

NON-DISCLOSURE AGREEMENT

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

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

Power Grid Corporation of India Limited, a company incorporated under the laws of Companies Act 1956 and having its Registered Office at B-9, Qutab Institutional Area, Katwarai Sarai, New Delhi-110 016 and its Corporate Office at 'Saudamini', Plot No.-2, Sector-29, Gurgaon (Haryana) - 122001 (hereinafter called "**Disclosing Party**" and also referred to as "POWERGRID"),

and

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

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

WHEREAS

1. POWERGRID (the "*Disclosing Party*") intends to participate in the Bidding process undertaken by the Bid Process Coordinator (hereinafter referred to as the "*BPC*") for selection of the Transmission Service Provider (TSP) for establishing "**Transmission system for evacuation of additional 7 GW RE power from Khavda RE park under Phase-III Part B**" under Tariff Based Competitive Bidding (TBCB) framework of the Ministry of Power, Govt. of India.
2. To facilitate in making its competitive bid to BPC, POWERGRID has undertaken Invitation for Bids (**IFB**) process for [Name of the Package] under Spec. No. [Specification No.].
3. The Receiving Party is desirous of associating with POWERGRID to facilitate it in preparing a competitive bid for BPC bidding after assessing the Bidding Documents and its subsequent Amendments & Clarifications (if any) for the Package mentioned at para 2.0 above (hereinafter referred to as the "**Proposed Transaction**").
4. The Disclosing Party contemplates that with respect to the Proposed Transaction, it may exchange certain information, material and documents relating to the aforesaid Package as well as Project inter-alia including but not limited to maps, diagrams, plans, statistics, designs, reports, drawings and supporting records or material documents or software (hereinafter referred to as "**Confidential Information**", more fully detailed in Clause 5 herein below) that the Disclosing Party regards as proprietary, confidential and trade/business secret; and

NOW THEREFORE, in consideration of the above, the following understanding is mutually agreed upon by and between the Parties for entering into a Non-Disclosure Agreement for [Name of the Package] under Spec. No. [Specification No.] as follows:

5. **Definition of Confidential Information**

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

- iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 8 hereof shall apply prior to any disclosure being made; and
- v) is or has been independently developed by the Receiving Party without violation of the terms of this Agreement, as evidenced by the Receiving Party's records, and without reference or access to any Confidential Information.

6. **Disclosure of Confidential Information**

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

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

7. **Use of Confidential Information**

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

Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

8. **Compelled Disclosure of Confidential Information**

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

9. **Term**

This Agreement shall remain in effect from the date of execution of this Agreement till the time BPC declares the successful bidder for the Project mentioned at S. No. 1 above or annuls the tendering process for the same, whichever is earlier. Further, this Agreement shall continue to be in force for the Term (stated herein above) until terminated by mutual agreement by both the Parties.

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

10. **Remedies**

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

attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

11. **Notice of Breach.**

Receiving Party shall notify the Disclosing Party immediately upon discovery of, or suspicion of, (1) any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives; or (2) any actions by Receiving Party or its Representatives inconsistent with their respective obligations under this Agreement, Receiving Party shall cooperate with any and all efforts of the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

12. **No Binding Agreement for Transaction**

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

13. **Warranty.**

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

14. **Miscellaneous.**

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

ANNEXURE-C

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

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

Signed by for and
on behalf of the Disclosing Party

Signed by for and
on behalf of the Receiving Party