

# **INVITATION FOR BIDS**

## **FOR**

**PRE-BID TIE UP FOR “ESTABLISHMENT OF 400/220/132  
KV UMRED SUBSTATION (AIS), DIST. NAGPUR”  
THROUGH TARIFF BASED COMPETITIVE BIDDING  
(TBCB) ROUTE PRIOR TO RFP BID SUBMISSION BY  
MSETCL TO BPC.**



**Maharashtra State Electricity Transmission Company Limited**

## **SECTION-I: INVITATION FOR BIDS (IFB)**

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## **INVITATION FOR BIDS (IFB)**

**For**

**Pre-Bid Tie up for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” through Tariff Based Competitive Bidding (for short ‘TBCB’) route prior to RFP bid submission by MSETCL to BPC**

**(SINGLE STAGE TWO ENVELOPE BIDDING)**

**(Domestic Competitive Bidding under e-procurement)**

**DATE OF ISSUANCE OF IFB: 04.07.2025**

**SPECIFICATION No.: MSETCL/TBCB/2025-26/03**

1. This invitation for bids follows the e-procurement notice for the subject package published on **04.07.2025** on MSETCL’s website and e-procurement portal given at para 8.0 below and on MSETCL’s SRM e- Tendering website <https://srmetender.mahatransco.in>. Any Corrigendum and/or amendments, etc. shall also be published only on the above website/portals.
2. Maharashtra State Electricity Transmission Company Limited (MSETCL), a wholly owned corporate entity under the Maharashtra Government, was incorporated under the Companies Act, in June, 2005 after restructuring the erstwhile Maharashtra State Electricity Board to transmit electricity from its point of Generation to its point of Distribution. It owns and operates most of Maharashtra's Electric Power Transmission System. MSETCL operates a transmission network of 51518 Circuit KM of transmission lines and 742 EHV Substations with 138598 MVA transformation capacity. This infrastructure constitutes most of the inter-regional as well as intra-regional electric power transmission system in the State. MSETCL is one of the largest state transmission utility in India. MSETCL intends to participate in the selection of bidder as Transmission Service Provider (TSP) for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” through tariff based competitive bidding process.

M/s. REC Power Development and Consultancy Limited (RECPDCL) is the Bid Process Coordinator (hereinafter referred to as the “BPC”), for selection of Transmission Service Provider (TSP) for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” (hereinafter referred to as the “Project”) under Tariff Based Competitive Bidding (TBCB) framework of Ministry of Power. The Request for Proposal for the Project has been issued by the BPC.

3. Pursuant to completion of tariff bidding by BPC, in case MSETCL is declared as the successful Bidder, then MSETCL shall acquire hundred percent (100%) equity shares of **“Project Specific Transmission Company (to be incorporated by the BPC)”** (hereinafter referred to as the “SPV”/“Project SPV Company”) along with all its related assets and liabilities, which will be responsible as TSP to establish transmission system for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” on Build, Own, Operate and Transfer (BOOT) basis.

4. MSETCL, therefore, invites sealed bids from eligible bidders for the following package for this project on Domestic Competitive Bidding basis under secured e-procurement procedure:

**Pre-Bid Tie up for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” through tariff based competitive bidding (TBCB) route prior to RFP bid submission by MSETCL to BPC**

This Invitation for Bids extended through media, website or written communication or by any other means, and issuance of Bidding Documents as per para 8.0 below shall not be construed to mean that the prospective bidders to whom the Invitation for Bids has been extended and/or Bidding Documents have been issued is deemed to be an eligible bidder. The eligibility of the bidders shall be determined as per the provisions of Bidding Documents. Some of the salient points in that respect are:

- a) This Invitation for Bids, is open to all firms including company(ies), Government owned Enterprises registered and incorporated in India as per Companies Act, 1956/2013, barring Government Department as well as foreign bidders/MNCs not registered and incorporated in India and those bidders with whom business is banned by MSETCL.
- b) Compliance to the provisions of Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII) and its subsequent modifications/amendments, if any.
- c) Compliance to order no. F.No.6/18/2019-PPD (Order Public Procurement no.1) dated 23/07/2020 and F.No.6/18/2019-PPD (Order Public Procurement no.2) dated 23/07/2020, F.No.7/10/2021-PPD (Order Public Procurement no.4) dtd. 23/02/2023 and subsequent modifications/amendments if any, issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order) regarding restriction on Bidders sharing Land Border with India.
- d) Non-participation as a bidding company directly; or indirectly through their Subsidiaries, Partnership, Ownership, Individual firm; or Consortium for the Transmission Project under TBCB route referred to at S.No. 2 above, if pre-selected for associating with MSETCL for the purpose of tariff bidding by MSETCL in the RFP process of the BPC.

The qualified, lowest evaluated Bidder having requisite capacity and capability to perform the contract for the aforesaid Package(s) as per the provisions of the Bidding Documents shall be pre-selected, for the scope of work contained in the Bidding Documents, for associating with MSETCL for the purpose of tariff bidding by MSETCL in the RFP process of the BPC for the subject Project under TBCB route and, in case MSETCL becomes successful Bidder, the successful Bidder(s) for aforesaid mentioned Package(s) will be awarded the Contract for execution of scope of work contained in the Bidding Documents.

The pre-selected bidder shall have to confirm non-participation as a bidding company directly; or indirectly through their Subsidiaries, Partnership,

Ownership, Individual firm; or Consortium in the RFP stage of the BPC for subject Transmission Project under TBCB route.

An MOU shall be signed with the pre-selected Bidder(s) prior to tariff bid submission by MSETCL to BPC against its RFP process. This MOU shall, inter-alia, bind both MSETCL and the pre-selected Bidder(s) for associating on exclusive basis and maintaining strict confidentiality by the pre-selected Bidder(s) of the prices, terms and conditions. As per the terms of MOU, both the Parties shall be making joint efforts to win the project together.

In case MSETCL becomes successful Bidder, the successful Bidder(s) for aforesaid Package(s) will be awarded the Contract for execution of scope of work contained in the Bidding Documents.

5. The scope of works covered under the package inter-alia includes the following:

Design, engineering, manufacture, testing at manufacture's work, supply including transportation & insurance, unloading, storage, erection, testing and commissioning at site the specified equipment/items, complete in all respect for the broad scope of work for the project as follows:

S. N.	Scope of Work
	Design, Engineering, Procurement, Construction, Testing, and Commissioning of 400/220/132 kV Umred Substation (AIS) and associated transmission lines as per scope specified in RFP by the BPC.
1	<p>Establishment of 2 x 500MVA, 400/220 kV ICTs  Establishment of 2 x 300MVA, 400/132 kV ICTs  Establishment of 1 x 125 MVAr bus Reactor at 400 kV level.</p> <p>i) 400/220 kV, 500 MVA ICT – 2 No's.  ii) 400/132 kV, 300 MVA ICT – 2 No's.  iii) 400 kV ICT Bays – 4 No's.  iv) 400 kV Line Bays – 4 No's.  v) 220 kV ICT Bays – 2 No's.  vi) 220 kV Line Bays – 6 No's.  vii) 132 kV ICT Bays – 2 No's.  viii) 132 kV Line Bays – 6 No's.  ix) 125 MVAr Bus Reactor at 400 kV level – 1 No.  x) 400 kV Bus Reactor bay - 1 No.</p> <p>Space for Future Scope:  i) 1 x 300 MVA, 400/132 kV ICT  ii) 400 kV ICT Bays – 1 No.  iii) 132 kV ICT Bays – 1 No.</p>
2	LILO on Both circuits of 400 kV Tiroda (Adani) (existing) - Warora (MSETCL) (existing) D/C line at 400/220/132 kV Umred (New)
3	220 kV D/C line from 400/220/132 kV Umred (New) to 220 kV Add. Buttibori (Proposed)
4	LILO on Both circuit of 220 kV Umred (existing)-Nagbhid (proposed) D/C line at 400/220/132 kV Umred (New)

S. N.	Scope of Work
5	132 kV D/C line from 132 kV Kolari (existing) to 400/220/132 kV Umred (New)
6	LILO on 132 kV Kanhan – Bhandara Ckt at 400/220/132 kV Umred (New)
7	LILO on 132 kV Kanhan – Mouda Ckt at 400/220/132 kV Umred (New)
8	220 kV Line End Bays at 220 kV Addl. Buttibori (Proposed)- 02 Nos
9	132 kV Line End Bays at 132 kV Kolar (Existing)- 02 Nos
	Note:#: Space for 220 kV line bay at Add. Buttibori (Proposed), 132 kV Kolari (existing) shall be provided (Scope at Sl. 8 & 9 above) by existing Utility. In the case of LILO lines the technical specifications of Conductor and OPGW should be matching with existing line parameters.

Above scope of work is indicative, and the detailed scope of work is given in the Technical Specification (Volume-II) of the Bidding Documents.

6. The completion period for the subject Package shall be **17 Months** as specified in ITB Sub-Clause 24.1 (c).
7. The detailed Qualifying Requirements (QR) for the subject package(s) are attached at **Annexure-A** to this IFB. Bidders are advised to check their prima-facie eligibility/responsiveness as per the specified QR before participating. However, Bidders may note that the Employer shall carry out techno-commercial evaluation of the submitted bids inter-alia including ascertaining responsiveness to stipulated QR in line with the provisions of the Bidding Documents post First Envelope Bid opening.
8. The complete Bidding Documents inter-alia including tender drawings are available for downloading on MSETCL's SRM e-Tendering website <https://srmetender.mahatransco.in> subject to submission of:
  - i) A request letter for issuance of Bidding Documents as per format attached at **Annexure-B** to this IFB,
  - ii) Signed copy of Non-Disclosure Agreement (hereinafter called 'NDA') as per format attached at **Annexure-C** to this IFB, and
  - iii) Power of Attorney (POA) of the person signing the NDA.

The aforesaid request along with the documents mentioned above needs to be submitted through SRM e-Tendering website <https://srmetender.mahatransco.in> up to 03 (Three) days prior to First Envelope bid submission deadline (soft copy part) i.e. on or before **22.07.2025**.

Upon receipt of such request along with the aforesaid requisite documents, the access of complete Bidding Documents will be provided to the requesting party except for the firms rendered ineligible on grounds like a) firm is engaged in different business segment other than the scope of procurement; b) firm is blacklisted/banned in MSETCL; or c) has competing interests in the concerned Project of Bid Process Coordinator (BPC). The Employer shall be sole judge in

regard to considering the request for issuance of Bidding Documents or otherwise. No firm shall have any claim on the Employer on the basis of the same.

**Note:** *The bidding documents are meant for the exclusive purpose of bidding against this specification and shall not be transferred to any parts or reproduced or used otherwise for any purpose other than for which they are specifically uploaded.*

9. The applicant(s) may note that the request for issuance of Bidding Documents shall be submitted in line with the formats as provided along with this IFB. In case of erroneous/non-submission of documents as identified under Para 8.0 above by the applicant, the Employer may seek rectification of such documents and may also seek certain additional documents as deemed appropriate. To this effect, the MSETCL may give the bidder not more than **3 days'** notice to rectify/furnish such documents, failing which the application is liable to be rejected. The request for clarification and the response shall be through SRM portal <https://srmetender.mahatransco.in>. Detailed SOP/User Manual are available on SRM portal front page.
10. Interested bidders have to necessarily register themselves on the MSETCL's SRM e-Tendering website <https://srmetender.mahatransco.in> to participate in the bidding under this invitation for bids. It shall be the sole responsibility of the interested bidders to get themselves registered at the aforesaid portal.

The said registration shall be free of cost. On completion of registration process, the registering bidders will be provided with User ID and Log-In password.

**Kindly note that to submit the bids electronically, bidders must have a valid Class 3B Digital Certificate (signing and encryption / decryption certificate).**

For proper uploading of the bids on the portal namely <https://srmetender.mahatransco.in> (hereinafter referred to as the 'portal'), it shall be the sole responsibility of the bidders to apprise themselves adequately regarding all the relevant procedures and provisions as detailed at the portal as well as by contacting from MSETCL, as and when required, for which contact details are mentioned above below. The Employer in no case shall be responsible for any issues related to timely or properly uploading/submission of the bid in accordance with the relevant provisions of Section II – ITB of the Bidding Documents.

11. Bidders are requested to read the 'Vendor Registration Manual and General Guidelines to Bidders etc. documents before proceeding for submission of bids. It is important to note that bidders can submit their bids online.
12. Bidders shall ensure that their bids, complete in all respects, are submitted online through MSETCL's e-tendering portal only.
13. A Single Stage Two Envelope Bidding Procedure will be adopted and will proceed on SRM portal <https://srmetender.mahatransco.in> as detailed in the Bidding Documents.
14. Soft Copy Part of the Bids must be uploaded under Single Stage Two Envelope Bidding Procedure on the SRM portal on or before **11:00 hours** on **24.07.2025** as per

the provisions of the Bidding Documents. The e-Procurement system would not allow any late submission of bids through the portal after due date & time as specified.

The documents required to be submitted as part of Hard Copy Part of the Bid shall be scanned and uploaded as part of First Envelope in Soft Copy Part of the Bid as per provisions of ITB Clause 9 (II).

Documents Fee to be paid online in favour of “Maharashtra State Electricity Transmission Company Limited” as per ITB Clause 9(I) of the Bidding Documents (for details also refer Clause ITB 5.4). Bidder must fill in details as:

1. Name of Depositor: Name of the Bidder (name of the Sole bidder or name of Lead partner of the Joint Venture (on behalf of the Joint Venture) in case of Joint Venture bids.
2. Payment Remarks: Tender fee for ...*[enter the name of the project]* .....

Bank details of MSETCL are as follows:

Bank Name	State Bank Of India
Bank Account Name	Maharashtra State Electricity Transmission Co. Ltd (MSETCL)
Account Number	10996687969
Account Type	Current Account
IFSC Code	SBIN0000300

The First Envelope Bids (Techno Commercial part) shall be opened privately and thereafter pursuant to evaluation of First Envelope Bids, the Second Envelope Bids (Price part) of Techno-Commercially responsive and qualified bidders having requisite Capacity & Capability to execute the contract in the event of award, will also be opened privately, as per the provisions of the Bidding Documents.

15. MSETCL reserves the right to cancel/withdraw this invitation for bids without assigning any reason and shall bear no liability whatsoever consequent upon such a decision.
16. All correspondence with regard to the above shall be to the following address.

**Office of the Chief Engineer (TBCB),  
Maharashtra State Electricity Transmission Co. Ltd (MSETCL);  
5th floor, Plot No. C-19, ‘E’- Block, Bandra Kurla Complex,  
Bandra (East), Mumbai 400 051.  
Tel No. 022 2659 5000 (Extn. No. 5125).  
Email ID: [cetbcb@mahatransco.in](mailto:cetbcb@mahatransco.in)  
[setbcb@mahatransco.in](mailto:setbcb@mahatransco.in)**

17. Bidders are requested to open the following link for pre-requisite system settings of SRM portal and manuals regarding information for bid submission:



<https://srmetender.mahatransco.in/>

In case any technical issue remains unresolved, Bidder may contact the ERP SRM Helpdesk support for assistance as per the details below:

Phone No – 022-5969 5254

Timings – 11:00 AM To 5:00 PM

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**QUALIFICATION REQUIREMENTS**

**FOR**

**PRE-BID TIE UP FOR “ESTABLISHMENT OF 400/220/132 KV UMRED SUBSTATION (AIS), DIST. NAGPUR” UNDER TARIFF BASED COMPETITIVE BIDDING (TBCB) ROUTE PRIOR TO RFP BID SUBMISSION BY MSETCL TO BPC.**

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**QUALIFICATION OF THE BIDDER**

Qualification of bidder will be based on meeting the minimum pass/fail criteria specified below regarding the Bidder's Technical Experience and Financial Position as demonstrated by the Bidder's responses in the corresponding Bid Schedules. Subcontractors' technical experience and financial resources shall not be taken into account in determining the Bidder's compliance with the qualifying criteria. The bid can be submitted by an individual firm

The Employer may assess the capacity and capability of the bidder, to ascertain that the bidder can successfully execute the scope of work covered under the package within stipulated completion period. This assessment shall inter-alia include (i) document verification; (ii) bidders work visit; (iii) details of works executed, works in hand, anticipated in future & the balance capacity available for the present scope of work; (iv) details of plant and machinery, testing facilities, manpower and financial resources; (v) details of quality systems in place; (vi) past experience and performance; (vii) customer feedback; (viii) banker's feedback etc.

The Employer reserves the right to waive minor deviations if they do not materially affect the capability of the Bidder to perform the contract.

**1.1 Technical Experience**

The Bidder should have carried out the following as a prime contractor:

**(a) Substation Portion:**

Bidder must have erected, tested and commissioned as a prime contractor, in TBCB projects at least two (02) nos. of AIS Circuit Breaker equipped bays of 715 kV or above voltage level in one Substation or switchyard for TBCB projects during the last seven (07) years and these bays must be in satisfactory operation as on the originally scheduled last date of bid submission

OR

Bidder must have constructed as a prime contractor, at least two (02) new substations, each having minimum four (04) Circuit Breaker equipped bays with at least one ICT bay of 345kV or above voltage level during the last seven (07) years and these bays must be in satisfactory operation as on the originally scheduled last date of bid submission mentioned above

**(b) Transmission line Portion:**

Bidder must have successfully completed physical construction of one (01) transmission line for TBCB projects of not less than 100 kms of 345kV D/C or

higher voltage class transmission line within the last seven (07) years as on the Originally scheduled last date of bid submission involving the following scope of work:

- i) Tower foundation, erection and stringing
- ii) Supply of tower & tower parts
- iii) Supply of line material viz. Conductor or Insulator or Hardware Fittings

**The bidder must possess capabilities in Tower Design, Engineering, In-house manufacturing facility and validation of design through testing and issue of test certificate thereof by the Test Agency to the contractor.**

Note : In case of works executed under a contract that had been awarded on a Joint Venture, the experience of individual Joint Venture partner shall be considered limited to the scope of that partner under the said contract.

In case Bidder is a holding company, the technical experience referred to in clause 1.1 above shall be of that holding company only (i.e. excluding its subsidiary/group companies). In case Bidder is a subsidiary of a holding company, the technical experience referred to in clause 1.1 above shall be of that subsidiary company only (i.e. excluding its holding companies).

Successfully completed means issue of provisional or final taking over certificate (TOC) by the Employer to the contractor for the referred contract.

## **1.2 Financial Position:**

- (a) Net worth of the bidder for last 3 (three) financial years should be positive and more than **Rs. 250 Cr** (which is defined as “Equity share capital + Reserves Revaluation reserves Intangible assets Miscellaneous expenditure to the extent not written off and carry forward losses”).

- (b) Minimum Average Annual Turnover\*(MAAT) for best three years i.e. 36 months out of last five financial years of the bidder should be **Rs. 500 Cr** for Package.

\* Note- Annual Gross Revenue from operations/Gross operating income as incorporated in the profit & loss account excluding other operative Income/ other income.

- (c) Bidder shall have liquid assets (L.A.) or/and evidence of access to or availability of credit facilities of not less than **Rs. 125 Cr** for Package.

In case bidder is a holding company, the financial position criteria referred to in clause 1.2 above shall be of that holding company only (i.e excluding its subsidiary/ group companies). In case bidder is a subsidiary of a holding company the financial position criteria referred to in clause 1.2 above shall be of that subsidiary company only (i.e excluding its holding company).

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**LETTER**

(To be signed on the letter head of the firm requesting for issuance of Bidding Documents)

**To,  
Chief Engineer (TBCB),  
Maharashtra State Electricity Transmission Co. Ltd (MSETCL)  
5th floor, Plot No. C-19, 'E'- Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai 400 051.**

Sub: Pre-Bid Tie up for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur” through tariff based competitive bidding (TBCB) route prior to RFP bid submission by MSETCL to BPC.

Dated: .....

**Issuance of Bidding Documents reg.**

Dear Madam/Sir,

We, have read your Invitation for Bids (IFB) along with the associated documents for the subject package. Based on the same, we hereby request you to grant us the access to complete Bidding Documents

Further, in accordance with the provisions of IFB for the subject package, we hereby declare that:

- i) We are engaged in similar business segment as the scope of procurement demands
- ii) We are not a blacklisted/banned firm in MSETCL
- iii) We do not have a competing interest with MSETCL in the concerned Project of Bid Process Coordinator (BPC)

We have also enclosed a signed copy of Non-Disclosure Agreement (NDA) and Power of Attorney (POA) of the person who has signed the aforesaid NDA as per the provisions of IFB for the subject package.

We further understand that, MSETCL reserves the sole right to consider our request for granting us the access to the Bidding Documents for the subject package or otherwise and its decision in this regard shall be final and binding.

Thanking you,

**Enclosures:**

- 1. Signed copy of Non-Disclosure Agreement (NDA)
- 2. POA of signatory of NDA

**NON-DISCLOSURE AGREEMENT**

(To be signed by the POA holder of the Receiving Entity)

THIS NON-DISCLOSURE AGREEMENT (the "Agreement") is entered into on the \_\_\_\_ day of \_\_\_\_\_ between

Maharashtra State Electricity Transmission Company limited (MSETCL), a company incorporated under the laws of Companies Act 1956 and having its Registered Office at "Prakashganga", Plot No.C-19, E-Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051 (hereinafter called "**Disclosing Party**"),

and

M/s ..... (*Name of Firm requesting for issuance of Bidding Documents*) ....., a company incorporated under the laws of Companies Act 1956 and having its Registered Office at .....(*Registered address of Firm requesting for issuance of Bidding Documents*) ..... (hereinafter called "**Receiving Party**")

The "Disclosing Party" and "Receiving Party" shall hereinafter be collectively referred to as "**Parties**" and individually as "**Party**".

**WHEREAS**

- A. Disclosing Party intends to participate in the Bidding process undertaken by the Bid Process Coordinator (hereinafter referred to as the "BPC") for selection of the Transmission Service Provider (TSP) for **Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur** (hereinafter referred to as the "Project") under Tariff Based Competitive Bidding (TBCB) framework of the Ministry of Power, Govt. of India.
- B. To facilitate in making its competitive bid to BPC, MSETCL has undertaken Invitation for Bids (IFB) process for **Pre-Bid Tie up for Transmission Line and Substation Package for "Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur" under Tariff Based Competitive Bidding (TBCB) route prior to RFP Bid submission by MSETCL to BPC under Specification No.: MSETCL/TBCB/2025-26/03.**
- C. The Receiving Party is desirous of associating with MSETCL to facilitate it in preparing a competitive bid for BPC bidding after assessing the Bidding Documents and its subsequent Amendments & Clarifications (if any) for the Package mentioned at para B above (hereinafter referred to as the "**Proposed Transaction**").
- D. The Disclosing Party contemplates that with respect to the Proposed Transaction, it may exchange certain information, material and documents relating to the aforesaid Package as well as Project inter-alia including but not limited to maps, diagrams, plans, statistics, designs, reports, drawings and supporting records or material documents or software (hereinafter referred to as "**Confidential Information**", more fully detailed in Clause 1.0 herein below) that the Disclosing Party regards as proprietary, confidential and trade/business secret; and

- E. NOW THEREFORE, in consideration of the above, the following understanding is mutually agreed upon by and between the Parties for entering into a Non-Disclosure Agreement for **Pre-Bid Tie up for Transmission Line and Substation Package for “Establishment of 400/220/132 kV Umred Substation (AIS), Dist. Nagpur”** under **Specification No.: MSETCL/TBCB/2025-26/03** as follows:

**1. Definition of Confidential Information**

- (a) For purposes of this AGREEMENT, “**Confidential Information**” means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by the parties or its Representatives (as defined herein), whenever and however disclosed, including, but not limited to: (i) any concepts, maps, reports, diagrams, data, know-how, works-in-progress, designs, development tools, specifications, computer software, flow charts, databases, inventions, information and trade secrets; ii) any strategies, plans, financial information, or projections, business plans and performance results relating to the past, present or future business activities of Disclosing Party, its affiliates, subsidiaries and affiliated companies; (iii) plans for products or services, and customer or supplier lists; (iv) any scientific or technical information, invention, design, drawing, process, procedure, formula, improvement, technology or method; (v) any other information that should reasonably be recognized as confidential information of the Disclosing Party; and (vi) any information generated by the Receiving Party or by its Representatives that contains, reflects, or is derived from any of the foregoing. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.
- (b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which:
- i) was lawfully possessed, as evidenced by the Receiving Party’s records, by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party;
  - ii) becomes rightfully known by the Receiving Party from a third-party source not under an obligation to Disclosing Party to maintain confidentiality;
  - iii) is generally known by the public through no fault of or failure to act by the Receiving Party inconsistent with its obligations under this Agreement;
  - iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 8 hereof shall apply prior to any disclosure being made; and

- v) is or has been independently developed by the Receiving Party without violation of the terms of this Agreement, as evidenced by the Receiving Party's records, and without reference or access to any Confidential Information.

## **2. Disclosure of Confidential Information**

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party shall:

- (a) refrain from disclosing, reproducing, summarizing and/or disseminating Confidential Information except in connection with the Proposed Transaction
- (b) limit disclosure of any Confidential Information to its directors, officers, employees, agents, Parent/principal, Subsidiary/Group companies or representatives (collectively "**Representatives**") on a need-to-know basis for the Proposed transaction
- (c) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement, require such Representatives to be bound by written confidentiality restrictions no less stringent than those contained herein, and assume full liability for acts or omissions by its Representatives that are inconsistent with its obligations under this Agreement;
- (d) keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and
- (e) not disclose any Confidential Information received by it to any third parties except for the ones in connection with the Proposed Transaction. In such cases, the Receiving Party shall have executed or shall execute appropriate written agreements with such parties in a form and manner sufficient to enable the Receiving Party to enforce all the provisions of this Agreement.
- (f) execute appropriate written agreements with Joint Venture Partner(s) or Associate(s) proposed by it in a form and manner similar to the subject Agreement.

## **3. Use of Confidential Information**

The Receiving Party agrees to use the Confidential Information solely in connection with the Proposed Transaction between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

#### **4. Compelled Disclosure of Confidential Information**

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided that the Receiving Party will disclose only that portion of the requested Confidential Information that, in the written opinion of its legal counsel, it is required to disclose. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information in terms of the said order may be made without liability.

#### **5. Term**

This Agreement shall remain in effect from the date of execution of this Agreement till the time BPC declares the successful bidder for the Project mentioned at para A above or annuls the tendering process for the same, whichever is earlier. Further, this Agreement shall continue to be in force for the Term (stated herein above) until terminated by mutual agreement by both the Parties.

Notwithstanding the foregoing, the Receiving Party's duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect indefinitely.

#### **6. Remedies**

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

#### **7. Notice of Breach**

Receiving Party shall notify the Disclosing Party immediately upon discovery of, or suspicion of, (1) any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives; or (2) any actions by Receiving Party or its



Representatives inconsistent with their respective obligations under this Agreement, Receiving Party shall cooperate with any and all efforts of the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

**8. No Binding Agreement for Transaction**

The parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

**9. Ownership of Material**

Each Party retains all rights, title and interest to its confidential information. No license in respect of any trademark, patent or copyright or application is granted nor can be implied to have been granted, by reason of disclosure of same by one party to another.

**10. Warranty**

No Warranties are made by either Party under this Agreement whatsoever. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. The Disclosing Party shall have no liability to the Receiving Party (or any other person or entity) resulting from the use of the Disclosing Party's Confidential Information or any reliance on the accuracy or completeness thereof.

**11. Return of Confidential information**

Upon written request of either party, parties and its representatives shall promptly return to the other party all copies of confidential information in its possession including all copies of any analyses, compilations, studies or other documents prepared by the receiving party or its representatives containing or reflecting any confidential information. Either party shall clarify in writing that it and its representatives have returned all such information to the other party

## **12. Miscellaneous**

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof.
- (b) All modifications and Amendments to this Agreement must be made in writing.
- (c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
- (d) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- (e) Any notices or communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, courier or electronic-mail, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by courier, on the seventh business day following dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by special courier. Provided further that whenever the postal authorities or courier service provide a proof of delivery, the same shall also be applicable for presenting the fact of dispatch.
- (f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.
- (g) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) developing, making or marketing products or services that are or may be competitive with the products or services of the other; or (ii) providing products or services to others who compete with the other.

- (h) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.
- (i) This Agreement shall be governed by and interpreted in accordance with laws applicable in India and the Courts of Mumbai shall have exclusive jurisdiction in all matters arising under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**Signed by for and  
on behalf of the Disclosing Party**

**Signed by for and  
on behalf of the Receiving Party**