



GOVERNMENT OF INDIA  
MINISTRY OF POWER

# **Draft Standard Bidding Documents for Privatization of Distribution Licensees**

**(Version Date: 20/09/2020)**

**NOTE:**

*The provisions contained in the SBDs do not represent the views of this Ministry, or its Officers, and are not binding on the Ministry.*

*The proposals are essentially being presented with an aim of initiating discussions and soliciting inputs from Stakeholders on the SBDs*

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GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# Guidance Note to SBDs for Privatization of  
Distribution Licensees)**

**Guidance to Standard Bidding Documents**

**for**

**Selection of Bidder for purchase of majority shares in  
[Distribution Licensee/ SPV] for distribution and retail  
sale of electricity in [area description]**

**Date:**

**(Version Date: 20/09/2020)**

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# 1. Introduction

## 1.1. Transaction Structure

The Ministry of Power is pleased to issue the Standard Bidding Documents (SBD) for encouraging and supporting acceleration of Private Sector Participation (PSP) in power distribution utilities across the country. The SBD considers a transaction structure in which:

- (a) The entity in which investor's equity ownership will be sought will be a distribution licensee in States/ UTs at the end of the transaction process.
- (b) Assets of the existing distribution licensee, other than land, will be transferred to the new entity at SERC approved Net Asset Value. Land owned or in possession of the existing distribution licensee shall be provided to the successor entity on a right to use basis at nominal charges.
- (c) Employees of the existing distribution licensee shall be transferred to the successor entity. Such transfer of employees shall be at continued or better service conditions. Further, the concerned State/ UT Government shall be responsible for all terminal liability obligations of such employees till their transfer date. The successor entity shall fund necessary contributions towards terminal liabilities on a prospective basis from the date of their transfer.
- (d) PPA's of existing distribution licensees shall be transferred to the successor entities. Only in specific cases where there is a significant gap between ARR and ACOS, PPAs may be retained in a State/ UT Government entity to structure a subsidized bulk power purchase cost for the successor entity for making it an independently financially viable entity, for a specified period.
- (e) The successor entity shall be provided with a clean balance sheet free of accumulated losses/ unserviceable liabilities.
- (f) Wherever required, the concerned State/ UT Government may provide suitable transition support to the successor entity for a specified period of say 5 or 7 years.

## 1.2. Process Overview

The overall process that may be followed by states is envisaged to include:

- (a) Pre-transaction preparatory activities (Transaction strategy, due-diligence and pre-feasibility analysis):**
  - (i) Review of existing structure and decision on need for creation of SPV or a new legal entity which may emerge as the successor entity and in which the selected bidder will acquire equity shares. In States/ UTs where existing distribution licensee is a Government Department, a SPV may be incorporated for taking over the distribution licensee function. In States/ UTs where corporatization has already happened, and there is no proposal for further area configuration, selected investor may be offered equity shareholding in the existing legal entity itself.

- (ii) Area configuration and network boundaries for the same. To the extent possible States/ UTs may continue with existing configurations and seek investor ownership in the existing entities. Area carve out may enhance the need for preparatory work and efforts required in creating reliable baseline information and opening balance sheet for the new entity.
- (iii) Financial modelling for viability analysis of successor entity.
- (iv) Decision on treatment of assets in the proposed transaction.
- (v) Assignment/ handling of PPAs.
- (vi) Review of adequacy/ appropriateness of employees that may be transferred to the new entity.
- (vii) Critical regulatory issues.
- (viii) AT&C loss performance.
- (ix) Choice of bid parameter in transaction process.
- (x) Need for transition support.
- (xi) Decision on extent of Government ownership/ role in the new entity.

**(b) Pre-transaction stage activities**

- (i) Preparation of draft transfer scheme and opening balance sheet.
- (ii) Actuarial valuation of staff terminal liabilities.
- (iii) Baseline AT&C loss review and validation report, prepared by third party/ transaction advisor.
- (iv) Preparation of Information Memorandum.
- (v) Customization of SBD transaction documents.
- (vi) Consultation with SERC on key aspects of the transaction.
- (vii) Incorporation of SPV (if required).

**(c) Transaction stage activities**

- (i) NIT and issuance of Bid Documents.
- (ii) Investors conference - cum - Pre-bid meeting.
- (iii) Issuance of clarifications/ response to queries.
- (iv) Receipt, screening and evaluation of bids.
- (v) Approval of bid outcome by bid evaluation committee.
- (vi) Issue of letter of award to selected bidder.

**(d) Post transaction stage activities**

- (i) Notification of Transfer Scheme.
- (ii) Signing of SAA/ SHA and nomination of directors in the new entity, as appropriate.
- (iii) Issuance of Government Policy Direction for adopted of bid process outcomes for tariff determination.
- (iv) Taking-over of assets (including joint verification of assets).
- (v) Intimation to SERC about successor entity ownership structure (by successor entity).
- (vi) Creation of trust for serving pension liabilities of transferred employees (by State/ UT Government and successor entity).

State/ UT Governments are advised to appoint Transaction Advisor for end-to-end support from pre-feasibility to post-transaction stage activities as per the Scope of Work provided in Annexure 3.

**1.3. Transaction Documents**

Depending on the transaction framework, standard bidding documents applicable in a particular transaction is provided in the following table:

Sl.	Standard Bidding Documents	Applicability
1.	Request for Proposal	All cases
2.	Shareholders Agreement	All cases, except when transaction envisages no shareholding by the concerned State/ UT Government.
3.	Share Acquisition Agreement	All cases. Separate agreements provided for cases wherein: (i) State/ UT Government decides to retain minority holding (ii) State/ UT Governments decides to not retain any holding
4.	Policy Directions	All cases
5.	Bulk Supply Agreement	Applicable only when PPAs are proposed to be retained with a State Owned Entity for a specified period.

**1.4. Transaction Timelines**

State/ UT Governments are encouraged to conclude the entire process covering accomplishment of pre-feasibility to post-transaction stage activities within the following timelines:

Sl.	Deliverables	Timelines
1.	Transaction Strategy Paper	T <sub>0</sub> (Date of commencement) + 2 weeks

Sl.	Deliverables	Timelines
2.	Assessment of Feasibility, Financial Restructuring and Transition Finance; Draft Opening Balance Sheet	T <sub>0</sub> + 10 weeks
3.	Baseline Data study	T <sub>0</sub> + 10 weeks
4.	Draft Transfer Scheme, Note for approval of Administrator, Draft MoA & AoA (if required) etc.	T <sub>0</sub> + 12 weeks
<b>Privatization Process</b>		
5.	Finalization of Information Memorandum & Bid Documents	T <sub>0</sub> + 14 weeks
6.	Release of Bid Documents	T <sub>0</sub> + 16 weeks
7.	Receipt of Bids	T <sub>0</sub> + 24 weeks
8.	Evaluation and Selection of Preferred Bidder	T <sub>0</sub> + 28 weeks
9.	Transfer Scheme Appointed Date and Transfer of Shareholding	T <sub>0</sub> + 32 weeks
10.	Corporatization, Commercial Documents & Government Directive	T <sub>0</sub> + 32 weeks
11.	Staff Transfer Scheme Finalization (post options exercise) and successful handing over and transfer to Selected Bidder	T <sub>0</sub> + 32 weeks

## 1.5. Creation of Empowered Committee

State/ UT Governments are encouraged to create Empowered Committee at the level of Chief Secretary for a State and Advisor in case of UTs for reviewing the entire process and for timely concurrence on transfer scheme, bid documents/ changes to SBD, bid outcomes and various other decision points forming part of the process. The Government of State/ UT, through a Government Order, should vest necessary power in such committee to take decisions as per the prevailing rules and procedures of the State/ UT. Such Committee may be comprised of:

- (a) Chief Secretary (in States)/ Advisor to Administrator (in UTs) – Chairperson
- (b) Finance Secretary – Member
- (c) Power/ Energy Secretary – Member and convenor
- (d) Other members – as per State/ UTs decision

## 1.6. Creation of Technical Evaluation Committee

State/ UT Governments will be required to create Technical Evaluation Committee for evaluation of bids received. Further, a nodal officer will be required to manage bid process including acting as a point of contact for the bidders, issuance of documents/ clarifications and receipt of bids.



## 2. Guidance Note to Standard Bidding Documents

### 2.1. GN#1: Shareholding of Distribution Company

Sl.	Alternatives	Suitability/ context
a.	<b>Investor</b> <ul style="list-style-type: none"> <li>100% equity sale</li> </ul> <b>Government</b> <ul style="list-style-type: none"> <li>No involvement</li> </ul>	<ul style="list-style-type: none"> <li>Distribution utilities in densely populated urban areas</li> <li>Financially viable utility</li> <li>Retail tariff covers Cost of Supply</li> <li>No/ limited need for subsidization in retail tariffs</li> </ul>
b.	<b>Investor</b> <ul style="list-style-type: none"> <li>74% equity sale</li> </ul> <b>Government</b> <ul style="list-style-type: none"> <li>26% equity</li> </ul>	<ul style="list-style-type: none"> <li>Distribution utilities in a urban-rural mixed geography</li> <li>Utilities strategic from national security perspective</li> <li>Utility expected to have continued need for subsidization in retail tariffs</li> </ul>

### 2.2. GN#2: Treatment of existing Power Purchase Agreements

Sl.	Alternatives	Suitability/ context
a.	<ul style="list-style-type: none"> <li>PPAs may be assigned to successor entity</li> </ul>	<ul style="list-style-type: none"> <li>Retail tariffs cover (or can cover in the near term) Cost of Power purchase and other reasonable costs of the distribution of electricity.</li> <li>Utility is viable or expected to turnaround in near future.</li> <li>Limited/ no need for subsidies from State/ UT Government.</li> </ul>
b.	<ul style="list-style-type: none"> <li>PPAs may be retained with a State Owned Entity for a specified period.</li> <li>The successor entity may sign a Bulk Supply Agreement with such entity.</li> </ul>	<ul style="list-style-type: none"> <li>There is significant gap between ARR and ACS which is likely to continue to several years, despite reduction of AT&amp;C losses by the successor entity.</li> <li>Subsidized bulk supply is required to ensure independent financial viability of the successor entity over the specified period (say 3 to 5 years or more, as the case may be).</li> <li>In utilities where ACOS is higher than ARR and it is expected to remain even after AT&amp;C loss reduction, Bulk Supply arrangement may be used for making distribution utility independently viable, as a long-term arrangement.</li> </ul>

### 2.3. GN#3: Bid Parameter

Sl.	Alternatives	Suitability/ context
a.	<b>Bid Parameter</b> <ul style="list-style-type: none"> <li>AT&amp;C loss trajectory</li> </ul> <b>Fixed Parameter</b>	<ul style="list-style-type: none"> <li>In case of Discoms with medium/ high AT&amp;C Losses of above 15%, bid parameter may be AT&amp;C Loss commitment for first 5 years.</li> </ul>

Sl.	Alternatives	Suitability/ context
	<ul style="list-style-type: none"> <li>Consideration for sale of equity shares in successor entity</li> </ul>	
<b>b.</b>	<p><b>Bid Parameter</b></p> <ul style="list-style-type: none"> <li>Consideration for sale of equity shares in successor entity</li> </ul> <p><b>Fixed Parameter</b></p> <ul style="list-style-type: none"> <li>AT&amp;C loss trajectory</li> </ul>	<ul style="list-style-type: none"> <li>In case of Discoms with lower than 15% AT&amp;C Losses (with no/negligible ACS-ARR gap), bid parameter may be upfront premium for equity consideration in the Distribution Company.</li> <li>Fixed AT&amp;C Loss trajectory for next 5 years may be specified in the RFP which shall be adopted for tariff determination.</li> </ul>

## 2.4. GN#4: Bid Processing Fees

Sl.	Alternatives	Suitability/ context														
<b>a.</b>	<ul style="list-style-type: none"> <li>Bid Processing Fees may be considered based on annual input energy handled by the Discom.</li> </ul>	<table border="1"> <thead> <tr> <th>Annual Input Energy (MUs)</th> <th>Fee (INR Cr)</th> </tr> </thead> <tbody> <tr> <td>&lt;= 1000</td> <td>INR 0.5 Cr</td> </tr> <tr> <td>&gt;1000 &amp; &lt;= 2000</td> <td>INR 1.0 Cr</td> </tr> <tr> <td>&gt;2000 &amp; &lt;= 3000</td> <td>INR 2.0 Cr</td> </tr> <tr> <td>&gt;3000 &amp; &lt;= 4000</td> <td>INR 3.0 Cr</td> </tr> <tr> <td>&gt;4000 &amp; &lt;= 5000</td> <td>INR 4.0 Cr</td> </tr> <tr> <td>&gt; 5000</td> <td>INR 5.0 Cr</td> </tr> </tbody> </table>	Annual Input Energy (MUs)	Fee (INR Cr)	<= 1000	INR 0.5 Cr	>1000 & <= 2000	INR 1.0 Cr	>2000 & <= 3000	INR 2.0 Cr	>3000 & <= 4000	INR 3.0 Cr	>4000 & <= 5000	INR 4.0 Cr	> 5000	INR 5.0 Cr
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>3000 & <= 4000	INR 3.0 Cr															
>4000 & <= 5000	INR 4.0 Cr															
> 5000	INR 5.0 Cr															

# 3. Annexure

## 3.1. Scope of Work

### (a) Design a Transaction Strategy for the State/ UT Government

The Consultant will first prepare an overall transaction strategy in consultation with the State/ UT Government focused on the following aspects.

- (i) Setting up the right empowered structure within the State/ UT Government for administrative deliberations and timely decisions and actions.
- (ii) Recommendation on the appropriate transaction framework from amongst the proposed models by Ministry of Power including the bid parameter, structuring of power purchase for the restructured Discom, lien on employees, State/ UT Government holding post privatisation, etc.
- (iii) Outlining the sequencing and inter-linkages of actions to be undertaken by the State/ UT Government covering financial restructuring and financial transfer, employee options and transfer, corporatization, bid documents finalization and conduct of bid process, etc.
- (iv) Staff transfer strategy including deputation vs permanent absorption, conduct of the options exercise, structuring of any Early Voluntary Retirement Scheme (EVRS) if necessary and treatment of staff terminal liabilities and its funding going forward.
- (v) Agreeing on the points of deliberation with the State/ Joint Electricity Regulatory Commission including discussions on the State/ UT Government directive to be issued to SERC/ JERC as part of the privatisation process.

### (b) Assessment of Feasibility, Financial Restructuring and Transition Financing

The Consultant shall undertake a due diligence of the existing operations and balance sheet of the distribution function to be privatized. In particular, this shall include the following key assessments and actions to be undertaken.

- (i) Use industry benchmarks and analysis of past data for receivables, payables, stores and capital work in progress to arrive at realistic assessment of values to be considered for opening balance sheet of the restructured distribution utility.
- (ii) The receivables analysis shall be conducted on the consumer billing database of the distribution function and include aged debtor analysis, payment history analysis for key consumers and average billing rate analysis by consumer categories to ascertain the extent of provisions required for doubtful receivables. Receivables from Government Departments as well as subsidy receivable from State/ UT Government shall also be analysed and established clearly and a set-off mechanism proposed by the Consultants, as part of the financial restructuring.
- (iii) Similar analysis shall also be carried out on the power purchase and transmission payables, with any overdue payables and its associated delayed

payment surcharges to be accounted for realistically in the opening balance sheet of the restructured distribution utility.

- (iv) Capital Work in Progress as well as inventories shall also be analysed through appropriate benchmarks to ascertain if any provisions are required on these items. The restructured balance sheet for the distribution entity shall thus consider appropriate provisions and realistic net balances for receivables, payables, stores, consumer deposits and capital work in progress.
- (v) Review contingent liabilities and suggest methods for ownership and treatment of contingent liabilities which are currently not recognized under Department's balance sheets. Determine the extent of recognized staff terminal liabilities and administer conduct of actuarial valuation to determine the unfunded liabilities and the rate of contribution for pension to be discharged by the restructured Discom in the future.
- (vi) Fixed assets and its associated capital sources (equity and long-term liabilities) is proposed to be transferred at SERC approved values. The Consultants shall thus analyze regulatory orders for the values of net assets, liabilities and equity permitted by the SERC/ JERC in tariffs over the years and determine the appropriate value to be established in the opening balance sheet of the restructured Discom. This may include overseeing a process of asset base related data collection and its compilation to provide an overview of the opening level of assets to be transferred to the restructured Discom.
- (vii) The actions described above in addition to clean up on other significant items emerging from the due diligence exercise, shall form the basis of financial restructuring in the hands of State/ UT Government or existing corporatized and corresponding creation of clean draft opening balance sheets to be transferred to the restructured Discom. The Consultants shall create an acceptable basis for the draft opening balance sheets, which can be audited by statutory auditors of the restructured Discom. A financial restructuring report shall be drawn up for the State/ UT Government for consideration, approval and corresponding action in the hands of the State/ UT Government.
- (viii) The consultants shall carry out detailed financial projections for the restructured Discom with assumptions agreed with the State/ UT Government, on energy demand-supply, power procurement, tariff revisions, AT&C loss trajectories and financing of future capital expenditure on a reasonable basis. Cash flows of the restructured business shall be analysed to ascertain the levels of transition financing required over the next 5 years to create a viable transaction. Options and proposals for funding the transition finance shall be drawn up for the consideration of the State/ UT Government.
- (ix) Draft opening balance sheets thus created shall be reflected in the Opening Transfer Scheme along with the RTU obligations.

**(c) Baseline Data study for AT&C losses**

- (i) Baseline AT&C loss review report based on energy audit study comprising of the following:
  - Status of boundary metering.

- Review of energy input/ purchase into the area, including distributed generation sources.
  - Review of billing data and energy sold, with review of assumptions and analysis of un-metered billing, assessed billing, theft billing, meter defective cases etc.
  - Restatement/ opinion on T&D losses.
  - Review of revenue collection against energy bills.
  - Restatement/ opinion on AT&C losses.
- (ii) Creating a data room with detailed background information on AT&C losses which may be opened up for potential bidders during due-diligence stage.

**(d) Staff Transfer Scheme and its implementation**

- (i) Where appropriate, assist the State/ UT Government in negotiating an agreement with Employees Unions/ Associations with a clear Staff Transfer strategy.
- (ii) Consultants shall guide and assist the utility in creating an exhaustive employee database with the clear identification of distribution service cadres and identification of common cadre personnel.
- (iii) Study of service conditions for workmen and officers to determine transferability of various cadres of employees.
- (iv) Determine the minimum service conditions including the rank, scale of pay, salary, allowances and pecuniary benefits including terminal benefits, which must be met at a minimum by the restructured Discom and thus to be reflected in the Staff Transfer Scheme.
- (v) Establish vacancy positions in Government Electricity Department / existing corporatized entity as an important input to options exercise.
- (vi) Assist the State/ UT Government in establishing a committee for conduct of an options / preference exercise for the transferable employees limited by vacancies and seniority of staff in Government ED/ existing corporatized entity.
- (vii) Draw up the Staff Transfer Scheme with finalization specified on the transaction appointed date.

**(e) Information Memorandum and Bid Documents**

- (i) Draw up the Information Memorandum with adequate baseline information for the investors to undertake an assessment of the feasibility and value of the Discom transaction.
- (ii) Finalize RFP, Share Acquisition and Share Holders Agreement, which will form the Bid Documents for the transaction.

- (iii) Assist the State/ UT Government in getting internal approvals on the set of Bidding Documents finalized. Where necessary, SERC/ JERC shall be informed and consulted in the process of finalizing the Bid Documents.

**(f) Support in Commercial Documents, Corporatization and State/ UT Government Directives**

- (i) The consultant shall assist the State/ UT Government in preparing a policy directive to be issued to the SERC/ JERC as part of the transaction process to direct adoption of bid outcomes for tariff determination.
- (ii) Assist State/ UT Government in determining the appropriate way forward for assignment of power purchase agreements. Where PPAs have to be retained by the ED or existing holding company, a Bulk Supply Agreement will need to be drafted and entered into by the Restructured Discom and the holding company.
- (iii) Where appropriate, the Consultant shall assist State/ UT Government in finalising the corporatization of the restructured Discom, including assistance in company formation.
- (iv) To assist in drafting of necessary documents for the State/ UT Government including issuance of directions under section 108/ 109 of Electricity Act 2003 or any other applicable Acts, Rules etc.

**(g) Assistance in conduct of Bid Process**

- (i) Preparation of a digital data room containing the relevant data and analysis.
- (ii) Marketing the transaction including conduct of road shows, publicizing the process and conducting Bidders' conferences.
- (iii) Arranging Pre-Bid conference and organizing site visits.
- (iv) Evaluation of technical and financial bids and selection of the successful bidder.
- (v) Preparation of documents related to closure of transaction, issuance of LoA and signing of various Agreements with Selected Bidder
- (vi) Assisting in post Transaction activities till handing over and transfer
- (vii) Any other necessary activities contingent to this and not included herein

**(h) Actuarial Study:**

- (i) Administer conduct of actuarial study through a certified Actuarial Valuer for determination of the unfunded liabilities and the rate of contribution for pension to be discharged by the restructured Discom in the future.

**(i) Legal & Taxation aspects:**

- (i) Legal vetting of transaction documents.
- (ii) Legal due-diligence of administrative orders and directives to be issued by Govt.

- (iii) Support in license application (where required).

Note: This scope may be suitably enhanced in case the UT/ State intends to undertake a configuration/ carve out exercise as part of the process.



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# RFP for Privatization of Distribution Licensees)**

**Request for Proposal**

**for**

**Selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]**

**Date:**

**(Version Date: 20/09/2020)**

**Issued by:**

**[Name of Bid Process Authority]**

**Address**



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# Disclaimer

The information contained in this RFP or any other information provided to Bidders, whether verbally or in writing or in any other form by or on behalf of the Bid Process Authority and its employees or advisors is provided to Bidders on terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is on an agreement and is neither an offer nor an invitation by Bid Process Authority to Bidders or any other Person. The purpose of this RFP is to set the terms for the selection process and to provide Bidders with information that may be useful to them in preparation and submission of their Bids.

This RFP includes statement which reflect various assumptions and assessments arrived at by the Bid Process Authority and its advisors. Such assumptions, assessments and statements do not purport to contain all information that Bidders may require. The information contained in this RFP may not be appropriate for all persons and it is not possible for the Bid Process Authority and its employees or advisors to consider the data requirements, investment objectives, financial situation and particular needs of each Person who reads this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP.

The information provided in this RFP to Bidders is on a wide range of matters, some of which may depend upon interpretation of the law. The information given is not intended as a complete or authoritative statement under any law. The Bid Process Authority and its employees and advisors accept no responsibility or otherwise any interpretation or opinion on laws expressed in this RFP.

Except as provided in this RFP, the Bid Process Authority and its employees and advisors make no representation or warranty and shall have no liability to any Person, including any Bidder, under any law, statute, rules or regulations or tort or otherwise for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of anything contained in this RFP, including the accuracy, adequacy, correctness, completeness or reliability of this RFP and any assessment, assumption, statement or information contained in this RFP or deemed to form part of this RFP or arising in any way.

It shall be deemed that by submitting Bid, a Bidder agrees and releases the Bid Process Authority and its employees, agents and advisors, irrevocable, unconditionally, fully and finally from any and all liability for any claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations under this RFP and/ or in connection with the Bid Process, to the fullest extent permitted by Applicable Law and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in the future.

The Bid Process Authority and its employees and advisors also accept no liability of any nature, whether resulting from negligence or otherwise arising from reliance of any Bidder upon the content of this RFP. The Bid Process Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment, statement or assumptions contained in this RFP.

The issuance of this RFP does not imply that the Bid Process Authority is bound to qualify any Bidder or to select any Bidder for the stated purpose. The Bid Process Authority reserves the right to reject all or any of the Bids or cancel the entire RFP process without assigning any reasons whatsoever.

# 1. Definitions and Interpretations

## 1.1. Definitions

- 1.1.1. The words and expressions beginning with capital letters and defined in this RFP shall, unless the context otherwise requires, have the meaning ascribed thereto herein.

<b>Addendum or Addenda</b>	shall mean an addendum or addenda to this RFP;
<b>Address</b>	shall mean the address as per Clause 2.3.9;
<b>Affiliate</b>	shall mean a company that either directly or indirectly (i) controls or (ii) is controlled by or (iii) is under common control with a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and "control" means ownership by one company of twenty six percent (26%) or more of the voting rights of the other company;
<b>Annexure</b>	shall mean an annexure to this RFP;
<b>Appropriate Commission</b>	shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 of the Electricity Act, or the State Electricity Regulatory Commission, referred to in section 82 of the Electricity Act or the Joint Commission referred to in section 83 of the Electricity Act, as the case may be;
<b>ARR</b>	shall mean the annual revenue requirement, to be filed by the Deemed Licensee before [SERC], in line with the provisions of the Electricity Act and relevant [SERC] regulations as amended from time to time;
<b>Authorized Signatory</b>	shall refer to the person authorized by the board of the Bidding Company/ Lead Member to sign Bid on behalf of Bidder and in whose name the Power of Attorney (PoA) has been issued as per the Format 7.1.2 of this RFP;
<b>Bid</b>	shall mean the required documents including the Technical Proposal submitted as part of Envelope-1 and the Financial Proposal submitted as part of Envelope-2, submitted by the Bidder in response to this RFP, in accordance with the terms and conditions hereof;
<b>Bid Process Authority</b>	shall mean [...] authorized by Government of [State/ UT name] for running the bid process for "Selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]";

<b>Bid Due Date</b>	means the last date and time for submission of the Bid as specified in the Bid Schedule and as extended from time to time in accordance with Clause 5.3 of this RFP;
<b>Bid Process</b>	shall mean the process undertaken by Bid Process Authority to select a Bidder for purchase of majority shares in [SPV] as per the terms and conditions set out in this RFP. Bid Process has commenced with the issuance of this RFP and will end on the Effective Date;
<b>Bid Processing Fee</b>	shall have the meaning as per Clause 4.9 of this RFP;
<b>Bid Schedule</b>	shall mean the schedule of Bid Process set out in Clause 2.3.8, as may be amended from time to time;
<b>Bid Security</b>	shall mean the unconditional and irrevocable bank guarantee of Indian Rupees [.] (INR [.]00) only, to be submitted along with the Bid by the Bidder under Clause 4.8 of this RFP, as per the format prescribed in Clause 7.3.3;
<b>Bidder</b>	shall mean either a single company or a Consortium of companies submitting a Bid in response to this RFP. Any reference to Bidder/ Bidders includes Bidding Company, Bidding Consortium/ Consortium, Member in a Bidding Consortium and Lead Member of the Bidding Consortium jointly and severally, as the context may require;
<b>Bidding Company</b>	shall refer to such single company that has submitted its Bid in response to this RFP;
<b>Bidding Consortium or Consortium</b>	shall refer to a group of companies that has collectively made and submitted a Bid in response to this RFP; Provided that there shall not be more than two (2) Members in a Consortium including the Lead Member;
<b>Clause</b>	shall mean a clause of this RFP;
<b>Companies Act</b>	shall mean the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require;
<b>Company</b>	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute in its jurisdiction;
<b>Conflict of Interest</b>	shall have the same meaning as ascribed here to in Clause 3.1.2;
<b>Consents, Clearances and Permits</b>	shall refer to all such authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the development, execution and performance as a distribution licensee by the Deemed Licensee, including without any limitation on the construction, ownership, operation, and

	maintenance of the distribution assets and system;
<b>Consortium SPV</b>	shall mean a company incorporated under the Companies Act 2013, by the Successful Bidder in case of Successful Bidder being a Bidding Consortium, with equity holding among the Members in the same proportion as committed in the Consortium Agreement, submitted in Bid of such Consortium, and which shall, in turn, invest in the Deemed Licensee, as per the provisions of this RFP;
<b>CPSE</b>	shall mean company in which the direct shareholding of the Central Government of India or other CPSEs is fifty one percent (51%) or more.
<b>Distribution Company</b>	<i>{Insert in case existing utility is a department which is to be corporatized before sale of equity shares to the Successful Bidder}</i> in the context of this RFP, shall mean the [SPV] in which distribution and retail supply of electricity business of [Utility/ Department name] shall be vested as per the Transfer Scheme issued by Government of [State/ UT name] and in which the Successful Bidder shall subscribe to [Refer Guidance Note #1] share capital, and which shall be a licensee as per the provisions of the Electricity Act 2003;  <i>{Insert in case existing utility is a corporate entity in which the Successful Bidder shall purchase equity shares}</i> shall mean the [Utility] and in which the Successful Bidder shall subscribe to [Refer Guidance Note #1] share capital];
<b>Distribution Franchisee</b>	shall have the meaning as prescribed in Electricity Act, 2003;
<b>Distribution Licensee</b>	shall have the meaning as prescribed in Electricity Act, 2003;
<b>Effective Date</b>	shall mean the date on which distribution and retail supply of electricity business of [Utility/ Department name] would be vested in the Distribution Company pursuant to the Transfer Scheme issued by Government of [State/ UT name];
<b>Electricity Act or Act</b>	shall refer to The Electricity Act, 2003 as amended from time to time;
<b>Eligibility Criteria</b>	shall mean the eligibility criteria required to be met by the Bidder as per Clause 3.1 of this RFP;
<b>Financial Proposal</b>	shall mean Envelope-2 of Bid containing Bidder's quote as per Format 7.2 of this RFP;
<b>Financial Year</b>	shall mean each 12-month period commencing on 1 <sup>st</sup> of April of a calendar year and ending on 31 <sup>st</sup> of March of the next calendar year; In case of an international Bidder the 12-month period for which such Bidder files its statutory audited

	accounts in the normal course of its business shall be considered for the purpose of its financial statements to be submitted for meeting the Qualification Requirements as per Clause 3.2 of this RFP;
<b>Financially Evaluated Entity</b>	shall mean a Company that has been evaluated for the satisfaction of the Financial Qualification Requirements set forth in Clause 3.2.1;
<b>Government Policy Directions</b>	shall mean the policy directions dated [.] notified by Government of [State/ UT name] under section [108/109] of the Act on matters of policy involving public interest for privatization of distribution and retail supply of electricity in [area description].
<b>Lead Member of the Bidding Consortium or Lead Member</b>	shall mean the Member of the Consortium who commits and invests at least fifty one percent (51%) equity stake in the Consortium SPV and is authorized by all other Consortium Members to be responsible for Bid Process and to represent and act on behalf of the Consortium for submission of Bid, in terms of the Consortium Agreement;
<b>Letter of Intent or LOI</b>	shall mean the letter issued by Bid Process Authority to the Bidder, who has been identified as Successful Bidder, to purchase majority shares in the Distribution Company which shall become the distribution licensee on issuance of the Transfer Scheme;
<b>Member or Member in a Bidding Consortium</b>	shall refer to each entity/ Company in the Bidding Consortium. Each Member has to commit, in the Consortium Agreement, to invest a minimum of twenty six percent (26%) in the Consortium SPV;
<b>[Utility/ Department name]</b>	shall mean utility involved in distribution and retail supply of electricity covering the distribution circles of [.] in the State of [.]
<b>SERC or Commission</b>	shall mean the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission name];
<b>Parent Company</b>	shall mean a company that holds more than fifty percent (50%) of the paid - up equity capital directly or indirectly in the Bidding Company or in the Member of a Bidding Consortium, as the case may be;
<b>Past Arrears</b>	shall refer to the accumulated arrears from consumers of the [Utility/ Department name] outstanding as on the Effective Date;
<b>Person</b>	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity;

<b>Pre-Bid Meeting</b>	shall mean the meeting to be held in accordance with Clause 4.3.2;
<b>[SPV]</b>	shall mean the company to be incorporated by Bid Process Authority which will carry out the business of distribution and retail supply of electricity as per the provisions of the Transfer Scheme;
<b>Qualification Requirements</b>	means the qualification requirements (both Technical Qualification Requirements and Financial Qualification Requirements) set out in Clause 3.2 of this RFP that a Bidder is required to satisfy and meet (in addition to the Eligibility Criteria), to be qualified for evaluation of the Financial Proposal;
<b>Qualified Bidder(s)</b>	shall mean those Bidders who are short-listed subsequent to evaluation of their Technical Proposal (Envelope-1) and are eligible for opening of their respective Financial Proposal in accordance with Clause 6.2.6 of this RFP;
<b>RFP</b>	shall mean this Request for Proposal document along with all schedules, annexures and RFP Documents and shall include any modifications, amendments or alterations or clarifications thereto;
<b>RFP Documents</b>	shall mean the following documents to be entered into in respect of the purchase of majority shares, by the parties to the respective agreements: (i) Share Acquisition Agreement to be executed between Successful Bidder, Bid Process Authority (directly or through any of its undertakings) and the Distribution Company; (ii) Shareholders' Agreement to be executed between Successful Bidder, Bid Process Authority (directly or through any of its undertakings) and the Distribution Company; and <i>{Insert in case the PPAs are being transferred after a transition period}</i> (iii) Bulk Supply Agreement to be executed between Bid Process Authority, directly or through any of its undertakings and the Distribution Company;
<b>Rupee or INR</b>	means Indian Rupee, the lawful currency of India;
<b>Successful Bidder</b>	shall mean the Bidder selected pursuant to this Bid Process for purchase of the majority shares in the [SPV];
<b>Technical Proposal</b>	shall mean Envelope-1 of Bid containing the documents as specified in Clause 5.4 of RFP;
<b>Technically Evaluated Entity</b>	shall mean the company which has been evaluated for the satisfaction of the Technical Qualification Requirements set forth in Clause 3.2.1;
<b>Term of the License</b>	for the Distribution Company shall be for a period of twenty five (25) years from the Effective Date, in line with the

	provisions of the Electricity Act 2003, or any amendments thereof;
<b>Transfer Scheme</b>	shall mean the [...] dated [...];
<b>USD or \$</b>	shall mean United States Dollar, the lawful currency of United States of America.

## 1.2. Rules of Interpretation

### 1.2.1. In this RFP

- (a) headings are for convenience only and shall be ignored in construing this RFP;
- (b) the singular includes the plural and vice versa;
- (c) references to Articles, Sections, Clauses, Schedules, Appendix and Annexure are, unless the context otherwise requires, references to Articles, Sections, Clauses, Schedules, Appendix and Annexure of this RFP;
- (d) "includes" and "including" shall mean "including without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (e) reference to any law or regulation having the force of law includes amendments, modifications, supplements, extensions or re-enactments thereof in future;
- (f) Any reference to time is a reference to the time in India;
- (g) the terms "Bid" and "Proposal" are used interchangeably;



## 2. Transaction Features

### 2.1. Introduction

- 2.1.1. [Utility/ Department name] is currently engaged in power distribution and retail supply of electricity in the [area description] of [State/ UT name].
- 2.1.2. The Bid Process Authority, acting on behalf of the Government of [State/ UT name] is inclined to select a suitable company for acquiring majority stake in the [SPV] which [is/ shall] be responsible for distribution and retail supply of electricity as a Distribution Company for [area description].
- 2.1.3. The purpose of this transaction is:
  - (a) To improve the quality, security and reliability of power supply and various services delivered to consumers;
  - (b) To achieve global benchmarks in Aggregate Technical & Commercial ("AT&C") losses; and
  - (c) To achieve affordable and reasonable pricing of electricity.

### 2.2. Key Transaction Features

- 2.2.1. The Government of [State/ UT name], under section 131 of the Electricity Act, 2003, will notify a Transfer Scheme to vest the distribution and retail supply of electricity business of the [Utility/ Department name] into a new SPV to be incorporated by [Utility/ Department name] on the Effective Date.
- 2.2.2. Post completion of transaction and notification of the Transfer Scheme, the Successful Bidder will acquire [Refer Guidance Note #1] of the ordinary share capital of the [SPV] on the Effective Date and [Bid Process Authority/ other agency name] will continue to own [Refer Guidance Note #1] of the ordinary share capital of the [SPV].
- 2.2.3. In case of Successful Bidder being a Bidding Company, the Successful Bidder shall be required to directly hold shares of the [SPV]. However, in case of Successful Bidder being a Consortium, it shall be required to incorporate a Consortium SPV, with equity holding in the same proportion among the Members as committed to in the Consortium Agreement, which shall then hold shares of the [SPV].
- 2.2.4. Provisions relating to the proposed relationship between [Bid Process Authority/ other agency name] and Successful Bidder are set out in the Share Acquisition Agreement and the Shareholders' Agreement.
- 2.2.5. In exercise of the powers conferred to the Government of [State/ UT name] under section [108/109] of the Act, the Government of [State/ UT name] shall notify policy involving public interest to facilitate adoption of key aspects of the transaction in ARR/ tariff determination by the [SERC].

#### 2.2.6. Right to Use

- (a) The Distribution Company shall be entitled with the right to use the land of [Utility/ Department name] in its License Area to perform its obligations as a Distribution Licensee. The [Utility/ Department name] shall, however, continue to be the lawful owner of such assets.
- (b) In lieu of the right to use of land of [Utility/Department name], the Deemed Licensee shall remit monthly charges of Indian Rupees One (INR 1.00).
- (c) Right to use on [Utility/ Department name]'s land shall be coterminous with the distribution license of the [SPV] and shall cease to exist on expiry, revocation or cancellation of same. The land shall be used only for retail and supply business of the [SPV]. Any other usage of such land shall not be allowed.

### **2.2.7. Power Procurement**

- (a) *{Insert in case the PPAs are transferred on the Effective Date; Refer Guidance Note #2}* The existing PPAs of the [Utility/ Department name] as on the Effective Date shall be transferred to the Distribution Company from the Effective Date.  
  
*{Insert in case the PPAs are being transferred after a transition period; Refer Guidance Note #2}* The existing PPAs of the [Utility/ Department name] as on the Effective Date shall be transferred to the Distribution Company at the end of [.] Financial Year of operations of the Distribution Company.
- (b) *{Insert in case the PPAs are being transferred after a transition period; Refer Guidance Note #2}* Till the time existing PPAs are transferred to the Distribution Company, the arrangement between the [Utility/ Department name] and the Distribution Company for bulk supply of electricity will be governed by Bulk Supply Agreement.
- (c) *{Insert in case the PPAs are being transferred after a transition period; Refer Guidance Note #2}* In case [Utility/ Department name] is unable to make available any quantum of power requisitioned by the Distribution Company, such incremental quantum may be procured directly by the Distribution Company as per applicable laws and regulations. Further, the Distribution Company, with due approval of the SERC, may procure power from alternate sources provided that the cost of such power is lower than the variable charge of power being sourced and provided to it under the Bulk Supply Agreement.
- (d) *{Insert in case the PPAs are being transferred after a transition period; Refer Guidance Note #2}* For the period of applicability of the Bulk Supply Agreement signed between [Utility/ Department name] and Distribution Company, the Bulk Supply Tariff applicable for sale of power by [Utility/ Department name] to the Distribution Company shall be determined based on paying capacity of the Distribution Company and not on the basis of the cost of power purchase by the [Utility/ Department name].

### **2.2.8. Existing Employees**

- (a) All existing employees of [Utility/ Department name] as on the Effective Date shall be transferred to the Distribution Company through the Transfer Scheme.
- (b) The terms and conditions of employment of these employees after the transfer to the Distribution Company shall not be made inferior to their existing service conditions in any manner. The Distribution Company shall have the operational

flexibility to design the organization structure to ensure efficiency in operations and staff deployment.

- (c) *{Insert in case there are no trusts for managing terminal liabilities}* Currently, no trust exists for managing the terminal liabilities of the employees. Separate trust will be incorporated by the Distribution Company for managing funds against pension, gratuity, provident fund etc.

*{Insert in case there are established trusts for managing terminal liabilities}* Currently, [Name of Trusts] are managing funds against pension, gratuity and provident fund respectively.

- (d) The [Utility/ Department name] shall continue to pay terminal liabilities related to retired employees of the [Utility/ Department name].
- (e) From the Effective Date, the Distribution Company shall periodically remit contribution to the respective trust(s) for onward disbursement to the beneficiaries covered under such trust(s). The unfunded terminal liabilities as on Effective Date shall remain the responsibility of and shall be paid by the Government of [State/ UT name].
- (f) Actual cash outgo incurred by the Distribution Company in relation to servicing of terminal liabilities of employees of the [Utility/ Department name] will be allowed as a pass through in ARR/ tariff determination process as per Government's Policy Directions.

#### **2.2.9. Incentive on collection of Past Arrears**

- (a) The Distribution Company shall be provided an incentive of ten percent (10%) on recovery of Past Arrears from live consumers and twenty percent (20%) on recovery of Past Arrears from permanently disconnected consumers. Such incentive would be on the amount of Past Arrears collected from consumers, net of all taxes and duties recovered from Consumers. It is clarified that the collection from current live consumers may first be appropriated towards current bills and then towards Past Arrears.
- (b) In this regard, the Distribution Company is expected to keep a separate records/ account and information regarding Past Arrears and their collection in each consumers' ledger.
- (c) This incentive will be allowed to be retained by the Distribution Company in full and shall be over and above the return on equity allowed by [SERC] from time to time. As per the Government Policy Directions, the Distribution Company will be allowed to retain the incentives realized against such arrear collection and the same shall not be adjusted by in the trueing up of the ARR or for adjustment in the ARR in future years.
- (d) The past arrear recovery after retaining applicable incentives of the Distribution Company shall be transferred to the [Utility/ Department name] on a monthly basis.

#### **2.2.10. Treatment of Past Period True-up**

- (a) Treatment of true-up of past period i.e. for period prior to taking-over or Effective Date of the Distribution Company, if any, shall be done in a manner that it will not cause any financial gain or losses to the Distribution Company.

### 2.2.11. Opening Balance Sheet

- (a) The provisional opening balance sheet of the Distribution Company as provided in the Transfer Scheme is provided in Annexure 7.3.2.
- (b) Within six (6) months of date of transfer, the account balances shall be updated to reflect the actual value as on Effective Date as per the principles outlined in the provisional Transfer Scheme.

### 2.2.12. Bid Parameter/ Commitment from Bidders

- (a) The equity value for the entire one hundred percent (100%) of shares of the Distribution Company as per the provisional opening balance sheet is set at Indian Rupees [.] (INR [.]00).
- (b) *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* The reserve equity value of [Refer Guidance Note #1] of shares of the [SPV] is Indian Rupees [.] (INR [.]00). As part of their financial proposal, Bidders have to quote above this value for acquiring [Refer Guidance Note #1] shares of the [SPV].

*{Insert in case AT&C Loss commitment is the bid parameter; Refer Guidance Note #3}* The Successful Bidder shall purchase [Refer Guidance Note #1] of the fully paid up equity shares of the [SPV] at the face value i.e. at (INR [.]00).

- (c) The amount to be paid for acquisitions of equity share shall be adjusted as per the provisions of the Share Acquisition Agreement.
- (d) *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* The following AT&C loss trajectory shall be considered for ARR & Tariffs determination for the first [five (5)] Financial Years of operation of the Distribution Company as per the provisions of the Government Policy Directions:

	Y1	Y2	Y3	Y4	Y5
<b>AT&amp;C loss</b>	[.]	[.]	[.]	[.]	[.]

*{Insert in case AT&C Loss commitment is the bid parameter; Refer Guidance Note #3}* As part of their Financial Proposal, Bidders are required to quote AT&C losses that they commit to achieve in each of the first [five (5)] Financial Years of operations.

- (e) During the first [five (5)] Financial Years of operation of the [SPV], gains from over-achievement of AT&C loss trajectory shall be shared in the ratio of two third (2/3<sup>rd</sup>) and one third (1/3<sup>rd</sup>) towards the [SPV] and consumers respectively. Any losses due to underachievement of AT&C loss trajectory shall be borne by the [SPV].

### 2.2.13. Equity Lock-in

- (a) Successful Bidder is required to invest and own [Refer Guidance Note #1] equity shares in the [SPV].
- (b) The Successful Bidder shall not change its equity shareholding in the Distribution Company, during the first ten (10) years from the Effective Date, without the explicit and prior written approval of Bid Process Authority.

- (c) In case of Successful Bidder having taken recourse to a Technically Evaluated Entity/ Financially Evaluated Entity to meet the Qualification Requirement as per the provisions of Clause 5.4, the Successful Bidder shall be required to continue to be an Affiliate with such entity for at least ten (10) years from the Effective Date;
- (d) Successful Bidder cannot, in any way, change the legal standing of the Distribution Company for at least ten (10) years from the Effective Date by way of any merger/ acquisition/ sale/ divestment/ demerger, unless duly approved by the Bid Process Authority.

## 2.3. Brief Description of Bid Process

- 2.3.1. Bid Process Authority has adopted a single stage Bid Process for declaration/ selection of the Successful Bidder.
- 2.3.2. Each Bidder is required to submit a single Bid, consisting of two (2) envelopes: (a) the Technical Proposal and (b) the Financial Proposal.
- 2.3.3. The evaluation of Bids shall be carried out in two (2) sub-stages:
  - (a) The first sub-stage will involve qualification of Bidders based on the evaluation of their Technical Proposals to determine compliance with the Eligibility Criteria and Qualification Requirements in accordance with Clause 3.1 and Clause 3.2 respectively. Only those Bidders who are found to meet the Eligibility Criteria and the Qualification Requirements shall be qualified for the next sub-stage.
  - (b) The second sub-stage shall involve evaluation of the Financial Proposals in accordance with Clause 6.3 and identification of Successful Bidder in accordance with Clause 6.4.
- 2.3.4. Bids must be valid for a period that is not less than one hundred and eighty (180) days from Bid Due Date.
- 2.3.5. Bidders shall be required to provide Bid Security along with their Bids in accordance with Clause 4.8 of this RFP. A Bid shall be summarily rejected if it is not accompanied by Bid Security.
- 2.3.6. Bidders may visit [Utility/ Department name] offices and carry out, at their own cost, such studies as may be required to submit their respective Bids.
- 2.3.7. All Bids are required to be prepared and submitted in accordance with the terms of this RFP on or before Bid Due Date.
- 2.3.8. Any queries or requests for additional information relating to this RFP shall be submitted to Bid Process Authority in accordance with Clause 4.3.1
- 2.3.9. Bid Process Authority shall endeavour to adhere to the following Bid Schedule:

Sl.	Event	Date/Location
1.	Publication of Notice to Bidders	T <sub>0</sub>
2.	Start Date of Sale of RFP	T <sub>0</sub>
3.	Last Date of Submission of Queries/ Information Required by Bidders	T <sub>0</sub> + 2 weeks
4.	Pre-Bid Meeting/ Investor Meet	T <sub>0</sub> + 3 weeks
5.	Issue of Clarifications, Addendum/ Revised RFP	T <sub>0</sub> + 4 weeks

<b>Sl.</b>	<b>Event</b>	<b>Date/Location</b>
6.	Last Date of sale of RFP Documents	T <sub>0</sub> + 7 weeks
7.	Bid Due Date	T <sub>0</sub> + 8 weeks
8.	Opening of Technical Proposals	To be communicated separately to Bidder(s) as per RFP provisions.
9.	Opening of Financial Proposals	
10.	Issuance of LOI	

2.3.10. All communications related to Bid including submission of Bid shall be addressed to the following:

[Name]

[Designation]

[Address]

[Telephone No:]

[Email:]

# 3. Eligibility Criteria and Qualification Requirements

## 3.1. Eligibility of Bidders

### 3.1.1. Nature of Bidder

- (a) A Bidder shall be a Company registered under the Companies Act or an equivalent law outside India, acting in its individual capacity or as a Consortium. The term Bidder used in this RFP shall apply to both a single entity as well as a Consortium.
- (b) If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
  - (i) The number of Members in such Consortium, including the Lead Member, shall not exceed two (2).
  - (ii) Bid submitted by the Consortium shall contain the required information for each Member.
  - (iii) The Consortium shall nominate one of the Members as the Lead Member. Such nomination shall be supported by a power of attorney from each Member of the Consortium in favour of the Lead Member and shall be in the Format 7.1.5. The Lead Member shall have the authority to represent and bind all Members during Bid Process.
  - (iv) The Consortium is required to submit a binding and enforceable Consortium Agreement, in the Format 7.1.4, and the Members shall not be permitted to amend or terminate the agreement, at any time during the validity of Bid without the prior consent of Bid Process Authority.

**3.1.2. Conflict of Interest:** A Bidder shall not have a conflict of interest (Conflict of Interest). Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be considered to have a Conflict of Interest if Bidder:

- (a) is an Affiliate of any of the other Bidders;
- (b) receives or has received any direct or indirect subsidy, grant, loan, subordinated debt or other funded or non-funded financial assistance from any of the other Bidders;
- (c) has direct or indirect shareholding in any other Bidder;
- (d) has a relationship with any of the other Bidders, directly or through common third parties, that puts them in a position to have access to information that may influence Bid of one or more of such Bidders, or influence the decisions of Bid Process Authority regarding Bid Process;
- (e) submits more than one (1) Bid either individually or through an Affiliate. This shall result in the disqualification of all such Bids submitted by Bidder and/ or its Affiliates; or

- (f) has participated directly or through an Affiliate as a consultant or advisor in the preparation of this RFP.

### 3.1.3. Fraud and Corrupt Practices

- (a) Bidders and their respective officers, employees, agents and advisors are required to observe the highest standards of ethics during Bid Process. Notwithstanding anything to the contrary contained in this RFP, Bid Process Authority may reject a Bid without being liable in any manner whatsoever to Bidder, if it determines that a Bidder has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice in or affecting Bid Process.
- (b) Without prejudice to the rights of Bid Process Authority under Clause 3.1.3 (a) above, in the event that a Bidder is found to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during Bid Process, such Bidder shall not be eligible to participate in any tender or request for qualification issued by Bid Process Authority for 5 (five) years with immediate effect.
- (c) For the purposes of this Clause 3.1.3, the following terms shall have the meanings given to them below:
  - (i) corrupt practice means:
    - (A) 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 the avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of Bid Process Authority who is or has been associated in any manner, directly or indirectly, with the Bid Process or has dealt with matters relating to this process or arising from it, before or after its execution, at any time prior to the expiry of 1 (one) year from the date that such official resigns or retires from or otherwise ceases to be in the service of Bid Process Authority, shall be deemed to constitute influencing the actions of a Person connected with the Bid Process); or
    - (B) appointing or engaging in any manner whatsoever, whether during or after the Bid Process or after the execution of RFP Documents, as the case may be, any Person, for any matter relating to the Bid Process, who at any time has been or is a legal, financial or technical advisor of Bid Process Authority for this process;
  - (ii) fraudulent practice means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or any other benefit or to avoid an obligation;
  - (iii) coercive practice means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or the property of the Person to influence improperly the actions of a Person;
  - (iv) undesirable practice means: (A) establishing contact with any Person connected or employed or engaged by Bid Process Authority with the objective of canvassing, lobbying or in any manner influencing or attempting



to influence Bid Process; or (B) having a Conflict of Interest (as defined in Clause 3.1.2); and

- (v) restrictive practice means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating full and fair competition in Bid Process.

#### 3.1.4. Other Eligibility Criteria

- (a) If the Bidder (or any Member in case of a Consortium) or their Parent/ Affiliate has been prosecuted in an insolvency or bankruptcy case in last ten (10) years, then such Bidder shall not be eligible to submit a Bid.
- (b) If a Bidder, including any Member or an Affiliate whose technical/ financial capability is being relied upon to qualify in this RFP, has been barred by the Government of India (GoI), any state government, or any of its instrumentalities from participating in any project or being awarded any contract in any of the past five (5) years preceding Bid Due Date, then such Bidder shall not be eligible to submit a Bid.
- (c) If Bidder (or any Member in case of a Consortium) is party to any litigation which, in Bid Process Authority's opinion, affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations as a licensee, its Bid shall not be accepted for evaluation by Bid Process Authority. In the event Bid Process Authority discovers about the litigation aspect of Bidder post submission of Bid, Bid Process Authority shall not evaluate the Bid submitted by such Bidder any further and such Bidder shall be considered ineligible for evaluation;

3.1.5. Bidders shall provide such evidence of their continued eligibility as Bid Process Authority may request at any time during or after Bid Process.

3.1.6. If a Bidder is a Consortium, then the term "Bidder" as used in Clause 3.1.2, Clause 3.1.3 and Clause 3.1.4 shall include each Member of such Consortium, and the term "Affiliate" as used in Clause 3.1.2 and Clause 3.1.4 shall include Affiliates of each Member of the Consortium.

## 3.2. Qualification Requirements

3.2.1. Bidders shall satisfy the following minimum technical qualification requirements and financial qualification requirements to qualify for evaluation of Financial Proposal:

Technical Qualification Requirements	Financial Qualification Requirements
<p>(i) Bidder (or Lead Member in case of a Bidding Consortium) is a power Distribution Licensee or Distribution Franchisee serving at least five lakhs (5,00,000) consumers in its designated supply area, either on its own or through an Affiliate or Parent.</p> <p>(ii) For experience of operating as a power Distribution Licensee, Bidder must demonstrate that it meets the Technical Qualification Requirements by submission of a copy of their distribution license (in case of the licensee operating in India or in case of a foreign</p>	<p>(i) Net Worth: Bidder's average Net Worth during the last three (3) Financial Years immediately preceding Bid Due Date (as per the annual audited financial statements) shall be at least Indian Rupees [Two Thousand Crore (INR 2,000,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p>

Technical Qualification Requirements	Financial Qualification Requirements
<p>Distribution Licensee, through a copy of the distribution license or any relevant and legally approved and authorized documentary evidence, to the satisfaction of Bid Process Authority), in support of having a valid Distribution License .</p> <p>(iii) Distribution Franchisees having a contract period of fifteen (15) years or more and that own, construct and operate sub-transmission and distribution network in addition to managing billing and collections related activities shall only be qualified. Distribution Franchisees shall be required to submit a copy of their franchisee agreement and a satisfactory performance certificate from the concerned distribution licensee.</p> <p>(iv) In case of international Bidders from countries where retail supply competition has been introduced, experience of Licensees undertaking wheeling/ network operations shall only be considered.</p> <p>(v) In all of the above, the Bidder must demonstrate his qualification as on a date that is not more than fifteen (15) days prior to Bid Due Date.</p>	<p>(ii) Cash Accruals: Bidder's average Cash Accruals of last three (3) Financial Years immediately preceding Bid Due Date, shall be at least Indian Rupees [Four Hundred Crore (INR 400,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p>
<b>OR</b>	
<p>(i) Bidder (or Lead Member in case of a Bidding Consortium) has developed, financed, commissioned and owns and operates power transmission projects of at least Indian Rupees [Five Thousand Crore (INR 5,000,00,00,000.00)].</p> <p>Such projects may include those developed directly or indirectly by the Bidder (or Lead Member in case of a Bidding Consortium) and subsequently transferred to an InvIT, provided the Bidder continues to be the Project Manager (as defined in SEBI InvIT Regulations, 2014) for these projects as on fifteen (15) days prior Bid Due Date.</p> <p>(ii) Bidder must demonstrate that it meets the Technical Qualification Requirements by submission of attested true copies of relevant orders of regulatory commission(s) or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, relevant order/</p>	<p>(i) Net Worth: Bidder's average Net Worth during the last three (3) Financial Years immediately preceding Bid Due Date (as per the annual audited financial statements) shall be at least Indian Rupees [Four Thousand Crore (INR 4,000,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p> <p>(ii) Cash Accruals: Bidder's average Cash Accruals of last three (3) Financial Years immediately preceding Bid Due Date, shall be at least Indian Rupees [Eight Hundred Crore (INR 800,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p>

Technical Qualification Requirements	Financial Qualification Requirements
documents as a proof of total capital investment including line length and substation capacity, environmental clearances post commissioning, project implementation agreement, project management agreement etc.), to the satisfaction of Bid Process Authority, that demonstrates that the Bidder is meeting the Technical Qualification Requirements, as on a date that is not more than fifteen (15) days prior to Bid Due Date.	
<b>OR</b>	
<p>(i) Bidder (or Lead Member in case of a Bidding Consortium) owns and operates commissioned power generation projects of cumulative operational generation capacity of at least [1 GW (1000 MW)], either on its own or through an Affiliate or Parent.</p> <p>(ii) Bidder must demonstrate that it meets the Technical Qualification Requirements by submission of attested true copies of relevant orders of regulatory commission(s) or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, environmental clearances post commissioning etc.), to the satisfaction of Bid Process Authority, that demonstrates the operational generation capacity and ownership in the power generation project, as on a date that is not more than fifteen (15) days prior to Bid Due Date.</p>	<p>(i) Net Worth: Bidder's average Net Worth during the last three (3) Financial Years immediately preceding Bid Due Date (as per the annual audited financial statements) shall be at least Indian Rupees [Four Thousand Crore (INR 4,000,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p> <p>(ii) Cash Accruals: Bidder's average Cash Accruals of last three (3) Financial Years immediately preceding Bid Due Date, shall be at least Indian Rupees [Eight Hundred Crore (INR 800,00,00,000.00)] or equivalent US\$ (calculated as per the provisions in Clause 3.2.6).</p>

3.2.2. Net worth shall mean (Paid-up Equity Share Capital + Reserves) less (Revaluation reserves + Intangible Assets + miscellaneous expenditure not written off & carry forward losses + reserves not available for distribution to equity shareholders).

3.2.3. Net Yearly Cash Accruals shall mean Profit after Tax + Depreciation & Amortization.

3.2.4. If Bidder is a Consortium, then the Networth and Cash Accruals, as required in Clause 3.2.1 above shall be met jointly by all the Members of the Consortium. However, the Lead Member shall necessarily meet atleast 26% of the Financial Qualification Requirements. Further, no Member in the Consortium shall have negative Networth and Cash Accruals.

3.2.5. The calculation of Net Worth and Cash Accruals must be based on the unconsolidated audited annual accounts of Bidder/ each Member of a Bidding Consortium for the preceding Financial Years. However, audited consolidated annual accounts of Bidder may be used for the purpose of financial criteria, provided Bidder has more than fifty percent (50%) equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the qualification documents. Bidders shall furnish documentary evidence,

duly certified by Managing Director/ Chief Executive Officer, being a full time director on the Board of the company/ Manager of the company and the Statutory Auditor in support of their financial capability as herein defined.

- 3.2.6. If Bidders provide financial data in currency other than INR, the Net Worth equivalent in Indian Rupees shall be calculated using the bills selling exchange rate (card rate) USD/INR published by the State Bank of India for that currency on the date of closing of the accounts for the relevant Financial Year as certified by the banker.
- 3.2.7. Bidder may seek qualification on the basis of technical and financial capability of its Parent and/ or its Affiliate(s) for the purpose of meeting the Qualification Requirements. Authorization for use of such technical or financial capability shall have to be provided from its Parent and/ or Affiliate(s) as per Format 7.1.8. The technical and financial capability of a particular company, including its Parents and/ or Affiliates, shall not be used by more than one Bidder/ Member of a Bidding Consortium/ Bidding Company.
- 3.2.8. The determination of the relationship of Parent or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be on a date sixty (60) days prior to Bid Due Date. Documentary evidence to establish such relationship shall be furnished by Bidder along with its Bid as part of Envelope-1.
- 3.2.9. If the Financially Evaluated Entity is an entity other than the Bidding Company or a Member in a Bidding Consortium, the Bidding Company or Member relying on such Financially Evaluated Entity shall have to submit a legally binding undertaking supported by a board resolution along with its Technical Proposal (viz., Envelope-1) from the Financially Evaluated Entity, that all the equity investment obligations of the Bidding Company or the Member of the Consortium shall be deemed to be equity investment obligations of the Financially Evaluated Entity, and in the event of any default the same shall be met by such evaluated entity. Moreover, the Bidding Company or the Consortium Member shall have to provide information and documents relating to its relationship with such Financially Evaluated Entity, including details about the equity shareholding between them as per Format 7.1.6.
- 3.2.10. Notwithstanding anything stated above, Bid Process Authority reserves the right to verify the authenticity of the documents submitted by Bidder for meeting the Qualification Requirements and may request for any additional information and documents. Bid Process Authority reserves the right, at its sole discretion, to contact Bidder's bank and the Appropriate Commission or authority (for entities incorporated outside of India) and verify Bidder's information and qualification documents for the purpose of it meeting the Qualification Requirements.
- 3.2.11. The Qualified Bidder shall be required to continue to maintain compliance with the Qualification Requirements throughout Bid Process and until the Effective Date. Where the Technically Evaluated and/ or the Financially Evaluated Entity is not the Bidding Company or a Member in a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Technically Evaluated and/ or Financially Evaluated Entity till the execution of RFP Documents. Failure to comply with these provisions shall make Bid liable for rejection at any stage of Bid Process. Further, in case of Successful Bidder having taken recourse to a Technically Evaluated Entity/ Financially Evaluated Entity to meet the Qualification Requirement as per the provisions of Clause 5.4, the Successful Bidder shall be required to continue to be an Affiliate of such entity for at least ten (10) years from the Effective Date.

## 4. General Instructions to Bidders

### 4.1. Acknowledgement by Bidder

4.1.1. It shall be deemed that by submitting Bid, Bidder has:

- (a) made a complete and careful examination of RFP (including all instructions, forms, terms and specifications) and any other information provided by Bid Process Authority under this RFP and Bidder acknowledges that its submission of a Bid that is not substantially responsive to RFP in every respect shall be at Bidder's risk and may result in rejection of Bid;
- (b) received all relevant information requested from Bid Process Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in RFP or furnished by or on behalf of Bid Process Authority;
- (d) satisfied itself about all things, matters and information, necessary and required to submit a Bid;
- (e) familiarized itself with the procedures and time frames required to obtain all Consents, Clearances and Permits to operate as a distribution licensee; and
- (f) agreed to be bound by the undertakings provided by it under and in terms of this RFP.

4.1.2. Bid Process Authority 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 relating to RFP or Bid Process.

### 4.2. Rights of Bid Process Authority

4.2.1. Bid Process Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend the Bid Process and/ or amend and/ or supplement the Bid Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information at any stage of the Bid Process;
- (c) retain any information, documents and/ or evidence submitted to Bid Process Authority by and/ or on behalf of any Bidder;
- (d) independently verify, disqualify, reject and/ or accept any and all documents, information and/ or evidence submitted by or on behalf of any Bidder;
- (e) reject any Bid, if:
  - (i) at any time, a material misrepresentation is made or uncovered; or

- (ii) Bidder in question does not provide, within the time specified by Bid Process Authority, the supplemental information sought by Bid Process Authority for evaluation of Bid; or
  - (f) accept or reject any or all Bids, annul Bid Process and reject all Bids, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons whatsoever to any Person, including the Bidders.
- 4.2.2. If Bid Process Authority annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids.
- 4.2.3. If Bid Process Authority exercises its right under this RFP to reject a Bid and consequently, Successful Bidder gets disqualified or rejected, then Bid Process Authority reserves the right to:
  - (a) select the Second Successful Bidder as the Successful Bidder; or
  - (b) take any such measure as may be deemed fit in the sole discretion of Bid Process Authority, including inviting fresh Bids from the qualified Bidders or annulling the entire Bid Process; or
  - (c) take any such measure as it may deem fit.
- 4.2.4. If it is found during Bid Process, at any time before signing of RFP Documents or after its execution and while it is in force, that one or more of the Eligibility Criteria and Qualification Requirement have not been met by a Bidder or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Bidder shall be disqualified. If such Bidder has been declared as the Successful Bidder and has already been issued the LOI or has executed the RFP Documents, the LOI or the RFP Documents, as the case may be, shall be liable to be terminated, by a notice in writing from Bid Process Authority to such Successful Bidder.
- 4.2.5. Upon any disqualification, cancellation or termination in accordance with this Clause 4.2, Bid Process Authority shall not be liable in any manner whatsoever to the Bidder. Additionally, Bid Process Authority shall have the right to forfeit and appropriate the Bid Security as a mutually agreed genuine pre-estimate of the loss suffered by Bid Process Authority for, amongst others, Bid Process Authority's time, cost and efforts in conducting Bid Process. Such forfeiture shall be without prejudice to any other right or remedy that Bid Process Authority may have under RFP, RFP Documents or applicable laws.

### 4.3. Clarifications and Pre-bid Meeting

- 4.3.1. Clarifications and Queries
  - (a) If a Bidder requires any clarification on or has any query in relation to RFP, it shall submit such query or request for clarification to Bid Process Authority by e-mail to the e-mail address mentioned in Clause 2.3.10 or by speed post or courier to the address mentioned in Clause 2.3.10 on or before the time and date specified in Bid Schedule. In case of any e-mail queries or clarifications, the subject of the e-mail must clearly bear the following subject: **"Selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]: Clarifications or Request for Amendments"**. For any such clarifications or amendments, Bidder shall adhere to the Format 7.3.1 of RFP.

- (b) Bid Process Authority shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. However, Bid Process Authority reserves the right to not respond to any query or provide any clarification, in its sole discretion. Bid Process Authority's responses (including an explanation of the query but not identification of its source) shall be made available to all Bidders.
- (c) Bid Process Authority may, on its own initiative, if deemed necessary, issue clarifications to all Bidders. All clarifications and interpretations issued by Bid Process Authority shall be deemed to be part of this RFP. Should Bid Process Authority deem it necessary to amend RFP as a result of a request for clarification, it shall do so following the procedure under Clause 4.4.
- (d) Verbal clarifications and information given by Bid Process Authority or any other Person for or on its behalf shall not in any way or manner be binding on Bid Process Authority.

#### 4.3.2. Pre-Bid Meeting

- (a) All interested Companies shall be invited to attend the Pre-Bid Meeting on the date, and time mentioned in Bid Schedule at the address mentioned in Clause 2.3.10. The purpose of the Pre-Bid Meeting shall be to clarify issues and answer questions on any matter relating to RFP and Bid Process.
- (b) All interested Companies may nominate up to three (3) authorized representatives to participate in the Pre-Bid Meeting, by confirming the participation of its authorized representatives at the Pre-Bid Meeting at least three (3) days prior to the date of the Pre-Bid Meeting. Such confirmation shall be sent by e-mail at the e-mail address mentioned in Clause 2.3.10.
- (c) During the course of the Pre-Bid Meeting, all interested Companies having purchased the RFP shall be free to seek clarifications and make suggestions to Bid Process Authority.
- (d) Non-attendance at the Pre-Bid Meeting shall not be a cause for disqualification of an interested Company from participating in Bid Process.

## 4.4. Amendment of RFP

- 4.4.1. Up until Bid Due Date, Bid Process Authority may, for any reason, whether on its own initiative or in response to a query raised or clarifications requested by a Bidder in writing, amend the RFP by issuing an Addendum or an amended RFP.
- 4.4.2. All Addenda/ amendments shall be notified in writing through a letter or fax or e-mail to all Bidders who have purchased the RFP.
- 4.4.3. Bidders are required to read RFP together with any Addenda/ amendments that may be issued in accordance with this Clause 4.4.
- 4.4.4. Each Addendum/ amendment shall be binding on Bidders whether or not Bidders convey their acceptance of the Addendum/ amendment.
- 4.4.5. Any oral statements made by Bid Process Authority or its advisors regarding Bid Process, RFP or on any other matter, shall not be considered as amending RFP.

- 4.4.6. Bid Process Authority will assume that the information contained in the Addendum/ amendments shall have been taken into account by Bidder in its Bid. Bid Process Authority assumes no responsibility for the failure of a Bidder to submit its Bid in accordance with the terms of the Addendum/ amendments or for any consequential losses suffered by Bidder.

## 4.5. Confidential Information and Proprietary Data

- 4.5.1. Proprietary Data:** All documents and other information provided by Bid Process Authority and/ or submitted by a Bidder to Bid Process Authority shall remain or become the property of Bid Process Authority, as the case may be. Bidders are required to treat all information provided by Bid Process Authority in RFP as strictly confidential and not to use them for any purpose other than for preparation and submission of their Bids.

- 4.5.2. Confidentiality Obligations of Bid Process Authority:** Bid Process Authority shall treat all information, submitted as part of a Bid as confidential and shall require all those who have access to such material to treat it in confidence. Bid Process Authority may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with Bid Process or is a retained professional advisor advising Bid Process Authority or Bidder on matters arising out of or in connection with Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/ or Bid Process Authority or as may be required by law (including under the Right to Information Act, 2005 or amendments thereof); or
- (e) in connection with any legal process.

## 4.6. Governing Law and Jurisdiction

- 4.6.1. **Governing Law:** Bid Process, this RFP and Bids shall be governed by, and construed in accordance with, the laws of India.

- 4.6.2. **Exclusive Jurisdiction:** The competent courts at [Name of the place] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with Bid Process, this RFP and Bids.

## 4.7. Validity of Bids

- 4.7.1. Bids shall remain valid for a period of one hundred and eighty (180) days from Bid Due Date. A Bid valid for a shorter period shall be rejected by Bid Process Authority as being non-responsive.

- 4.7.2. In exceptional circumstances, prior to the expiry of Bid validity period, Bid Process Authority may request Bidders to extend Bid validity period. The request and response, in this regard, shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by Bid Process Authority, Bid Process Authority shall not be entitled to invoke Bid Security. A Bidder, accepting Bid Process Authority's request for validity extension shall



not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of Bid Security as requested by Bid Process Authority within seven (7) working days of such request, failing which Bid shall not be considered as valid.

## 4.8. Bid Security

- 4.8.1. Bidder shall furnish as part of its Bid, a Bid Security for an amount equivalent to [Indian Rupees Thirty Crores (INR 30,00,00,000.00)].
- 4.8.2. Bid Security shall remain valid for a period of thirty (30) days beyond Bid validity period as specified in Clause 4.7.
- 4.8.3. Bidder shall provide Bid Security in the form of an unconditional, irrevocable, and on-demand bank guarantee issued by any of the Banks listed in Annexure 7.3.4. Bid Security shall be issued in favour of the "[Name of Bid Process Authority]", payable at [Name of Place] and in the format set out in Annexure 7.3.3.
- 4.8.4. If any Bid is not accompanied by a Bid Security, then such Bid shall be rejected by Bid Process Authority as non-responsive. Unless forfeited in accordance with Clause 4.8.6 below, Bid Security of the unsuccessful Bidders shall be returned by Bid Process Authority no later than one hundred and eighty (180) days from the date of opening of Financial Proposals or on occurrence of the annulment/ cancellation of Bid Process by Bid Process Authority.
- 4.8.5. Bid Security of Successful Bidder shall be returned upon Successful Bidder furnishing the Bid Processing Fee in accordance with Clause 4.9.
- 4.8.6. Bid Security shall be forfeited and appropriated by Bid Process Authority, without prejudice to any other right or remedy that may be available to Bid Process Authority hereunder or otherwise, under the following conditions:
  - (a) if a Bidder engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as specified in Clause 3.1.3;
  - (b) if, after Bid Due Date, a Bidder withdraws its Bid during Bid validity period; or
  - (c) if a Bidder is selected as Successful Bidder and it fails, within the specified time limit, to:
    - (i) sign and return, as acknowledgement, the duplicate copy of the LOI;
    - (ii) furnish the Bid Processing Fee, in accordance with Clause 4.9;
    - (iii) fulfil any other condition precedent to the execution of RFP Documents; or
    - (iv) create a Consortium SPV (in case of a Bidding Consortium, in accordance with the provisions of Clause 2.2.3, leading to the cancellation of the Letter of Intent.

## 4.9. Bid Processing Fee

- 4.9.1. Within thirty (30) days from the date of issue of LOI, Successful Bidder shall pay a Bid Processing Fee of [Refer Guidance Note #4] to an entity as notified by Bid Process Authority.

#### 4.10. Cost of RFP

- 4.10.1. The cost of this RFP document is [Indian Rupees Five Lakhs (INR 5,00,00,000.00)], which shall be non-refundable. This amount is excluding applicable GST charges and other applicable statutory levies and shall be payable as per actual rates prevailing at the time of procurement of RFP.
- 4.10.2. All those interested in purchasing RFP may respond in writing to the Bid Process Authority with the total fee as indicated in Clause 4.10.1 above, in the form of a demand draft/ banker's cheque/ pay order drawn in favour of [Name of Bid Process Authority], payable at [Name of Place]. RFP shall be issued to Bidders on any working day up to the date mentioned in Bid Schedule between 1100 hours (IST) to 1700 hours (IST) by Bid Process Authority on written request and against payment of the above mentioned fee by any Bidder.

# 5. Preparation and Submission of Bids

## 5.1. Number of Bids

- 5.1.1. Each Bidder shall be permitted to submit only one (1) Bid, either individually or as a Member of a Consortium. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Bidder who submits or participates in more than one (1) Bid, either directly or through its affiliates, shall cause all Bids with Bidder's participation to be disqualified.

## 5.2. Language of Bids and Correspondence

- 5.2.1. Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by Bidder and Bid Process Authority shall be in English.
- 5.2.2. Any document furnished by the Bidder may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall take precedence. If any document submitted by a Bidder is in a local language, then the English translation must be certified by an advocate and notarized in India. If any document submitted by a Bidder is in a foreign language, then the English translation must be certified by the embassy/ consulate/ high commission of the relevant foreign country in India or the Ministry of Foreign/ External Affairs or any other relevant ministry empowered to certify such English translations in the foreign country where the project is situated. Supporting materials which are not translated into English or certified/ notarized in accordance with this Clause 5.2.2 may not be considered by Bid Process Authority.

## 5.3. Bid Due Date

- 5.3.1. Bid shall be submitted on or before the date and time specified in Bid Schedule at the address mentioned in Clause 2.3.10.
- 5.3.2. Bid Process Authority may, at its discretion and for any reason, extend Bid Due Date for all Bidders by issuing an Addendum in accordance with Clause 4.4, in which case all rights and obligations of Bid Process Authority and Bidders shall thereafter be subject to Bid Due Date as extended.
- 5.3.3. Bids received by Bid Process Authority after the specified time on Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## 5.4. Technical Proposal

- 5.4.1. The Technical Proposal submitted by a Bidder shall comprise the following:
- (a) Covering Letter as per prescribed Format 7.1.1;

- (b) Original power of attorney issued by the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the authorized person signing Bid, in the form attached hereto as Format 7.1.2;

Additionally, in case of a Bidding Consortium, Bid shall also contain a Power of Attorney in original (as per Format 7.1.5) in favour of the Lead Member issued by other Members of the Consortium.

Provided that in the event the Bidding Company or any Member of a Bidding Consortium, as the case may be, is a foreign entity, it may submit Board resolutions (essentially authorizing the signatory for the responsibilities and in the manner provided in the format of the Power of Attorney) in place of Power of Attorney for the purpose of fulfilling the above requirements;

Provided further that, such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid. In the case of a foreign entity, in the event, any and/ or all of the documents/ resolutions are in any other language other than English, then a duly notarized copy of such translation shall also be required to be submitted.

- (c) Letter of Consent from the Consortium Members as per prescribed Format 7.1.3;
- (d) Consortium Agreement as per prescribed Format 7.1.4;
- (e) Bidder's composition and ownership structure as per prescribed Format 7.1.6;
- (f) Authorization from Affiliate for utilizing the credentials for meeting the technical/financial capability as per Format 7.1.8;
- (g) Relationship between the Affiliate and the Bidding Company or the Member in case of a Bidding Consortium as per Format 7.1.15;
- (h) Details for meeting Qualification Requirement as per the prescribed Formats 7.1.9 and 7.1.10, along with documentary evidence for the same as specified in Clause 3.2;

[Note to Bidders: Separate calculation sheets, detailing the computation of Net worth and Average Net Yearly Cash Accruals, considered for meeting the Financial Qualification Requirements, certified by the statutory Auditors of the Financially Evaluated Entity, shall also need to be submitted along with this format];

- (i) Bidders' Undertaking as per the prescribed Format 7.1.11 and Undertakings from the Financially/ Technically Evaluated Entity or its Parent Company as per Format 7.1.12, if applicable;

Provided further, in case the Bidding Company or Member of a Consortium, (as the case may be) holds more than fifty percent (50%) equity in such Financially Evaluated Entity, whose credentials have been considered for the purpose of meeting the Qualification Requirements as per RFP, undertaking as per Format 7.1.11 shall not be required from the Financially Evaluated Entity;

- (j) Original Board Resolution from the Bidding Company or each Member of the Bidding Consortium as per Format 7.1.13 (A) for providing the Undertaking and for making

investment in the equity of the Distribution Company and the Consortium SPV (if applicable);

- (k) Original Board Resolution of the Financially Evaluated Entity of the Bidding Company or each Member of the Bidding Consortium, if applicable, as per prescribed Format 7.1.13 (B), duly certified by the Company Secretary or the Managing Director undertaking to provide the Undertaking and to invest in the equity of the Distribution Company and the Consortium SPV (if applicable), in the event of failure of the Bidding Company/ Member of the Consortium to do so;

Provided that, such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by a legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

- (l) Disclosure as per Format 7.1.14 regarding participation of any related companies in this Bid Process;
- (m) Bid Security, as per the prescribed Format 7.3.3;
- (n) Following document(s), as applicable, so as to meet the minimum Technical Qualification Requirements as per Clause 3.2.1 and applicable formats, to the satisfaction of Bid Process Authority:

Copy of electricity distribution license or relevant order of the authority/ regulatory commission certifying Bidder or the Lead Member in case of a Bidding Consortium or their Technically Evaluated Entity to be a valid electricity distribution licensee/ or relevant and legally approved and authorized documentary evidence in case of a foreign licensee.

OR

Copy of their franchisee agreement and a satisfactory performance certificate from the concerned distribution licensee.

OR

Attested true copies of relevant orders of regulatory commission or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, relevant order/documents as a proof of total capital investment including line length and substation capacity, environmental clearances post commissioning, project implementation agreement, project management agreement etc.), which demonstrates that Bidder is meeting the Technical Qualification Requirements.

OR

Attested true copies of relevant orders of regulatory commission or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, relevant order/documents as a proof of contracted capacity of the power purchase agreements, environmental clearances post commissioning etc.), which demonstrates the operational generation capacity and ownership in the power generation project;

- (o) Unconsolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditors report, etc., as the case may be, of Bidding Company or each Member of a Consortium or their Financially Evaluated Entity for the last three (3) Financial Years, [viz., FY 20XX-XX, FY 20XX-XX and FY 20XX-XX];
- (p) Initialled RFP Documents including any clarifications/ amendments issued by Bid Process Authority;

## 5.5. Financial Proposal

- 5.5.1. *{Insert in case AT&C loss commitment is the bid parameter; Refer Guidance Note #3}* As part of the Financial Proposal, Bidders shall provide AT&C loss commitment for first [five (5)] Financial Year of operations. AT&C loss commitments shall be up to two (2) decimal places.

*{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* As part of the Financial Proposal, Bidders shall provide quote over and above the value mentioned in Clause 2.2.12 (b) for purchasing [Refer Guidance Note #1] shares in the Distribution Company.

- 5.5.2. The Financial Proposal submitted by a Bidder shall comprise the following:

- (a) Financial Proposal as per the prescribed Format 7.2.1 duly signed by the Authorized Signatory.

## 5.6. Cost and Currency of Bids

- 5.6.1. Bidders shall bear their own costs associated with or relating to the preparation and submission of their Bids, including copying, postage, delivery charges and expenses associated with any presentations which may be required by Bid Process Authority or any other costs incurred in connection with or relating to their Bids, including any costs incurred on conducting any due diligence. All such costs and expenses shall be borne by Bidders and Bid Process Authority and their employees and advisors shall not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of Bid Process.

- 5.6.2. All amounts in the Bid shall be stated in Indian Rupees (INR).

## 5.7. Signing of Bids

- 5.7.1. Each Bid must be printed. All pages of the Bid must be physically signed by the Authorized Signatory of Bidder (and in case of a Consortium, by the Lead Member). If any pages of Bid are not physically signed by Bidder's (and in case of a Consortium, by Lead Member's) Authorized Signatory, then Bid Process Authority may reject such Bid or require the Authorized Signatory of such Bidder (and in case of a Consortium, of the Lead Member) to sign the pages that were not signed at Bid Process Authority's office. A Bid submitted by a Consortium and signed by the Lead Member's Authorized Signatory shall be legally binding on all Members.

## 5.8. Submission of Bids

5.8.1. Bidders shall submit bids in a single closed and sealed cover envelope, containing two (2) envelopes for Technical Proposal and Financial Proposal, each one duly closed and sealed separately. The super script to be mentioned in each of these envelopes is provided below:

Cover Envelope	<p>"Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]"</p> <p>Due for Opening on: .....</p> <p>To,</p> <p>[Name] [Designation] [Address] [Telephone No:] [Email:]</p> <p>"Name of Bidder: ....."</p>
Envelope 1 (Technical Proposal)	<p>"Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]"</p> <p>"Name of Bidder: ....."</p> <p>Envelope 1: Technical Proposal</p>
Envelope 2 (Financial Proposal)	<p>"Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description]"</p> <p>"Name of Bidder: ....."</p> <p>Envelope 2: Financial Proposal</p>

5.8.2. Each of the two (2) inner envelopes shall include one (1) original plus one (1) copy, duly signed by the Authorized Signatory of Bidder. The original Bid shall be clearly marked "ORIGINAL", and all other copies are to be clearly marked "COPY OF BID". In the event of any discrepancy between the original and the accompanying copies, the original shall prevail.

5.8.3. Bid shall either be hand delivered or sent by registered post acknowledgement due; or speed post; or courier; so as to reach to the address mentioned in Clause 2.3.10 by Bid Due Date. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected. Bid Process Authority shall not be responsible for any delays, loss or non-receipt of Bids.

5.8.4. All pages of Bid, except for Bid Security, and any other document executed on non-judicial stamp paper, forming part of Bid and corrections in Bid, if any, must be signed by the Authorized Signatory on behalf of Bidder.

5.8.5. Bid shall contain no alterations, omissions or additions, unless such alterations, omissions or additions are signed by the Authorized Signatory of Bidder/ Lead Member. Any

interlineations, erasures, or overwriting shall be valid only if they are signed by the Authorized Signatory of Bidder/ Lead Member.

- 5.8.6. It may be noted that Envelope-1 (Technical Proposal) shall not contain any information/ document relating to Financial Proposal. If either Envelope-1 contain any such information/ documents, Bid Process Authority shall reject Bid of such Bidder from further evaluations and forfeit its Bid Security.
- 5.8.7. If the envelopes are not sealed and super scribed as instructed in this Clause 5.8, Bid Process Authority assumes no responsibility for the misplacement or premature opening of the contents of Bid and consequent losses, if any, suffered by Bidder.

## **5.9. Substitution/ Withdrawal of Bids**

- 5.9.1. Bidder may substitute or withdraw its Bid after submission at any time prior to the specified time on Bid Due Date. No Bid shall be substituted or withdrawn by Bidder on or after the specified time on Bid Due Date.
- 5.9.2. Subject to Clause 5.9.1 above, Bidder may substitute or withdraw the Bid by submitting a substitution or withdrawal letter/ notice to Bid Process Authority to substitute or withdraw the hard copy of the Bid submitted to Bid Process Authority.
- 5.9.3. The substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 5.8, with the envelopes being additionally marked "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 5.9.4. Any alteration/ modification in Bid or additional information supplied after the specified time on Bid Due Date, unless such additional information has been expressly sought for by Bid Process Authority, shall be disregarded.
- 5.9.5. If Bid Process Authority receives a substitution notice from a Bidder before the specified time on Bid Due Date, then Bidder shall be allowed to substitute its original Bid, and the hard copy of the original Bid shall be returned unopened. Provided that in such an event, Bidder shall be required to submit its substituted Bid prior to the specified time on Bid Due Date.
- 5.9.6. If Bid Process Authority receives a withdrawal notice before the specified time on Bid Due Date, then Bid Process Authority shall return the hard copy of Bid to such Bidder unopened.



# 6. Opening and Evaluation of Bids

## 6.1. Opening of Bids

- 6.1.1. Bid Process Authority shall open only those Bids that are submitted on or before the specified time on Bid Due Date. If any Bid is received after the specified time on Bid Due Date, it shall be rejected and shall be returned unopened to Bidder.
- 6.1.2. The Technical Proposals shall be opened in the presence of maximum of two (2) designated representatives from each of such Bidders who have submitted their Bids and choose to be present at the time and on the date specified in Bid Schedule at the address mentioned in Clause 2.3.10.
- 6.1.3. Bid Process Authority shall prepare a record of the opening of Bids that shall include, as a minimum, the names of Bidders from whom Bids have been received. Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's representative's signature on the record shall not invalidate the contents and effect of the record.
- 6.1.4. Once all the Technical Proposals have been opened, they shall be evaluated for responsiveness and to determine whether Bidders are qualified for opening of the Financial Proposals. The procedure for evaluation of the Technical Proposals is set out in Clause 6.2.
- 6.1.5. Once the Technical Proposals have been evaluated, Bidders meeting the requirements, shall be informed of a date, time and place for opening of their Financial Proposal. The Financial Proposals shall be opened in the presence of the representatives of the qualified Bidders that choose to be present. The procedure for evaluation of the Financial Proposals is set out in Clause 6.3 respectively.
- 6.1.6. The qualification of Bidders shall be entirely at the discretion of Bid Process Authority. Bidders shall be deemed to have understood and agreed that no explanation or justification on any aspect of Bid Process or selection shall be given.
- 6.1.7. Any information contained in a Bid shall not in any manner be construed as binding on Bid Process Authority, its agents, successors or assigns; but shall be binding on Bidder.

## 6.2. Determination of Responsiveness and Evaluation of Technical Proposals

- 6.2.1. Bid Process Authority shall examine the Technical Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Technical Proposals are generally in order. If any Bidder is found to be disqualified in accordance with the terms of RFP or if any Technical Proposal is found to be non-responsive or not meeting the Technical Qualification Requirements or the Financial Qualification Requirements, Bid comprising such Technical Proposal shall be rejected by Bid Process Authority and not included for further consideration. No request for alteration, modification, substitution or withdrawal shall be entertained by Bid Process Authority in respect of such Bid(s).

- 6.2.2. Prior to evaluation of the Technical Proposals, the Technical Proposals shall be reviewed to determine responsiveness to RFP. A Technical Proposal shall be considered responsive only if:
- (a) Bid is received by the specified time on Bid Due Date;
  - (b) the Technical Proposal and all documents specified in Clause 5.4 are received in the prescribed formats;
  - (c) it contains all the information and documents (complete in all respects) as requested in this RFP;
  - (d) it is signed, marked and submitted as stipulated in Clauses 5.8; and
  - (e) it does not contain any condition or qualification.
- 6.2.3. Bid Process Authority shall then evaluate and determine whether Bidders who have submitted responsive Technical Proposals satisfy the Eligibility Criteria and the Qualification Requirements set out at Clause 3.1 and Clause 3.2 respectively.
- 6.2.4. In order to determine whether Bidder satisfies the Eligibility Criteria and the Qualification Requirements, Bid Process Authority will review the documentary evidence of Bidder's eligibility and qualifications submitted by Bidder and any additional information which Bid Process Authority seeks from Bidder.
- 6.2.5. Where any information provided by a Bidder is amounting to a material misrepresentation, Bid Process Authority reserves the right to reject Bid submitted by such Bidder.
- 6.2.6. Upon completion of evaluation of the Technical Proposals, Bidders meeting the Qualification Requirements set out at Clause 3.1 and Clause 3.2, shall be declared as Qualified Bidders. Bid Process Authority will notify the Qualified Bidders of the date and time on which their Financial Proposals shall be opened. The Financial Proposals of those Bidders who do not qualify shall not be opened.
- 6.2.7. If there is only one (1) Qualified Bidder, Bid Process Authority may, at its sole discretion, decide to open this Bidder's Financial Proposal or cancel Bid Process and decide to start a new bidding process without incurring any liability to Bidders.

### **6.3. Evaluation of Financial Proposals**

- 6.3.1. In the presence of representatives of the Qualified Bidders who choose to be present at the opening of the Financial Proposals, Bid Process Authority shall open the Financial Proposal of each Qualified Bidder and announce the quote by such Bidder.
- 6.3.2. Following the opening of the Financial Proposals, Bid Process Authority shall evaluate the Financial Proposals for responsiveness. If any Financial Proposal is found:
- (a) not to be complete in all respects;
  - (b) not duly signed by the Authorized Signatory of Bidder/ Lead Member;
  - (c) not to be in the prescribed format; or
  - (d) *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* to have a quote lower than the value mentioned in Clause 2.2.12 (b).

then such Financial Proposal shall be deemed to be substantially non-responsive.

- 6.3.3. Bid Process Authority shall notify a Qualified Bidder whose Financial Proposal is found to be non-responsive, that such Qualified Bidder's Financial Proposal shall not be considered.
- 6.3.4. Bid Process Authority shall, for each Qualified Bidder that has submitted a responsive Financial Proposal, tabulate the total quote.
- 6.3.5. *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* Bidder with highest financial quote (FH) shall be given the highest financial score i.e. 100 and rest of the Bidders shall be given score as per the formula provided below:

$$FS_N = 100 * (F_N) / (F_H)$$

FS<sub>N</sub> - Financial Score of Nth Bidder

F<sub>H</sub> - Highest financial quote

F<sub>N</sub> - Financial quote of Nth Bidder

*{Insert in case A&C Loss commitment is the bid parameter; Refer Guidance Note #3}* Sum of cumulative AT&C Loss reduction (SCR) for [5 (five)] years will be computed for each bidder. The Bidder with highest sum of cumulative reduction will be given the highest financial score i.e. 100 and rest of the bidders will be given score as per the formula provided below:

$$FS_N = 100 * (ACR_N) / (ACR_H)$$

FS<sub>N</sub> – Financial score of Nth bidder

SCR<sub>H</sub> - Highest sum of cumulative reduction

SCR<sub>N</sub> – Sum of cumulative reduction of Nth bidder

For example, suppose the quote of the 3 bidders is as given in the table below:

	BY	Y1	Y2	Y3	Y4	Y5
<b>Bidder 1</b>						
AT&C Loss – Quoted	25.00%	22.00%	20.00%	19.00%	18.50%	18.00%
<b>Bidder 2</b>						
AT&C Loss – Quoted	25.00%	23.00%	21.00%	20.00%	19.00%	18.00%
<b>Bidder 3</b>						
AT&C Loss – Quoted	25.00%	23.00%	21.00%	19.00%	18.00%	17.00%

The sum of cumulative reduction of each bidder is provided below:

	BY	Y1	Y2	Y3	Y4	Y5	Sum of Cum. Reduction
<b>Bidder 1</b>							
AT&C Loss – Quoted	25.00%	22.00%	20.00%	19.00%	18.50%	18.00%	
Annual Reduction		3.00%	2.00%	1.00%	0.50%	0.50%	
Cumulative Reduction		3.00%	5.00%	6.00%	6.50%	7.00%	27.50%
<b>Bidder 2</b>							
AT&C Loss – Quoted	25.00%	23.00%	21.00%	20.00%	19.00%	18.00%	
Annual Reduction		2.00%	2.00%	1.00%	1.00%	1.00%	
Cumulative Reduction		2.00%	4.00%	5.00%	6.00%	7.00%	24.00%
<b>Bidder 3</b>							
AT&C Loss – Quoted	25.00%	23.00%	21.00%	19.00%	18.00%	17.00%	
Annual Reduction		2.00%	2.00%	2.00%	1.00%	1.00%	
Cumulative Reduction		2.00%	4.00%	6.00%	7.00%	8.00%	27.00%

Based on the above, the financial score on AT&C Loss commitment for each of the bidders is computed below:

Bidder 1:  $27.50\% / 27.50\% * 100 = 100.00$

Bidder 2:  $24.00\% / 27.50\% * 100 = 87.27$

Bidder 3:  $27.00\% / 27.50\% * 100 = 98.18$

- 6.3.6. Financial Score shall be calculated up to two (2) decimal places.

## 6.4. Selection of Successful Bidder

- 6.4.1. Bidder with the highest financial score calculated in accordance with Clause 6.3.5 shall be declared as the Successful Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in RFP, be invited as the next successful Bidder, in case such Successful Bidder withdraws or such selection is cancelled for any reason.
- 6.4.2. *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* In the event that two or more Bidders achieve the same financial score (the "Tie Bidders"), Bid Process Authority shall identify the Successful Bidder from among the Tie Bidders with a higher Networth computed as per Clause 3.2.1 as the Successful Bidder. In the event of a further tie in the Networth as well, Bid Process Authority will select the Successful Bidder by conducting a draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders, who choose to attend
- 6.4.3. *{Insert in case A&C Loss commitment is the bid parameter; Refer Guidance Note #3}* In the event that two or more Bidders achieve the same financial score (the "Tie Bidders"), Bid Process Authority shall identify the Successful Bidder from among the Tie Bidders with a higher sum of cumulative reduction for Y1 to Y4 as per Clause 3.2.1 as the Successful Bidder. In the event of a further tie in the sum of cumulative reduction from Y1 to Y4, Bidder with a higher sum of cumulative reduction from Y1 to Y3 shall be selected and in case of further tie(s) the same process will be followed at Y2 and then at Y1 to identify the Successful Bidder. In the event of a further tie, Bid Process Authority will select the Successful Bidder by conducting a draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders, who choose to attend.

## 6.5. Clarification on Bids

- 6.5.1. To facilitate evaluation of Bids, Bid Process Authority may, in its sole discretion, seek clarifications and/ or any additional information from any Bidder regarding its Bid (including if Bid is not signed, marked and sealed in accordance with Clauses 5.7 and 5.8). Such clarification(s) shall be provided within the time specified by Bid Process Authority for this purpose. Any request for clarification(s) and all responses to such clarification(s) shall be in writing. Any clarification submitted by a Bidder that is not in response to a request by Bid Process Authority shall not be considered.
- 6.5.2. If a Bidder does not provide clarifications and/ or any additional information sought under Clause 6.5.1 within the prescribed time, its Bid may be liable for rejection. If Bid is not rejected, Bid Process Authority may proceed to evaluate Bid by construing the particulars requiring clarification to the best of its understanding, and Bidder shall be barred from subsequently questioning such interpretation of Bid Process Authority.

## 6.6. Letter of Intent (LOI)

- 6.6.1. After declaration of Successful Bidder, Bid Process Authority will issue the LOI to Successful Bidder in duplicate:

- (a) accepting its Financial Proposal;
  - (b) requesting it to sign and return, as acknowledgement, a copy of the LOI within fifteen (15) days of issuance of the LOI;
  - (c) requesting it to submit the Bid Processing Fee in accordance with Clause 4.9;
  - (d) *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* Pay to Bid Process Authority the value quoted as part of its Financial Proposal and undertake to take delivery of [Refer Guidance Note #1] of the ordinary equity share capital of the [SPV] within thirty (30) days of issuance of the LOI; and  
  
*{Insert in case AT&C Loss commitment is the bid parameter; Refer Guidance Note #3}* Pay to Bid Process Authority the value mentioned in Clause 2.2.12 (b) and undertake to take delivery of [Refer Guidance Note #1] of the ordinary equity share capital of the [SPV] within thirty (30) days of issuance of the LOI; and
  - (e) Execute RFP Documents in required number of originals so as to ensure that one original is retained by each party to the Agreement within thirty (30) days of issuance of the LOI.
- 6.6.2. If the Successful Bidder fails to comply with any of the above mentioned provisions, then Bid Process Authority may, unless it consents to an extension, without prejudice to any of its rights under RFP or law, disqualify the Successful Bidder, revoke the LOI, and forfeit Bid Security submitted by the Successful Bidder.
- 6.6.3. If Bid Process Authority elects to disqualify such Bidder and revoke the LOI, then the procedure set out in Clause 4.2.3 shall follow.

# 7. Annexure

## 7.1. Formats for Technical Proposal

### 7.1.1. Format for Covering Letter

**[Note to Bidders:** The covering letter shall be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium]

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

Dear Sir,

We, the undersigned, having read, examined and understood in detail RFP and RFP Documents for the selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] hereby submit our Bid comprising of our Technical Proposal and Financial Proposal. We confirm that neither we nor any of our Parent Company/ Affiliate has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

1. We give our unconditional acceptance to the said RFP and RFP Documents attached thereto, issued by Bid Process Authority, as amended. In token of our acceptance to RFP Documents, the same have been initialed by us and enclosed hereto. We shall ensure the execution of such RFP Documents as per the provisions of RFP and provisions of such RFP Documents shall be binding on us.

#### 2. Bid Security

We have enclosed a Bid Security of INR ....., in the form of bank guarantee no.: ..... dated ..... as per Format under Clause 7.3.3 from ..... and valid up to ..... in terms of Clause 4.8 of RFP.

3. We have submitted our Financial Proposal strictly as per Format 7.2.1 of RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Proposal in the said format.

#### 4. Acceptance

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

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfil our obligations with regard to undertaking the functions of a distribution licensee.

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

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 3, Clause 4 and Clause 5 of RFP have been fully examined and considered while submitting Bid.

**6. Contact person:**

Details of the contact person are furnished as under:

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

- 7. We are enclosing herewith the Technical Proposal (Envelope I) and Financial Proposal (Envelope II) containing duly signed formats, each one duly closed separately, in one (1) original and one (1) copy (duly attested) as desired by you in RFP for your consideration.
- 8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in RFP and subsequent communications from Bid Process Authority.
- 9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in RFP and is correct to the best of our knowledge and understanding. We shall be solely responsible for any errors or omissions in our Bid.
- 10. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and eighty (180) days from Bid Due Date.
- 11. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 6.2 of RFP.
- 12. We confirm that we or any of our Affiliates have not been prosecuted in any insolvency or bankruptcy case.

Dated the ..... day of ..... [20XX].

Thanking you,  
We remain,  
Yours faithfully,

.....  
(Signature of the Authorised Signatory)  
Name of the Authorised Signatory: .....  
Designation: .....

[**Note to Bidders:** Name, Designation and Signature of Authorized Signatory in whose name Power of Attorney/ Board Resolution as per Clause 5.4.1 (j) is issued]

.....

(Rubber seal of the Company to be affixed)



**7.1.2. Format for Evidence of Authorized Signatory’s Authority (Power of Attorney)**

[**Note to Bidders:** To be executed on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bids are required to follow the applicable law in their country]

**POWER OF ATTORNEY**

Know all men by these presents, we ..... [Insert name and address of the registered office of the Bidding Company or Lead Member of the Bidding Consortium, as applicable] do hereby constitute, appoint and authorize Mr./ Ms. .... [Insert name and residential address] who is presently employed with us and holding the position of .....[Insert Designation of the Authorized Signatory] as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof issued by Bid Process Authority, including signing and submission of Bid and all other documents related to Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which Bid Process Authority may require us to submit. The aforesaid Attorney is further authorized for making representations to Bid Process Authority and providing information/ responses to Bid Process Authority, representing us in all matters before Bid Process Authority, and generally dealing with Bid Process Authority in all matters in connection with our Bid till the completion of Bid Process as per the terms of 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 RFP.

**Signed by the within named**

..... [Insert the name of Bidder on whose behalf the PoA is executed] through the hand of Mr. .... [Insert name of the person giving the PoA i.e. the executant] duly authorized by the Board to issue such Power of Attorney

Dated this ..... day of ....., [20XX]

**Accepted by:**

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

**Attested by:**

.....  
 (Signature of the executant)  
 Name of the Executant: .....  
 Designation: .....  
 Address: .....  
 (Name, designation and address of the executant)

**Notarised by:**

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

.....  
 (Common Seal of the Executant’s company affixed)

Common seal of ..... [Insert name of the company in which the Executant is employed] has been affixed in my/ our presence pursuant to Board of Director’s Resolution dated .....

**[Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

**Witnessed by: [Note to Bidders:** These witnesses will be as specified in the Board resolution for affixation of the Common Seal or as provided in the Articles of Association of the Executant Company]

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

**Note to Bidders:**

1. To be executed by Bidding Company or the Lead Member of the Bidding Consortium, as the case maybe
2. The mode of execution of the power of attorney shall be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same shall be under common seal of the executant, affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
3. The person authorized under this Power of Attorney, in the case of the Bidding Company/ Lead Member shall be the person authorized by Managing Director/Whole Time Director in all resolutions duly passed by the company.
4. In case of the Bidding Company/ Lead Member being a foreign company, the same shall be signed by a person of equivalent position.

5. In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
6. Also, wherever required, the executant(s) shall submit for verification the extract of the chartered documents and documents such as a Board resolution/ power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

\*In case of a Manager, Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956/ Companies Act, 2013 (as the case may be) for the purpose in question.

**7.1.3. Format for Letter of Consent from Consortium Members**

**[Note to Bidders:** To be submitted on the letterhead by each Member of the Consortium including the Lead Member]

Date: .....

**From:**

Name: ..... [Insert name of Bidder]  
Full Address: ..... [Insert address of Bidder]  
Telephone No.: .....  
Facsimile no.: .....  
Email address: .....

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We, the undersigned Member of ..... [Insert name of the Bidding Consortium] have read, examined and understood RFP document for the selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] , through this Bid Process being conducted by Bid Process Authority. We hereby confirm our concurrence with the Bid, including in particular the Consortium Agreement submitted by ..... [Insert name of the Lead Member] in response to RFP document.

We hereby confirm our commitment to participate in the said Bidding Consortium and invest, if selected as Successful Bidder, ..... % [Insert the equity being committed as part of the Consortium Agreement and which shall be committed in the Consortium SPV to be incorporated by the Consortium if selected as Successful Bidder] of the total equity in the Consortium SPV to purchase the majority shares in the [Distribution Licensee/ SPV] as per the terms of the Consortium Agreement dated ..... and confirm that we have submitted the necessary board resolution for such investment commitment as part of our Bid.

**[Insert this para if applicable]** We hereby confirm that in accordance with Clause 3.2.9 of RFP, we have submitted legally binding undertaking, supported by a board resolution from the ..... [Insert name of Financially Evaluated Entity] that all the equity investment obligations of ..... [Insert name of the Member] shall be deemed to be equity investment obligations of the ..... [Insert name of Financially Evaluated Entity], and in the event of any default by..... [Insert name of the Member], the same shall be met by..... [Insert name of Financially Evaluated Entity].

*{To be inserted by the Lead Member only}* We further confirm that we have submitted legally binding board resolution for the total equity investment obligations in case of any breach of any of the equity investment commitment by any of the Consortium Members,

in line with the provisions of the Consortium Agreement dated ..... [Bidder to insert date of Consortium Agreement]

The details of contact person are furnished as under:

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

Dated the ..... day of ..... of [20XX]

Thanking you,

Yours faithfully,

.....  
(Signature of Authorised Signatory\* of Consortium Member  
Name: .....  
Designation: .....  
Business Address: .....  
.....  
Name of principal officer: .....  
Address: .....

.....  
(Company Seal)

\* The Consortium Members (other than Lead Member) shall also submit the respective documents (PoA or copy of board resolution) authorizing the signatory to submit this document.

**7.1.4. Format for Consortium Agreement**

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

**FORM OF CONSORTIUM AGREEMENT BETWEEN  
M/s. .... AND M/s. ....  
FOR (.....)**

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

Party 1 and Party 2 are hereinafter collectively referred to as the "Parties" and individually as a "Party".

**WHEREAS** Bid Process Authority seeks to qualify and select Successful Bidder(s) for acquisition of the [Distribution Licensee/ SPV] and had invited Bids, vide RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof issued to .....

**AND WHEREAS** RFP stipulates that Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment in the Consortium SPV, and in the [Distribution Licensee/ SPV] to undertake the distribution and retail supply of power in [area description], and undertake to submit the Bid Processing Fee as required as per the provisions of RFP, as specified herein.

**NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:**

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

1. In consideration of the selection of the Consortium as Successful Bidder by Bid Process Authority, we, the Members of the Consortium and parties to the Consortium Agreement, do hereby unequivocally agree that M/s ..... [Insert name of the Lead Member], shall act as the Lead Member as defined in RFP for self and agent for and on behalf of ..... [the names of all the other Members of the Consortium to be filled in here].
2. The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members.

3. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each Member of the Consortium in discharging all their respective equity obligations. Each Consortium Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
4. The Consortium shall be responsible to incorporate a Consortium SPV as a legal entity as per the provisions of RFP, within fifteen (15) days of issue of LOI, provided such a Consortium SPV has not been incorporated by Bidder prior to the submission of Bid.

OR

5. The Consortium has incorporated a Consortium SPV by the name ..... [Insert name of the Consortium SPV] to acquire the Distribution Company, who shall undertake the responsibilities and obligations for undertaking the distribution and retail supply of power in [area description], as per the provisions of RFP Documents.
6. The percentage of equity holding of each Member of the Consortium in the Consortium SPV shall be/is as follows:

Name	Percentage (%) of equity holding in the SPV to be incorporated by the Consortium
Party 1	.....
Party 2	.....
<b>Total</b>	100%

[**Note to Bidders:** The percentage equity holding for any Consortium Member cannot be less than twenty six percent (26%) in the above table, and the Lead Member's percentage equity holding in the Consortium SPV to be incorporated to invest in the Distribution Company cannot be less than fifty one percent (51%).]

7. In case of any breach of any of the equity investment commitment as specified in the table above under para 6 above by any of the Consortium Members for the formation of the Consortium SPV, the Lead Member shall be liable to meet the equity obligation.
8. Except as specified in the Agreement, it is agreed that sharing of responsibilities as mentioned in Annexure-I to this Agreement and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
9. It is further specifically agreed that the financial liability for equity contribution of Lead Member shall not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of their scope of work or financial commitments.
10. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at [Place of Bid Process Authority] alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
11. It is hereby agreed that the Lead Member shall furnish Bid Security, as stipulated in RFP, on behalf of the Consortium.
12. It is hereby agreed that, in case of selection of a Bidding Consortium as Successful Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Bid Processing Fee on behalf of Bidder in favour of the entity notified by Bid Process Authority, as stipulated in RFP. The Lead Member shall be responsible for

ensuring the submission of the Bid Processing Fee on behalf of all the Consortium Members.

- 13. It is further expressly agreed that the Consortium Agreement shall be irrevocable and shall form an integral part of RFP Documents and shall remain valid over the term of the transaction, unless expressly agreed to the contrary by Bid Process Authority.
- 14. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to RFP for the purpose of Bid.
- 15. It is expressly understood and agreed between the Members that the responsibilities and obligations of each Member shall be as delineated as annexed hereto as Annexure-I, forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to undertaking the distribution and retail supply of power in [area description] as envisaged in RFP Documents.
- 16. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its/ their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.
- 17. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of Bid Process Authority.

This Consortium Agreement

- (a) has been duly executed and delivered on behalf of each Party hereto, and constitutes the legal, valid, binding and enforceable obligation of each such Party;
- (b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof; and
- (c) may not be amended or modified except in writing by Bid Process Authority and with prior written consent of Bid Process Authority:

**IN WITNESS WHEREOF**, the Parties to the Consortium Agreement have, through their authorized representatives, executed these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of ..... has  
 been affixed in my/ our presence  
 pursuant to the Board of Directors'  
 Resolution dated .....

For and on behalf of Consortium  
 Member (Party 1),  
 M/s. ....

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



**Witnessed by:**

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

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

Common Seal of ..... has  
been affixed in my/ our presence  
pursuant to the Board of Directors'  
Resolution dated .....

For and on behalf of Consortium  
Member (Party 2),  
M/s. ....

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

**Witnessed by:**

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

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

**Attested by:**

.....  
(Signature of Notary Public)  
Place: .....  
Date: .....

[**Note to Bidders:** The affixation of Common Seal of each Consortium Member shall be affixed under authorization by a board resolution from the Board of such Member and witnessed as provided in the resolution or the articles of association of the company]

## Annexure 1 to the Consortium Agreement

Sl.	Name of Consortium Agreement	Responsibilities under Consortium Agreement
1.	M/s ..... (Lead Member)	
2.	M/s ..... (Member)	

.....  
 (Signature of the Authorised Signatory of Lead Member)

Name of the Authorised Signatory: .....

Designation: .....

**7.1.5. Format for Power of Attorney to be provided by each of the other members of the Consortium in favour of the Lead Member**

[**Note to Bidders:** To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting bids are required to follow the applicable law in their country]

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS THAT M/s.....having its registered office at ....., ..... and M/s ..... having its registered office at ....., [Insert names and registered offices of all Members of the Consortium] the Members of Consortium have formed a Bidding Consortium named ..... [Insert name of the Consortium] (hereinafter called the 'Consortium') vide Consortium Agreement dated..... and having agreed to appoint M/s..... [Insert name of the Lead Member] as the Lead Member of the said Consortium. We ..... [Insert name of the Member of the Consortium giving the PoA] do hereby constitute, nominate and appoint M/s....., a company incorporated under the laws of .....and having its Registered /Head Office at .....as our duly constituted lawful Attorney (hereinafter called as "Lead Member") to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of Bid against RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof as part of the process for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description], for which Bids are now being invited by Bid Process Authority, having its office at [Address of Bid Process Authority].

We also authorize the said Lead Member to undertake the following acts:

- (a) To submit on behalf of the Consortium Members, Bid in response to RFP dated.....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof;
- (b) To do any other act or submit any information and document related to the above Bid.

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

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

**IN WITNESS WHEREOF** M/s ....., as the Member of the Consortium have executed these presents on this..... day of .....under the Common Seal of our company.

Common Seal of .....  
[Insert name of the Executant Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director's resolution dated .....

For and behalf of Consortium Member  
M/s. ....  
.....  
(Signature of authorized representative authorized to give this PoA)

[**Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

Name: .....  
Designation: .....  
Place: .....  
Date: .....

**Witnessed by:** [**Note to Bidders:** To be as per the authorization given by the Board in the resolution passed for affixation of the Common Seal or as per the provisions of the Articles of association of the Member of the Consortium]:

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

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

**Accepted by:**

.....  
(Signature of the Attorney)  
Place: .....  
Date: .....

Specimen signatures of Attorney attested

.....  
(Signature of Notary Public)  
Place: .....  
Date: .....

**Note to Bidders:**

1. The mode of execution of the power of attorney shall be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same shall be under common seal of the executant, affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
2. Also, wherever required, the executant(s) shall submit for verification the extract of the chartered documents and documents, such as a Board resolution/ power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).
3. In case of the Member of the Consortium being a foreign company, the same shall be signed by a person of the rank of managing Director or Chief Executive on the board of the Company or by any other official duly authorized by the board to give such power of attorney.

4. In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.

**7.1.6. Format for Bidder's Composition and Ownership Structure**

[To be submitted on the letter head of Bidder, and in case of Bidder being a Consortium, by each Member of the Consortium, separately as per this format]

**1. Corporate Details:**

Please provide the following information for Bidder. If Bidder is a Consortium, please provide this information for each Member including Lead Member

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

Name: .....

Registered/Principal Address: .....

Website Address: www.....

Corporate Identification Number, if any: .....

Country of Origin: .....

Address for Correspondence: .....

## b. Year of Incorporation: .....

## c. Company's Business Activities: .....

## d. Name of the Authorized Signatory: .....

## e. Telephone Number: .....

## f. Email Address: .....

## g. Telefax Number: .....

## h. Status as a Bidder (tick the applicable serial number):

i. Bidding Company

ii. Lead Member of the Bidding Consortium

iii. Member of the Bidding Consortium

i. Company's Local Address in India (if incorporated outside India):  
.....

## j. Please provide the following documents:

i. Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable in the case of a foreign company), including their amendments, certified by the company secretary of the Bidding Company/ each Member of the Consortium.

ii. Authority letter in favour of Bid Process Authority from the Bidding Company/ each Member of the Consortium (as per format specified in 7.1.7), authorizing Bid Process Authority to seek reference from their respective bankers, lenders, financing institutions and any other person as given below in the Format for Authorization, as per Clause 3.2.10 of RFP.

**2. Details of Ownership Structure:**

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

Name of the Bidding Company/ Member of the Consortium: .....

Status of equity holding as on ..... [this shall be as of a date thirty (30) days prior to Bid Due Date]

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

Notes:

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

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

M/s. ....

.....  
 (Signature of Authorized Signatory)

Name: .....

Designation: .....

Stamp: .....

Date: .....

Place: .....

**7.1.7. Format for Authorization**

[In case of Bidding Consortium, to be given separately by each Member]  
[To be submitted on Non – judicial stamp paper, duly attested by notary public]

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

Dear Sir,

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith (Bidder to provide the list of Bankers), including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by the [Name of the Bid Process Authority] or their authorized representatives to verify the authenticity of the documents/ information submitted by us for meeting the Qualification Requirements in respect of our Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] and/ or regarding our financial standing and general reputation.

**For and on behalf of M/s..... [Insert Name of Bidding Company or Member of the Consortium]**

.....  
(Signature of the authorized representative of the Company)  
Name: .....  
Designation: .....

.....  
Company rubber stamp/seal

**Signature of Notary Public**

.....  
(Signature)  
Place: .....  
Date: .....

[**Note to Bidders:** Bidders to annex to this format, a list of all their bankers as required in this Authorization]



**7.1.8. Authorisation from Parent/ Affiliate of Bidding Company/ Member of Bidding Consortium whose technical/ financial capability has been used by the Bidding Company/ Member of Bidding Consortium**

[To be submitted on the Letter Head of the Parent /Affiliate and given by each entity whose credentials have been used, if it is more than one such entity]

**AUTHORISATION**

**From:**

Name: ..... [Insert name of Bidder]  
Full Address: ..... [Insert address of Bidder]  
Telephone No.: .....  
Facsimile no.: .....  
Email address: .....

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We refer to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof ("RFP") issued by you for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description].

We confirm that M/s. .... [Insert name of Bidding Company/ Consortium Member] has been authorized by us to use our technical and/ or financial capability [strikeout whichever is not applicable] for meeting the Qualification Requirements for the Bid.

*[To be added by Financially Evaluated Entity]* "We have carefully read and examined in detail RFP including in particular, Clause 3.2.7 of RFP, and confirm that we are submitting, along with this Bid, legally binding undertaking supported by a board resolution that all the equity investment obligations of M/s..... [Insert Name of Bidding Company/ Consortium Member], shall be deemed to be our equity investment obligations and in the event of any default by the M/s..... [Insert Name of Bidding Company/ Consortium Member], the same shall be met by us."

For and on behalf of M/s..... [Insert Name of Parent/Affiliate]

.....  
(Signature and stamp of Managing Director/ Whole Time Director/ Manager# of Parent/ Affiliate)  
Name: .....

Date: .....  
Place: .....

Common Seal of .....  
[Insert name of the Parent/ Affiliate of  
Bidding company/ Member of the  
Consortium] has been fixed my/ our  
presence pursuant to the Board of  
Director’s resolution dated  
.....

[**Note to Bidders:** Parent/Affiliate to  
attach copy of the relevant Resolution,  
duly certified by the Company Secretary]

For and behalf of Parent/ Affiliate  
M/s. ....  
.....  
(Signature of authorized representative\*  
authorized to give such confirmation)

Name: .....  
Designation: .....  
Place: .....  
Date: .....

**Witnessed by:** [**Note to Bidders:** To be as per the authorization given by the Board in  
the resolution passed for affixation of the Common Seal or as per the provisions of the  
Articles of association of the Parent/ Affiliate]:

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

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

# In case of a Manager, the company shall confirm through a copy of Board Resolution  
attested by Company Secretary that the concerned person is appointed as Manager as  
defined under the Companies Act, 1956/ Companies Act, 2013 (as the case may be) for  
the purpose in question

\*Bidder to submit the authorization letter from the Parent/Affiliate/Member in the form of  
PoA/ copy of board resolution authorizing the signatory.

**7.1.9. Format for meeting Qualification Requirements – Technical****(A) In case of prior experience of operating as a distribution licensee or distribution franchisee**

[**Note to Bidders:** To be submitted on the Letter Head of the Technically Evaluated Entity]

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We hereby certify that we, ..... [Insert name of the Technically Evaluated Entity] are operating as a [distribution and retail supply licensee or distribution franchisee] in ..... [Insert the area of operation] in ..... [Insert state and country of operations] since ..... [Insert year since when operating].

The details of our operations are as per the detailed table below.

**Details of Distribution & Retail Supply License or Distribution Franchisee operations:**

<b>Name of Distribution Business/ Details of licensee operations</b>	
<b>Country of Operation</b>	
<b>Total Area (sq. km)</b>	
<b>Type of Participation (ownership, lease, management, or other, specify) – Please provide evidence</b>	
<b>Period of Concession/ License to operate (From MM/YY – to MM/YY)</b>	
<b>Number of Employees</b>	
Number of Supervisory Staff	
Number of Technical Staff	
Number of Clerical & Administrative Staff	
Number of Unskilled Workers	
<b>General Description of Business/Project</b>	
<b>Description of Role Played by Bidder's Member Company and Achievements Made:</b>	

<b>Details of Electricity Distribution Business:</b>			
Network (km)			
Maximum Voltage in Network (kV)			
Fiscal Year, starting from the latest year, going back for 3 years. [Bidder to specify MM/YY - MM/YY]	Latest Year (MM/YY- MM/YY)	(MM/YY-MM/YY)	(MM/YY-MM/YY)
<b>Number of Customers (category-wise)</b>			
Domestic			
Industrial (HT/LT) separately			
Commercial			
Agriculture			
Others			
<b>Total Energy Purchased (GWh)</b>			
<b>Total Energy Sold (GWh)</b>			
<b>ATC&amp;C loss (%)</b>			
<b>Customer Service initiatives undertaken:</b>			
<b>Technology implemented in existing license area (such as number of consumers covered under smart meters; coverage of GIS/ DMS/ OMS/ ERP and other advanced technologies):</b>			
<b>Any other significant achievement/ innovation implemented in the previous experience as a Distribution Licensee or Distribution Franchisee</b>			

**[Note to Bidders:** Bidder must demonstrate their meeting the Technical Qualification Requirements by submission of a copy of their distribution license (in case of the licensee operating in India or in case of a foreign distribution licensee, through a copy of the license or any other relevant and legally approved documentary evidence, to the satisfaction of Bid Process Authority), in support of their being a valid electricity distribution licensee as on a date that is not more than least fifteen (15) days prior to Bid Due Date.

Distribution Franchisees shall be required to submit a copy of their franchisee agreement and a satisfactory performance certificate from the concerned distribution licensee.]

.....  
(Signature of the Authorized Signatory)  
Name of the Authorized Signatory: .....  
Designation: .....  
  
Company Rubber Seal: .....

**(B) In case of prior experience of owning and operating power transmission projects**

[**Note to Bidders:** To be submitted on the Letter Head of the Technically Evaluated Entity]

To,

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We hereby certify that we, ..... [Insert name of the Technically Evaluated Entity] are operating power transmission projects of total asset base of Indian Rupees ..... (INR .....) [Insert the asset base of the power transmission projects] since ..... [Insert year since when operating].

The details of our operations are as per the detailed table below.

We also certify that we have not been held in default of operating regulations by any regulatory commission or authority.

**Details of Power Transmission Projects (details to be provided for each project which are being proposed for the purpose of Technical Evaluation):**

<b>Name of the Project</b>	
<b>Location of the Project</b>	
<b>Type of Participation (ownership, lease, management, or other, specify) – Please provide evidence</b>	
<b>Project Cost</b>	The total Project Cost of the project is INR ..... Crore (Insert Capital Cost of the Project) as on ..... (Insert relevant Date. Refer Note below.)
<b>Date of commissioning of the project (DD/MM/YY)</b>	The project was commissioned on ..... (date of commissioning of the project).
<b>Equity shareholding (with period during which equity was held in the project)</b>	This is to certify that ..... (name of the Technically Evaluated Entity) is/ was an equity shareholder in ..... (name of the project) and holds/ held Rs. .... crore (INR ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project/project company from ..... (date) to ..... (date).
<b>Number of Employees</b>	

Number of Supervisory Staff	
Number of Technical Staff	
Number of Clerical & Administrative Staff	
Number of Unskilled Workers	
<b>General Description of Project</b>	
<b>Description of Role Played by Bidder’s Member Company and Achievements Made</b>	
<b>Details of Transmission Project:</b>	
Line Length (km)	
Substation Capacity (MVA)	
<b>Any other significant achievement/ innovation implemented in the generation project</b>	

**[Note to Bidders:** Bidder must demonstrate their meeting the Technical Qualification Requirements by submission of attested true copies of relevant orders of regulatory commission or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, relevant order/documents as a proof of total capital investment including line length and substation capacity, environmental clearances post commissioning, project implementation agreement, project management agreement etc.), to the satisfaction of Bid Process Authority, which demonstrates that the Bidder is the meeting the Technical Qualification Requirements, as on a date that is not more than fifteen (15) days prior to Bid Due Date.]

.....  
 (Signature of the Authorized Signatory)  
 Name of the Authorized Signatory: .....  
 Designation: .....  
  
 Company Rubber Seal: .....

**(C) In case of prior experience of owning and operating power generation projects**

[**Note to Bidders:** To be submitted on the Letter Head of the Technically Evaluated Entity]

To,

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We hereby certify that we, ..... [Insert name of the Technically Evaluated Entity] are operating power generation projects of cumulative generation capacity of ..... [Insert the cumulative generation capacity of the power generation projects] since ..... [Insert year since when operating].

The details of our operations are as per the detailed table below.

We also certify that we have not been held in default of operating regulations by any regulatory commission or authority.

**Details of Power Generation Projects (details to be provided for each project which are being proposed for the purpose of Technical Evaluation):**

<b>Name of the Project</b>	
<b>Location of the Project</b>	
<b>Type of Participation (ownership, lease, management, or other, specify) – Please provide evidence</b>	
<b>Project Cost</b>	The total Project Cost of the project is INR ..... Crore (Insert Capital Cost of the Project) as on ..... (Insert relevant Date. Refer Note below.)
<b>Date of commissioning of the project (DD/MM/YY)</b>	The project was commissioned on ..... (date of commissioning of the project).
<b>Equity shareholding (with period during which equity was held in the project)</b>	This is to certify that ..... (name of the Technically Evaluated Entity) is/ was an equity shareholder in ..... (name of the project) and holds/ held Rs. .... crore (INR ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project/project company from ..... (date) to ..... (date).
<b>Number of Employees</b>	



Number of Supervisory Staff	
Number of Technical Staff	
Number of Clerical & Administrative Staff	
Number of Unskilled Workers	
<b>General Description of Project</b>	
<b>Description of Role Played by Bidder's Member Company and Achievements Made</b>	
<b>Details of Generation Project:</b>	
Existing Capacity (MW)	
Units and Capacity (Nos X MW)	
<b>Any other significant achievement/ innovation implemented in the generation project</b>	

[**Note to Bidders:** Bidder must demonstrate their meeting the Technical Qualification Requirements by submission of attested true copies of relevant orders of regulatory commission or statutory documents or any authorized documentary evidence (including copies of the commissioning certificate, certificates issued by the appropriate load despatch centres, relevant order/documents as a proof of contracted capacity of the power purchase agreements, environmental clearances post commissioning etc.), to the satisfaction of Bid Process Authority, which demonstrates the operational generation capacity and ownership in the power generation project, as on a date that is not more than fifteen (15) days prior to Bid Due Date.]

.....  
 (Signature of the Authorized Signatory)  
 Name of the Authorized Signatory: .....  
 Designation: .....  
  
 Company Rubber Seal: .....



**7.1.10. Format for meeting Qualification Requirements – Financial (To be submitted on letterhead of Bidding Company/ Lead Member)**

**(A) NET WORTH**

To,

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

**1. [Note: Applicable in case of Bidding Company]**

We certify that the Financially Evaluated Entity had an Average Network of INR ..... Crore or equivalent US\$\*, computed as per instructions in this RFP over the three (3) financial years – viz., [of FY 20XX-XX, FY 20XX-XX and FY 20XX-XX], based on unconsolidated audited annual accounts (refer Note-2 below).

Sl.	Name of Financially Evaluated Entity	Relationship with Bidding Company**	Networth (INR Crore)
1.			
2.			
3.			
.....			
<b>TOTAL NETWORTH</b>			

\* Equivalent USD shall be calculated as per provisions of Clause 3.2.6

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

**2. [Note: Applicable in case of Bidding Consortium]**

We certify that the Financially Evaluated Entity (ies) put together had a minimum Average Network of INR ..... Crore or equivalent US\$\* computed as per instructions in RFP over the three financial years – viz., [of FY 20XX-XX, FY 20XX-XX and FY 20XX-XX], based on unconsolidated audited annual accounts (refer Note-2 below).

Sl.	Name of the Consortium Member	Equity Commitment (%) in the Consortium SPV (as per Consortium Agreement)	Networth of Member (INR Crore) (as per table below)
	(1)	(2)	(3)
1.			

Sl.	Name of the Consortium Member	Equity Commitment (%) in the Consortium SPV (as per Consortium Agreement)	Networth of Member (INR Crore) (as per table below)
2.			
	<b>TOTAL</b>		

**NETWORTH FOR MEMBER-1 (LEAD MEMBER):**

Name of the Member: .....

Percentage of Equity Commitment in the Consortium: .....

Financial Year considered for the Member: .....

Sl.	Name of the Financially Evaluated Entity	Relationship** with the Member of Consortium	Networth (INR Crore)
1.			
<b>TOTAL NETWORTH OF MEMBERS IN THE CONSORTIUM</b>			

**NETWORTH FOR MEMBER-2 (MEMBER):**

Name of the Member: .....

Percentage of Equity Commitment in the Consortium: .....

Financial Year considered for the Member: .....

Sl.	Name of the Financially Evaluated Entity	Relationship** with the Member of Consortium	Networth (INR Crore)
1.			

\* Equivalent USD shall be calculated as per provisions of Clause 3.2.6;

\*\* The column for "Relationship with Member of Consortium" is to be filled in only in case financial capability of Parent/Affiliate has been used for meeting Qualification Requirements

Yours faithfully

.....  
 (Signature and stamp of Managing Director/ Whole Time Director/ Manager of Bidding Company/ Lead Member of Consortium)

Name: .....

Date: .....

Place: .....

.....  
 (Signature and Stamp of Statutory Auditors of Bidding Company/ Lead Member of Consortium)  
 Name: .....  
 Date: .....  
 Place: .....

Common Seal of .....  
 [Insert name of the Bidding Company/ Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director’s resolution dated .....

**[Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

For and behalf of Bidding Company/ Consortium Member  
 M/s. ....

.....  
 (Signature of authorized representative of the Bidding Company/ Member) (Please see Notes below)

Name: .....  
 Designation: .....  
 Place: .....  
 Date: .....

Common Seal of .....  
 [Insert name of the Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director’s resolution dated .....

**[Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

For and behalf of Consortium Member  
 M/s. ....

.....  
 (Signature of authorized representative of the Member) (Please see Notes below)

Name: .....  
 Designation: .....  
 Place: .....  
 Date: .....

**Witnessed by: [Note to Bidders:** To be as per the authorization given by the Board in the resolution passed for affixation of the Common Seal or as per the provisions of the Articles of association of the Bidding Company/ Member of the Consortium]:

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

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

**Note to Bidders:**

1. Along with the above format, in a separate sheet, please provide details of computation of Net worth duly certified by Statutory Auditor.

2. Audited consolidated annual accounts of Bidder may be used for the purpose of financial criteria, provided Bidder has over 50% equity in each company whose accounts are merged in the audited consolidated accounts and provided further, that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of Bid.
3. In case of Manager, the Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act 1956/2013, as the case may be, for the purpose in question.
4. For Bidding Company/Member, Bidder to submit the authorization letter from the Member in the form of PoA/copy of board resolution authorizing the signatory.

**(B) AVERAGE NET YEARLY CASH ACCRUALS****To,**

[Designation]  
 [Name of Bid Process Authority]  
 [Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

**1. [Note: Applicable in case of Bidding Company]**

We certify that the Financially Evaluated Entity had an Average Net Yearly Cash Accruals equal to INR ..... Crore or equivalent US\$\*, computed as per instructions in RFP over the three financial years – viz., [of FY 20XX-XX, FY 20XX-XX and FY 20XX-XX], based on unconsolidated audited annual accounts (refer Note 2 below).

Sl.	Name of Financially Evaluated Entity	Relationship with Bidding Company**	Average Net Yearly Cash Accruals (INR Crore)
1.			
2.			
3.			
.....			
<b>SUM OF AVERAGE NET YEARLY CASH ACCRUALS</b>			

\* Equivalent US\$ shall be calculated as per provisions of Clause 3.2.6.

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

**2. [Note: Applicable in case of Bidding Consortium]**

We certify that the Financially Evaluated Entity (ies) put together had Average Net Yearly Cash Accruals equal to at least INR ..... Crore or equivalent US\$\*, computed as per instructions in RFP over the three financial years – viz., [of FY 20XX-XX, FY 20XX-XX and FY 20XX-XX], based on unconsolidated audited annual accounts (refer Note 2 below).

Sl.	Name of the Consortium Member	Equity Commitment (%) in the Consortium SPV (as per Consortium Agreement)	Member's Average Net Yearly Cash Accruals (INR Crore)
	(1)	(2)	(3)
1.			
2.			
<b>Total</b>			

**AVERAGE NET YEARLY CASH ACCRUALS FOR MEMBER-1 (LEAD MEMBER):**

Name of the Member: .....

Percentage of Equity Commitment in the Consortium: .....

Sl.	Name of the Financially Evaluated Entity	Relationship** with the Member of Consortium	Average Net Yearly Cash Accruals (INR Crore)
1.			

**AVERAGE NET YEARLY CASH ACCRUALS FOR MEMBER-2 (MEMBER):**

Name of the Member: .....

Percentage of Equity Commitment in the Consortium: .....

Sl.	Name of the Financially Evaluated Entity	Relationship** with the Member of Consortium	Average Net Yearly Cash Accruals (INR Crore)
1.			

\* Equivalent USD shall be calculated as per provisions of Clause 3.2.6.

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

Yours faithfully

.....  
 (Signature and stamp of Managing Director/ Whole Time Director/ Manager [refer Note below] of Bidding Company/ Lead Member of Consortium)

Name: .....

Date: .....

Place: .....

.....  
 (Signature and Stamp of Statutory Auditors of Bidding Company/ Lead Member of Consortium)

Name: .....

Date: .....

Place: .....

Common Seal of .....  
 [Insert name of the Bidding Company/  
 Member of the Consortium] has been

For and behalf of Bidding Company/  
 Consortium Member  
 M/s. ....



fixed my/ our presence pursuant to the Board of Director’s resolution dated

.....

[**Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

.....

(Signature of authorized representative of the Bidding Company/ Member) (Please see notes below)

Name: .....

Designation: .....

Place: .....

Date: .....

For and behalf of Consortium Member

M/s. ....

Common Seal of .....

[Insert name of the Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director’s resolution dated

.....

[**Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

.....

(Signature of authorized representative of the Member) (Please see notes below)

Name: .....

Designation: .....

Place: .....

Date: .....

**Witnessed by: [Note to Bidders:** To be as per the authorization given by the Board in the resolution passed for affixation of the Common Seal or as per the provisions of the Articles of association of the Bidding Company/ Member of the Consortium]:

1. ....

(Signature)

Name: .....

Designation: .....

2. ....

(Signature)

Name: .....

Designation: .....

**Note to Bidders:**

1. Along with the above format, in a separate sheet, please provide details of computation of Average Net Yearly Cash Accruals duly certified by Statutory Auditor.
2. Audited consolidated annual accounts of Bidder may be used for the purpose of financial criteria, provided Bidder has over 50% equity in each company whose accounts are merged in the audited consolidated accounts and provided further, that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of Bid.
3. In case of Manager, the Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager

as defined under the Companies Act, 1956/2013, as the case maybe, for the purpose in question.

4. The Company Secretary also certifies that the Company does not have a Managing Director or CEO.
5. For Bidding Company/ Member, Bidder to submit the authorization letter from the Member in the form of PoA/ copy of board resolution authorizing the signatory.

**7.1.11. Format for Undertakings****(A) Format-1: Bidder's Undertakings**

[To be submitted on the letter head of the Bidding Company/ Lead Member of the Bidding Consortium]

Date: .....

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

Dear Sir,

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

We hereby undertake, on our own behalf, that if selected as Successful Bidder:

1. The Distribution Company shall comply with all the relevant electricity laws, codes, regulations, standard and prudent utility practices, environment laws and relevant technical, operational and safety standards, and we shall execute any agreement that may be required to be executed as per law in this regard.
2. We give our unconditional acceptance to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof issued by Bid Process Authority and RFP Documents, as amended, and undertake to ensure that we, the Distribution Company, shall execute all RFP Documents, as applicable, as per the provisions of this RFP.
3. We have submitted this Bid on the terms and conditions contained in RFP and RFP Documents. Further, the Financial Proposal submitted by us is strictly as per the Formats prescribed as per Format 7.2.1 of RFP, without mentioning any deviations, conditions, assumptions or notes in the said format.
4. Our Bid is valid up to the period required under Clause 4.7 of RFP.
5. Our Bid has been duly signed by Authorized Signatory and stamped in the manner and to the extent indicated in this RFP and the power of the attorney/ Board resolution in requisite format as per RFP has been enclosed in original with this Undertaking.
6. *{Insert in case of Consortium}* We have assumed that if we are selected as Successful Bidder, the provisions of the Consortium Agreement submitted along with Bid, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of Clause 2.2.13 of RFP and the provisions of the Shareholders' Agreement.
7. We confirm that our Financial Proposal conforms to all the conditions mentioned in this RFP, and in particular, we confirm that:

- a. Financial Proposal in the prescribed in Format 7.2.1 has been submitted duly signed by the Authorized Signatory;
  - b. Financial Proposal is unconditional;
  - c. Only one (1) Financial Proposal has been submitted.
8. We have neither made any statement nor provided any information in Bid, which to the best of our knowledge, is materially inaccurate or misleading. Further, all the confirmations, declaration and representations made in our Bid are true and accurate. In case this is found to be incorrect after our acquisition of the Deemed Licensee, pursuant to our selection as Successful Bidder, we agree that the same shall be treated as the Deemed Licensee's critical event of default and accordingly dealt with by Bid Process Authority as per the provisions of the Share Acquisition Agreement and the Shareholders' Agreement.
9. We confirm that there are no litigations or other disputes against us, which materially affect our ability to fulfil our obligations with regard to the Deemed Licensee as per the terms of Bid Process Authority's license conditions and regulations, and as per the terms of RFP Documents.
10. Original power of attorney/ Board resolution as per Clause 5.4.1 (b) is enclosed.

.....  
 [Signature and stamp of Managing Director/ Whole Time Director/ Manager of Bidding Company or Lead Member of the Consortium] [Refer notes below].

Common Seal of ..... [Insert name of the Bidding Company or the Lead Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director's resolution dated ..... [**Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

Witnessed by: [**Note to Bidders:** To be as per the authorization given by the Board in the resolution passed for affixation of the Common Seal or as per the provisions of the Articles of association of Bidder]:

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

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

**Note to Bidders:**

1. In case of Manager, the Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956/ 2013, as the case maybe, for the purpose in question.

**(B) Format-2: Details of equity investment in the Deemed Licensee**

1. Name of the Bidding Company/ Bidding Consortium: .....

Name of the Lead Member in case of a Bidding Consortium: .....

2. Investment details of the Bidding Company investing in the Deemed Licensee in case of being declared as Successful Bidder:

Sl.	Name of the Bidding Company	%age of equity participation in the Deemed Licensee
(1)	(2)	(3)
1		[Refer Guidance Note #1]
	<b>TOTAL</b>	<b>[Refer Guidance Note #1]</b>

3. *{Insert in case of Consortium}* Investment details of the Member of the Bidding Consortium investing in the Consortium SPV to be created by the Consortium in case of being declared as Successful Bidder:

Sl.	Name of Member of the Bidding Consortium	%age of equity participation in the Consortium SPV	%age of equity participation in the Deemed Licensee
(1)	(2)	(3)	(4)
1			
2			
	<b>TOTAL</b>	<b>100%</b>	<b>[Refer Guidance Note #1]</b>

- Members of the Consortium making investment in the Consortium SPV to be incorporated by Successful Bidder shall fill in the details in column (3) as per the Consortium Agreement.
- Equity commitment in column (4) shall be in proportion to the equity participation mentioned in column (3)

**Signature and Name of the Authorized Signatory in whose name the power of attorney has been issued:**

.....  
 (Signature of the Authorized Signatory)  
 Name of Authorized Signatory: .....  
 Designation: .....  
 Date: .....

.....  
 Company rubbed stamp to be affixed

**7.1.12. Format for Undertaking from Financially Evaluated Entity/ Parent Company**

[**Note to Bidders:** To be submitted on the Letter Head of the Financially Evaluated Entity/ Parent Company]

**From:**

Name: ..... [Insert name of Bidder]  
Full Address: ..... [Insert address of Bidder]  
Telephone No.: .....  
Facsimile no.: .....  
Email address: .....

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

**Sub:** Undertaking for Equity Investment in the Deemed Licensee

Dear Sir,

We refer to the Request for Proposal document dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof ("RFP"), issued by you regarding selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description].

We have carefully read and examined in detail RFP, including in particular, Clause 3.2.9 of RFP, regarding submission of an undertaking regarding the investment in the equity share capital of the Deemed Licensee and provisions for minimum equity holding and equity lock-in. We have also noted the amount of the equity investment required to be made in the Deemed Licensee by the ..... [Insert name of Bidder or the Consortium Member].

In view of the above, we hereby undertake to you and conform that, in the event of failure of ..... [Insert name of Bidder or the Consortium Member] to invest in full or part, in the equity share capital of the Deemed Licensee, we shall invest the said amount not invested by ..... [Insert name of Bidder or the Consortium Member] by purchasing of existing shares or subscribing to the new shares of the Deemed Licensee, as stipulated by you.

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

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

.....  
(Signature of Managing Director/ Whole time Director/ Manager)

[**Note to Bidders:** The above Undertaking shall be signed and certified as true by the Managing Director/ Whole time Director on the Board/ Manager (refer note below) of the Bidding Company or of the Member, in case of a Consortium.]

Common Seal of ..... [Insert name of the Bidding Company or Member of the Consortium] has been fixed my/ our presence pursuant to the Board of Director’s resolution dated ..... [**Note to Bidders:** Bidder to attach copy of the relevant Resolution, duly certified by the Company Secretary]

**Witnessed by: [Note to Bidders:** To be as per the authorization given by the Board in the resolution passed for affixation of the Common Seal or as per the provisions of the Articles of association of the Member of the Consortium]:

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

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

**Note to Bidders:**

1. In case of Manager, the Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956/2013, as the case maybe, for the purpose in question.



7.1.13. Format for Board Resolution for Investment in Equity

(A) **Format – I: Format of the Board Resolution for the Bidding Company/ each Member of the Consortium/ Parent Company, where applicable**

[Reference Clause 5.4.1 (j) of RFP]

[**Note to Bidders:** The following resolution no.1 needs to be passed by the Boards of Bidder in case of Bidding Company and each Member of the Consortium in case Bidder is a Bidding Consortium making equity investment in the Deemed Licensee or in the Consortium SPV, as the case may be]

The Board, after discussion, at the duly convened Meeting on ..... [Insert date of the relevant Board meeting], with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution:

1. **RESOLVED THAT**, pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an undertaking to Bid Process Authority in the format specified in RFP, draft of which is attached hereto and initialed by the Managing Director/ Full Time Director, where the company undertakes the investment of ..... percent (..... %) of the total equity share capital of the Deemed Licensee, representing the entire amount proposed to be invested by the company, partly by acquisition of the existing equity shares from the company to be incorporated for the purpose of giving effect to the sale of the Utility and/ or partly by subscribing to the new equity shares, as per the terms of RFP.

[**Note to Bidders:** Equity investment obligations by the Bidding Company/ each Member of the Bidding Consortium shall add up to [Refer Guidance Note #1]]

[**Note to Bidders:** In the event Bidder is a Bidding Consortium, the following Board resolution no. 2, in addition to the resolution at Sl. No.1, also needs to be passed by the Lead Member of the Bidding Consortium]

2. **FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to contribute such further amount over and above the said percentage limit to the extent becoming obligatory towards the total equity share in the ..... [Insert name of the Consortium SPV, on the part of the company, pursuant to the terms and conditions contained in the Consortium Agreement dated..... [Insert date of the Consortium Agreement] executed by the company as per the provisions of this RFP.

**Certified True Copy**

.....  
Company rubber stamp to be affixed

**Note to Bidders:**

1. This certified true copy shall be submitted on the letter head of the Company, signed by the Company Secretary/ Managing Director of the Bidding Company or the Lead Member of the Consortium.

2. The contents of the format may be suitably re-worded, indicating the identity of the entity passing the resolution; i.e., the Bidding Company, or each Member of the Consortium.
3. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to the Companies Act 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorisations granted therein are true and valid.

(B) **Format – II: Format of the Board Resolution to be submitted by each Financially Evaluated Entity/ Parent Company, where applicable**

**[To be submitted only when the financial credential of any entity other than the Bidding Company or Member of Consortium have been used for meeting the Qualification Requirements]**

The Board, after discussion, at the duly convened Meeting on ..... [Insert date of the relevant Board meeting], with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution:

**RESOLVED THAT**, pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum of Association and Articles of Association of the Company, approval of the Board be and is hereby accorded for issuing an Undertaking to Bid Process Authority in the Format specified in RFP draft of which is attached hereto and initialed by the Managing Director/ Full Time Director whereby the company undertakes investment of .....percent (....%) of the total equity share capital of the Deemed Licensee representing the entire amount proposed to be invested by the company, partly by acquisition of the existing equity shares from.....[Insert Name of the holding company of Consortium SPV] and/ or partly by subscribing to the new equity shares, as per the terms of RFP, in case of the failure of the ..... [Insert the name of the Bidding Company or Member of the Bidding Consortium].

**FURTHER RESOLVED THAT**, ..... [Insert name of the Bidding Company or the Lead Member of the Bidding Consortium, as applicable], be and is hereby authorized to take all the steps required to be taken by them, including in particular, signing the said Undertaking, submitting a copy of the Undertaking and resolutions to Bid Process Authority and all the related documents, letters, undertakings, etc., required to be submitted to Bid Process Authority as part of Bid or such other documents as may be necessary in this regard.

**Certified True Copy**

.....  
Company rubber stamp to be affixed

**Note to Bidders:**

1. This certified true copy shall be submitted on the letterhead of the Company, signed by the Company Secretary/ Managing Director of the Technical and/ or Financial Evaluated Entity.
2. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to the Companies Act, 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

## 7.1.14. Format for Disclosure

[On the Letter Head of the Bidding Company/ Each Member in a Bidding Consortium]

**DISCLOSURE**

**To,**

[Designation]  
[Name of Bid Process Authority]  
[Address of Bid Process Authority]

**Sub:** Bidders' Disclosure for its Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

Dear Sir,

We hereby declare that the companies with which we have direct or indirect relationship are also separately participating in this Bid Process as per following details:

Sl.	Name of the Company	Relationship
1.		
2.		

Further, we confirm that we don't have any Conflict of Interest with any other Bidder participating in this Bid Process.

.....  
Signature of Managing Director/ Whole Time Director/ Manager

**Note to Bidders:**

1. In case of a Manager, the Company shall confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956/2013, as the case may be, for the purpose in question.
2. In case there is no such company please fill in the column "Name of the Company" as Nil and under column of Relationship as "Not Applicable".

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

[To be submitted by the Bidding Company or by Member(s) of the Consortium, only if technical and/ or financial credentials have been used by Bidder of any of its Affiliate and/ or Parent]

**To,**

[Designation]  
 [Name of Bid Process Authority]  
 [Address of Bid Process Authority]

**Sub:** Bid for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated .....[Insert start date of sale of RFP by Bid Process Authority] including amendments thereof.

Dear Sir,

We hereby certify that M/s. ...., M/s. ...., M/s. .... are the Affiliate(s)/ Parent Company of the Bidding Company/ Member of the Bidding Consortium as per the definition of Affiliate/ Parent Company as provided in this RFP and based on details of equity holding as on sixty (60) days prior to Bid Due Date.

The details of equity holding of the Bidding Company/ Member of the Consortium in the Affiliate/Parent Company or vice versa as on sixty (60) days prior to Bid Due Date are given as below:

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

\* Bidding Company/ Member of the Bidding Consortium to hold more than fifty percent (50%) in such Affiliate as on sixty (60) days prior to Bid Due Date.

Documents submitted in support of establishing the relationship with the Parent Company/Affiliate with the Bidding Company or with the Member of the Bidding Consortium (including Lead Member) in terms of the provisions of Clause 3.2.8 of this RFP are as follows:

1. ....
2. ....
3. ....

.....  
(Signature of the Statutory Auditor of Bidder or of any practicing Company Secretary)  
Name: .....  
Place: .....  
Date: .....

## 7.2. Formats for Financial Proposal

### 7.2.1. Format for Financial Proposal

[To be submitted on the Letter Head of the Bidding Company/ Lead Member in case of a Bidding Consortium]

#### FINANCIAL PROPOSAL

##### From:

Name: ..... [Insert name of Bidder]  
 Full Address: ..... [Insert address of Bidder]  
 Telephone No.: .....  
 Facsimile no.: .....  
 Email address: .....

##### To,

[Designation]  
 [Name of Bid Process Authority]  
 [Address of Bid Process Authority]

Dear Sir,

We, ..... [Insert name of Bidder], the undersigned, offer to own, manage, operate and maintain the Deemed Licensee in accordance with the terms of RFP.

*{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* Our Bid (including this letter) for acquiring [Refer Guidance Note #1] of equity share of [SPV] is provided in the following table:

Sl.	Value	Amount in Words	Amount in figures
1.	Value for acquisition of [Refer Guidance Note #1] of equity share of [SPV]		

*{Insert in case AT&C Loss commitment is the bid parameter; Refer Guidance Note #3}* Our Bid (including this letter) for AT&C Loss commitment for next [five (5)] Financial Years of operations is provided in the following table:

Value	Y1	Y2	Y3	Y4	Y5
<b>AT&amp;C loss Level committed to be achieved as on 31st March of the respective years</b>					

We agree to abide by this offer for a period of one hundred and eighty (180) days after Bid, Bid Process Authority and it shall remain binding upon us and may be accepted by Bid Process Authority at any time before that date.

We understand that Bid Process Authority is not bound to accept any offer it may receive. We accept that we are fully responsible for all costs associated with our participation in Bid Process.

.....  
(Signature of Authorised Signatory)  
Name: .....  
Designation: .....  
Date: .....

[Name and Signature of Authorised Signatory in whose name power of attorney/ Board resolution, as per Clause 5.4.1 (b), is issued]

.....  
(Company Rubber Stamp)

**Note to Bidders:**

1. Bidders are required to ensure compliance with the provisions of Clause 3, Clause 4 and Clause 5 of this RFP.
2. *{Insert in case upfront premium for equity consideration is the bid parameter; Refer Guidance Note #3}* Quote to be in Indian Rupees Crores and shall be up to three (3) decimal places.  
  
*{Insert in case AT&C Loss commitment is the bid parameter; Refer Guidance Note #3}* Quote for AT&C loss shall be up to two (2) decimal places.
3. In case of any discrepancy in the value quoted in words and in numbers, the value quoted in words shall prevail.
4. The contents of this format shall be clearly typed. Financial Proposal which are not typed or which have been corrected/ or overwritten, shall be rejected.
5. All pages of this format shall be signed by the Authorised Signatory, in whose name the power of attorney pursuant to Clause 5.4.1 (b) has been issued.



### 7.3. Other Formats and Annexure

#### 7.3.1. Format for seeking clarifications/ amendments on RFP by Bidders

Sl.	Name of the Document	Clause no. and Existing Provision	Clarification required	Suggest text for the amendment	Rationale for the Clarification or Amendment

.....

(Signature of Authorized Signatory of Bidder/ Lead Member in case of a Consortium)

Name: .....

For: .....

Bidder's Rubber Stamp and Full Address.

**[Note to Bidders:** This format shall be used for submission of requests for seeking clarifications/ suggesting amendments on the draft RFP Documents as per the provisions of Clause 6.5]

7.3.2. Provisional Opening Balance Sheet of the Utility as on 31st Mar [.]

## 7.3.3. Format for Bid Security:

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

**FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR  
BID SECURITY**

In consideration of the ..... [Insert name of Bidder] submitting Bid inter alia for selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description] in response to RFP dated ..... [Insert start date of sale of RFP by Bid Process Authority] including amendments thereof, issued by the [Name of Bid Process Authority], (hereinafter referred to as "Bid Process Authority") and Bid Process Authority agreeing to consider Bid of ..... [Insert the name of Bidder] as per the terms of RFP, the ..... [Insert name and address of the bank issuing Bid Security, and address of the head office] (here in after referred to as the "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to Bid Process Authority at [Place of Bid Process Authority] forthwith, on demand in writing from Bid Process Authority or any representative authorized by it in this behalf, an amount not exceeding Indian Rupees ..... (INR .....) only on behalf of M/s. .... [Insert name of Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including ..... [Insert date of validity of Bid Security in accordance with Clause 4.8 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 Indian Rupees ..... only (INR .....) only. Our Guarantee shall remain in force until ..... Bid Process Authority or its authorized representative shall be entitled to invoke this Guarantee until ..... [Insert Date, which is thirty (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 Bid Process Authority or its authorized representative, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to Bid Process Authority or its authorized representative.

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [Place of Bid Process Authority] 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, Bid Process Authority or its authorized representative shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against Bidder, to make any claim against or any demand on Bidder or to give any notice to Bidder to enforce any security held by Bid Process Authority or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against Bidder.

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

The Guarantor Bank hereby agrees and acknowledges that Bid Process Authority 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 Indian Rupees ..... only (INR .....) and it shall remain in force until ..... [Date to be inserted on the basis of Clause 4.8 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 Bid Process Authority or its authorized representative 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: .....  
Power of Attorney No. ....

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

..... (Banker's Seal)

Witnessed by:

1. ....

Name: .....

Address: .....

.....

2. ....

Name: .....

Address: .....

.....

**Full address of the Bank issuing the BG:**

.....

.....

.....

**Mailing address of the Head Office of the Bank:**

.....

.....

.....

[**Note to Bidders:** The Stamp Paper shall be in the name of the Executing Bank.]

**7.3.4. List of Banks:****Scheduled Commercial Banks**

<b>Category</b>	<b>Bank Name</b>
SBI and Associates	<ol style="list-style-type: none"> <li>1. State Bank of India</li> <li>2. State Bank of Bikaner and Jaipur</li> <li>3. State Bank of Hyderabad</li> <li>4. State Bank of Indore</li> <li>5. State Bank of Mysore</li> <li>6. State Bank of Patiala</li> <li>7. State Bank of Saurashtra</li> <li>8. State Bank of Travancore</li> </ol>
Nationalised Bank	<ol style="list-style-type: none"> <li>1. Allahabad Bank</li> <li>2. Andhra Bank</li> <li>3. Bank of Baroda</li> <li>4. Bank of India</li> <li>5. Bank of Maharashtra</li> <li>6. Canara Bank</li> <li>7. Central Bank of India</li> <li>8. Corporation Bank</li> <li>9. Dena Bank</li> <li>10. Indian Bank</li> <li>11. Indian Overseas Bank</li> <li>12. Oriental Bank of Commerce</li> <li>13. Punjab National Bank</li> <li>14. Punjab and Sind Bank</li> <li>15. South Indian Bank</li> <li>16. Syndicate Bank</li> <li>17. Union Bank of India</li> <li>18. United Bank of India</li> <li>19. UCO Bank</li> <li>20. Vijaya Bank</li> </ol>
Scheduled/ Foreign Banks	<ol style="list-style-type: none"> <li>1. AB Bank</li> <li>2. ABN Amro Bank N.V.</li> <li>3. Bank of America</li> <li>4. Bank of Novascotia</li> <li>5. Bank of Ceylon</li> <li>6. Barclays Bank</li> <li>7. BNP Paribas</li> <li>8. Citi Bank N.A.</li> <li>9. DBS Bank</li> <li>10. DCB Bank</li> <li>11. Deutsche Bank A.G.</li> <li>12. HSBC Bank</li> <li>13. Societe Generale</li> <li>14. Standard Chartered Bank</li> </ol>
Scheduled Private Banks	<ol style="list-style-type: none"> <li>1. Axis Bank</li> <li>2. Bandhan Bank</li> <li>3. Catholic Syrian Bank</li> <li>4. City Union Bank</li> <li>5. Dhanlaxmi Bank</li> <li>6. Federal Bank</li> <li>7. HDFC Bank</li> <li>8. ICICI Bank</li> </ol>

Category	Bank Name
	9. IDBI Bank 10. IDFC Bank 11. IndusInd Bank 12. ING Vysya Bank 13. Jammu & Kashmir Bank 14. Karnataka Bank 15. Karur Vysya Bank 16. Kotak Mahindra Bank 17. Lakshmi Vilas Bank 18. RBL Bank 19. Tamilnad Mercantile Bank 20. Yes Bank 21. Mizuho Bank Ltd.

## 7.3.5. Illustration for applicable Board Resolution Requirements under Clause 5.4.1

<b>Investor</b>	<b>Entities (other than Bidder) whose credentials (financial and/ or technical) used by Bidder</b>	<b>Applicable Board Resolutions</b>	<b>Requirement of Undertaking</b>
<b>Bidder himself for [Refer Guidance Note #1] equity in the Deemed Licensee</b>	None	Format-I of Format 7.1.13	Bidder's Undertaking as per Format 7.1.11 (Both Format I & II)
<b>Bidder himself for [Refer Guidance Note #1] equity in the Deemed Licensee</b>	Affiliate and/ or Parent Company	Formats I & II of Format 7.1.13	Yes, by Financially Evaluated Entity, whose credentials have been used as per Format 7.1.12, in addition to Format 7.1.11 (Both Format I & II).



7.3.6. Information Memorandum

- Provided separately



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# SHA for Privatization of Distribution  
Licensees)**

**Shareholders Agreement**

**Between**

**[Insert Name of Holding Entity]**

**AND**

**[Insert Name of Successful Bidder]**

**AND**

**[Insert Name of SPV]**

**Date:**

**(Version Date: 20/09/2020)**

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This Shareholder's Agreement (the "Agreement") is made on the [Date] day of [Month], [Year],

### AMONGST

- (1) **[Insert Name of Holding Entity]**, a company incorporated under the provisions of the Companies Act, [1956/ 2013] and having its registered office at [.] (hereinafter referred to as "**Holding Entity**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the first part;
- (2) **[Insert Name of Successful Bidder]** a company incorporated under the provisions of the Companies Act, [1956/ 2013] with registered office at [.] (hereinafter referred to as "**[SB]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the second part; and
- (3) **[Insert Name of SPV]**, a company incorporated under the provision of the Companies Act, 2013 and having its registered office at [.] (hereinafter referred to as "**[SPV]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the third part.

The Holding Entity, the [SB] and the [SPV] are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Holding Entity and the [SB] are collectively referred to as the "**Shareholders**" and individually as "**Shareholder**".

### WHEREAS:

- (A) In exercise of powers under the Electricity Act, 2003, the Government of [State/ UT name] has published the [Transfer Scheme name] ("**Transfer Scheme**") that has become effective as on [.] ("**Transfer Date**").
- (B) The [SPV] has been incorporated as a limited company under the Companies Act, 2013 to undertake the business of distribution and retail supply of electricity in the [area description] ("**Area**") and is 100% owned by [Government of State/ UT name or any other company] ("**Holding Entity**").
- (C) In terms of the provisions of the Electricity Act, 2013 and the Transfer Scheme, the [SPV] is a deemed licensee to undertake the business of electricity distribution and retail supply in the Area to all consumers from the Transfer Date.
- (D) Presently, the authorized share capital of the [SPV] is Indian Rupees [.] (INR [.]00) comprising of [.] ([.]00) equity shares of Indian Rupees [.] (INR [.]00) each and the entire share capital is held by Holding Entity.
- (E) [SB] has been selected through a competitive bidding process as investor/ operator to purchase from Holding Entity the majority interest in [SPV] and manage the business of distribution and retail supply of electricity in the Area.
- (F) [SB] had complied with the terms of the RFP and RFP Documents which were necessary to execute the Share Acquisition Agreement and consequently, [SB] and Holding Entity entered into a Share Acquisition Agreement dated [.] Under the said Share Acquisition Agreement, the Holding Entity had agreed to sell and transfer to [SB] and [SB] had agreed to purchase from Holding Entity [.] ([.]00) equity shares on the terms and conditions contained in the RFP and in the Share Acquisition Agreement.
- (G) In terms of the Share Acquisition Agreement, [SB] has arranged for the payment of consideration to Holding Entity for the shares agreed to be purchased, and the same has been paid contemporaneously with the execution of this Agreement.

- (H) The Holding Entity and the [Successful Bidder name] are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as Shareholders of the [SPV] and to record their respective rights and obligations in relation to its management and functioning and other matters incidental thereto.

**NOW, THEREFORE,** for an in consideration of mutual promises made and contained herein it is agreed as follows:

## 1. DEFINITIONS AND INTERPRETATIONS

1.1. **Definitions:** In this Agreement (including the recitals), unless the context otherwise requires, the following terms shall have the meanings given to them below:

- (a) **"Agreement"** shall mean this Shareholders Agreement entered into between Holding Entity, [SB] and [SPV];
- (b) **"Area"** shall mean the license area of [Utility/ SPV];
- (c) **"Articles"** shall mean the Articles of Association of [SPV] for the time being in force;
- (d) **"Bid"** is defined as bid dated [.] submitted by [SB] in response to the RFP dated [.] read with any clarifications thereto;
- (e) **"Board"** or **"Board of Directors"** shall mean the board of director(s) of the [SPV];
- (f) **"Chairman"** shall mean chairman of the Board of the [SPV];
- (g) **"Commission"** shall mean shall mean the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission name];
- (h) **"Director"** shall have the meaning as ascribed in the Companies Act, 2013;
- (i) **"Equity Shares"** shall mean the fully paid up equity share of a par value of Indian Rupees [.] (INR [.]00) each of the [SPV];
- (j) **"Holding Entity"** shall mean [Government of [State/ UT name] or [Utility/ Department name]];
- (k) **"Managing Director"** shall mean the whole time managing director of the [SPV];
- (l) **"RFP"** shall mean the Request for Proposal dated [.] issued by the [.] for selection of bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description];
- (m) **"RFP Documents"** shall have the same meaning as ascribed thereto in RFP;
- (n) **"Share Acquisition Agreement"** shall mean the agreement made between [SB], Holding Entity and [SPV] dated [.] relating to the sale of shares by Holding Entity in the [SPV] to [SB];
- (o) **"Shareholder"** or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement; and
- (p) **"Shares"** the ordinary shares of Indian Rupees [.] (INR [.]00) each in the capital of [SPV] from time to time in issue;

## 1.2. Interpretations

- (a) References in this Agreement to any statutory provision shall include a reference to that statute or provision as amended, extended or re-enacted and to any statutory replacement thereof from time to time and shall also include reference to all statutory instruments and orders made pursuant to any such statutory provision.
- (b) Reference in this Agreement to the singular shall include a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter and reference to a person shall include reference to any company as well as any legal or natural person.
- (c) The construction of this Agreement and the Schedules hereto is not to be affected by any heading.
- (d) References in this Agreement to recitals, clauses, sub-clauses and schedules are, unless otherwise specified, references to recitals, clauses and sub-clauses of and schedules of this Agreement.
- (e) References to this Agreement include a reference to each of the schedules.

## 2. THE [SPV] AND OBJECTIVES

- 2.1. [SB] and Holding Entity shall participate in the manner provided in this Agreement in various matters related to the capital, business and operations of [SPV].
- 2.2. Neither Party hereto shall have the authority or power to bind the other Party hereto save and except as specified provided in this Agreement.
- 2.3. [SB] acknowledges that the principal objectives of Holding Entity in selling the majority Equity Shares in [SPV] to [SB] are to achieve following outcomes in distribution and retail sale of electricity in the license area of the SPV:
  - (a) Improved quality, security and reliability of power supply and the quality of various services delivered to consumers;
  - (b) Achieving global benchmarks in Aggregate Technical & Commercial ("AT&C") losses; and
  - (c) Affordable and competitive pricing of electricity.

## 3. CAPITAL STRUCTURE

- 3.1. The authorized equity share capital of [SPV] is Indian Rupees [.] (INR [.]00) comprising of [.] ([.]00) Equity Shares of Indian Rupees [.] (INR [.]00) each. The issued, subscribed and paid up equity share capital of [SPV] presently is Indian Rupees [.] (INR [.]00).
- 3.2. The persons/ shareholders who hold the issued Equity Shares are those listed below:

Sl.	Shareholder Name	Number of shares	Percentage shareholding
1	[SB]	[.]	[.]
2	Holding Entity	[.]	[.]

Sl.	Shareholder Name	Number of shares	Percentage shareholding
<b>TOTAL</b>		[.]	<b>100%</b>

3.3. The amount of issued and paid up capital of [SPV] may vary from time to time as may be determined and approved by the Board of Directors or the shareholders of [SPV], in accordance with the provisions of the existing shareholders in proportion to their respective holding in [SPV].

## **4. MANAGEMENT OF [SPV] - DIRECTORS, CHAIRMAN, MANAGING DIRECTOR/ MANAGER**

### **4.1. Board of Directors:**

- (a) The Board of Directors of [SPV] shall consist of the nominees of the respective groups i.e. Holding Entity and [SB].
- (b) In the event the shareholding of the Holding Entity increases beyond twenty six percent (26%), it shall be entitled to nominate [.] Directors.
- (c) [SB] shall have the right to appoint the majority of the Directors which shall include atleast one (1) Director more as compared with the rights of the Holding Entity.
- (d) The Parties agree that the nominee Director of the Holding Entity shall have a right of affirmative vote in the meetings of the Board of Directors of the [SPV], and the Holding Entity shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the matters provided under Article 7.
- (e) The initial Board of [SPV] shall consist of [.] Directors. Of these [SB] shall be entitled to nominate or appoint [.] Directors, Holding Entity shall be entitled to nominate [.] Directors.
- (f) No Director or his alternate shall be required to hold any qualification share.

### **4.2. Chairman:**

- (a) The Chairman of the [SPV] shall be appointed by the Board of Directors and shall be a non-executive director. The Chairman shall not have a Casting vote.

### **4.3. Managing Director:**

- (a) One of the Directors nominated by [SB] shall be appointed as the Managing Director or Whole time Director or a Chief Executive and shall be designated as Manager of [SPV] as envisaged in Chapter XIII of the Companies Act, 2013. [SB] shall also be entitled to designate all the other executive directors of [SPV] and Holding Entity shall not claim any right to designate any executive director.
- (b) Subject to the supervision and control of the Board, the day-to-day management and conduct of the affairs of [SPV] shall vest in the Managing Director or Whole time Directors or the Chief Executive appointed as per Clause 4.3 (a) above.

4.4. The Parties, including their nominees and affiliates, shall ensure that the individuals nominated by [SB] to be Directors of [SPV] are duly elected and for this purpose shall use

the voting rights attached to the respective shares held by them in favour of election of such individuals as Directors.

4.5. The Parties shall be entitled with right to remove their respective nominee Directors and nominate alternatives in their place.

4.6. **Casual Vacancies:** All casual vacancies in the office of Directors on the Board shall be filled as follows:

(a) In case of Director who has been appointed or designated by [SB] vacating his office as a Director for any reason, the person designated or selected by [SB] shall be appointed to fill the casual vacancy.

(b) In case of a Director who has been appointed or designated by Holding Entity vacating his office as a Director for any reason, the person designated or selected by the Holding Entity shall be appointed to fill the casual vacancy.

4.7. **Alternate Director:**

(a) If a Director nominated by a Party is unable to attend meetings of the Board of Directors of [SPV], [SB] or Holding Entity, as the case may be, shall be entitled to nominate in his place an alternate Director to attend such meetings.

(b) The Board of Directors of [SPV] shall duly appoint as alternate Director, the person so nominated by the Party concerned.

4.8. **Notice and Agenda for meeting**

(a) The Board of Directors of [SPV] shall meet from time to time (at least once in every quarter in a financial year) for the purpose of determination and dealing with policy matters affecting the business and affairs of [SPV].

(b) Except when the exigencies of business otherwise warrant or otherwise a shorter notice is mutually agreed, meetings of the Board shall be held with not less than ten (10) working days' notice given to all Directors.

(c) Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

(d) The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all Directors, with all Director nominated by Holding Entity in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

4.9. **Quorum for Board Meetings:**

(a) Subject to the provisions of the Companies Act, 2013 the quorum for the meetings of the Board shall be at least [...] nominee Director of [SB] and [...] nominee Director of Holding Entity or their respective alternates. If such quorum is not present, the meeting shall be adjourned to the same day and the same time in the following week and in such adjourned meeting the Directors may transact the business even if the quorum mentioned above is not present.

(b) Subject to the provisions of the Companies Act, 2013 and the other terms contained in this Agreement the decisions in meetings of the Board of Directors shall be valid



and effective if approved by majority voting of the Directors present in such meetings.

- (c) However, the quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Holding Entity if any matter provided in Article 7 is to be considered in such meeting; and no matter provided in Article 7 shall be taken into consideration at such meeting if the nominee Director of the Holding Entity is not present at such meeting.
- (d) All items of business transacted or decisions taken at meetings where the appropriate quorum is not constituted shall be null and void.

#### 4.10. **Decisions:**

- (a) Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present.

Provided, however, that all resolutions on the matters provided in Article 7 to be passed in the meeting of Board of Directors of [SPV] shall be subject to the affirmative vote of the Director nominated by the Holding Entity and no such resolution shall be passed if no such Director nominated by the Holding Entity is present and voting in favour of such resolution.

- (b) The [SPV] or any of its Directors, officers, agents or representatives shall not undertake any matter provided in Article 7 without the prior approval by the Board in the manner provided in Clause 4.10 (a) above and any act done by the [SPV] or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

#### 4.11. [SB] and Holding Entity on their behalf and on behalf of their affiliates and nominees undertake with each other as follows:

- (a) To exercise all voting rights and powers available to them in relation to [SPV] so as to give full effect to the terms and conditions of this Agreement including, where appropriate, the carrying into effect of such terms as if they were embodied in [SPV]'s Memorandum and Articles of Association;
- (b) To ensure that the Directors nominated by them and other representatives shall support and implement all reasonable proposals which comes before the general meetings, board meetings or committee meetings of [SPV] for the proper development and conduct of the business as contemplated in this Agreement;
- (c) Save as provided in Article 4, if any employee of the [SPV] is to be nominated as a Director of the [SPV] the same is given effect to only with the consent of both [SB] and the Holding Entity; and
- (d) To use all reasonable endeavours to promote the business and the interests of [SPV].

#### 4.12. The number of Directors of the [SPV] shall be a minimum of [.] and a maximum of [.]

## 5. **BUSINESS OF [SPV]**

- 5.1. The main business of [SPV] shall be to undertake the distribution and retail supply of electricity in the Area as a distribution licensee for [Area] and to do such other things as

may be ancillary or incidental to the same or otherwise as mutually agreed between [SB] and Holding Entity.

- 5.2. Except as the Parties may otherwise agree in writing or save as otherwise provided or contemplated in this Agreement the Parties shall exercise their powers as shareholders and cause the exercise of the powers by their nominees in the board meetings so as to ensure that
- (a) [SPV] carries on and conducts its business and affairs in a proper and efficient manner;
  - (b) [SPV] transacts all its business on arm's length basis;
  - (c) [SPV] does not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it may think fit;
  - (d) The business of [SPV] is carried on pursuant to the policies laid down from time to time by the Board of Directors;
  - (e) [SPV] maintains proper and adequate insurance against all risks usually insured against by companies carrying out same or similar businesses;
  - (f) [SPV] undertakes the activities in accordance with the terms of the Electricity Act, 2003 or licence conditions, the provisions of applicable laws, rules, regulations, orders and directions of concerned authorities including and in particular the Commission;
  - (g) [SPV] does not acquire, dispose, hire, lease, licence or receive licenses of any assets, goods, rights or services other than at reasonably obtainable price ; and
  - (h) [SPV] keeps books of account and make true and complete entries of all its dealings and transactions of and in relation to its business therein.
- 5.3. [SB] and Holding Entity shall each be entitled to examine the books and accounts kept by [SPV] and to be supplied with all relevant information including quarterly management accounts and operating statistics and such other trading and financial information in such form as they may reasonably require to keep each of them properly informed about the business of [SPV] and generally to protect their respective interests.
- 5.4. The Holding Entity, with support of the Government of [State/ UT name], shall endeavour to make available the benefits of various State/ Central Government Schemes for power distribution licensees/ their consumers to [SPV]/ its consumers, as appropriate.

## **6. FUNDING**

- 6.1. Subject to other provisions of this Agreement, [SB] as the majority and controlling shareholder shall help and assist the [SPV] to raise capital and other finances required for the business of [SPV]. [SB] shall not require Holding Entity and/ or its nominees to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds. Provided however that Holding Entity shall duly consider the shares held by it in the [SPV] to be pledged for seeking finances for the [SPV], in the event the [SB] provides proportionate (or higher) security for such finances.

## **7. MATTERS REQUIRING CONSENT OF BOTH PARTIES**

- 7.1. The [SPV] shall not give effect to any decision or resolution on any of the following matters unless the Director nominated or appointed by the Holding Entity votes in the affirmative for the same.
- (a) Any amendment to the Memorandum or Articles of Association of [SPV];
  - (b) Application to a court to wind-up the [SPV];
  - (c) Dissolution, liquidation or winding up of [SPV];
  - (d) Merger or amalgamation with any other company or split/ vision of [SPV];
  - (e) Closure of business or activities of [SPV] or sale or transfer of any of its undertaking;
  - (f) Subscription for or any shares, debentures or securities or interest in any other entity except to the extent of short-term investment (e.g. treasury functions) upto Indian Rupees [.] (INR [.]00) of surplus funds not immediately required for business;
  - (g) Material change in any significant accounting policy;
  - (h) Write-off/ cancellation of any investment/ money deposit exceeding Indian Rupees [.] (INR [.]00);
  - (i) Giving corporate guarantee for any other person or business;
  - (j) Commencement of any new lines of business; and
  - (k) any other matter which is required by the Companies Act, 2013 or any other applicable law to be passed by a special resolution of the shareholders of the company.

## **8. FINANCIAL POLICY, ACCOUNTS AND AUDIT**

- 8.1. [SB] shall assist [SPV] to prepare all financial, budgetary and operational accounts, reports and reviews in accordance with generally accepted accounting norms followed in India and as required by applicable Indian laws/ regulations so as to ensure that all such reports/ accounts/ reviews present a true and fair picture of the business of the [SPV].
- 8.2. [SB] shall assist [SPV] to prepare the financial accounts of [SPV] as required under the Companies Act, 2013 in accordance with the Indian accounting standards.
- 8.3. The financial year of [SPV] unless otherwise mutually agreed between the Holding Entity and [SB], shall be from 1st April of a year to 31st March of the following year.
- 8.4. The Parties hereto and the nominee Director of the Parties hereto on the Board of [SPV] shall receive quarterly financial statements relating to the operations and activities of [SPV] including un-audited balance sheets, profit and loss statements and cash flow statements with relevant particulars relating to distribution and retail business such as amounts billed for electricity supplied, amounts collected, AT&C losses, areas arrears, performance against SERC mandated targets etc. not later than forty five (45) days of close of each quarter.
- 8.5. The tax and accounting practices adopted by [SPV] shall be determined by applicable Indian laws and regulations including the income tax law in India and customs and practices so as to secure the maximum benefit for [SPV].

## 9. PROFIT DISTRIBUTION

- 9.1. [SPV] shall declare dividends out of the profits after providing for such reserves and deductions as may be required by law or otherwise as may be determined by the Board of Directors of the [SPV] from time to time in accordance with prudent financial practices and business requirements of the [SPV].
- 9.2. For the purpose of Clause 9.1, the expression 'profits' shall mean the profits as reflected in the audited financial statements of [SPV] prepared in accordance with Indian General Auditing and Accounting Principles (GAAP) after proper provisions for all taxation assessable on or by reference to the profits of the [SPV].

## 10. REPRESENTATIONS TO [SPV]

- 10.1. Each Party hereto represents and warrants to, and covenants with the other Parties that:
- (a) the Party has been duly incorporated or created and is validly subsisting and in good standing under the jurisdictions of its incorporation;
  - (b) the Party has all requisite powers and has been duly authorized to execute and consummate this Agreement;
  - (c) this Agreement has been duly approved and authorized, executed and delivered by the Party and constitutes a valid, binding and enforceable obligation of the Party, enforceable against it in accordance with its terms and no other corporate action (by the Party) is necessary to approve this Agreement or for the Party to perform its obligations hereunder;
  - (d) the consummation of the transactions contemplated by this Agreement on the part of Party will not violate any provision or nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or any lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which it is a party or to which it is bound which violation, default or power has not been waived;
  - (e) the Party shall adhere to the provisions of the Transfer Scheme; and
  - (f) all the consents or approvals or filings or registrations with any governmental authority or third party necessary in connection with the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of its obligations hereunder have been obtained.
- 10.2. [SB] has agreed to provide to [SPV] on an ongoing basis proper professional management and support and for this purpose [SB] shall be bound by the representation given by [SB] in the RFP and RFP Documents.
- 10.3. [SB] and Holding Entity shall be bound by the representations and warranties given by them in the Share Acquisition Agreement dated [.]

## 11. TRANSFER OF SHARES

- 11.1. The [SB] shall continue to hold at least fifty one percent (51%) shareholding in the [SPV] until the completion of ten (10) years from the date of signing of this Agreement.

*{Insert in case [SB] is a Consortium}* The [SB] shall continue to maintain the equity commitment of each of its members in the same proportion as specified in its Consortium Agreement at the RFP stage until the completion of ten (10) years from the date of signing of this Agreement.

- 11.2. After completion of ten (10) years, [SB] shall be entitled to transfer any or all of its shares to any other entity/ person after giving the option of first refusal to the Holding Entity as per terms of Clause 11.5. In such event, the [SB] will be responsible to make the purchaser of the shares agree to comply with this Agreement as a condition of transfer.
- 11.3. Holding Entity, after a period of five (5) years, shall be entitled to transfer any or all its Equity Shares in the [SPV] to any other entity/ person. In such event, the Holding Entity will be responsible to make the purchaser of the shares agree to comply with this Agreement as a condition of transfer.
- 11.4. Subject to Clause 11.1, [SB], seeking to transfer its shares shall, as per Clause 11.2, give written notice of its intention to the Holding Entity and shall allow the Holding Entity thirty (30) days' time to exercise its option to purchase the shares.
- 11.5. In the event [SB] exercises the option to transfer shares under Article 11, the following shall apply:
  - (a) [SB] shall offer the price at which it is willing to sell the shares held by it in [SPV] and if the price offered by the [SB] is acceptable to the Holding Entity, the shares shall be sold and transferred at the said price.
  - (b) If the price offered by the [SB] is not acceptable to the Holding Entity, the [SB] shall have the right to sell the shares to any third party/ parties at a price that is not lower than or equal to the price offered to the Holding Entity.
- 11.6. In the event [SB] desires to transfer the shares held by it in the [SPV] to any third party after the lock-in period (mentioned in Clause 11.2) and subject to the Holding Entity not exercising its right under Clause 11.2, the [SB] shall notify the Holding Entity of its intent to transfer its shares to a third party. The Holding Entity shall have the option to exercise its right, within thirty (30) days of being notified, to require [SB] to also sell all its shares held by the Holding Entity or any part thereof on the same terms and conditions as available to the [SB] and the [SB] shall duly comply with the same and arrange for the sale of such shares offered by Holding Entity along with its shares.
- 11.7. Any third party, who acquires ten percent (10%) or more shares and desires a seat/ representation in the Board of Directors, shall be required to abide by this Agreement and shall be inducted as co-signatory to this Agreement.

## **12. DURATION OF THE AGREEMENT AND TERMINATION**

- 12.1. This Agreement shall come into force on the date of its execution by the Parties.
- 12.2. Termination:
  - (a) In the event any entity, other than Holding Entity ceases to hold, directly or indirectly, less than ten percent (10%) of Equity Shares of the [SPV], this Agreement shall stand terminated for that entity automatically.

## **13. RELATIONSHIP BETWEEN THE PARTIES**

- 13.1. Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the Parties and neither Party shall have any authority to bind or obligate the other Party in any manner whatsoever in relation to third parties.

## **14. ASSIGNMENT**

- 14.1. Holding Entity shall at all times have the right to assign the rights, benefits and its obligations under this Agreement and also convey, transfer and vest all the shares held by it in [SPV] together with all beneficial interest in the successor entity or entities as a part of reorganization or restructuring of electricity industry in the [State/ UT] or otherwise as a part of reorganization of shareholding and/ or interest held by Government of [State/ UT name], government corporations, companies and bodies cooperates in the [State/UT]. Provided that such transfer of shares shall be only to the Government or a Government company or a body corporate owned or controlled by the Government.
- 14.2. In case of assignment specified under Clause 14.1 the term Holding Entity referred to in this Agreement shall for all intent and purposes, mean and include such successor entity or entities and such successor entity or entities shall duly fulfil the obligations assumed under this Agreement by the Holding Entity.
- 14.3. For the purposes of Clauses 14.1 and 14.2 one of the companies shall be designated as the coordinating entity and [SB] shall be required to deal only with the company so designated.
- 14.4. The assignment of the rights, benefits and obligations specified in Clause 14.1 above shall not amount to transfer of shares within the meaning of Article 11.
- 14.5. [SB] shall not be entitled to assign the rights, benefits and/ or obligations of this Agreement to any other person.
- 14.6. Provided however that there shall be no restriction on the pledge of the shares to the banks and financial institutions to secure finances and funding for the business of the [SPV].
- 14.7. For the purposes of this Agreement, two bodies corporate will be considered as a part of the same group if one body corporate is a subsidiary or holding company of another or both the bodies corporate are otherwise to the satisfaction of Holding Entity established to be under a common management.

## **15. COSTS AND EXPENSES**

- 15.1. Unless mutually agreed otherwise, each Party shall bear its own costs and expenses in connection with this Agreement and steps taken in furtherance of the business contemplated by this Agreement until the date of execution of this Agreement.

## **16. MUTUAL COOPERATION**

- 16.1. The Parties to this Agreement shall exercise their rights and shall cause their representatives and nominees on the Board of Directors of [SPV] to do and perform all acts, deeds and things as may be necessary or expedient to give effect to the terms of this Agreement.
- 16.2. Each of the Parties hereto undertakes with the other.
- (a) To perform and observe and so far as it is able by the exercise of voting rights or

otherwise so to do to ensure that the [SPV] performs and observes all the provisions of this Agreement.

- (b) To take all necessary steps on its part to give full effect to the provisions of this Agreement.
- (c) Without prejudice to the generality of the foregoing to exercise and ensure that every person for the time being representing it will exercise or refrain from exercising any voting rights at any meeting of the members or of the Directors of the [SPV] so as to ensure adherence to every resolution to ensure that the affairs of the [SPV] are conducted in accordance with this Agreement and otherwise to give full effect to the provisions of this Agreement.

16.3. By entering into this Agreement, the Parties recognize that it is impractical to provide for every contingency that may arise in the course of the performance thereof. Accordingly the Parties declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interest of any of them and if in the course of the performance of this Agreement unfairness to any Party hereto manifests, they will use their best endeavours to remove the cause or causes of the same.

## **17. FORCE MAJEURE**

17.1. If the performance by either Party to this Agreement or of any obligation hereunder is prevented by reason of force major such as:

- (a) war, revolution, blockade or embargo or the like; or
- (b) any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government; or
- (c) any other event beyond the reasonable control of the Party affected.

Then the Party so affected shall upon giving prior written notice to the other be excused from such performance to the extent that such cause prevents, restricts or interferes with it. Provided that it shall use its best endeavor to avoid and remove such cause of non-performance and shall continue performance hereunder with the utmost dispatch whenever such cause or restriction is removed.

17.2. Upon such prevention, restriction or interference as aforesaid arising, the Parties shall meet forthwith to discuss what modifications (if any) may be required to the terms of this Agreement in order to arrive at an equitable solution.

## **18. MISCELLANEOUS**

18.1. Severability

Each of the provisions contained in this Agreement shall be severable and the unenforceability of one shall not affect the enforceability of any other or of the remainder of this Agreement.

18.2. Modification

This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both the Parties.

**18.3. Waiver**

The failure of any Party to enforce any condition or part of this Agreement at any time shall not be construed as a waiver of that condition or part, for shall it forfeit any rights to future enforcement thereof.

**18.4. Government Law and Jurisdiction**

This Agreement shall be construed and enforced in accordance with and governed by the laws of India and subject to Clause 19.3, the Parties hereby irrevocably submit to the exclusive jurisdiction of the appropriate Courts in [Place name].

**18.5. Headings**

The headings of the Articles and Clauses of this Agreement are inserted for convenience only and shall not be deemed to constitute part hereof.

**18.6. Counterparts**

More than one counterpart of this Agreement may be executed by the Parties or different counterparts may be executed by different Parties and all such counterparts shall be deemed originals and shall be deemed to be a single Agreement.

**18.7. Notices**

All communications, notices and consents provided for herein shall be in writing and be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type) or by registered or certified mail, return receipt requested and shall become effective (a) on delivery if given in person, (b) on the date of transmission if sent by telex, telecopy or other wire transmission or (c) on receipt if sent by mail.

Notices shall be addressed as follows

If to [SB], to

Company Secretary  
[SB name]  
[Address of SB]

If to Holding Entity, to

Company Secretary  
[Holding Entity name]  
[Address of Holding Entity]

If to [SPV], to

Company Secretary  
[SPV name]  
[Address of SPV]

**18.8. No Partnership etc.:**



Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties nor constitute any Party the agent of another Party for any purpose.

18.9. Unless the context otherwise requires, the terms used in this Agreement and not defined herein shall have the meaning as in the Share Acquisition Agreement.

**19. DISPUTE RESOLUTION AND ARBITRATION**

19.1. Any dispute, question or difference arising between the Holding Entity on the one part and [SB] on the other part, in connection with this Agreement or otherwise in regard to the relationship by virtue of the terms of this Agreement including the construction and scope of the agreement shall first be referred to the respective Chief Executive of [SB] and a senior official to be designated by the Chief Executive of Holding Entity not by way of arbitration but with a view to amicably resolve the issue by discussion and conciliation.

19.2. In the event such dispute, question or difference cannot be amicably resolved between them during the period of thirty (30) days of the dispute being notified by the Party of either part for such resolution, the dispute question or difference shall be referred to arbitration.

19.3. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof as applicable at the relevant time. Unless otherwise determined by the arbitrator/arbitrators the location for the arbitration shall be in [Place name]. The award of the arbitrator shall be final and binding.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

SIGNED ON BEHALF OF  
[SB name]  
By-----  
On-----

SIGNED ON BEHALF OF  
[Holding Entity name]  
By-----  
On-----

SIGNED ON BEHALF OF  
[SPV name]  
By-----  
On-----

WITNESSES

- 1.
- 2.



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# SAA for Privatization of Distribution  
Licensees)**

**Share Acquisition Agreement**

**Between**

**[Insert Name of Holding Entity]**

**AND**

**[Insert Name of Successful Bidder]**

**AND**

**[Insert Name of SPV]**

**Date:**

**(Version Date: 20/09/2020)**

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This Share Acquisition Agreement (the "Agreement") is made on the [Date] day of [Month], [Year],

## AMONGST

- (1) **[Insert Name of Holding Entity]**, a company incorporated under the provisions of the Companies Act, [1956/ 2013] and having its registered office at [.] (hereinafter referred to as "**Holding Entity**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the first part;
- (2) **[Insert Name of Successful Bidder]** a company incorporated under the provisions of the Companies Act, [1956/ 2013] with registered office at [.] (hereinafter referred to as "**[SB]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the second part; and
- (3) **[Insert Name of SPV]**, a company incorporated under the provision of the Companies Act, 2013 and having its registered office at [.] (hereinafter referred to as "**[SPV]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the third part.

The Holding Entity, the [SB] and the [SPV] are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Holding Entity and the [SB] are collectively referred to as the "**Shareholders**" and individually as "**Shareholder**".

## WHEREAS:

- (A) In exercise of power under the Electricity Act, 2003, the Government of [State/ UT name] has published the [Transfer Scheme name] ("**Transfer Scheme**") that has become effective as on [.] ("**Transfer Date**").
- (B) The [SPV] has been incorporated as a limited company under the Companies Act, 2013 to undertake the business of distribution and retail supply of electricity in the [area description] ("**Area**") and is 100% owned by [Government of State/ UT name or any other company] ("**Holding Entity**").
- (C) In terms of the provisions of the Electricity Act, 2013 and Transfer Scheme, the [SPV] is a deemed licensee to undertake the business of electricity distribution and retail supply in the Area to all consumers from the Transfer Date.
- (D) Presently, the authorised share capital of the [SPV] is Indian Rupees [.] (INR [.]00) comprising of [.] ([.]00) Equity Shares of Indian Rupees [.] (INR [.]00) each and the entire share capital is held by Holding Entity.
- (E) [SB] has been selected, through a competitive bidding process, as investor/ operator to purchase from Holding Entity the majority interest in [SPV] and manage the business of distribution and retail supply of electricity in the Area.
- (F) [SB] has complied with the terms of the RFP and RFP Documents which were necessary to execute this Share Acquisition Agreement. Holding Entity has agreed to sell and transfer to [SB] and [SB] has agreed to purchase from Holding Entity [.] ([.]00) Equity Shares on the terms and conditions contained in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of mutual promises made and contained herein it is agreed as follows:

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1. **Definitions:** In this Agreement (including the recitals), unless the context otherwise requires, the following terms shall have the meanings given to them below:
- (a) **"Agreement"** shall mean this Share Acquisition Agreement entered into between Holding Entity, [SB] and [SPV];
  - (b) **"Area"** shall mean the license area of [Utility/ SPV];
  - (c) **"Bid"** shall mean the bid dated [.] submitted by [SB] in response to the RFP dated [.] read with any clarifications thereto;
  - (d) **"Bid Authority"** shall have the same meaning as ascribed thereto in RFP;
  - (e) **"Bid Security"** shall mean bank guarantee no. [.] dated [.] provided by [Insert Name of Successful Bidder] pursuant to terms of the RFP;
  - (f) **"Board"** or **"Board of Directors"** shall mean the board of director(s) of the [SPV];
  - (g) **"Chairman"** shall mean chairman of the Board of the [SPV];
  - (h) **"Commission"** shall mean the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission name];
  - (i) **"Completion Date"** shall be the date on which the last of the requirements of Article 2 is completed;
  - (j) **"Consideration"** shall mean the amount of Indian Rupees [.] (INR [.]00) paid by [SB] for acquisition of Purchased Shares;
  - (k) **"Director"** shall have the meaning as ascribed in the Companies Act, 2013;
  - (l) **"Equity Shares"** shall mean the fully paid up equity share of a par value of Indian Rupees [.] (INR [.]00) each of the [SPV];
  - (m) **"Holding Entity"** shall mean [Government of [State/ UT name] or [Utility/ Department name]];
  - (n) **"Managing Director"** shall mean the whole time managing director of the [SPV] ;
  - (o) **"Purchased Shares"** shall mean [.] ([.]) equity shares of Indian Rupees [.] (INR [.]00) each paid up which constitute [Refer Guidance Note 1] of the equity capital in [SPV];
  - (p) **"RFP"** shall mean the Request for Proposal dated [.] issued by the [.] for selection of bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description];
  - (q) **"RFP Documents"** shall have the same meaning as ascribed thereto in RFP;
  - (r) **"Shareholders Agreement"** shall mean the agreement to be executed between [SB], Holding Entity and [SPV] dated [.] relating to the sale of share by Holding Entity to [SB];
  - (s) **"Shareholder"** or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement;

- (t) **"Shares"** the ordinary shares of Indian Rupees [.] (INR [.]00) each in the capital of [SPV] from time to time in issue; and

## 1.2. Interpretations

- (a) References in this Agreement to any statutory provision shall include a reference to that statute or provision as amended, extended or re-enacted and to any statutory replacement thereof from time to time and shall also include reference to all statutory instruments and orders made pursuant to any such statutory provision.
- (b) Reference in this Agreement to the singular shall include a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter and reference to a person shall include reference to any company as well as any legal or natural person.
- (c) The construction of this Agreement and the Schedules hereto is not to be affected by any heading.
- (d) References in this Agreement to recitals, clauses, sub-clauses and schedules are, unless otherwise specified, references to recitals, clauses and sub-clauses of and schedules of this Agreement.
- (e) References to this Agreement include a reference to each of the schedules.

## 2. PURCHASE OF SHARES BY [SB] AND COMPLETION

- 2.1. Within thirty (30) days from the date of this Agreement, [SB] shall pay to Holding Entity the total Consideration of Indian Rupees [.] (INR [.]00). Holding Entity shall sell and transfer to [SB] and [SB] shall purchase from Holding Entity the Purchased Shares against the receipt of the Consideration in the manner and upon the terms and subject to conditions specified in this Agreement and RFP Documents. In the event the sale and purchase of shares is not completed for reasons attributable to Government of [State/ UT name] or the Holding Entity and if there are no contributory defaults or failures on the part of [SB], the conduct of business of the [SPV] from the said thirty (30) days to the Completion Date shall be to the account of Government of [State/ UT name] and/ or the Holding Entity.
- 2.2. The Purchased Shares shall be delivered by Holding Entity to [SB] against the payment of the entire Consideration amount by [SB] to Holding Entity. Holding Entity shall deliver to [SB] the duly executed transfer deeds to enable [SB] to lodge the Purchased Shares with [SPV] for registration in the name of [SB].
- 2.3. [SB] shall place before the Board of [SPV] the Purchased Shares and the transfer deeds pertaining to the Purchased Shares for registration of the transfer at the time of completion of the transactions as provided hereunder.
- 2.4. The completion of such transaction shall take place within the time specified in Clause 2.1 above in the following manner:

A meeting of the Board of Directors of [SPV] shall be held to undertake the following:

- (a) **REGISTRATION OF PURCHASED SHARES TRANSFERRED in FAVOUR OF [SB]:** The Board of Directors of [SPV] shall pass a resolution approving the transfer of the Purchased Shares from Holding Entity to [SB] and registration in the books of [SPV] of the transfers in favour of [SB].

- (b) **RECONSTITUTION OF THE BOARD OF DIRECTORS:** The Board of Directors of [SPV] shall be re-constituted with the co-option of [.] nominee Directors of [SB] and [.] Directors to be nominated by Holding Entity. All existing Directors other than the [.] Directors mentioned above shall resign from the Board of Directors of [SPV] and their resignation will be noted and accepted by the Board. The resigning Directors will confirm that they will have no claim against the [SPV] by reason of their appointment, continuation or resignation as Directors in the [SPV].
  - (c) **APPOINTMENT OF MANAGING DIRECTOR/ MANAGER AND AUTHORISATION TO BE GIVEN:** One of the Directors nominated by [SB] shall be appointed as the Managing Director or Whole time Director or a Chief Executive shall be designated as the Manager of [SPV] as envisaged in Chapter XIII of the Companies Act, 2013. He/ she shall be given the powers of management of [SPV] subject to the supervision and control of the Board of Directors.
  - (d) **CHAIRMAN:** The chairman of the [SPV] shall be chosen at the Board Meeting of the [SPV] and the Director so chosen shall act as the Chairman. The Chairman shall exercise such powers (provided such power shall not be inconsistent with the terms of the Shareholders Agreement) as the Board may decide.
  - (e) **AUTHORISATION FOR SIGNING OF THE SHAREHOLDERS AGREEMENT:** The Board of Directors shall authorize the signing of the Shareholders Agreement. Holding Entity, [SB] and [SPV] shall sign the Shareholders Agreement.
  - (f) **CALLING OF AN EXTRA ORDINARY GENERAL MEETING:** The Board of Directors shall call an Extra Ordinary General Meeting of the [SPV] to be held on a date to be mutually agreed to between [SB] and Holding Entity to transact the following:
    - (i) Passing of the resolution for amendment of the articles of association;
    - (ii) Appointment of Directors of the reconstituted Board of the [SPV] as provided in Clause 2.4 (b) above as regular Directors; and
    - (iii) Confirmation of other actions taken by the Board as per Clause 2.4 (a) to 2.4 (e) above.
- 2.5. The [SPV] shall take necessary steps for enabling its authorized share capital, through the Holding Entity, as per the provisions of the Transfer Scheme.

### **3. PURCHASE PRICE ADJUSTMENT**

- 3.1. The Parties agree that the Consideration amount shall be adjusted as per the following formula, on account of difference between provisional and final opening balance sheet of the [SPV] notified by the Government of [State/ UT] as part of the Transfer Scheme:

Adjustment in Consideration = Change in Gross Fixed Assets (other than those funded by grants) + Change in Capital Work in Progress - Change in Long Term Liabilities

Such adjustment shall be subject to recognition of the [SERC].

- 3.2. The Parties further agree that any adjustments computed as per the provision of Clause 3.1 shall be binding on both Parties and shall be paid by one Party to the other Party within thirty (30) days from notification of the final opening balance sheet of the [SPV].

### **4. REPRESENTATION AND WARRANTIES**

#### 4.1. Representations and Warranties by [SB]:

[SB] hereby represents and warrants to and agrees with Holding Entity as follows and acknowledges and confirms that Holding Entity is relying on such representations and warranties in connection with the transactions described in this Agreement:

(a) Due organisation:

[SB] is a company duly organized and validly existing and governed as per the applicable laws of India.

(b) Due authorisation:

(i) [SB] has the corporate power and corporate authority to adopt this Agreement and to purchase the Purchased Shares and undertakes the obligations of this Agreement in so far it applies to [SB];

(ii) [SB] has valid and legal binding obligations of this Agreement; and

(iii) Neither the execution and delivery nor the performance of this Agreement by [SB] will violate its articles of incorporation or bye laws or any indenture, loan agreement, contract, or instrument to which [SB] is a party or by which it is bound or any governments' order, rule or regulation applicable to it for adopting this Agreement and to purchase the Purchased Shares and to undertake its obligations under this Agreement.

(c) The [SB] acknowledges that it has made its own independent investigation, inspection, analysis and evaluation of the following:

(i) the business, assets and liabilities, performance on key parameters etc. of [SPV] and/ or the erstwhile [Utility/ Department name];

(ii) the regulatory regime in India and particularly in [State/ UT] to which [SPV] is subject to;

(iii) [State/ UT] itself;

(iv) the legal, financial and taxation consequences of entering into this Agreement; and

(v) the provisions of the Act and all regulations made by the Commission and the implications thereof

(d) On basis of independent investigation, inspection, analysis and evaluation of the points as mentioned in Clause 4.1 (c) above [SB] has entered into this Agreement.

(e) [SB] has undertaken its own due-diligence to its full-satisfaction and not relied on any information or representation made available to it by the Bid Authority, Holding Entity, [SPV] or any of their officers, employees, consultants or advisers.

#### 4.2. Holding Entity is expressly absolved from all liabilities and responsibilities for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from any operation, technical or scientific evaluation, testing, observation or investigation carried out or made by the [SB] or their bankers or advisers. Further the Holding Entity shall remain absolved from all liabilities and responsibilities arising out of any data, document, records or information disclosed prior to signing of this Agreement by Holding Entity or [SPV] or by any officer, director or employee or any agent, consultant,



banker or adviser acting on behalf of Holding Entity or [SPV] to the [SB] or their bankers or advisers or to any person acting on behalf of the [SB].

#### 4.3. Representations and Warranties by Holding Entity:

Holding Entity, on its own behalf and on behalf of [SPV] of which Holding Entity presently holds the entire shares (legally and beneficially), hereby represents and warrants to and agrees with [SB] as follows and acknowledges and confirms that [SB] is relying on such representations and warranties in connections with the transactions described in this Agreement:

##### (a) Due authorization

- (i) Holding Entity has the authority to enter into and to perform this Agreement and to sell the Purchased Shares to [SB].
- (ii) The terms of this Agreement constitutes valid and legally binding obligations of Holding Entity, enforceable in accordance with their respective terms.
- (iii) Neither the execution and delivery nor the performance of this Agreement by the Holding Entity will violate its articles of incorporation or bye laws or any indenture, loan agreement, contract or instrument to which the Holding Entity is a party or by which it is bound or any governments' order, rule or regulation.
- (iv) Further, the Holding Entity has duly complied with all statutory requirements applicable to it for adopting this Agreement and to sell the Purchased Shares and to undertake its obligations under this Agreement.

##### (b) Due organization of [SPV]

[SPV] is a company duly organized and validly existing under the laws of India from the date of its incorporation till the date of signing of this Agreement. The [SPV] conducts its business in the ordinary course and has the corporate power and authority to execute and perform its obligations under this Agreement.

##### (c) Purchased Shares

- (i) The Purchased Shares have been duly and validly authorized and issued by [SPV] and constitute [Refer Guidance Note 1] of the issued ordinary share capital of the [SPV] and shall be fully paid as on the Completion Date.
- (ii) Holding Entity owns the Purchased Share free and clear of all liens, security interests, restrictions and other adverse claims.
- (iii) When the Purchased Shares are transferred to [SB] and registered in the books of [SPV], [SB] will acquire good and valid title to the Purchased Shares and own them free and clear of all liens, security interests, restrictions and other adverse claims as on the Completion Date specified in Article 2.
- (iv) [SPV] will not have issued and will not be authorized to issue and no person will hold any option or other contractual right to cause the [SPV] to issue any equity shares or any other capital stock other than the issued equity shares as specified in Recital (D).

##### (d) Miscellaneous

- (i) The Recitals to this Agreement are true and accurate in all material respects.
  - (ii) Other than the undertaking transferred under the Transfer Scheme, the [SPV] does not directly or indirectly own any interest in any corporation, partnership, joint venture or other business entity.
  - (iii) The memorandum of association and articles of association of the [SPV] have not been amended and save as provided or envisaged in this Agreement nor such amendment has been proposed or pending.
  - (iv) The minute books of the [SPV] contain true and accurate records of all meetings of the [SPV].
- (e) It shall be the earnest desire of Government of [State/ UT name] and the Holding Entity to provide such reasonable assistance on a best endeavour basis, without incurring any legal obligation, to facilitate the [SPV] in the operation and conduct of its business.

#### 4.4. TRANSFER TAXES

[SB] shall be liable for and shall pay all share transfer duties, taxes, recording fees, sales taxes, stamp duties and all other taxes, duties or other like charges payable upon or in connection with the conveyance and transfer of the Purchased Shares to [SB] and execution of this Agreement.

## 5. CONDITIONS PRECEDENT OF THE PARTIES AND CONSEQUENCE OF NON COMPLIANCE

### 5.1. Conditions precedent of Holding Company

The obligation of Holding Entity, [SB] and [SPV] to consummate the transactions described herein shall be subject to the fulfilment, on or prior to the Completion Date, of the following conditions:

(a) Performance of Agreements and Covenants:

All conditions to be performed and satisfied by [SB] as specified or envisaged in the RFP on or prior to the Completion Date, shall have been duly performed and satisfied by [SB].

(b) Representations and Warranties:

The representation and warranties of [SB] contained in this Agreement shall be true in all material respects on and as of the Completion Date with the same effect as though made on and as of the Completion Date, and these shall be delivered to Holding Entity on the Completion Date in form and substance reasonably satisfactory to Holding Entity, duly signed by the Chief Executive or the Company Secretary of [SB] certifying to the foregoing.

(c) Opinions of Counsel:

Holding Entity shall have received opinions, dated the Completion Date and in form and substance satisfactory to Holding Entity from the counsel of [SB] that [SB] shall have the corporate power and corporate authority to enter into valid and legally binding obligations enforceable in accordance with their respective terms and that

there is no pending permit, consent, approval or authorization of or declaration to be filed with, any governmental authority required in connection with the execution, delivery or performance of this Agreement or the transaction contemplated hereby; and

(d) No Action or Proceedings

No court order shall have been entered in any action or proceeding instituted by any third party, which enjoins, restrains, or prohibits this Agreement or the complete consummation of the transactions contemplated by this Agreement.

5.2. In event of material breach on part of [SB], Holding Entity may terminate this Agreement by issuing notice in writing to [SB] and invoke the Bid Security of Indian Rupees [.] (INR [.]00) submitted with the Bid, without prejudice to its other legal rights and claims. For the purposes of this clause the occurrence of the following events would constitute material breach on part of [SB]

- (a) Failure on part of [SB] to perform condition, obligation or covenant in terms of this agreement at or prior to the Completion Date; or
- (b) Failure on part of [SB] to pay the Consideration; or
- (c) Failure on part of [SB] to complete the transaction as per the terms of this Agreement, due to reasons not attributable exclusively to the Holding Entity, [SPV] or Government of [State/ UT name].

5.3. Conduct until Completion Date:

- (a) Holding Entity hereby undertakes to procure that between the date of execution of this Agreement and Completion Dates, [SB] and its duly authorised representatives shall be given reasonable access to the premises and assets of [SPV] and to the books, records accounts and other facilities and properties of [SPV] and shall be permitted to make such inspection as may facilitate smooth transfer and be given fully and promptly all such financial and operating information as [SB] and their representatives may reasonably request provided that
  - (i) all such access shall be granted and all such inspections shall be conducted in such as manner as not to interfere unreasonably with the operation of the business of [SPV];
  - (ii) all such access shall be granted and all such inspections shall be subject to requirements of obligations to maintain confidentiality;
  - (iii) [SB] shall strictly observe all relevant regulations and security procedures of [SPV] in force from time to time and shall promptly carry out all reasonable requests and instructions from time to time given to [SB]'s representatives; and
  - (iv) The Bid given by [SB] shall not be subject to any variation or cancellation because of any matter which [SB] may raise after such inspection or access and [SB] shall not claim or assert any right to vary or modify the Bid or the terms of this Agreement or to not to pay the Consideration amount and complete the transaction based on such access or any information received by [SB];
- (b) [SB] shall be entitled to appoint two (2) representatives to receive notice of, and

attend (in the capacity of observers only) management and board meeting of [SPV], subject to any duties of confidentiality, which [SPV] may owe to third parties.

- (c) Holding Entity hereby assures to [SB] that, from the date of execution of this Agreement and until Completion Date (except as contemplated by this Agreement and save in the case of operational necessity or emergency), it shall cause the [SPV] to maintain and carry on its business in the ordinary and usual course.
- (d) Prior to Completion Date, [SPV] shall not in the ordinary course of business or in case of operational necessity or emergency or as disclosed in writing to [SB] prior to the submission of the Bid or as contemplated by the RFP and RFP Documents or in relation to any act, event or omission which is not material to [SPV] or its operation or business or with the prior consent in writing of [SB]:
  - (i) cancel or release any material debt or claim or sell or transfer any material tangible or intangible asset;
  - (ii) enter into material contracts or commitments including borrowings which in aggregate exceeds Indian Rupees [.] (INR [.]00);
  - (iii) give any material guarantee or indemnity;
  - (iv) assume or incur or agree to assume or incur any capital commitment in excess of Indian Rupees [.] (INR [.]00) in aggregate;
  - (v) dispose of the ownership, possession, custody or control of any corporate or other books or records;
  - (vi) materially alter its present business policies (both short term and long term) including those relating to manning levels, salary and benefit levels, ordering supply and stocking;
  - (vii) fail to carry out [SPV]'s present repair and maintenance procedures in any material respect;
  - (viii) cease to maintain in full force and effect all insurance policies now in effect and knowingly default under any material provision thereof, and duly give notice and present and obtain any material claim under any such insurance policies;
  - (ix) materially contravene the terms or conditions of any licence or sanction relating to the business or the assets of [SPV]; and
  - (x) permit any lien charge or encumbrance to be created over the assets of [SPV] except as envisaged in any of the RFP and RFP Documents.

## **6. INDEMNIFICATION**

### **6.1. Indemnification by [SB]**

If the transactions contemplated by this Agreement are consummated, [SB] agrees, without prejudice to other rights of Holding Entity and [SPV] to indemnify and hold harmless Holding Entity and the [SPV] against and in respect of any loss, damage, claim, action, suit, proceeding deficiency or expense relating to, arising from, or in connection with any misrepresentation, breach of any representation, warranty obligation, covenant

or agreement or fault on the part of [SB] in or under this Agreement or Bid delivered by [SB] prior to Completion Date in connection herewith.

## 6.2. Indemnification Process

- (a) In the event any third party makes a claim or commences any action or proceeding against Holding Entity and [SPV], with respect to any matter specified in Clause 6.1 as to which such party intends to seek indemnification, Holding Entity or [SPV] shall promptly notify [SB] of the existence of such claim.
- (b) [SB] shall have the right, upon receipt of notice from Holding Entity or [SPV] of the existence of such claim or the commencement of any such third party action or proceeding as specified in Clause 6.2 (a) to undertake and direct the defense of such claim, action or proceeding at any time by delivering to Holding Entity or [SPV], as the case may be;
  - (i) written notice of such undertaking.
  - (ii) written admission of complete liability for indemnification with respect to any such claim, action or proceeding and
  - (iii) written consent to be joined as a party to any such action or proceeding or in any action or proceeding resulting from such claims.

## 7. ASSIGNMENT

- 7.1. Holding Entity shall at all times have the right to assign the rights, benefits and its obligations under this Agreement and also convey, transfer and vest all the shares held by it in [SPV] together with all beneficial interest in the successor entity or entities as a part of reorganisation or restructuring of electricity industry in the [State/ UT] or otherwise as a part of reorganisation of shareholding and/ or interest held by Government of [State/ UT name], government corporations, companies and bodies corporate in the [State/ UT]. Provided that such transfer of shares shall be only to the Government or a Government Company or a body Corporate owned or controlled by the Government.
- 7.2. In case of assignment specified under Clause 7.1 the term Holding Entity referred to in this Agreement shall for all intent and purposes, mean an include such successor entity or entities and such successor entity or entities shall duly fulfil the obligations assumed under this Agreement by the Holding Entity.
- 7.3. For the purposes of Clauses 7.1 and 7.2 one of the companies shall be designated as the coordinating entity and [SB] shall be required to deal only with the company so designated.
- 7.4. The assignment of the rights, benefits and obligations specified in Clause 7.1 above shall not be deemed to be a transfer of shares by Holding Entity within the meaning of Article 11 of the Shareholders Agreement and the parties hereby clarify that in the event of such assignment the successor entity shall be entitled to exercise the rights of Holding Entity as the shareholder.
- 7.5. [SB] shall not be entitled to assign the rights, benefits and/ or obligations of this Agreement to any other person.
- 7.6. For the purpose of this Agreement, two bodies corporate will be considered as a part of the same group if one body corporate is a subsidiary or holding company of another or both the bodies corporate are subsidiaries of a third body corporate or the two bodies corporate

are other wise to the satisfaction of Holding Entity established to be under a common management.

## **8. EVENTS OF DEFAULT**

### **8.1. [SB]'s Event of Default**

- (a) The occurrence and continuation of any of the following events shall constitute a [SB]'s Event of Default unless there are no contributory defaults or failure on part of the Holding Entity:
  - (i) Failure by the [SB] to pay, to the Holding Entity, the total Consideration and acquire Purchase Shares as per Clause 2.1 within thirty (30) days from the date of this Agreement;
  - (ii) Material breach on part of [SB] as per Clause 5.2 of this Agreement;
  - (iii) Engagement or indulgence by [SB] in corrupt practice or fraudulent practices;
  - (iv) Unlawful repudiation of this Agreement or otherwise expression of an intention not to be bound by this Agreement by the [SB];
  - (v) Any representation or warranty made by the [SB] during the term of the Agreement is found to be false or misleading at any stage during subsistence of this Agreement.

### **8.2. Consequence of Default**

- (a) On occurrence of any [SB]'s Event of Default, or its coming to notice of the Holding Entity, the Holding Entity shall issue an Event of Default notice to the [SB].
- (b) [SB] shall eliminate such Event of Default and mitigate consequence of such Event of Default within a period of fifteen (15) days.
- (c) In case [SB] is unable to eliminate or mitigate the consequences of Event of Default within the period stipulated in Clause 8.2 (b), a termination event is set to occur. In such cases, Holding Entity may
  - (i) terminate this Agreement and thereby rescinding the transfer of shares to [SPV] and/ or
  - (ii) request to [SERC] for revocation of licensee of [SPV] and transfer of [SPV] to another qualified entity.

## **9. MISCELLANEOUS**

### **9.1. Severability**

Each of the provisions contained in this Agreement shall be severable and the unenforceability of one shall not affect the enforceability of any other or of the remainder provisions in this Agreement.

### **9.2. Modification**

This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both the Parties.

9.3. Waiver

The failure of any Party to enforce any condition or part of this Agreement at any time shall not be construed as waiver of that condition or part thereof, nor shall it forfeit any rights to future enforcement of the same.

9.4. Survival of the Agreement

All representations, warranties, covenants and other agreements contained in this Agreement (or given in connection with this Agreement) shall to the extent that it remains to be performed, survive the Completion Date and notwithstanding any investigation by a party or any knowledge obtained as a result thereof or otherwise, shall continue in full force and effect after the Completion Date.

9.5. Governing Law and Jurisdiction

This Agreement shall be construed and enforced in accordance with and governed by the laws of India and subject to Clause 10.3, the Parties hereby irrevocably submit to the exclusive jurisdiction of the appropriate Courts in [Place name].

9.6. Headings

The headings of the Article and Clause of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

9.7. Counterparts

More than one counterpart of this Agreement may be executed by the Parties or different counterparts may be executed by different Parties and all such counterparts shall be deemed original and shall be deemed to be a single Agreement.

9.8. Expenses

Subject to Clause 4.4 of this Agreement each of the parties will pay its own accounting, legal and other expenses associated with the transactions contemplated hereby.

9.9. Notices

All communications, notices and consents provided in respect of this Agreement shall be in writing and be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type) or by registered or certified mail, return receipt requested and shall become effective (a) on delivery if given in person; (b) on the date of transmission if sent by telex, telecopy, or other wire transmission or (c) on receipt if sent by mail.

Notices shall be addressed as follows:

If to [SB], to

Company Secretary  
[SB name]  
[Address of SB]

If to Holding Entity, to

Company Secretary  
[Holding Entity name]  
[Address of Holding Entity]

If to [SPV], to

Company Secretary  
[SPV name]  
[Address of SPV]

9.10. No Partnership etc:

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties nor constitute any Party the agent of another Party for any purpose.

## 10. DISPUTE RESOLUTION AND ARBITRATION

- 10.1. Any dispute, question or difference arising between the Holding Entity on the one part and [SB] on the other part, in connection with this Agreement or otherwise in regard to the relationship by virtue of the terms of this Agreement including the construction and scope of the Agreement shall first be referred to the Chief Executive of [SB] and a senior official to be designated by the Chief Executive of the Holding Entity not by way of arbitration but with a view to amicably resolve the issue by discussion and conciliation.
- 10.2. In the event that such dispute, question or difference cannot be amicably resolved between them during a period thirty (30) days of the dispute being notified by the Party of either part for such resolution, dispute or difference shall be referred to arbitration.
- 10.3. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof as applicable from time to time. Unless otherwise determined by the arbitrator/ arbitrators the location for the arbitration shall be in [Place name]. The award of the arbitrator shall be final and binding.
- 10.4. Notwithstanding the discussion, conciliation efforts and/ or arbitrator mentioned above, Holding Entity shall have the absolute and unconditional right to appropriate the Bid Security deposited, if Holding Entity is of the opinion that [SB] has committed a breach or failure of the terms and conditions of the RFP or RFP Documents or of this Agreement. The Holding Entity shall however give notice in writing to [SB] of its proposal to appropriate the Bid Security and permit [SB] to present its view against such appropriation of Bid Security by the Holding Entity within three (3) days of receipt of notice. [SB] acknowledges and accepts that the notice to be given by the Holding Entity shall not in any manner affect the unconditional nature of the right of the Holding Entity to encash and appropriate the Bid Security.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

SIGNED ON BEHALF OF  
[SB name]  
By-----



On-----

SIGNED ON BEHALF OF  
[Holding Entity name]

By-----

On-----

SIGNED ON BEHALF OF  
[SPV name]

By-----

On-----

WITNESSES

1.

2.



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# SAA for Privatization of Distribution Licensees – 100% stake sale)**

**Share Acquisition Agreement**

**Between**

**[Insert Name of Holding Entity]**

**AND**

**[Insert Name of Successful Bidder]**

**AND**

**[Insert Name of SPV]**

**Date:**

**(Version Date: 20/09/2020)**

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This Share Acquisition Agreement (the "Agreement") is made on the [Date] day of [Month], [Year],

#### AMONGST

- (1) **[Insert Name of Holding Entity]**, a company incorporated under the provisions of the Companies Act, [1956/ 2013] and having its registered office at [.] (hereinafter referred to as "**Holding Entity**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the first part;
- (2) **[Insert Name of Successful Bidder]** a company incorporated under the provisions of the Companies Act, [1956/ 2013] with registered office at [.] (hereinafter referred to as "**[SB]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the second part; and
- (3) **[Insert Name of SPV]**, a company incorporated under the provision of the Companies Act, 2013 and having its registered office at [.] (hereinafter referred to as "**[SPV]**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the third part.

The Holding Entity, the [SB] and the [SPV] are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Holding Entity and the [SB] are collectively referred to as the "**Shareholders**" and individually as "**Shareholder**".

#### WHEREAS:

- (A) In exercise of power under the Electricity Act, 2003, the Government of [State/ UT name] has published the [Transfer Scheme name] ("**Transfer Scheme**") that has become effective as on [.] ("**Transfer Date**").
- (B) The [SPV] has been incorporated as a limited company under the Companies Act, 2013 to undertake the business of distribution and retail supply of electricity in the [area description] ("**Area**") and is 100% owned by [Government of State/ UT name or any other company] ("**Holding Entity**").
- (C) In terms of the provisions of the Electricity Act, 2013 and Transfer Scheme, the [SPV] is a deemed licensee to undertake the business of electricity distribution and retail supply in the Area to all consumers from the Transfer Date.
- (D) Presently, the authorised share capital of the [SPV] is Indian Rupees [.] (INR [.]00) comprising of [.] ([.]00) Equity Shares of Indian Rupees [.] (INR [.]00) each and the entire share capital is held by Holding Entity.
- (E) [SB] has been selected, through a competitive bidding process, as investor/ operator to purchase from Holding Entity the majority interest in [SPV] and manage the business of distribution and retail supply of electricity in the Area.
- (F) [SB] has complied with the terms of the RFP and RFP Documents which were necessary to execute this Share Acquisition Agreement. Holding Entity has agreed to sell and transfer to [SB] and [SB] has agreed to purchase from Holding Entity [.] ([.]00) Equity Shares on the terms and conditions contained in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of mutual promises made and contained herein it is agreed as follows:

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1. **Definitions:** In this Agreement (including the recitals), unless the context otherwise requires, the following terms shall have the meanings given to them below:
- (a) **"Agreement"** shall mean this Share Acquisition Agreement entered into between Holding Entity, [SB] and [SPV];
  - (b) **"Area"** shall mean the license area of [Utility/ SPV];
  - (c) **"Bid"** shall mean the bid dated [.] submitted by [SB] in response to the RFP dated [.] read with any clarifications thereto;
  - (d) **"Bid Authority"** shall have the same meaning as ascribed thereto in RFP;
  - (e) **"Bid Security"** shall mean bank guarantee no. [.] dated [.] provided by [Insert Name of Successful Bidder] pursuant to terms of the RFP;
  - (f) **"Board"** or **"Board of Directors"** shall mean the board of director(s) of the [SPV];
  - (g) **"Chairman"** shall mean chairman of the Board of the [SPV];
  - (h) **"Commission"** shall mean the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission name];
  - (i) **"Completion Date"** shall be the date on which the last of the requirements of Article 2 is completed;
  - (j) **"Consideration"** shall mean the amount of Indian Rupees [.] (INR [.]00) paid by [SB] for acquisition of Purchased Shares;
  - (k) **"Director"** shall have the meaning as ascribed in the Companies Act, 2013;
  - (l) **"Equity Shares"** shall mean the fully paid up equity share of a par value of Indian Rupees [.] (INR [.]00) each of the [SPV];
  - (m) **"Holding Entity"** shall mean [Government of [State/ UT name] or [Utility/ Department name]];
  - (n) **"Managing Director"** shall mean the whole time managing director of the [SPV] ;
  - (o) **"Purchased Shares"** shall mean [.] ([.]) equity shares of Indian Rupees [.] (INR [.]00) each paid up which constitute [Refer Guidance Note 1] of the equity capital in [SPV];
  - (p) **"RFP"** shall mean the Request for Proposal dated [.] issued by the [.] for selection of bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description];
  - (q) **"RFP Documents"** shall have the same meaning as ascribed thereto in RFP;
  - (r) **"Shareholder"** or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement;
  - (s) **"Shares"** the ordinary shares of Indian Rupees [.] (INR [.]00) each in the capital of [SPV] from time to time in issue; and

1.2. **Interpretations**

- (a) References in this Agreement to any statutory provision shall include a reference to that statute or provision as amended, extended or re-enacted and to any statutory replacement thereof from time to time and shall also include reference to all statutory instruments and orders made pursuant to any such statutory provision.
- (b) Reference in this Agreement to the singular shall include a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter and reference to a person shall include reference to any company as well as any legal or natural person.
- (c) The construction of this Agreement and the Schedules hereto is not to be affected by any heading.
- (d) References in this Agreement to recitals, clauses, sub-clauses and schedules are, unless otherwise specified, references to recitals, clauses and sub-clauses of and schedules of this Agreement.
- (e) References to this Agreement include a reference to each of the schedules.

## **2. PURCHASE OF SHARES BY [SB] AND COMPLETION**

- 2.1. Within thirty (30) days from the date of this Agreement, [SB] shall pay to Holding Entity the total Consideration of Indian Rupees [.] (INR [.]00). Holding Entity shall sell and transfer to [SB] and [SB] shall purchase from Holding Entity the Purchased Shares against the receipt of the Consideration in the manner and upon the terms and subject to conditions specified in this Agreement and RFP Documents. In the event the sale and purchase of shares is not completed for reasons attributable to Government of [State/ UT name] or the Holding Entity and if there are no contributory defaults or failures on the part of [SB], the conduct of business of the [SPV] from the said thirty (30) days to the Completion Date shall be to the account of Government of [State/ UT name] and/ or the Holding Entity.
- 2.2. The Purchased Shares shall be delivered by Holding Entity to [SB] against the payment of the entire Consideration amount by [SB] to Holding Entity. Holding Entity shall deliver to [SB] the duly executed transfer deeds to enable [SB] to lodge the Purchased Shares with [SPV] for registration in the name of [SB].
- 2.3. [SB] shall place before the Board of [SPV] the Purchased Shares and the transfer deeds pertaining to the Purchased Shares for registration of the transfer at the time of completion of the transactions as provided hereunder.
- 2.4. The completion of such transaction shall take place within the time specified in Clause 2.1 above in the following manner:

A meeting of the Board of Directors of [SPV] shall be held to undertake the following:

- (a) **REGISTRATION OF PURCHASED SHARES TRANSFERRED in FAVOUR OF [SB]:** The Board of Directors of [SPV] shall pass a resolution approving the transfer of the Purchased Shares from Holding Entity to [SB] and registration in the books of [SPV] of the transfers in favour of [SB].
- (b) **RECONSTITUTION OF THE BOARD OF DIRECTORS:** The Board of Directors of [SPV] shall be re-constituted with the co-option of [.] nominee Directors of [SB]. All existing Directors other than the [.] Directors mentioned above shall resign from the Board of Directors of [SPV] and their resignation will be noted and accepted by the Board. The resigning Directors will confirm that they will have no claim against the

[SPV] by reason of their appointment, continuation or resignation as Directors in the [SPV].

- (c) **APPOINTMENT OF MANAGING DIRECTOR/ MANAGER AND AUTHORISATION TO BE GIVEN:** One of the Directors nominated by [SB] shall be appointed as the Managing Director or Whole time Director or a Chief Executive shall be designated as the Manager of [SPV] as envisaged in Chapter XIII of the Companies Act, 2013. He/ she shall be given the powers of management of [SPV] subject to the supervision and control of the Board of Directors.
  - (d) **CHAIRMAN:** The chairman of the [SPV] shall be chosen at the Board Meeting of the [SPV] and the Director so chosen shall act as the Chairman. The Chairman shall exercise such powers as the Board may decide.
  - (e) **CALLING OF AN EXTRA ORDINARY GENERAL MEETING:** The Board of Directors shall call an Extra Ordinary General Meeting of the [SPV] to be held on a date to be mutually agreed to between [SB] and Holding Entity to transact the following:
    - (i) Passing of the resolution for amendment of the articles of association;
    - (ii) Appointment of Directors of the reconstituted Board of the [SPV] as provided in Clause 2.4 (b) above as regular Directors; and
    - (iii) Confirmation of other actions taken by the Board as per Clause 2.4 (a) to 2.4 (d) above.
- 2.5. The [SPV] shall take necessary steps for enabling its authorized share capital, through the Holding Entity, as per the provisions of the Transfer Scheme.

### **3. PURCHASE PRICE ADJUSTMENT**

- 3.1. The Parties agree that the Consideration amount shall be adjusted as per the following formula, on account of difference between provisional and final opening balance sheet of the [SPV] notified by the Government of [State/ UT] as part of the Transfer Scheme:

Adjustment in Consideration = Change in Gross Fixed Assets (other than those funded by grants) + Change in Capital Work in Progress - Change in Long Term Liabilities

Such adjustment shall be subject to recognition of the [SERC].

- 3.2. The Parties further agree that any adjustments computed as per the provision of Clause 3.1 shall be binding on both Parties and shall be paid by one Party to the other Party within thirty (30) days from notification of the final opening balance sheet of the [SPV].

### **4. REPRESENTATION AND WARRANTIES**

- 4.1. Representations and Warranties by [SB]:

[SB] hereby represents and warrants to and agrees with Holding Entity as follows and acknowledges and confirms that Holding Entity is relying on such representations and warranties in connection with the transactions described in this Agreement:

- (a) **Due organisation:**

[SB] is a company duly organized and validly existing and governed as per the

applicable laws of India.

- (b) Due authorisation:
- (i) [SB] has the corporate power and corporate authority to adopt this Agreement and to purchase the Purchased Shares and undertakes the obligations of this Agreement in so far it applies to [SB];
  - (ii) [SB] has valid and legal binding obligations of this Agreement; and
  - (iii) Neither the execution and delivery nor the performance of this Agreement by [SB] will violate its articles of incorporation or bye laws or any indenture, loan agreement, contract, or instrument to which [SB] is a party or by which it is bound or any governments' order, rule or regulation applicable to it for adopting this Agreement and to purchase the Purchased Shares and to undertake its obligations under this Agreement.
- (c) The [SB] acknowledges that it has made its own independent investigation, inspection, analysis and evaluation of the following:
- (i) the business, assets and liabilities, performance on key parameters etc. of [SPV] and/ or the erstwhile [Utility/ Department name];
  - (ii) the regulatory regime in India and particularly in [State/ UT] to which [SPV] is subject to;
  - (iii) [State/ UT] itself;
  - (iv) the legal, financial and taxation consequences of entering into this Agreement; and
  - (v) the provisions of the Act and all regulations made by the Commission and the implications thereof
- (d) On basis of independent investigation, inspection, analysis and evaluation of the points as mentioned in Clause 4.1 (c) above [SB] has entered into this Agreement.
- (e) [SB] has undertaken its own due-diligence to its full-satisfaction and not relied on any information or representation made available to it by the Bid Authority, Holding Entity, [SPV] or any of their officers, employees, consultants or advisers.
- 4.2. Holding Entity is expressly absolved from all liabilities and responsibilities for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from any operation, technical or scientific evaluation, testing, observation or investigation carried out or made by the [SB] or their bankers or advisers. Further the Holding Entity shall remain absolved from all liabilities and responsibilities arising out of any data, document, records or information disclosed prior to signing of this Agreement by Holding Entity or [SPV] or by any officer, director or employee or any agent, consultant, banker or adviser acting on behalf of Holding Entity or [SPV] to the [SB] or their bankers or advisers or to any person acting on behalf of the [SB].
- 4.3. Representations and Warranties by Holding Entity:
- Holding Entity, on its own behalf and on behalf of [SPV] of which Holding Entity presently holds the entire shares (legally and beneficially), hereby represents and warrants to and agrees with [SB] as follows and acknowledges and confirms that [SB] is relying on such representations and warranties in connections with the transactions described in this



## Agreement:

## (a) Due authorization

- (i) Holding Entity has the authority to enter into and to perform this Agreement and to sell the Purchased Shares to [SB].
- (ii) The terms of this Agreement constitutes valid and legally binding obligations of Holding Entity, enforceable in accordance with their respective terms.
- (iii) Neither the execution and delivery nor the performance of this Agreement by the Holding Entity will violate its articles of incorporation or bye laws or any indenture, loan agreement, contract or instrument to which the Holding Entity is a party or by which it is bound or any governments' order, rule or regulation.
- (iv) Further, the Holding Entity has duly complied with all statutory requirements applicable to it for adopting this Agreement and to sell the Purchased Shares and to undertake its obligations under this Agreement.

## (b) Due organization of [SPV]

[SPV] is a company duly organized and validly existing under the laws of India from the date of its incorporation till the date of signing of this Agreement. The [SPV] conducts its business in the ordinary course and has the corporate power and authority to execute and perform its obligations under this Agreement.

## (c) Purchased Shares

- (i) The Purchased Shares have been duly and validly authorized and issued by [SPV] and constitute one hundred percent (100%) of the issued ordinary share capital of the [SPV] and shall be fully paid as on the Completion Date.
- (ii) Holding Entity owns the Purchased Share free and clear of all liens, security interests, restrictions and other adverse claims.
- (iii) When the Purchased Shares are transferred to [SB] and registered in the books of [SPV], [SB] will acquire good and valid title to the Purchased Shares and own them free and clear of all liens, security interests, restrictions and other adverse claims as on the Completion Date specified in Article 2.
- (iv) [SPV] will not have issued and will not be authorized to issue and no person will hold any option or other contractual right to cause the [SPV] to issue any equity shares or any other capital stock other than the issued equity shares as specified in Recital (D).

## (d) Miscellaneous

- (i) The Recitals to this Agreement are true and accurate in all material respects.
- (ii) Other than the undertaking transferred under the Transfer Scheme, the [SPV] does not directly or indirectly own any interest in any corporation, partnership, joint venture or other business entity.

- (iii) The memorandum of association and articles of association of the [SPV] have not been amended and save as provided or envisaged in this Agreement nor such amendment has been proposed or pending.
- (iv) The minute books of the [SPV] contain true and accurate records of all meetings of the [SPV].
- (e) It shall be the earnest desire of Government of [State/ UT name] and the Holding Entity to provide such reasonable assistance on a best endeavour basis, without incurring any legal obligation, to facilitate the [SPV] in the operation and conduct of its business.

#### 4.4. TRANSFER TAXES

[SB] shall be liable for and shall pay all share transfer duties, taxes, recording fees, sales taxes, stamp duties and all other taxes, duties or other like charges payable upon or in connection with the conveyance and transfer of the Purchased Shares to [SB] and execution of this Agreement.

## 5. **CONDITIONS PRECEDENT OF THE PARTIES AND CONSEQUENCE OF NON COMPLIANCE**

### 5.1. Conditions precedent of Holding Company

The obligation of Holding Entity, [SB] and [SPV] to consummate the transactions described herein shall be subject to the fulfilment, on or prior to the Completion Date, of the following conditions:

(a) Performance of Agreements and Covenants:

All conditions to be performed and satisfied by [SB] as specified or envisaged in the RFP on or prior to the Completion Date, shall have been duly performed and satisfied by [SB].

(b) Representations and Warranties:

The representation and warranties of [SB] contained in this Agreement shall be true in all material respects on and as of the Completion Date with the same effect as though made on and as of the Completion Date, and these shall be delivered to Holding Entity on the Completion Date in form and substance reasonably satisfactory to Holding Entity, duly signed by the Chief Executive or the Company Secretary of [SB] certifying to the foregoing.

(c) Opinions of Counsel:

Holding Entity shall have received opinions, dated the Completion Date and in form and substance satisfactory to Holding Entity from the counsel of [SB] that [SB] shall have the corporate power and corporate authority to enter into valid and legally binding obligations enforceable in accordance with their respective terms and that there is no pending permit, consent, approval or authorization of or declaration to be filed with, any governmental authority required in connection with the execution, delivery or performance of this Agreement or the transaction contemplated hereby; and

(d) No Action or Proceedings

No court order shall have been entered in any action or proceeding instituted by any third party, which enjoins, restrains, or prohibits this Agreement or the complete consummation of the transactions contemplated by this Agreement.

5.2. In event of material breach on part of [SB], Holding Entity may terminate this Agreement by issuing notice in writing to [SB] and invoke the Bid Security of Indian Rupees [.] (INR [.]00) submitted with the Bid, without prejudice to its other legal rights and claims. For the purposes of this clause the occurrence of the following events would constitute material breach on part of [SB]

- (a) Failure on part of [SB] to perform condition, obligation or covenant in terms of this agreement at or prior to the Completion Date; or
- (b) Failure on part of [SB] to pay the Consideration; or
- (c) Failure on part of [SB] to complete the transaction as per the terms of this Agreement, due to reasons not attributable exclusively to the Holding Entity, [SPV] or Government of [State/ UT name].

5.3. Conduct until Completion Date:

- (a) Holding Entity hereby undertakes to procure that between the date of execution of this Agreement and Completion Dates, [SB] and its duly authorised representatives shall be given reasonable access to the premises and assets of [SPV] and to the books, records accounts and other facilities and properties of [SPV] and shall be permitted to make such inspection as may facilitate smooth transfer and be given fully and promptly all such financial and operating information as [SB] and their representatives may reasonably request provided that
  - (i) all such access shall be granted and all such inspections shall be conducted in such as manner as not to interfere unreasonably with the operation of the business of [SPV];
  - (ii) all such access shall be granted and all such inspections shall be subject to requirements of obligations to maintain confidentiality;
  - (iii) [SB] shall strictly observe all relevant regulations and security procedures of [SPV] in force from time to time and shall promptly carry out all reasonable requests and instructions from time to time given to [SB]'s representatives; and
  - (iv) The Bid given by [SB] shall not be subject to any variation or cancellation because of any matter which [SB] may raise after such inspection or access and [SB] shall not claim or assert any right to vary or modify the Bid or the terms of this Agreement or to not to pay the Consideration amount and complete the transaction based on such access or any information received by [SB];
- (b) [SB] shall be entitled to appoint two (2) representatives to receive notice of, and attend (in the capacity of observers only) management and board meeting of [SPV], subject to any duties of confidentiality, which [SPV] may owe to third parties.
- (c) Holding Entity hereby assures to [SB] that, from the date of execution of this Agreement and until Completion Date (except as contemplated by this Agreement and save in the case of operational necessity or emergency), it shall cause the [SPV] to maintain and carry on its business in the ordinary and usual course.

- (d) Prior to Completion Date, [SPV] shall not in the ordinary course of business or in case of operational necessity or emergency or as disclosed in writing to [SB] prior to the submission of the Bid or as contemplated by the RFP and RFP Documents or in relation to any act, event or omission which is not material to [SPV] or its operation or business or with the prior consent in writing of [SB]:
- (i) cancel or release any material debt or claim or sell or transfer any material tangible or intangible asset;
  - (ii) enter into material contracts or commitments including borrowings which in aggregate exceeds Indian Rupees [.] (INR [.]00);
  - (iii) give any material guarantee or indemnity;
  - (iv) assume or incur or agree to assume or incur any capital commitment in excess of Indian Rupees [.] (INR [.]00) in aggregate;
  - (v) dispose of the ownership, possession, custody or control of any corporate or other books or records;
  - (vi) materially alter its present business policies (both short term and long term) including those relating to manning levels, salary and benefit levels, ordering supply and stocking;
  - (vii) fail to carry out [SPV]'s present repair and maintenance procedures in any material respect;
  - (viii) cease to maintain in full force and effect all insurance policies now in effect and knowingly default under any material provision thereof, and duly give notice and present and obtain any material claim under any such insurance policies;
  - (ix) materially contravene the terms or conditions of any licence or sanction relating to the business or the assets of [SPV]; and
  - (x) permit any lien charge or encumbrance to be created over the assets of [SPV] except as envisaged in any of the RFP and RFP Documents.

## 6. INDEMNIFICATION

### 6.1. Indemnification by [SB]

If the transactions contemplated by this Agreement are consummated, [SB] agrees, without prejudice to other rights of Holding Entity and [SPV] to indemnify and hold harmless Holding Entity and the [SPV] against and in respect of any loss, damage, claim, action, suit, proceeding deficiency or expense relating to, arising from, or in connection with any misrepresentation, breach of any representation, warranty obligation, covenant or agreement or fault on the part of [SB] in or under this Agreement or Bid delivered by [SB] prior to Completion Date in connection herewith.

### 6.2. Indemnification Process

- (a) In the event any third party makes a claim or commences any action or proceeding against Holding Entity and [SPV], with respect to any matter specified in Clause 6.1 as to which such party intends to seek indemnification, Holding Entity or [SPV] shall

promptly notify [SB] of the existence of such claim.

- (b) [SB] shall have the right, upon receipt of notice from Holding Entity or [SPV] of the existence of such claim or the commencement of any such third party action or proceeding as specified in Clause 6.2 (a) to undertake and direct the defense of such claim, action or proceeding at any time by delivering to Holding Entity or [SPV], as the case may be;
  - (i) written notice of such undertaking.
  - (ii) written admission of complete liability for indemnification with respect to any such claim, action or proceeding and
  - (iii) written consent to be joined as a party to any such action or proceeding or in any action or proceeding resulting from such claims.

## **7. LOCK-IN PERIOD**

7.1. [SB] shall continue to hold at least fifty one percent (51%) shareholding in the [SPV] until the completion of ten (10) years from the date of signing of this Agreement.

*{Insert in case [SB] is a Consortium}* The [SB] shall continue to maintain the equity commitment of each of its members in the same proportion as specified in its Consortium Agreement at the RFP stage until the completion of ten (10) years from the date of signing of this Agreement.

7.2. [SB] shall intimate Holding Entity in writing about any transaction with respect to sale/ purchase of share of the [SPV], within ten (10) days of such transaction.

7.3. [SB] shall not pledge its shares in the [SPV] during the first ten (10) years from the date of this Agreement.

7.4. Further, [SB] cannot, in any way, change the legal standing of the [SPV] for at least ten (10) years from the Completion Date by way of any merger/ acquisition/ sale/ divestment/ demerger, unless duly approved by the Holding Entity.

## **8. ASSIGNMENT**

8.1. [SB] shall not be entitled to assign the rights, benefits and/ or obligations of this Agreement to any other person.

## **9. EVENTS OF DEFAULT**

9.1. [SB]'s Event of Default

- (a) The occurrence and continuation of any of the following events shall constitute a [SB]'s Event of Default unless there are no contributory defaults or failure on part of the Holding Entity:
  - (i) Failure by the [SB] to pay, to the Holding Entity, the total Consideration and acquire Purchase Shares as per Clause 2.1 within thirty (30) days from the date of this Agreement;
  - (ii) Material breach on part of [SB] as per Clause 5.2 of this Agreement;

- (iii) Failure of the [SB] to adhere to the equity lock in requirements as per Article 7 of this Agreement;
- (iv) Engagement or indulgence by [SB] in corrupt practice or fraudulent practices;
- (v) Unlawful repudiation of this Agreement or otherwise expression of an intention not to be bound by this Agreement by the [SB];
- (vi) Any representation or warranty made by the [SB] during the term of the Agreement is found to be false or misleading at any stage during subsistence of this Agreement.

#### 9.2. Consequence of Default

- (a) On occurrence of any [SB]'s Event of Default, or its coming to notice of the Holding Entity, the Holding Entity shall issue an Event of Default notice to the [SB].
- (b) [SB] shall eliminate such Event of Default and mitigate consequence of such Event of Default within a period of fifteen (15) days.
- (c) In case [SB] is unable to eliminate or mitigate the consequences of Event of Default within the period stipulated in Clause 8.2 (b), a termination event is set to occur. In such cases, Holding Entity may
  - (i) terminate this Agreement and thereby rescinding the transfer of shares to [SPV] and/ or
  - (ii) request to [SERC] for revocation of licensee of [SPV] and transfer of [SPV] to another qualified entity.

## 10. MISCELLANEOUS

#### 10.1. Severability

Each of the provisions contained in this Agreement shall be severable and the unenforceability of one shall not affect the enforceability of any other or of the remainder provisions in this Agreement.

#### 10.2. Modification

This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both the Parties.

#### 10.3. Waiver

The failure of any Party to enforce any condition or part of this Agreement at any time shall not be construed as waiver of that condition or part thereof, nor shall it forfeit any rights to future enforcement of the same.

#### 10.4. Survival of the Agreement

All representations, warranties, covenants and other agreements contained in this Agreement (or given in connection with this Agreement) shall to the extent that it remains to be performed, survive the Completion Date and notwithstanding any investigation by a

party or any knowledge obtained as a result thereof or otherwise, shall continue in full force and effect after the Completion Date.

#### 10.5. Governing Law and Jurisdiction

This Agreement shall be construed and enforced in accordance with and governed by the laws of India and subject to Clause 10.3, the Parties hereby irrevocably submit to the exclusive jurisdiction of the appropriate Courts in [Place name].

#### 10.6. Headings

The headings of the Article and Clause of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

#### 10.7. Counterparts

More than one counterpart of this Agreement may be executed by the Parties or different counterparts may be executed by different Parties and all such counterparts shall be deemed original and shall be deemed to be a single Agreement.

#### 10.8. Expenses

Subject to Clause 4.4 of this Agreement each of the parties will pay its own accounting, legal and other expenses associated with the transactions contemplated hereby.

#### 10.9. Notices

All communications, notices and consents provided in respect of this Agreement shall be in writing and be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type) or by registered or certified mail, return receipt requested and shall become effective (a) on delivery if given in person; (b) on the date of transmission if sent by telex, telecopy, or other wire transmission or (c) on receipt if sent by mail.

Notices shall be addressed as follows:

If to [SB], to

Company Secretary  
[SB name]  
[Address of SB]

If to Holding Entity, to

Company Secretary  
[Holding Entity name]  
[Address of Holding Entity]

If to [SPV], to

Company Secretary  
[SPV name]  
[Address of SPV]

10.10. No Partnership etc:

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties nor constitute any Party the agent of another Party for any purpose.

**11. DISPUTE RESOLUTION AND ARBITRATION**

11.1. Any dispute, question or difference arising between the Holding Entity on the one part and [SB] on the other part, in connection with this Agreement or otherwise in regard to the relationship by virtue of the terms of this Agreement including the construction and scope of the Agreement shall first be referred to the Chief Executive of [SB] and a senior official to be designated by the Chief Executive of the Holding Entity not by way of arbitration but with a view to amicably resolve the issue by discussion and conciliation.

11.2. In the event that such dispute, question or difference cannot be amicably resolved between them during a period thirty (30) days of the dispute being notified by the Party of either part for such resolution, dispute or difference shall be referred to arbitration.

11.3. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof as applicable from time to time. Unless otherwise determined by the arbitrator/ arbitrators the location for the arbitration shall be in [Place name]. The award of the arbitrator shall be final and binding.

11.4. Notwithstanding the discussion, conciliation efforts and/ or arbitrator mentioned above, Holding Entity shall have the absolute and unconditional right to appropriate the Bid Security deposited, if Holding Entity is of the opinion that [SB] has committed a breach or failure of the terms and conditions of the RFP or RFP Documents or of this Agreement. The Holding Entity shall however give notice in writing to [SB] of its proposal to appropriate the Bid Security and permit [SB] to present its view against such appropriation of Bid Security by the Holding Entity within three (3) days of receipt of notice. [SB] acknowledges and accepts that the notice to be given by the Holding Entity shall not in any manner affect the unconditional nature of the right of the Holding Entity to encash and appropriate the Bid Security.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

SIGNED ON BEHALF OF

[SB name]

By-----

On-----

SIGNED ON BEHALF OF

[Holding Entity name]

By-----

On-----

SIGNED ON BEHALF OF

[SPV name]

By-----

On-----

WITNESSES



1.

2.



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft Policy Directions for Privatization of Distribution Licensees)**

**Policy Directions by Government of [State/UT name]**

**Date:**

**(Version Date: 20/09/2020)**

**GOVERNMENT OF [State/ UT name]  
[Department name]**

**Notification No.**

**Date:**

**NOTIFICATION**

In exercise of the powers conferred under Section [108/ 109] of the Electricity Act, 2003, the Government of [State/ UT name] hereby notifies the following as policy directions to enable restructuring of the electricity sector in [State/ UT name]:

1. The Government of [State/ UT name], under Section 131, 133 and 134 of the Electricity Act 2003, has notified [Transfer Scheme name] ("**Transfer Scheme**") to vest distribution and retail supply of electricity business of the [Utility/ Department name] into a newly incorporated [Company name] ("**DISCOM**").
2. The Government of [State/ UT name], through a competitive and transparent process selected [Investor name] to acquire [percentage %] equity shares in [Company name].
3. The Government of [State/ UT name], as part of the reforms process after extensive and careful deliberation, is of the opinion that the following aspects are important for effective and successful outcome of the reforms for the purpose of ARR/ tariff approvals of the DISCOM:

**3.1 AT&C loss target and performance**

- (a) The AT&C loss target for the first [five (5)] full financial years shall be as provided below:

	FY [.]	FY [.]	FY [.]	FY [.]	FY [.]
<b>AT&amp;C loss</b>	[.]	[.]	[.]	[.]	[.]

- (b) During this period, in the event actual AT&C loss level of the DISCOM for any particular year as determined by the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission] ("**Commission**") is better (lower) than the target, the DISCOM shall be entitled to retain two third (2/3<sup>rd</sup>) of the additional revenue resulting from such better performance. The balance one third (1/3<sup>rd</sup>) of additional revenue resulting from such better performance shall, however, be passed on as a benefit to consumers for the purpose of tariff fixation.
- (c) In the event the actual AT&C loss of the DISCOM in any year is worse (higher) than the AT&C loss target, the entire shortfall in revenue on account of the same shall be borne by the DISCOM. Consumers shall not be penalized for DISCOM's inability to meet the AT&C loss target specified in (a).
- (d) AT&C loss trajectory for subsequent years and the sharing mechanism for gains/ losses shall be set by the Commission as per due process.

**3.2 Employee Pension Liabilities**

- (a) Trust(s) are envisaged to be incorporated to serve the terminal liabilities of

employees of the erstwhile [incumbent entity name] who has been transferred to the DISCOM. The DISCOM's employee costs shall cover its obligations/ contribution to such trust(s) for payment of terminal liabilities to covered employees.

- (b) Further, in case of any shortfall in the fund(s) of the trust(s), the DISCOM shall pay terminal liabilities of covered personnel on a pay-as-you-go basis and such actual cash outgo incurred by the DISCOM in relation to servicing of terminal liabilities of employees of the [Utility/ Department name] shall be allowed as a pass through in ARR/ tariff determination process by the Commission.

### **3.3 Bulk Supply Arrangement (Guidance Note 2)**

- (a) For the period of applicability of the Bulk Supply Agreement signed between [Bulk Supplier Entity] and DISCOM, the Bulk Supply Tariff applicable for sale of power by [Utility/ Department name] to the DISCOM shall be determined based on paying capacity of the DISCOM and not on the basis of the cost of power purchase by the [Bulk Supplier Entity].

### **3.4 Other Considerations**

- (a) Any past period adjustments, relating to period prior to effective date of Transfer Scheme, shall not be adjusted in the ARR/ tariff approval of the DISCOM.
- (b) The DISCOM shall be provided an incentive of ten percent (10%) on recovery of past arrears from live consumers and twenty percent (20%) on recovery of past arrears from permanently disconnected consumers. Such incentive shall be allowed to be retained by the DISCOM in full and shall not be adjusted in the ARR/ tariff approval of the DISCOM..
4. While generally the above aspects shall be decided by the Commission, the Government of [State/ UT name] is of the view that in the larger public interest and to ensure successful reforms in power distribution, it is necessary to impart certainty to the newly incorporated DISCOM over the specified period.
5. These policy directions have been issued in public interest to implement the restructuring of the electricity sector in the [State/ UT name].
6. All the stakeholders, including the Commission and other authorities, shall be bound by the above policy directions from the date of issuance.

By order and in the name  
of the [Governor/ Administrator] of the [State/ UT name]

-sd-  
[Name]  
[Designation]



GOVERNMENT OF INDIA  
MINISTRY OF POWER

**(Draft SBD# BSA for Privatization of Distribution  
Licensees)**

**Bulk Supply Agreement**

**Between**

**[Insert Name of Bulk Supplier]**

**AND**

**[Insert Name of SPV]**

**Date:**

**(Version Date: 20/09/2020)**

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This Bulk Supply Agreement (the "Agreement") is made on the [Date] day of [Month], [Year],

## **BETWEEN**

- (1) **[Insert Name of Bulk Supplier Entity]**, [a company incorporated under the provisions of the Companies Act, [1956/ 2013] or [Department Name]] and having its [registered] office at [.] (hereinafter referred to as "**Bulk Supplier**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the FIRST PART;
- (2) **[Insert Name of SPV]**, a company incorporated under the provision of the Companies Act, 2013 and having its registered office at [.] (hereinafter referred to as "**[SPV]**" or "Distribution Licensee" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

The Bulk Supplier and the [SPV] are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**".

## **RECITALS:**

- (A) In exercise of power under the Electricity Act, 2003, the Government of [State/ UT name] has published the [Transfer Scheme name] ("**Transfer Scheme**") that has become effective as on [.] ("**Transfer Date**").
- (B) In terms of the provisions of the Electricity Act, 2013 and Transfer Scheme,
  - (i) [SPV] is a deemed licensee to undertake the business of electricity distribution and retail supply in the [area description] ("**Area**") to all consumers from the Transfer Date.
  - (ii) Bulk Supplier is responsible for purchase of electricity in bulk from various generators for supply of power in bulk to the [SPV] [and other retail supply licensees in the [State/ UT name]]
- (C) Subject to the provisions of the Act and the Regulations, the Parties wish to record the agreement reached between them in regard to the bulk supply of electricity by Bulk Supplier to the Distribution Licensee, the arrangements for invoicing by Bulk Supplier, payment by [SPV] of the Bulk Supply Tariff and for other matters connected therewith.

NOW, THEREFORE, for and in consideration of mutual promises made and contained herein it is agreed as follows:

## **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1. **Definitions:** In this Agreement (including the recitals), unless the context otherwise requires, the following terms shall have the meaning given to them below:
  - (a) "**Act**" shall mean Electricity Act, 2003;
  - (b) "**Agreement**" shall mean this Bulk Supply Agreement entered into between Bulk Supplier, [SB] and [SPV];
  - (c) "**Annual Schedule**" shall have the meaning as ascribed to it in Clause 3.1 (a);
  - (d) "**Area**" shall mean the license area of [Utility/ SPV];

- (e) **"Bank"** means a Scheduled Commercial Bank referred to in Clause 6.1;
- (f) **"Bank Rate"** means the one year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 500 basis points;
- (g) **"Bill Disagreement Notice"** shall have the meaning ascribed to it in Clause 5.4 (d);
- (h) **"Bill Dispute Notice"** shall have the meaning ascribed to it in Clause 5.4 (b);
- (i) **"Bulk Electricity"** shall mean electricity energy provided by Bulk Supplier at the points of Connection of transmission system to [SPV];
- (j) **"Bulk Supplier"** shall mean [Government of [State/ UT name] or [Utility/ Department name]];
- (k) **"Bulk Supply Tariff"** shall mean the Tariff and the terms and conditions thereof in respect of the supply of Bulk Electricity, approved or determined by the Commission and in effect from time to time in accordance with the applicable laws. [Until necessary Regulations are issued by the Commission, the Bulk Supply Tariff applicable shall be Rs [.] per kWh];
- (l) **"Commission"** shall mean the [State Electricity Regulatory Commission or Joint Electricity Regulatory Commission name];
- (m) **"Connection"** shall mean
  - (i) each point of interconnection from time to time between the Transmission System and the Distribution System (being at an outgoing feeder gantry of the relevant substation), or
  - (ii) (in the case of EHT Consumers) each point of interconnection between the Transmission System and the EHT Consumers' equipment (being either at an incoming feeder gantry or terminal at the relevant EHT Consumers' premises or at an outgoing feeder gantry of the relevant substation);
- (n) **"Consumer"** shall mean an end or final user of electricity and includes:
  - (i) any person whose premises are connected, for the purposes of receiving a supply of electrical energy, to a Distribution System, and
  - (ii) Any person whose premises are connected to the Transmission System for the purpose of receiving a supply of electrical energy but shall exclude any licensee;
- (o) **"Distribution Licensee"** shall mean the [SPV];
- (p) **"Distribution System"** shall mean the wires and associated facilities, between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers, owned and operated by [SPV];
- (q) **"Due Date"** shall have the meaning as ascribed to it in Clause 5.2;
- (r) **"Force Majeure"** shall have the meaning as ascribed to it in Article 8;
- (s) **"Government Policy Directions"** shall mean the policy directions dated [.] notified



by Government of [State/ UT name] under section [108/109] of the Act on matters of policy involving public interest for privatization of distribution and retail supply of electricity in [area description];

- (t) **"Grid"** means the integrated transmission system in the country;
- (u) **"Grid Code"** means the code specified by the Commission under clause (h) of sub-section (1) of section 86 of the Electricity Act 2003;
- (v) **"Letter of Credit"** shall have the meaning as ascribed to it in Clause 6.1;
- (w) **"Monthly Bill of Supply"** means any bill of supply prepared and delivered by Bulk Supplier to [SPV] pursuant to Clause 5.1;
- (x) **"Monthly Schedule"** shall have the meaning as ascribed to it in Clause 3.1 (b);
- (y) **"Operating Procedures"** shall mean the operating procedures agreed from time to time in accordance with the provisions of Article 7;
- (z) **"Power Supply Requirements"** shall mean, in respect of any period, the projected demand of Consumers for electrical energy within the Area during such period;
- (aa) **"Regulations"** shall mean any regulations, orders, codes, directions and/or instructions issued by the Commission from the time to time governing and/or regulating the functions of any distribution and retail supply licensee or transmission licensee under the Act including but not limited to Grid Code, distribution code and supply code;
- (bb) **"Retail Supply"** shall mean supply of electricity to Consumers;
- (cc) **"SLDC"** means Odisha State Load Despatch Centre established under Section 31 of the Act, and its successors and assigns;
- (dd) **"Supply Shortage"** means any circumstance whatsoever by reason of which Bulk Supplier's supplies of available electrical energy are at any time insufficient to enable Bulk Supplier to meet [SPV]'s actual demand at such time for Bulk Electricity and/ or the actual demand at such time for electricity of any retail supply licensee in the [State/ UT];
- (ee) **"Transmission System"** means the system consisting of extra high tension electric lines having design voltage of above 66 KV owned and/or operated by Bulk Supplier and used for the purpose of the transmission of electricity from any power station to a substation or to another power station or between substations or to or from any external interconnection up to the Points of Supply, and any plant land apparatus and meters owned or used in connection with the transmission of electricity and such building or part thereof as may be required to accommodate such plant and apparatus and other works, but shall not include any part of the Distribution System;
- (ff) **"Year"** means any twelve month period during the terms of his Agreement which begin on 1st April in one calendar year and ends on 31st March in the following calendar year, provided that the period between (a) Transfer Date and the immediately succeeding 31st March and (b) 1st April immediately preceding the last date of this Agreement and the date on which this Agreement is terminated pursuant to Clause 9, shall be a year for the purpose of this Agreement.

## 1.2. Interpretations:

- (a) References in this Agreement to any statutory provision shall include a reference to that statute or provision as amended, extended or re-enacted and to any statutory replacement thereof from time to time and shall also include reference to all statutory instruments and orders made pursuant to any such statutory provision.
- (b) Reference in this Agreement to the singular shall include a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter and reference to a person shall include reference to any company as well as any legal or natural person.
- (c) The construction of this Agreement and the Schedules hereto is not to be affected by any heading.
- (d) References in this Agreement to recitals, clauses, sub-clauses and schedules are, unless otherwise specified, references to recitals, clauses and sub-clauses of and schedules of this Agreement.
- (e) References to this Agreement include a reference to each of the schedules.

## 2. TERM

- 2.1. This Agreement shall commence on the Transfer Date and shall continue until it is terminated as provided in Article 9. The Parties, however, agree to review the terms of this Agreement from time to time when requested for by either of the Parties and incorporate changes, which the Parties may mutually agree subject to the approval of the Commission. In case of any difference or disagreement between the Parties on any such changes required to the terms of this Agreement, the same shall be resolved in accordance with Article 11 of this Agreement.
- 2.2. The terms of this Agreement shall stand modified automatically as per the Regulations, which the Commission may issue/ amend from time to time or by any other statutory body or authority under the applicable laws and the Parties shall prepare a revised version of this Agreement, incorporating the modified terms. Following an agreement between the Parties that the revised version accurately reflects the relevant Regulations, the Parties shall execute the revised version. Irrespective of modification of terms of this Agreement, the modified terms shall come into force from the effective date of respective Regulations. In case of any difference or disagreement between the Parties on the above, the same shall be resolved in accordance with Article 11 of this Agreement.

## 3. POWER SUPPLY PLANNING

- 3.1. The Distribution Licensee shall notify Bulk Supplier of its Power Supply Requirements as follows:
  - (a) Not later than three (3) months prior to the commencement of each year, the Distribution Licensee shall deliver to Bulk Supplier a schedule ("**Annual Schedule**") in the form to be mutually agreed to between the Parties, detailing its Power Supply Requirements for each month in such year.
  - (b) In addition to the Annual Schedule, not later than fifteen (15) days prior to the commencement of each month, Distribution Licensee shall deliver to Bulk Supplier a schedule for the next month ("**Monthly Schedule**") in the form to be mutually agreed to between the Parties, detailing its Power Supply Requirements for that month.

- (c) In addition to the Annual Schedule and the Monthly Schedules, Distribution Licensee shall upon written request by Bulk Supplier, provide to Bulk Supplier such further information in connection with its Power Supply Requirements and in such form and in respect of such periods as Bulk Supplier shall reasonably require, in order to enable it to plan the purchase of power.
  - (d) In addition to above, Distribution Licensee shall furnish the day ahead schedule to SLDC with a copy to Bulk Supplier as per the applicable Regulations.
- 3.2. Within thirty (30) days of receipt of Annual Schedule and seven (7) days of receipt of Monthly Schedule as per Clause 3.1 of this Agreement, Bulk Supplier shall intimate the Distribution Licensee of its ability to fully or partially meet the Distribution Licensee's Power Supply Requirements.
- 3.3. Distribution Licensee shall ensure that the information in connection with its Power Supply Requirements provided to Bulk Supplier in accordance with Clause 3.1 shall represent best estimate of its Power Supply Requirements for the relevant period, as at the date of delivery of such information.
- 3.4. If Distribution Licensee becomes aware of any material inaccuracy in any information contained in any Annual Schedule or in any Monthly Schedule or in any further information provided to Bulk Supplier pursuant to Clause 3.1, the Distribution Licensee shall, as soon as practicable after becoming so aware, deliver to Bulk Supplier a schedule setting out the relevant corrections or revisions to the information previously provided and an explanation for such changes.
- 3.5. The Parties agree and acknowledge that the provisions contained herein above in this Article 3 and in the Operating Procedure which relate to planning and determination of electricity required by the Distribution Licensee and to be supplied by Bulk Supplier shall not in any way affect any of the other rights and obligations of the Parties under the terms of this Agreement or under any Regulations of the Commission.

## **4. CONDITIONS OF SALE AND SUPPLY OF ELECTRICAL ENERGY BY BULK SUPPLIER**

- 4.1. The Parties acknowledge and accept that:
  - (a) Bulk Supplier generates electricity from its own generating stations and also acts in an intermediary capacity for purchase of electrical energy from other generating companies and in turn, effects supply of Bulk Electricity generated/ procured from such source to the Distribution Licensee in accordance with the bulk supply arrangements, and/ or direction of the Commission from time to time and other Regulations;
  - (b) Bulk Supplier's ability to supply Bulk Electricity to the Distribution Licensee is, in the absence of defaults or failures solely attributable to Bulk Supplier, dependent upon, and inter-related to Bulk Supplier securing sufficient electrical energy from other generation companies pursuant to the agreements or arrangements Bulk Supplier has and is also dependent upon the status and operation of the power system in the [State/ UT];
  - (c) Subject to the above, the endeavour of Bulk Supplier shall be to supply bulk electricity to the extent of the requirements of the Distribution Licensee from time to time and subject to approval required from the Commission under the applicable

laws, the Distribution Licensee shall be entitled to procure the additional requirement of electricity from other sources.

- (d) At any time, if Bulk Supplier conveys its inability to meet the power purchase requirement of Distribution Licensee, then the Distribution Licensee may procure power from alternate sources, provided that such alternate source is selected as per process prescribed by law/ regulation.
  - (e) In case of expiry of the license period of Distribution Licensee or revocation of the distribution license whichever is earlier, the power purchase agreement or similar arrangements entered into by the Distribution Licensee pursuant to Clause 4.1 (d) above shall devolve onto the successor entity, subject to approval of the Commission in accordance with relevant laws prevailing at that time.
- 4.2. Acknowledging the circumstances in Clause 4.1, the Parties specifically agree to the following:
- (a) At any time a Supply Shortage occurs, Bulk Supplier shall endeavour, to the extent practicable and economic, to allocate its available supplies of electrical energy, (subject from time to time to any limitations and/or constraints of the Transmission System and to the rules of the Grid, the requirements of the Grid Code, restrictions imposed by SLDC and prudent utility practices) in an appropriate and non-discriminatory manner amongst the Distribution Licensee and other retail supply licensees in the [State/ UT] and except where the Commission finds a deliberate breach or failure primarily attributable to Bulk Supplier, Bulk Supplier shall not be liable to compensate the Distribution Licensee for any such Supply Shortage for any reason whatsoever;
  - (b) Bulk Supplier agrees to share with Distribution Licensee any compensation it receives from the generating companies, other suppliers or any other person for such Supply Shortage.
  - (c) The Parties agree that financial impact of over-drawal/ under-drawal shall be dealt with as per applicable regulations, from time to time.

## 5. CALCULATION AND PAYMENT OF CHANGES

- 5.1. After the end of each month, Bulk Supplier shall prepare and deliver to Distribution Licensee an invoice ("**Monthly Bill of Supply**") in accordance with the Bulk Supply Tariff specifying all the amounts payable under the terms of this Agreement or otherwise as per the directions of the Commission. Bulk Supplier shall give requisite details of the calculation of charges in respect of the relevant month in each Monthly Bill of Supply.
- 5.2. The amount of each Monthly Bill of Supply shall become payable by Distribution Licensee on the date falling thirty (30) days after the receipt of such Monthly Bill of Supply ("**Due Date**"). Distribution Licensee shall pay the full amount of such Monthly Bill of Supply to Bulk Supplier without deduction, set-off or withholding on any account whatsoever, other than on accounts specified in Clause 5.3, unless otherwise agreed between Bulk Supplier and Distribution Licensee or required under prevailing law or any order of the Commission.
- 5.3. Deduction, set-off or withholding of payment would be permitted only under the following conditions:
  - (a) Rebate for prompt payment.

- (b) To the extent of any amount owed by Bulk Supplier to Distribution Licensee, as allowed by the Commission or acknowledged as payable by Bulk Supplier.

#### 5.4. Disputed Bill

- (a) If a Party does not dispute a Monthly Bill of Supply raised by the other Party within fifteen (15) days of receiving such Monthly Bill of Supply, such Monthly Bill of Supply shall be taken as conclusive.
- (b) If a Party disputes the amount under a Monthly Bill of Supply, that Party shall, within fifteen (15) days of receiving such Monthly Bill of Supply, issue a notice ("**Bill Dispute Notice**") to the invoicing Party setting out:
  - (i) the details of the disputed amount;
  - (ii) its estimate of what the correct amount should be; and
  - (iii) all written material in support of its claim.
- (c) If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Clause 5.4 (b), the invoicing Party shall revise such Monthly Bill of Supply within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) days of receiving the revised Monthly Bill of Supply from the invoicing Party or the Due Date whichever is later, make the payment thereunder. If the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such case, excess amount shall be refunded along with interest at the same rate as delayed payment surcharge determined as per Clause 5.6. The interest shall be applicable for the period from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- (d) If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Clause 5.4 (b), it shall, within seven (7) days of receiving the Bill Dispute Notice, furnish a notice ("**Bill Disagreement Notice**") to the disputing Party providing:
  - (i) reasons for its disagreement;
  - (ii) its estimate of what the correct amount should be; and
  - (iii) all written material in support of its counter-claim.
- (e) Upon receipt of the Bill Disagreement Notice by the disputing Party under Clause 5.4 (d), authorized representative(s) of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- (f) If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Clause 5.4 (d), then the aggrieved Party may approach the Commission for dispute resolution in accordance with Article 11. The Parties shall be bound by the decision of the Commission, including any delayed payment surcharge, if any directed by the Commission.

- (g) If a dispute regarding a Monthly Bill of Supply is settled pursuant to Clause 5.4 (e) or by the dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the resolution along with interest at the same rate as delayed payment surcharge determined as per Clause 5.6. The interest shall be applicable for the period from the date on which such payment had been made to the invoicing Party and up to and including the date on which such payment has been received as refund.
  - (h) For the avoidance of doubt, it is clarified that despite a dispute regarding a Monthly Bill of Supply, the Distribution Licensee shall be under an obligation to make payment of the same within the Due Date, without prejudice to its right to dispute.
- 5.5. If payment, either through Letter of Credit or by cash or by RTGS/ NEFT, is made by Distribution Licensee to Bulk Supplier within Due Date, Distribution Licensee shall be allowed rebate as per the prevalent Regulations of the Commission or as per any mechanism put in place by Bulk Supplier pursuant to Regulations of the Commission on this matter. [Until necessary Regulations are issued by the Commission, Bank Rate shall be applicable for computation of rebate prorated for the period, the payment is made prior to Due Date.]
- 5.6. If payment is not received by Bulk Supplier on or before the Due Date, Distribution Licensee shall pay to Bulk Supplier a delayed payment surcharge determined as per the prevalent Regulations of the Commission or as per any mechanism put in place by Bulk Supplier pursuant to Regulations of the Commission on this matter. [Until necessary Regulations are issued by the Commission, Bank Rate shall be applicable for computation of delayed payment surcharge for each day of delay from Due Date. For delay beyond one (1) month, the applicable Bank Rate shall be increased by 50 basis points for each month of delay, till it reaches Bank Rate plus 200 basis points.]
- 5.7. Further, if there are undisputed outstanding bulk supply bill dues, the payment so made by Distribution Licensee shall be first adjusted by Bulk Supplier against the delayed payment surcharge, then towards the arrear dues and balance towards the current dues.

## 6. PAYMENT SECURITY MECHANISM

- 6.1. Distribution Licensee shall provide to Bulk Supplier, not later than thirty (30) days of the date of signing of this Agreement, an unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**") from a Scheduled Commercial Bank in India having operations in [Place name] ("**Bank**"). The amount for the Letter of Credit shall be equivalent to two (2) months of average Monthly Bill of Supply amount for the relevant Year for which the Letter of Credit is issued in accordance with the provisions of this Agreement. The Letter of Credit shall be invocable at any branch in [Place name] city.
- 6.2. The Letter of Credit shall be a standby one. In the event of Distribution Licensee's failure to pay the Monthly Bill of Supply by the Due Date, Bulk Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank shall, without any reference to Distribution Licensee, pay the amount to Bulk Supplier upon submission of following documents namely:
- (a) a copy of the Monthly Bill of Supply which has remained unpaid; and
  - (b) a certificate from Bulk Supplier to the effect that the Monthly Bill of Supply is in accordance with this Agreement and has remained unpaid.

- 6.3. The first Letter of Credit shall be valid up to 31st March of the next year following the date of its issue and thereafter shall be renewed on an annual basis valid and operative for the following Year. At the time of every renewal, the amount of Letter of Credit shall be modified to reflect the revision in Monthly Bill of Supply amount for that relevant Year of supply of power. Advice of the renewal shall be duly secured from the Bank by Distribution Licensee and furnished to Bulk Supplier, at least two (2) months prior to the commencement of the relevant Year.
- 6.4. Distribution Licensee shall ensure the existence of Letter of Credit at all times during the term of this Agreement.
- 6.5. In the event that the amount covered by the Letter of Credit, at any time, is insufficient for recovery of payment due against the Monthly Bill of Supply, Distribution Licensee shall, within a period of seven (7) days from the date on which such shortfall occurred, replenish and reinstate the Letter of Credit to the amount specified in Clause 6.1.
- 6.6. There shall be no restriction on the number of times a Letter of Credit may be utilised, under the terms of relevant Letter of Credit. However, Bulk Supplier shall not be entitled to utilise the Letter of Credit for amount in excess of the sum payable (together with any delayed payment surcharge) or in case it has already received payment of the outstanding amount.

## **7. OPERATING ARRANGEMENT, CONNECTION AND METERING**

- 7.1. The Parties acknowledge and accept that they shall conduct their respective business in accordance with the Regulations of the Commission.
- 7.2. Subject to Clause 7.1, the Parties shall co-ordinate with each other on a regular basis in order to resolve all operational issues, including connection, metering, load shedding and other day-to-day matters and for the said purpose shall, form such co-ordination committees consisting of such officers as the Parties may mutually agree.
- 7.3. The co-ordination committees established by the Parties pursuant to Clause 7.2 shall settle the Operating Procedure, which will regulate relations between the Parties in respect of connection of the Distribution System to the Transmission System, the repair and maintenance of Points of Supply and interconnection, metering at each of the Points of Supply. The Operating Procedures prepared by the co-ordination committees may be amended from time to time by agreement between the Parties.
- 7.4. The Operating Procedures shall be subject to and in accordance with the Regulations of the Commission referred to in Clause 7.1. In the event, there is any dispute relating to the arrangement or implementation of the Operating Procedures the matter will be resolved in accordance with Article 11 of this Agreement.

## **8. FORCE MAJEURE**

- 8.1. "Force Majeure" means any events or circumstances or combination of events or circumstances which is beyond the control of a Party and results in or causes the failure of that party ("non-performing Party") to perform any of its obligations under this Agreement, and includes:
- (a) Act of war, invasion, armed conflict or act of foreign enemy, blockade;

- (b) Revolution, not or insurrection or civil commotion;
  - (c) Terrorism, sabotage, fire explosion or criminal damage;
  - (d) Act of God, including lightning, drought, volcanic eruption, cyclone, typhoon, tornado, flood, tidal wave, earthquake, landside, epidemic, geological surprises or similar cataclysmic event;
  - (e) Industry wide strikes and labour disturbances having a nationwide impact in India; or
  - (f) Any other event or circumstances, which could not have been prevented by the exercise by the non-performing Party of reasonable skill and diligence or otherwise by the observance by the non-performing Party of prudent utility practices.
- 8.2. Where a non-performing Party is unable to perform its obligations under this Agreement by reason of Force Majeure, the non-performing Party shall notify the other Party as soon as practicable of the
- (a) occurrence of Force Majeure event,
  - (b) nature of the event or circumstances of Force Majeure event,
  - (c) expected duration of such Force Majeure event,
  - (d) particular obligation of the non-performing party which are affected by such Force Majeure event and
  - (e) period for which such obligation are expected to be so affected.
- 8.3. Subject to Clause 8.2, the obligations of the Parties under this Agreement shall be suspended only to the extent that:
- (a) Such suspension is of no greater scope and no longer duration that is required by the effects of the relevant event or circumstances of Force Majeure; and
  - (b) The non-performing party uses all reasonable efforts to remedy, as soon as practicable, its inability to perform the affected obligations.
- 8.4. The Parties hereby clarify and agree that the Force Majeure shall not in any manner release Distribution Licensee from the obligation to pay for Bulk Electricity actually taken from Bulk Supplier and any amount outstanding for such Bulk Electricity supplied. However, no party shall be liable for any claim, for any damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a damage is due to the Force Majeure.

## **9. TERMINATION**

- 9.1. This Agreement shall terminate forthwith in the following events without any requirement of notice:
- (a) Cancellation or revocation of licence given to Distribution Licensee for undertaking the distribution and retail supply in the specified Area;
  - (b) Expiry of the license given to the Distribution Licensee without renewal; and



(c) Liquidation or winding up of Distribution Licensee.

9.2. Save as provided in Article 8 dealing with Force Majeure conditions, Bulk Supplier shall have the right to terminate this Agreement by service of written notice of termination to Distribution Licensee in the event

(a) Distribution Licensee is in default of its obligations to ensure the maintenance of the Letter of Credit in accordance with Article 6, or

(b) Distribution Licensee fails to pay the full amount of any Monthly Bill of Supply on the date on which the same shall have become payable in accordance with Article 5 and such failure is not remedied to the satisfaction of Bulk Supplier within a period of sixty (60) days from the date of the service of the notice.

Provided that Bulk Supplier's right to terminate the agreement in terms of this clause shall be without prejudice to its other rights.

9.3. Upon termination of this Agreement pursuant to Clauses 9.1 and 9.2 and subject to any order that may be passed by the Commission:

(a) Bulk Supplier shall prepare and deliver to Distribution Licensee a final bill of supply setting out all amounts which are outstanding from Distribution Licensee to Bulk Supplier, whether pursuant to Article 5 or for electrical energy supplied but in respect of which no bill of supply shall have been prepared at the date of termination, together with reasonable costs incurred by Bulk Supplier in connection with the termination of the Agreement. If Distribution Licensee disputes the reasonability of the cost, the same shall be resolved in accordance with Article 11 of this Agreement.

(b) Distribution Licensee shall pay to Bulk Supplier, within fifteen (15) days upon service of such final bill of supply, without deduction, set-off or withholding on any account whatsoever, the amount of such bill of supply.

9.4. Clause 9.3 and the Dispute Resolution Procedure contained in Article 11 and the Operating Procedures shall survive termination of this Agreement.

## **10. WAIVER OF RIGHTS**

10.1. No delay or forbearance by either Party in exercise any right or power under the Agreement shall be construed as a waiver of such right or power, nor shall any single or partial exercise of such right or power preclude any further exercise of such right or power.

## **11. DISPUTE RESOLUTION**

11.1. Any dispute arising under or in connection with this Agreement, shall first be referred to the chief executives of Bulk Supplier and Distribution Licensee for amicable resolution within thirty (30) days from the date of reference to the chief executives, failing which the matter shall be referred to the Commission for resolution in accordance with the powers conferred on the Commission by Section 86 of the Act.

## **12. ASSIGNMENT**

12.1. Bulk Supplier shall at all times have the right to assign its rights, benefits and obligations under this Agreement to any of its successors entity or entities as part of reorganisation or electricity industry in the [State/ UT] or otherwise as a part of reorganization of

shareholding and/or interest held by Government of [State/ UT name], government corporations, companies and bodies corporates in the [State/ UT]. Such a right of assignment shall be subject to the assignee or successor enjoying all the assurances and benefits that have been provided by the Government of [State/ UT name] to Bulk Supplier as per the Government Policy Directions so as not to cause any adverse effect to the Distribution Licensee in meeting its obligations.

12.2. In case of assignment specified under Clause 12.1, the term Bulk Supplier referred to in this Agreement shall for all intent and purposes, mean and include such successor entity or entities of Bulk Supplier. Such successor entity or entities shall be entitled to exercise the rights of Bulk Supplier and bound by its obligations in the same manner as Bulk Supplier is entitled to and bound by the terms of this Agreement.

12.3. Distribution Licensee shall not be entitled to assign the rights, benefit and for obligations of this Agreement to any other person without the approval of the Commission.

### **13. MISCELLANEOUS**

#### 13.1. Severability

If any provision of this Agreement is or becomes invalid or unenforceable by the courts of any jurisdiction to which it is subject, such invalidity or unenforceability shall not prejudice the remaining provisions of this Agreement which shall continue in full force and effect.

#### 13.2. Variations

Variations to this Agreement shall be in writing and signed by both Parties with prior approval of the Commission.

#### 13.3. Governing Law

The governing law shall be Indian Law.

#### 13.4. Essence of the Agreement

The time and date wherever mentioned in relation to performance of obligations or fulfilment of the covenants and conditions under this Agreement shall be an essence of this Agreement.

#### 13.5. Notices

All communications, notices and consents provided for herein shall be in writing and be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type) or by registered or certified mail, return receipt requests and shall become effective: (a) on delivery if given in person; (b) on the date of transmission if sent by telex, telecopy, or other wire transmission or (c) on receipt if sent by mail.

Notices shall be addressed as follows:

If to Bulk Supplier, to

Company Secretary  
[Bulk Supplier entity name]  
[Address of Bulk Supplier]

If to Distribution Licensee, to

Company Secretary  
[Distribution Licensee name]  
[Address of Distribution Licensee]

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

SIGNED ON BEHALF OF  
[Bulk Supplier entity name]  
By-----  
On-----

SIGNED ON BEHALF OF  
[Distribution Licensee name]  
By-----  
On-----

WITNESSES

- 1.
- 2.