10 CONFIDENTIALITY

10.1 The Parties undertake that they shall keep confidential (and shall use best endeavors to procure that their respective employees and agents keep confidential) any Confidential Information which is in their possession or which they may acquire and shall not disclose such information except in their usual course of business.

10.2 The obligations of each of the Parties contained in the Clause (10) shall continue without limit in point of time, but shall cease to apply to any Confidential Information required to be disclosed by an order of a court or under law;

Provided, however, that, the Seller and / or the Promoters, as the case may be, shall provide the Procurer with prior written notice thereof so that the Procurer may seek (with the cooperation and best efforts of the other Parties) a protective order, confidential treatment or other appropriate remedy, and in any event shall furnish only that portion of the information which is reasonably necessary for the purpose at hand and shall exercise best efforts to obtain reliable assurance that confidential treatment will be accorded to such information to the extent reasonably requested by the Procurer.

10.3 The Seller and / or the Promoters shall not without the prior written consent of the Procurer make any disclosure other than as required under law or by any stock exchange, in which case the disclosure will be made in compliance with provisions of Clause (10.2) above.

10.4 The Parties shall not issue any press release or make any public announcement or advertise or otherwise publicize in any manner whatsoever, the existence or consummation of this Investment Agreement except in their statutory disclosures and operational brochures.

10.5 The provisions under Clause 10 shall apply to the Parties till the period of one (1) year after the expiry of Investment Agreement and PPA.

11 INTENT AND EFFECT OF THIS INVESTMENT AGREEMENT

11.1 The Seller and / or the Promoters shall not act in any manner that is prejudicial to the rights of the Procurer under this Investment Agreement and the Seller and / or the Promoters shall not act in any manner or do any deed or thing under this Investment Agreement that would derogate or adversely affect the rights of the Procurer hereunder.

11.2 Each Party undertakes to fully and promptly observe and comply with the

provisions of this Investment Agreement to the extent and effect that each and every provision thereof shall be enforceable by the Parties hereto inter se and in whatever capacity. In the event of any conflict between this Investment Agreement and the AoA, the provisions of this Investment Agreement shall prevail as between the Parties.

12 COSTS AND EXPENSES

- 12.1 Other than the stamp duty charges to be paid on this Investment Agreement, which shall be borne by the Seller and / or the Promoters jointly, each Party shall bear its own costs and expenses incurred in relation to this Investment Agreement and the transaction proposed herein.

13 SUNSET CLAUSE

- 13.1 The rights stated in Clause 8 (*Representations and Warranties*), Clause 9 (*Indemnification*), Clause 10 (*Confidentiality*), Clause 14 (*Notices*) and Clause 16 (*Governing Law, Jurisdiction and Dispute Resolution*) shall survive termination of this Investment Agreement.

14 NOTICES

- 14.1 Service of Notice: All notices or other communications to be given under this Investment Agreement shall be made in writing and by e-mail, letter or facsimile transmission (save as otherwise stated) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when dispatched (in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission and a hard copy of such notice or communication is forthwith sent by prepaid post to the relevant address set out below) or 10 (ten) days after being dispatched in the post, postage prepaid, by the quickest mail available and by registered mail if available (in the case of a letter) to such Party at its address or facsimile number specified in Clause 14.2, or at such other address or facsimile number as such Party may hereafter specify for such purpose to the others by notice in writing.
- 14.2 Details for Notices: The details for notices for the purpose of this Investment Agreement are as follows:

To the Procurer : Name: []
Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

To the Seller : Name: []
company Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

To the : Name: []
Promoters Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

Any change in the address for notice shall be communicated in writing by the concerned party to the other Parties.

15 TERMINATION

15.1 This Investment Agreement may be terminated under the following conditions:

15.1.1 Upon coming of term of this Investment Agreement, in the manners provided in Clause 6.3, 6.4 or 6.5 (as the case may be) which is upon expiry of the term of the PPA, unless the PPA is extended, in which case this Investment Agreement may also be extended for such period as the PPA;

15.1.2 By the Procurer during the term of PPA as per the terms and conditions mentioned in PPA;

15.1.3 By the Procurer in the event of any breach of this Investment Agreement on part of the Seller and / or the Promoter; or

15.1.4 Upon expiry of the term of PPA i.e. 31st March 2018. If the term of the PPA is extended pursuant Article 2.2 therein, then the term of the Investment Agreement shall also be extended to coincide with the extended term of the PPA.

15.2 In case the Procurer terminating this Investment Agreement (in accordance with Sub-clause 15.1.1 and 15.1.3 above) shall do so by way of a written notice of such termination to the Seller and / or the Promoter hereto. If this Investment Agreement so terminates, it shall become null and void and have no further force or effect, except for the provisions that are intended to survive termination.

15.3 Upon termination of this Investment Agreement, the Seller and / or the Promoter shall:

15.3.1 Ensure Procurers Exit or Transfer of Equity Shares from the Procurer within one (1) month from the date of termination in the manner described in Clauses 6.3, 6.4 or 6.5 failing which the Procurer shall have the right to invoke the Promoters Bank Guarantee. The Seller and / or the Promoter, jointly and severally ensure that at least the Purchase Price shall be refunded to the Procurer i.e. at which price the Procurer purchased the Equity Shares;

15.3.2 Ensure that all records and documents shall be modified in such a manner, within three (3) months, that proves that the Procurer does not hold any Equity Shares of the Seller and has no obligations attached thereto, either to the Seller and / or the Promoters.

16 GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

16.1 Governing Law: This Investment Agreement shall be governed by, and construed in accordance with the laws of the Republic of India.

16.2 Jurisdiction: Subject to Clause 16.3, the competent courts in Mumbai, India shall have exclusive jurisdiction to settle any Dispute arising out of or in connection with this Investment Agreement. The Parties agree that such courts are the appropriate and convenient court to settle any Dispute and accordingly no Party will argue to the contrary.

16.3 Dispute Resolution:

16.3.1 Any and all claims, disputes, questions or controversies involving any or all Parties arising out of or in connection with this Investment Agreement, or the execution, interpretation, validity, performance, breach or termination hereof shall be first attempted to be resolved amicably through conciliation and negotiation between the Parties.

16.3.2 In case the dispute has not been resolved by the Parties within fifteen (15) calendar days of the arising of a dispute by conciliation and negotiation as mentioned above, the same shall be resolved by final and binding arbitration held in Mumbai in accordance with the Indian Arbitration and Conciliation Act, 1996 and the rules made there under as per Clause No. 41 of the General Terms and Conditions forming part of Tender No. 1000271467.

16.3.3 All arbitration proceedings shall be conducted in the English language.

16.3.4 Except as otherwise required by law, the arbitration proceedings and the arbitration award shall not be made public without the joint consent of the

disputing Parties and they shall maintain the confidentiality of such proceedings and the award.

- 16.3.5 Each disputing Party shall bear its respective costs incurred for arbitration, unless otherwise determined by the arbitral tribunal, and in case of common costs, the same shall be borne equally by the parties to the dispute.
- 16.3.6 All notices and other communications by any disputing Party to the other or by the arbitral tribunal to any such disputing Party in connection with the arbitration hereunder shall be in accordance with the provisions of Clause No. 14 above.
- 16.3.7 Each of the Parties expressly understands and agrees that the arbitration award shall be final, conclusive and binding upon the Parties.

17 MISCELLENEOUS PROVISIONS

- 17.1 Mechanism to deal with CSS: If in any event, the Cross Subsidy Surcharge (CSS) is being levied upon the Procurer by the Discom or any other party then it shall be on the account of Seller. The Seller shall furnish three Bank Guarantees in favor of the Procurer, as mentioned below:
- 17.1.1 One Bank Guarantee (as per Annexure 6) shall be for the amount equivalent to the product of estimated quantum of energy units to be consumed by BPCL under Open Access for the period from commencement of power supply upto March 31st of the first Contract Year and per unit CSS applicable for the relevant Contract Year;
- 17.1.2 The second Bank Guarantee (as per Annexure 6) shall be for the second Contract Year for the amount equivalent to the product of estimated energy units to be consumed by BPCL under Open Access for the period starting from April 01 of the second Contract Year upto the Expiry Date of the PPA and per unit CSS applicable for the relevant Contract Year.
- 17.1.3 The third Bank Guarantee (as per Annexure 6) shall be for the third Contract Year for the amount equivalent to the product of estimated energy units to be consumed by BPCL under Open Access for the period starting from April 01 of the third Contract Year upto the Expiry Date of the PPA and per unit CSS applicable for the relevant Contract Year

The validity of each Bank Guarantee under the claim period shall be

- a. *for the period up to issuance of respective tariff order for next financial year; or*
- b. *till the Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement,*

The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Bank Guarantees shall be returned to the Seller upon fulfilment of either of the below mentioned conditions:

- (a) Issuance of respective tariff order for next financial year; OR
- (b) Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the PPA;

whichever is earlier, and subject to verification from Procurer. In case of non-fulfillment of both (a) and (b) above within a period of 1 (one) year from the end of the Term of the PPA, the Seller shall extend the validity of respective Bank Guarantee for 1 (one) more year. Such extension of validity shall be continued till the fulfillment of either of condition (a) and (b) above.

Provided that, if the Seller does not wish to provide the above mentioned Bank Guarantee(s), it has to provide its consent (as per Annexure 7) that the Procurer shall make monthly bill payment for every month after retaining the amount equivalent to CSS for the respective month (to be computed based on units billed during the respective month multiplied by CSS applicable for the term of this Agreement).

Such retained amount shall be refunded to the Seller, either

- (a) after issuance of respective tariff order for next financial year; or
- (b) after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement;

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both (a) and (b) above, in such a case, the Procurer shall reserve its right to hold the retained amount till next financial year.

If retained amount by the Procurer is lesser than actual CSS imposed by

Discom/any other agency for the term of this Agreement, the Procurer shall claim reimbursement for the difference through Supplementary Bill from Seller. If retained CSS amount is more than the actual CSS imposed by Discom/any other agency for the term of this Agreement, then the difference shall be refunded to the Seller either after the issuance of the tariff order for next financial year or after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement, whichever is earlier.

The Seller has to either provide the Bank Guarantees (as per Annexure 6) or its consent (as per Annexure 7) at the time of execution of this Investment Agreement.

- 17.2 Not a Promoter: The Parties acknowledge and agree that the Procurer is entering into the transaction hereunder merely as a Procurer of a minority shareholding in the Seller and shall not acquire control and management of the Seller. The Seller shall not classify the Procurer as a 'promoter' of the Seller for any reason whatsoever and the Equity Shares shall also accordingly not be subject to any transfer restriction or lock-in conditions which are applicable to Promoters under any applicable law.
- 17.3 No Partnership or Agency: Nothing in this Investment Agreement shall be deemed to constitute a partnership between the Parties, nor, except as may be expressly set out in it, constitute any Party as the agent of another Party for any purpose, or entitle any Party to commit or bind another Party in any manner.
- 17.4 Announcements: Subject to applicable laws and regulations, each Party hereto agrees that it shall make no written or other public disclosures regarding the transaction contemplated by this Investment Agreement or regarding the Parties hereto, to any person without the prior written consent of the other Party, provided that disclosures to advisors, agents, banks, employees and representatives of the Parties hereto shall be permitted hereby. The Seller will not use or refer to the name of the Procurer in any public statement or disclosure without the consent of the Procurer (which consent shall not be unreasonably withheld).
- 17.5 Entire Investment Agreement: This Investment Agreement sets out the entire agreement and understanding between the Parties with respect to the subject matter of it. Save for provisions of PPA, this Investment Agreement supersedes all prior discussions and correspondence, which shall not have any further force or effect.
- 17.6 Amendments: This Investment Agreement may be amended only by an instrument in writing signed by duly authorized representatives of each of the Parties.

- 17.7 Further Assurances: The Parties agree to do all such further and other things, execute and deliver all such additional documents, to give full effect to the terms of this Investment Agreement. The Seller undertakes that it will do or procure to be done all such further acts and things, execute or procure the execution of all such other documents and exercise all rights and powers, direct and indirect, available to it in relation to any Person so as to ensure the complete and punctual fulfilment, observance and performance of the provisions of this Investment Agreement and generally that full effect is given to the provisions of this Investment Agreement.
- 17.8 Assignment: No Party shall be entitled to, nor shall they purport to, assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Investment Agreement nor grant, declare, create or dispose of any right or interest in it, in whole or in part;
- 17.9 Severability: Each of the provisions and restrictions as set out in this Investment Agreement is separate and distinct and is to be construed separately from the other such restrictions. The Seller acknowledges that it considers such provisions to be reasonable both individually and in aggregate and that the Purchase Price for the Equity Shares as paid by the Procurer adequately compensates the Seller. However, if any such restriction shall be found to be void or unenforceable, but would be valid or enforceable if some part of it were deleted or the period or area of application reduced, the Seller each, agrees that such restriction shall apply with such modifications as may be necessary to make it valid. If any provision of this Investment Agreement is held to be invalid or unenforceable, it shall not invalidate the remaining provisions of this Investment Agreement.
- 17.10 Waivers and Remedies: No failure or delay by the Parties in exercising any right or remedy provided by law under or pursuant to this Investment Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Parties under or pursuant to this Investment Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.
- 17.11 Counterparts: This Investment Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized

representatives to execute this Investment Agreement on the day and year first hereinabove written.

ANNEXURE 1

PROMOTERS OF THE SELLER

No.	NAME OF THE PROMOTER	ADDRESS OF THE PROMOTER	DESIGNATED BANK ACCOUNT DETAILS	SHAREHOLDING IN THE SELLER AS ON

ANNEXURE 2

CAPITAL STRUCTURE OF THE SELLER

Part A

Authorised Share Capital on the date of the Investment Agreement

Rs. _____ million consisting of _____ equity shares of a face value of Rs.10 each.

Issued and Paid-Up Shareholding Pattern as on 30 November 2016:

Sl.No.	Name of the Shareholder	No. of Equity Shares of Rs.10/-	No. of Equity Shares of Rs.10/-	Amount – paid up (Rs.)	% to Total Equity

Part B

Issued and Paid-Up Shareholding Pattern immediately post Final Closing

Proposed Issued and Paid-Up Shareholding Pattern immediately post the Final Closing as per Clause 5.5.2 of Investment Agreement

Name of Shareholders	Number of Shares	Face value of holding (Rs. Million)	Percentage
Total			100.00%

ANNEXURE 3

DETAILS OF SHAREHOLDING FOR PROCURER

Generating Units and related plant capacity from which power is intended to be supplied under Group Captive Mode	Total no. of Equity Shares of the Plant (for Generating Units which are operating under Group Captive Mode)	% of Equity Shares to be purchased by Procurer	Total Number of Equity Shares to be purchased by Procurer	Face Value of Equity Share (INR/ per share)	Total amount to be invested by the Procurer for purchase of required Equity Shares (INR)

ANNEXURE 4

WARRANTIES

- I. Standard Representations and Warranties:
 1. **Organisation and Authority:** The Seller is a company limited by shares duly incorporated and validly existing under the laws of India and has the corporate power, and has obtained all necessary authority, to own its assets, conduct its business as presently conducted and to enter into, and comply with its obligations under this Investment Agreement;
 2. **Validity:**This Investment Agreement has been, or will be, duly authorized and executed by the Seller and constitutes, or will, when executed constitute, a valid and legally binding obligation of the Seller, enforceable in accordance with its terms;
 3. **No Conflict:** Neither the execution of this Investment Agreement nor the compliance with its terms by the Seller will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the Seller is a party or by which it is bound, or violate any of the terms or provisions of the Seller's Charter Documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to the Seller;
 4. **Status of Government Approvals:** The Seller has all Government Approvals (other than Government Approvals that are of a routine nature, are obtained in the ordinary course of business and the absence of which will not have any Material Adverse Effect on the Business) needed by the Seller to conduct its Business and to

comply with its obligations under, this SHA, and all such Government Approvals and are in full force and effect;

5. No Amendments to Charter Documents: The Seller's Charter Documents have not been amended since March 2016;
6. Authorised Share Capital: The authorised, issued and paid up share capital of the Seller is as provided in Annexure 2 of the Investment Agreement. The Equity Shares presently registered in the name of the Promoters are, fully paid-up and legally and beneficially owned by them, and there is no option, right to acquire, mortgage, charge, pledge, lien or other form of security or Encumbrance on, over or affecting these Equity Shares or any of them or any agreement or commitment to give or create any of the foregoing in respect of these Equity Shares, and the Promoters have not received notice of any claim by any Person to be entitled to any of the foregoing in respect of these Equity Shares.
7. Shares duly authorised: The Equity Shares are, and will be, in compliance with law. Upon Transfer of the Equity Shares in favour of the Procurer on the Final Closing Date, the Equity Shares will rank *pari passu* with the Equity Shares of the other group captive users, who are procuring power from the Seller under Group Captive Mode, of the concerned CGP, the Procurer will be the absolute legal and beneficial owners of Equity Shares and the Procurer will have a clear title thereto and will hold the Equity Shares free and clear of all Encumbrances.
8. No Immunity: Neither the Seller nor any of its property or asset enjoys any right of immunity from set-off, suit or execution proceedings with respect to its assets or its obligations under this Investment Agreement;
9. Financial Statements: The financial statements of the Seller for the period ending on March 31, 2016 (the "Accounts"):

(i) have been prepared in accordance with the Accounting Principles, and give a true and fair view of the financial condition of the Seller as of the date as of which they were prepared and the results of the Seller's operations during the period then ended; and

(ii) disclose all liabilities (contingent or otherwise) of the Seller, and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from commitments entered into by the Seller (whether or not such commitments have been disclosed in such financial statements);

10. Management Accounts: The management accounts of the Seller have been prepared with due care and attention in accordance with accounting principles used by the Seller in the course of preparing management accounts for the Seller during the two year period ending on the date of this Investment Agreement and on a basis consistent with that used in preparing the Accounts;
11. Taxes: The Seller has duly filed all tax returns and reports of the Seller required by law to be filed and all Taxes, obligations, fees and other governmental charges upon the Seller, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest;
12. Litigation: The Seller is not engaged in nor, to the best of its knowledge after due inquiry, threatened by, any litigation, arbitration, investigations or administrative proceedings that, if decided adversely, can be expected to have a Material Adverse Effect nor aware of any circumstances that may give rise to such litigation, arbitration or administrative proceedings;

13. All material facts disclosed: There are no facts or circumstances relating to the affairs of the Seller having, or likely to lead to, a Materially Adverse Effect which has not been disclosed to the Procurer which might reasonably have been expected to influence the decision of the Procurer to enter into this SHA.

II Operational Representations:

14. No Judgement Restricting the Seller's Business: There are no actions, suits, claims, proceedings or investigations pending or threatened against or by the Seller, in equity or otherwise, and whether civil or criminal in nature in, before, or by, any court, commission, arbitrator or other Government Authority, and there are no outstanding judgments, decrees, orders or awards of any such court, commission, arbitrator or other Governmental Authority that, in the case of any of the above, individually or in the aggregate, could be expected to have a Material Adverse Effect on the Seller and its Business, or that seek to prevent, restrict or delay consummation of the transactions contemplated by this Investment Agreement.
15. Books And Records complete: All statutory books, statutory registers and minutes books of the Seller are complete in all respects and have been kept properly and in compliance with law and no notice or allegation that any of them is incorrect or should be rectified has been received. All such statutory books, statutory registers and minutes' books are in the possession or under the control of the Seller.
16. Contracts Enforceable: Each agreement or arrangement to which the Seller is a party has been duly authorised, executed and delivered by the Seller and constitutes a valid and binding obligation of the Seller, enforceable against it in accordance with its terms. No agreement or arrangement to which the Seller is a party is invalid or *ultra vires* and there are no grounds for rescission, breach, avoidance or repudiation of any agreement or arrangement to which

the Seller is a party. The Seller is not in default of the performance, observance or fulfilment of any of its obligations, covenants or conditions contained in any of agreement or arrangement to which it is a party.

17. Complete Disclosure: All representations, warranties, information, documents or statements relating to or provided by the Seller to the Procurer are true, accurate, complete and correct in all respects. All information and documents material to the affairs of the Seller or the proposed purchase of the Equity Shares have been disclosed to the Procurer and the Seller has not omitted to disclose any matter the omission of which makes any of such representations and warranties misleading.

ANNEXURE 5

BANK GUARANTEE AGAINST PURCHASE PRICE

In consideration of the[Insert name of the Seller with address] agreeing to undertake the obligations under the Investment Agreement & PPA and [Insert name of Procurer] (herein after referred to as Procurer), agreeing to execute the SHA with the Seller for **purchase of Equity Shares of the Seller towards supply of power on short/ medium term basis under Group Captive mode for meeting the requirements of the Procurer as per the PPA**, the [*Insert name and address of the bank issuing the guarantee and address of the head office*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at[*Insert address of Procurer*] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [Insert the amount of the bank guarantee computed on the basis of Purchase Price of the Equity Shares] as per the terms of Investment Agreement on behalf of M/s. [*Insert name of the Seller*].

This guarantee shall be valid and binding on the Guarantor Bank up to and including[*Insert date of validity of this Bank Guarantee*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between Parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until 3 (three) months from the date of expiry of the PPA.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format,

raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [*Insert name(s) of city (ies)*] shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether

absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crores (Rs. crores only) and it shall remain in force until[Date to be inserted is three (3) months after the term of the Agreement], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [Insert Name of the Bank]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

Note: The Stamp Paper should be in the name of the Executing Bank.

ANNEXURE 6

**BANK GUARANTEE FOR CLAIMING CROSS SUBSIDY SURCHARGE
FROM SELLER**

In consideration of the[Insert name of the Seller with address] agreeing to undertake the obligations under the Investment Agreement & PPA and [Insert name of Procurer] (herein after referred to as Procurer), agreeing to execute the SHA with the Seller **towards supply of power on short/ medium term basis under Group Captive mode for meeting the requirements of the Procurer as per the PPA**, the [*Insert name and address of the bank issuing the guarantee and address of the head office*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at[*Insert address of Procurer*] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [Insert the amount of the bank guarantee computed on the basis of product of estimated quantum of energy units to be consumed by BPCL under Open Access (i.e. MUs) and per unit CSS applicable for the First Contract Year or Second Contract Year¹ as applicable] as per the terms of Investment Agreement on behalf of M/s. [*Insert name of the Seller*].

This guarantee shall be valid and binding on the Guarantor Bank up to 1 (one) year from the end of the Term of the Agreement. Any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

¹ Exact amount for the Bank Guarantee for First Contract Year and Second Contract Year to be discussed and ascertained with the Seller before the signing of PPA and SHA.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until 1 (one) year from the end of the Term of the Agreement. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [*Insert name(s) of city(ies)*] shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK

GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crores (Rs. crores only) and it shall remain in force until 1 (one) year from the end of the Term of the Agreement, with an additional claim period of thirty (30) days thereafter.

This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [Insert Name of the Bank]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

Note: The Stamp Paper should be in the name of the Executing Bank.

ANNEXURE 7

**CONSENT/UNDERTAKING FOR ADJUSTMENT OF CROSS SUBSIDY
SURCHARGE**

To,
Bharat Petroleum Corporation Limited

We,(insert name of the Seller), hereby certify to, during the term of PPA and Investment Agreement, undertake the compensation for Cross Subsidy Surcharge (CSS), if imposed on the Procurer by Discom or any other party , in regard with supply of power from the Seller to the Procurer, for any reason, not attributable to the Procurer, under the Group Captive mode.

For compensating the CSS, if levied on the Procurer by the Discom or any other party, we allow the Procurer to make monthly bill payment for every month after retaining the amount equivalent to CSS for the respective month (to be computed based on units billed during the respective month multiplied by CSS applicable for the term of this Agreement).

Such retained amount shall be refunded to the Seller, either
a. after issuance of respective tariff order for next financial year; or
b. after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement,

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both para (a) and (b) above, in such a case, the Procurer shall reserve its right to hold the retained amount till next financial year.

If retained amount by the Procurer is lesser than actual CSS imposed by Discom/any other agency for the term of this Agreement, the Procurer shall claim reimbursement for the difference through Supplementary Bill from

Seller. If retained CSS amount is more than the actual CSS imposed by Discom/any other agency for the term of this Agreement, then the difference shall be refunded to the Seller either after the issuance of the tariff order for next financial year or after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement, whichever is earlier.

For, **(insert the name of the Seller)**

Designation:

(insert the address of the Seller)

(put seal of the Seller)

ANNEXURE 8

**CONSENT/UNDERTAKING FOR REFUND OF AMOUNT CHARGED FOR
ADJUSTMENT OF CROSS SUBSIDY SURCHARGE**

To,
[Name of the Successful Bidder]

We, Bharat Petroleum Corporation Limited, hereby certify to refund the amount collected/ adjusted from the Seller on account of CSS, if levied on the Procurer, in the event if the levied CSS on the Procurer is refunded by the concerned authorities to the Procurer.

For, (Bharat Petroleum Corporation Limited)

Designation:
Bharat Petroleum Corporation Limited

(Company seal of the Procurer)

ANNEXURE 9

SHARE TRANSFER FORM