

# **DMICDC - NSPCL**

**DMICDC Neemrana Solar Power Company Limited**

National Competitive Bidding (NCB)

**SUPPLY, INSTALLATION, COMMISSIONING & MAINTENANCE SERVICES FOR 5 X  
500 KVA ENGINEERED DIESEL GENERATOR POWER SYSTEM AT NEEMRANA  
INDUSTRIAL AREA**

**AT**

**NEEMRANA INDUSTRIAL PARK, JAPANESE ZONE, NEEMRANA, RAJASTHAN**

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**REQUEST FOR QUALIFICATION**

**Cum**

**REQUEST FOR PROPOSAL**

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**25th November 2016**

**DMICDC Neemrana Solar Power Company Limited  
(DMICDC - NSPCL)**

Room No.341 B, 3<sup>rd</sup> floor, Hotel Ashok, Diplomatic Enclave  
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**NOTICE INVITING REQUEST FOR QUALIFICATION CUM REQUEST FOR PROPOSAL**

**DMICDC - NSPCL  
DMICDC Neemrana Solar Power Company Limited**

**NATIONAL COMPETITIVE BIDDING (NCB)**

**REQUEST FOR QUALIFICATION CUM REQUEST FOR PROPOSAL FOR  
SELECTION OF SUPPLY, INSTALLATION, COMMISSIONING &  
MAINTENANCE CONTRACTOR FOR 5x500 KVA ENGINEERED DIESEL  
GENERATOR POWER SYSTEM AT NEEMRANA INDUSTRIAL AREA AT  
NEEMRANA INDUSTRIAL PARK,  
JAPANESE ZONE, NEEMRANA, RAJASTHAN**

**Date: 25th November 2016**

The Government of India has envisaged the development of Delhi Mumbai Industrial Corridor (DMIC) along the alignment of proposed Multi-modal High Axle Load Dedicated Freight Corridor (DFC) between Delhi and Mumbai, covering an overall length of 1,483 km. Further, DMICDC Neemrana Solar Power Company Limited (DMICDC-NSPCL), a special purpose company, was incorporated to establish, promote and facilitate development of DMIC Project.

DMICDC Neemrana Solar Power Company Limited (DMICDC-NSPCL) invites "Request for Qualification Cum Request for Proposal" (RFQ cum RFP) from interested bidders for **supply, installation, commissioning & maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Area at Neemrana Industrial Park, Japanese Zone, Neemrana, Rajasthan**. The salient features of the project, eligibility criteria and prescribed formats for submission can be accessed in the RFQ cum RFP document uploaded on the website: [www.dmicdc.com](http://www.dmicdc.com).

**Interested bidders are requested to submit their responses to the Request for Qualification Cum Request for Proposal at the address mentioned below on or before 16th December 2016 by 3:00 PM.** The RFQ cum RFP submissions will necessarily have to be accompanied with a Bank Draft of INR 50,000/- and service tax @15% (Indian Rupees Fifty Thousand only) in favour of "DMICDC Neemrana Solar Power Company Limited", payable at New Delhi, India, as a non-refundable processing fee.

The submissions must be addressed to:

**DMICDC Neemrana Solar Power Company Limited**

Room No. 341-B, 3<sup>rd</sup> Floor, Hotel Ashok,  
Diplomatic Enclave, 50-B Chanakyapuri, New Delhi -110 021  
Tel No: 011-2611 8884-8; Fax: 011-2611 8889  
Email: [contactus@dmicdc.com](mailto:contactus@dmicdc.com), [tenders@dmicdc.com](mailto:tenders@dmicdc.com)

CIN: U40300DL2014PLC266439

**Disclaimer:**

1. This REQUEST FOR QUALIFICATION (herein after called as RFQ)cum REQUEST FOR PROPOSAL (herein after called as RFP) document is neither an agreement nor an offer by the DMICDC Neemrana Solar Power Company Limited (DMICDC- NSPCL) to the prospective Bidders or any other person. The purpose of this RFQ cum RFP is to provide information to the interested parties that may be useful to them in the formulation of their Bid pursuant to this RFQ cum RFP.
2. DMICDC - NSPCL does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFQ cum RFP document and it is not possible for DMICDC - NSPCL to consider particular needs of each party who reads or uses this RFQ cum RFP document. This RFQ cum RFP includes statements which reflect various assumptions and assessments arrived at by DMICDC - NSPCL in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. Each prospective Bidder should conduct its own investigations and analyses and check the accuracy, reliability and completeness of the information provided in this RFQ cum RFP document and obtain independent advice from appropriate sources.
3. DMICDC - NSPCL will not have any liability to any prospective Bidding Company / Firm / Consortium or any other person including natural and artificial under any laws (including without limitation the law of contract, tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFQ cum RFP document, any matter deemed to form part of this RFQ cum RFP document, the award of the Project, the information and any other information supplied by or on behalf of DMICDC-NSPCL or their employees, any consultants or otherwise arising in any way from the selection process for the Project. DMICDC-NSPCL will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon any statements contained in this RFQ cum RFP.
4. DMICDC-NSPCL will not be responsible for any delay in receiving the Bids. The issue of this RFQ cum RFP does not imply that DMICDC-NSPCL is bound to select the Bidder or to appoint the Selected Bidder, as the case may be, for the Project and DMICDC-NSPCL reserves all the right and have discretionary powers to accept/reject any or all of Bids submitted in response to this RFQ cum RFP document at any stage without assigning any reasons and without any justification. DMICDC - NSPCL also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFQ cum RFP document.

Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan

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5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. DMICDC - NSPCL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
6. DMICDC - NSPCL reserves all the rights and power to change / modify / amend any or all provisions of this RFQ cum RFP document. Such revisions to the RFQ cum RFP / amended RFQ cum RFP will be made available on the website of DMICDC - NSPCL.

Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel  
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## Section 1. Letter of Invitation

New Delhi

Date: 25th November 2016

### 1. Introduction

The Government of India has launched a major initiative for building the Delhi - Mumbai Industrial Corridor (DMIC) along the backbone of the western leg of the Dedicated Freight Corridor (DFC) being developed by the Ministry of Railways. It spans six states of India, i.e. Gujarat, Maharashtra, Madhya Pradesh, Haryana, Rajasthan and Uttar Pradesh. The perspective plan for the Corridor sets out the following goals: double employment in seven years, triple industrial output in nine years, quadruple exports from the region in eight-nine years.

The Government of India has formed a special purpose vehicle (SPV) named the Delhi Mumbai Industrial Corridor Development Corporation Ltd. (DMICDC) for the implementation of Delhi Mumbai Industrial Corridor (DMIC) projects with the six State Governments and Ministries associated with the Government of India. DMICDC has formed a Special Purpose Vehicle (SPV) for Setting up the 6.00 MW Model Solar Power Project in Neemrana named "DMICDC Neemrana Solar Power Company Limited (DMICDC – NSPCL). Already 5.00 MWp grid connected solar power project has been commissioned in September 2015 at Area-2 in Neemrana.

The DG Power System at Neemrana, Rajasthan is a unique initiative of the Delhi - Mumbai Industrial Corridor Development Corporation Limited and has been conceived as the First Smart Micro - Grid Project in the country demonstrating the concept of integration of Solar Power with industrial Diesel Generator sets. It is a project that will not only produce green power but also endeavours to save on CO<sub>2</sub> emissions by cutting down on diesel consumption. The project will have the latest **cutting** edge technological breakthroughs in the field of Solar Generation & Smart Grid from Japan.

Therefore, DMICDC Neemrana Solar Power Company Limited (DMICDC - NSPCL) (Client) invites bids to undertake the 5 X 500 KVA Engineered diesel generator power System (herein after called as the "Project"):

***"Supply, Transport, Storage, Insurance, Erection, Testing, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System for the integrated solar, DG sets & micro grid at Neemrana Industrial Park, Japanese Zone, Neemrana, Rajasthan" (the "Project").***

The detailed scope of services is provided in the Terms of Reference.

### 2. Objectives

The main objective of this RFQ cum RFP is to engage an experienced Company for "Supply, Transportation, Storage, Insurance, Erection, Testing, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at at Neemrana Industrial Park, Japanese Zone, Neemrana, Rajasthan".

### 3. A Bidder will be selected under Net Present Value (NPV) method as per the procedures described in this RFQ cum RFP document.

**4. The RFQ cum RFP includes the following documents:**

SECTION 1: Letter of Invitation

SECTION 2: Instructions to Bidders

SECTION 3: Qualification & Technical Bid - Standard Forms

SECTION 4: Financial Bid - Standard forms

SECTION 5: Terms of Reference

SECTION 6: Standard forms of Contract

SECTION 7: Annexures

SECTION 8: Appendices

**All clarifications/ corrigendum will be published only on the DMICDC - NSPCL website. The official website for accessing the information related to this RFQ cum RFP is [www.dmicdc.com](http://www.dmicdc.com) (the “Official Website”).**

Note: From the “Home” page access the “Tenders” section to access all the uploaded documents related to this RFQ cum RFP.

Yours sincerely,

Managing Director

**DMICDC - Neemrana Solar Power Company Limited**



## Section 2. Instructions to Bidders

### 2.1 Definitions

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Governments of various States, including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Contract and the exercise, performance and discharge of the respective rights and obligations of the parties hereunder, as may be in force and effect during the subsistence of this Contract.

“**Approved / Approval**” shall mean and include approved/approval accorded by the Project Manager in writing with the concurrence of the Architect or of the Owner.

“**Associate**” shall mean a person who controls, is controlled by, or is under the common control with such Bidder.

“**Bid**” shall mean the Qualification Bid, Technical Bid and Financial Bid submitted by the Bidder, in response to Request for Qualification (RFQ) cum Request for Proposal (RFP).

“**Bidder**” shall mean Bidding Company .

“**Bidding Company**” shall mean a Company incorporated in India having its office in India, that has submitted the response in accordance with the provisions of this RFQ cum RFP;

“**Client**” shall mean DMICDC Neemrana Solar Power Company Limited (DMICDC - NSPCL).

“**Company**” shall mean a body corporate defined as company and incorporated in India under the Companies Act, 1956 or Companies Act, 2013 or any other applicable statute.

“**Commissioning**” As per the guideline of Good Utility practice.

“**Commercial Operation Date (COD)**” shall mean the date on which the power to Mikuni (Neemaran Industry) is made available for dispatch to its premises after actual commissioning date of the 1 MW micro grid DG power project.

“**Conflict of Interest**” A Bidder may be considered to be in a Conflict of Interest with one or more Bidders participating in the same bidding process under this RFQ cum RFP, if they have a relationship with each other directly or indirectly through a common Company / promoter / directors, that puts them in a position to have access to information about or influence the Bid of another Bidder.

“**Contract**” shall mean the agreement signed between successful / selected Bidder and the Client towards successful commissioning of 5 X 500 KVA DG at Neemrana.

“**Control**” shall mean with respect to a person, which is a company or corporation, the ownership, directly or indirectly, or more than 50 percent of the voting shares of such person and with respect to a person which is not a company or corporation, the

power to direct the management and policies of such person by operation of law or by contract.

**“Coercive Practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;

**“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process; or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical bidder of the Client in relation to any matter concerning the Project;

**“Contractor”** shall mean the Company / Selected Bidder who is responsible for “Supply, Procure, Construct, Transportation, Storage, Insurance, Erection, Testing and Commissioning of DG 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan.

**“Fraudulent Practice”** means a misrepresentation or omission of facts or disclosure of incomplete facts or intentional use of deceit, a trick or some dishonest means to , influence the Selection Process;

**“JVVNL”** shall mean Jaipur Vidyut Vitran Nigam Limited.

**“Letter of Award” or “LoA”** shall mean a letter issued by DMICDC Neemrana Solar Power Company Limited to the selected Bidder for the award of the Contract.

**“Material Adverse Effect”** shall mean the impact of an activity performed that may adversely affect the project completion schedule or project performance after completion or cause serious damages to the other areas of the project under construction.

**“Engineered DG Power System” means**

1MW Diesel Generator Power system with installed capacity of DG Set as 2.00 MW which includes 1.00 MW standby DG Power. This will be connected through LT Panels and Transformer for uninterrupted power supply. The scope of the bidder is upto the termination at primary side of the step up transformer.

**“Micro Grid Concept” means**

- i) A grouping of generating resources and end-user sinks that are placed and operated for the benefit of its members, which may be one utility “customer”, a grouping of several sites, or displaced sites that nonetheless operate in a coordinated fashion.
- ii) The supply sources may include reciprocating engine generator sets, micro turbines, fuel cells, photovoltaic and other small scale renewable generators, storage devices and controllable end-use loads
- iii) All controlled sources and sinks are interconnected in a manner that enables devices to perform the micro grid control functions unnecessary for traditional Distribution Energy Resources (DER). For example, the energy balance of the system must be maintained by dispatch, and non-critical loads might be curtailed or shed during times of energy shortfall or high costs. While capable of operating independently of the macro grid, the  $\mu$ Grid usually functions interconnected, purchasing energy and ancillary services from the macro grid as economic, and potentially selling back at times.
- iv) The energy balance of the system must be maintained by despatch, and non-critical loads might be curtailed or shed during times of energy shortfall or high costs.

**“Mobilisation at Site** “means establishment of temporary site office, appointment and placement of the Site-in-Charge and office staff at site.

**“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

**“RRVPNL”** shall mean Rajasthan Rajya Vidyut Prasaran Nigam Limited.

**“Selected Bidder / Successful Bidder”** shall mean the Bidder selected pursuant to this RFQ cum RFP to execute the 5 X 500 KVA Engineered Diesel Generator Power System as per the terms of Agreement.

**“Selection Process”** shall mean the whole process of selection of supply cum maintenance Company/Contractor, which includes the single stage bidding process and all other relevant work as per RFQ cum RFP.

**“Terms of Reference or TOR”** shall mean the scope of work towards supply as well as scope of services towards Maintenance and detailed technical specifications as specified in Section 4.

**“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest;

## **2.2 Introduction**

- 2.2.1** The Client named in the data sheet will select a Bidder, in accordance with the method of selection specified in the data sheet. Bidders are advised that the selection of Contractor shall be on the basis of an evaluation by Client through the selection process specified in this RFQ cum RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that **DMICDC - NSPCL's decisions are without any right of appeal whatsoever.**
- 2.2.2 The Bidders are invited to submit Qualification, Technical and Financial Bids (collectively called as "the Bid"), as specified in the data sheet, for the supply and Maintenance (herein after called as S&M) services required for the project. The S&M contractor shall be responsible to carry out , Supply, Procure, , Transportation, Storage, Insurance, Erection, Testing, Commissioning & Maintenance for 10 Years of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Area and provide necessary assistance in accordance with the Terms of Reference (TOR) of this RFQ cum RFP.
- 2.2.3 The Bidder shall submit the Bid in the form and manner specified in this RFQ cum RFP. The Bid shall be submitted as per the forms given in relevant sections herewith. Upon selection, the Bidder shall be required to enter into a contract with the Client in the form specified in this RFQ cum RFP.
- 2.2.4 Bidders should familiarize themselves with local conditions and take them into account in preparing their Bids.
- 2.2.5 The Client will timely provide, at no cost to the Bidder, the inputs and facilities required to carry out the services, and provide relevant project data and reports related to the Project available with the Client. However, for avoidance of doubt, it is hereby clarified that the aforesaid data / information provided under the RFQ cum RFP or to be provided later, is only indicative and solely for the purposes of rendering assistance to the Bidders towards preparation of their Bids. The Bidders are hereby advised to undertake their own due diligence (to their complete satisfaction) before placing reliance on any such data / information furnished or to be provided later by the Client and / or any of his contractors.
- 2.2.6 Bidders shall bear all costs associated with the preparation and submission of their bids, and their participation in the Selection Process, and presentation including but not limited to postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by Client or any other costs incurred in connection with or relating to its Bid. The Client is not bound to accept any Bid, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Bidders.
- 2.2.7 Client requires that the S&M Contractor shall supply as well as provide 10 Year Maintenance services DG for the 5 X 500 KVA Engineered Diesel Generator Power System to hold Client's interests' paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The contractor shall not accept or engage in any project that may place it in a position of not being able to carry out the project in the best interests of Client and the Project.

- 2.2.8 It is the Client's policy to require that the Bidder observe the highest standard of ethics during the Selection Process and execution of such contracts. In pursuance of this policy, the Client:
1. defines, for the purposes of this provision, the terms set forth below as follows:
    - a) "Corrupt practice" means the offering, giving, receiving, or soliciting anything of value to influence the action of officials in the Selection Process or in contract execution; and
    - b) "Fraudulent practice" means a misrepresentation of facts in order to influence the Selection Process or the execution of a Contract in a way which is detrimental to the Client, and includes collusive practices among Contractor's (prior to or after submission of Bids) designed to establish prices at artificial, non-competitive levels and to deprive the Client of the benefits of free and open competition.
  2. will reject the Bid for award if it determines that the Bidder has engaged in corrupt or fraudulent activities in competing for the contract in question;
  3. will declare a bidder ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the Bidder has engaged in corrupt or fraudulent practices in competing for and in executing the contract.
- 2.2.9 The bidder is required to follow the highest level of work ethics, . Further, in the event any entity has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project or bid, and the bar subsists as on the date of the Bid Due Date, it would not be eligible to submit a Bid either by itself or as part of a Consortium.
- 2.2.10 The bidder shall indicate the stage wise time schedule for construction and commissioning. DG
- 2.2.11 The Bid shall be valid for a period of not less than 180 (One hundred and eighty) days from the Bid Due Date (BDD).
- 2.2.12 **Brief Description of the Selection Process:** The Client has adopted a single stage-Three envelop bidding process for evaluating the bids comprising Envelop 1 titled as Request for Qualification (RFQ) which includes Qualification Requirement for opening of technical Bid, Envelop 2 titled as Request for Proposal (RFP) includes Technical Requirement and Envelop 3 titled as Financial bid includes final & firm quoted price. Request for Qualification (RFQ) shall contain the Bid processing fee and Bid Security as prescribed in this RFQ cum RFP document. . The submissions for Qualification shall be evaluated first as specified in this RFQ cum RFP. Subsequently the technical evaluation as specified in this RFQ cum RFP will be carried out only for those Bidders who meet the Qualification criteria. Based on this technical evaluation, a list of technically qualified Bidders shall be prepared. Only the Financial Bids of technically qualified Bidders will be opened. Bids will finally be ranked according to their financial bid as per bid evaluation criteria specified in this RFQ cum RFP. The first ranked Bidder (the "Selected Bidder / Successful Bidder") shall be invited for Negotiations while the second ranked Bidder will be kept in reserve.
- 2.2.13 Number of Bids: No Bidder or its Associate / Member shall submit more than one Bid for the Project. .
- 2.2.14 Visit to the Client and Verification of Information: Bidders are encouraged to submit their respective Bids after visiting the office of the Client or its delegates as the case

may be, and ascertaining for themselves the availability of documents and other data with the Client, Applicable Laws and Regulations or any other matter considered relevant by them.

**2.2.15 Right to reject any or all Bids:**

1. Notwithstanding anything contained in this RFQ cum RFP, the Client reserves the right to accept or reject any Bid and to annul the Selection 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 thereof.
2. Without prejudice to the generality of above, the Client reserves the right to reject any Bid if:
  - a) at any time, any misrepresentation is made or discovered, or
  - b) the Bidder does not provide, within the time specified by the Client, the supplemental information sought by the Client for evaluation of the Bid.
3. Such misrepresentation / improper response by the Bidder may lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Bids have been opened and the highest ranking Bidder gets disqualified / rejected, then the Client reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the Client, including annulment of the Selection Process.

**2.2.16 Acknowledgement by the Bidder**

1. It shall be deemed that by submitting the Bid, the Bidder has:
  - a) made a complete and careful examination of the RFQ cum RFP;
  - b) received all relevant information requested from the Client;
  - c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ cum RFP or furnished by or on behalf of the Client;
  - d) satisfied itself about all matters, things and information, including matters herein above, necessary and required for submitting an informed bid and performance of all of its obligations there under;
  - e) acknowledged that it does not have a Conflict of Interest; and
  - f) Agreed to be bound by the undertaking provided by it under and in term hereof.
2. The Client and/ or its advisors/ consultants shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFQ cum RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Client and/ or its consultant.

**2.2.17 RFQ cum RFP Processing Fee:** The RFQ cum RFP submissions shall be accompanied by a Bank Draft of INR 50,000/- (Indian Rupees Fifty Thousand only) along with service tax @ 15 % in favour of "DMICDC Neemrana Solar Power Company Limited", payable at New Delhi, India, as a non-refundable RFQ cum RFP processing fee (the "RFQ cum RFP Processing Fee"). Bids unaccompanied with the aforesaid RFQ cum RFP Processing Fee shall be liable to be rejected by the Client.

**2.2.18 Project Office:** Contractors are advised to have their main project office in India for co-ordination along with a site office in Neemrana, District Alwar, Rajasthan, India.

**2.3 Clarification and amendment of RFQ cum RFP documents**

**2.3.1** Bidders / Contractor may seek clarification on this RFQ cum RFP document, within a week of the date of issue of this RFQ cum RFP document. Any request for



clarification must be sent by standard electronic means (PDF and word file) / fax to the Client's office addressed to:

**Managing Director,  
DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 3<sup>rd</sup> Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110021, India  
Phone: 011-26118884-8 Fax: 011-26118889  
Email: [contactus@dmicdc.com](mailto:contactus@dmicdc.com), [tenders@dmicdc.com](mailto:tenders@dmicdc.com)  
CIN: U40300DL2014PLC266439**

The Client will endeavour to respond to the queries not later than 2 (two) weeks prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Client will post the reply to all such queries on its official website.

- 2.3.2 At any time before the submission of Bids, the Client may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the RFQ cum RFP documents by an amendment. All amendments / corrigenda will be posted only on the Client's Official Website. In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the Client may at its discretion extend the Bid Due Date.
- 2.3.3 Date of pre-bid meeting and venue is mentioned in data sheet. Bidders willing to attend the pre-bid should inform client beforehand in writing and email. The maximum number of participants from the Bidder, who chose to attend the pre-bid meeting, shall not be more than two per Bidder. The representatives attending the pre-bid meeting shall accompany with an authority letter duly signed by the authorised signatory of his/her organisation.

#### **2.4 Clarification and/ or interpretation of drawings / documents for approval**

After submission of the drawings and documents by the Contractor, to the Client or State / National Statutory Agencies, if clarifications are required or doubt arises as to the interpretation of anything included in the documents / drawings, Contractor shall, on receipt of written request form the Client or State / National Statutory Agencies, furnish such clarification to the satisfaction of Client or State / National Statutory Agencies within three (03) working days without any extra charge.

#### **2.5 Ownership of document and drawings, test results**

All the field test results, design documents, drawings, equipment manuals, etc. shall be compiled, classified and submitted by the contractor to DMICDC Neemrana Solar Power Company Limited in hard and soft copies in addition to the requirements for the reports and deliverables indicated in the TOR.

All such documents, drawings, etc. shall remain the property of the DMICDC Neemrana Solar Power Company Limited and shall not be used for any purpose other than that intended under these terms of reference without the prior permission of the DMICDC Neemrana Solar Power Company Limited.

#### **2.6 Bid Security**

- 2.6.1 The Bidder will be required to deposit, along with its Bid, a bid security of Rs. 5,00,000.00 (Indian Rupees Five Lacs only) (the "Bid Security"), refundable within 30 days after signing the contract with the Selected Bidder or when the Selection Process is cancelled by DMICDC Neemrana Solar Power Company Limited except

the selected bidder whose Bid Security shall be retained till it has provided a Performance Security under the Agreement. The Bidders will have an option to provide Bid Security in the form of Demand Draft or a Bank Guarantee acceptable to the Client and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (One Hundred and Eighty) days from the Bid Due Date, inclusive of a claim of 60 (Sixty) days, and may be extended as may be mutually agreed between DMICDC Neemrana Solar Power Company Limited and the Bidder from time to time. The Bid shall be summarily rejected if it's not accompanied by the Bid Security.

- 2.6.2 The Demand Draft/ Bank Guarantee in original shall be placed in an envelope and attached with the envelope 1 marked as “RFQ – [Name of Project]” and “Not to be opened except in the presence of evaluation committee”. Bids received without the specified Bid Security will be summarily rejected.
- 2.6.3 Client will not be liable to pay any interest on bid security deposits. Bid Security of Qualified but unsuccessful Bidders shall be returned, without any interest, within 30 days after signing the contract with the Selected Bidder or when the Selection Process is cancelled by DMICDC Neemrana Solar Power Company Limited. The Selected Bidder's Bid Security shall be returned, without any interest on signing the Contract and furnishing the Performance Security in accordance with provision of the RFQ cum RFP and Contract.
- 2.6.4 Client will be entitled to forfeit and appropriate the Bid Security as mutually agreed loss and damage payable to DMICDC Neemrana Solar Power Company Limited in regard to the RFQ cum RFP without prejudice to DMICDC Neemrana Solar Power Company Limited's any other right or remedy under the following conditions:
1. If the Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as envisaged under this RFQ cum RFP (including the Standard Form of Contract);
  2. If any Bidder withdraws its Bid during the period of its validity as specified in this RFQ cum RFP and as extended by the Bidder from time to time,
  3. In the case of the Selected Bidder, if the Selected Bidder fails to sign the contract or provide the Performance Security within the specified time limit, or

If the Bidder commits any breach of terms of this RFQ cum RFP or is found to have made a false representation to DMICDC Neemrana Solar Power Company Limited Performance Security equivalent to the amount indicated in this RFQ cum RFP shall be furnished before signing of the contract in form of a Bank Guarantee substantially in the form specified in the RFQ cum RFP / contract.

For the successful bidder, the Performance Security shall be retained with DMICDC Neemrana Solar Power Company Limited until the completion of the Project by the contractor and be released within 180 (one hundred and eighty) days after the completion of the Project.

## **2.7 Qualification Criteria:**

The Bidder shall meet the following qualification criteria to qualify the Technical Bid, as stipulated below:



**TECHNICAL REQUIREMENTS:**

**TECHNICAL REQUIREMENT-A**

The Bidder shall have executed contracts of Design, Engineering, Manufacture, Supply, Procurement, Transportation, Storage, Insurance, Construction / Erection, Testing and Commissioning of Diesel Generator Power Plant(s) with at least one such projects with multiple DG sets having an installed capacity of minimum 2,500 KVA at single location in India or abroad. The Bidder shall be an executor / contractor not as a Project Developer. Bidder shall furnish the details of project executed such as (i) Project location & details (ii) Customer details (iii) Latest satisfactory performance certificate of the installed project issued by the customer / project developer. The plant should be fully operational as on the date of submission of bid.

In addition to the above, the following criteria also need to be met by the bidders:

- i). The bidder must be an ISO: 9001 certified company.
- ii). The bidder shall be holding a valid electrical contracting licence as required by any statutory norms on the date of submission of the bid.
- iii). The bidders shall submit copies of the documentary evidence of the purchase orders for the DG power plants executed by them along with copies of ;
  - Equipment purchase orders
  - Final Acceptance Reports
  - Satisfactory Maintenance reports for the plants where Maintenance activities are being carried out for the past two (2) years
  - Copies of inspection reports of equipment tested and accepted at vendor/manufacture works.

All the bidders shall submit experience and past performance details of their own and of their collaborators on jobs / projects executed of similar nature in the past, current works in hand along with list of clients, in support of the experience claimed as per **Section 3, Clause 3.9 - Form 3I**

- i) Unconditional confirmation on acceptance of full responsibility of executing the 'Scope of Work' of this tender. This confirmation shall be submitted along with the techno-commercial bid, enclosed in "Envelop 2" of the tender.
- ii) All the members of the consortium must undertake in their MOU that each party shall be jointly and severally liable to DMICDC-NSPCL for any and all obligations and responsibilities arising out of this contract.

**FINANCIAL REQUIREMENTS:**

- a) The Bidder shall have average net worth of Rs. 1.5 Crores in last 3 Financial Years, and
- b) The average annual turnover during last three consecutive financial years of the Bidder should be at least Rs. 5.0 Crores (Rupees Five Crores only), and
- c) The Bidder shall submit bank solvency certificate of Rs. 1.5. Crores from a nationalised bank in India or any foreign bank having operations in India

For the computation of Net Worth, the Bidder shall submit last 3 (three) financial years audited annual accounts.

Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

**GENERAL REQUIREMENTS:**

- 2.7.1 The Bidder shall be a company incorporated under the Companies Act 1956 or 2013 or any other applicable statute..
- 2.7.2 The Bidder shall not have a conflict of interest that may affect the Selection Process (the “Conflict of Interest”). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Client will forfeit and appropriate the Bid Security as mutually agreed genuine pre - estimated compensation and damages payable to the Client for, inter alia, the time, cost and effort of the DMICDC Neemrana Solar Power Company Limited including consideration of such Bidder’s Bid, without prejudice to any other right or remedy that may be available to the **DMICDC Neemrana Solar Power Company Limited** hereunder or otherwise.
- 2.7.3 The Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
1. the Bidder, its consortium member (the “Member”) or Associate (or any constituent thereof) and any other Bidder, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its consortium member or Associate is less than 5 percent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956 and 2013 or any other provision. For the purposes of this clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26 percent of the subscribed and paid up equity shareholding of such intermediary; or
  2. a constituent of such Bidder is also a constituent of another Bidder; or

3. such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
4. such Bidder has the same legal representative for purposes of this bid as any other Bidder; or
5. such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's' information about, or to influence the bid of either or each of the other Bidder; or
6. there is a conflict among this and other projects of the Bidder (including its personnel and sub-vendors) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Contractor's will depend on the circumstances of each case. While providing services to DMICDC Neemrana Solar Power Company Limited for this particular project, the Contractor shall not take up any project that by its nature will result in conflict with the present assignment; or
7. a firm which has been engaged by the DMICDC Neemrana Solar Power Company Limited to provide goods or works or services for a project, and its Associates, will be disqualified from providing services for the same project and except as per provisions of this RFQ cum RFP, conversely, a firm hired to provide services for implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
8. the Bidder, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5 percent of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.
9. For purposes of this RFQ cum RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50 percent of the voting shares of such person and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

2.7.4 The Bidder eventually appointed to provide S&M services for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 2 (two) years from the completion of this Project or to Projects granted by banks / lenders at any time; provided further that this restriction shall not apply to services performed for the Client in continuation

of this services or to any subsequent services performed for the Client in accordance with the rules of the Client. For the avoidance of doubt, an entity affiliated with the Contractor shall include a partner in the Contractor's firm or a person who holds more than 5 percent of the subscribed and paid up share capital of the Contractor, as the case may be, and any Associate thereof.

- 2.7.5 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Bid Due Date, would not be eligible to submit a Bid either by itself or through its Associate.
- 2.7.6 An Bidder or its Associate should have, during the last 3 (three) years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.

## **2.8 Preparation and Submission of Bid**

### **2.8.1 Language**

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English translation shall prevail.

### **2.8.2 Bid Preparation**

- i The Bidder shall provide all the information sought under this RFQ cum RFP. The Client will evaluate only those bids that are received in the required formats and complete in all respects. Incomplete and / or conditional bids shall be liable for rejection.
- ii The Bidder shall prepare one original set of the documents comprising the Bid (together with originals / copies of documents required to be submitted along therewith pursuant to this RFQ cum RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 2 (two) copies of the bids, marked as "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- iii The Bid and its copies shall be typed or written in indelible ink and signed by the authorised signatory (in the case of Company the person shall be authorised by Board of Directors through Board Resolution) of the Bidder who shall also initial each page in blue ink. All the alterations, omissions, additions, or any other amendments made to the bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers and shall be hard bound.
- iv The Qualification Bid with processing fee and Bid Security shall be placed in a sealed envelope clearly marked "**RFQ – (Name of Project)**", The Technical Bid, placed in a sealed envelope clearly marked as "**RFP-TECHNICAL BID – (Name of Project)**", and the Financial Bid in a sealed envelope clearly marked

“RFP-FINANCIAL BID – (Name of Project)”, “RFP – (Name of Project)”. All envelopes shall be placed into an outer sealed envelope bearing the submissions address, name of project and marked “**DO NOT OPEN EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE**”.

**2.8.3 Bid submissions:**

Envelope	Content	Forms
<b>Outer Envelope (RFQ cum RFP)</b>	<u>Request for Qualification (RFQ), Request for Proposal (RFP)- Technical Bid and Request for Proposal (RFP)-Financial Bid</u>	<b>All three envelopes to be enclosed in one common outer envelope</b>
<b><u>Envelope 1</u></b>	<u>Processing Fee (Separately sealed envelope) and Bid Security (Separately sealed envelope)</u>	Form 3D Form 3E Form 3F Form 3G
<b><u>Envelope 2</u></b>	Format for Technical Requirement (Separately sealed envelope)	Form 3A Form 3B Form 3C Form 3H Form 3I Form 3J Form 3k Form 3L Form 3M Form 3N Form 3O
<b><u>Envelope 3</u></b>	Price Bid (Separately sealed envelope)	Form 4A Form 4B Form 4C

**2.8.4 Submission address:**

Managing Director,  
DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 3rd Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110021, India

The information on the outer envelope should also include name of the Project.

- 2.8.5 No Bid shall be accepted after the closing time for submission of Bids.
- 2.8.6 After the deadline for submission of Bids, the Evaluation Committee to evaluate whether the bid is accompanied by the Processing fee and Bid Security in the presence of all the bidders. The bid not accompanied by the Processing fee and Security Deposit will be rejected. The RFP Envelope containing the Technical Requirement and Financial Bids (Envelope 2 and Envelope 3) shall remain sealed.
- 2.8.7 After the Bid submission until the contract is awarded, if any Bidder wishes to contact the Client on any matter related to its Bid, it should do so in writing at the Bid submission address. Any effort by the firm to influence the Client during the Bid evaluation, Bid comparison or contract award decisions may result in the rejection of the Bidder's Bid.

## **2.9 Bid Evaluation**

- 2.9.1 As part of the evaluation, the Processing fee and Bid Security shall be verified in the presence of all the bidder as a responsiveness check during bid opening date, the bids does not accompany the processing fee and bid security will be rejected. The bidders who has submitted the processing fee and bid security shall be treated as the "Shortlisted Bidders". Only those bids found responsiveness, their Technical Bids will be opened.

Prior to evaluation of Bids, the Client will determine whether each Bid is responsive to the requirements of the RFQ cum RFP at each evaluation stage as indicated below. The Client may, in its sole discretion, reject any Bid that is not responsive hereunder. A Bid will be considered responsive at each stage only if:

### **Envelope – 1: RFQ Stage**

1. The Qualification Bid is received in the form specified in this RFQ cum RFP;
2. It is received by the Bid Due Date including any extension thereof in terms hereof;
3. It is accompanied by the following documents:
  - i) Bid Security Deposit
  - ii) Processing Fee as specified in this RFQ cum RFP
  - iii) Type approval and compliance certificate of concerned authority for the engine proposed to be supplied.
  - iv) ISO 9001 company accreditation certificate
  - v) Electrical Contracting Licence
4. It is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ cum RFP;
5. It does not contain any condition or qualification; and
6. It is not non-responsive in terms hereof.



**Envelope – 2: RFP Stage**

**Technical Bid**

1. The Technical Bid is received in the form specified in this RFQ cum RFP;
2. It contains the following documents :
  - i. Project completion certificate as supply contractor of minimum 2500 KVA DG power system as per the eligibility criteria mentioned in the bid document
  - ii. Certificate of Annual Maintenance contract of minimum 1 MW DG plant. Project.
  - iii. Net worth Certificates (Last 3 Years)
  - iv. Annual turn over Certificates (Last Years)
  - v. All other documents mentioned under the Clause 2.7 - Qualification Criteria – Technical Requirements (but other than those already included in Envelop 1)
3. It is received by the Bid Due Date including any extension thereof in terms hereof;
4. It is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ cum RFP;
5. It does not contain any condition or qualification or exclusions; and
6. It is not non-responsive in terms hereof.

**Envelope – 3: Financial Bid:**

1. The Financial Bid is received in the form specified in this RFQ cum RFP
2. It is received by the Bid Due Date including any extension thereof in terms hereof;
3. It is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ cum RFP;
4. It does not contain any condition or qualification; and
5. It is not non-responsive in terms hereof.

The DMICDC Neemrana Solar Power Company Limited reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal will be entertained by the Client in respect of such Bids. However, client reserves the right to seek clarifications or additional information from the Bidder during the evaluation process. The Client will subsequently examine and evaluate Bids in accordance with the Selection Process detailed out below.

- 2.9.2 As part of the evaluation, the Technical Requirements submitted in bid should fulfil the qualification criteria possessing experienced team of diesel generator sets.

Bidders fulfilling the technical requirements will qualify for the final phase i.e. financial bid opening.

- 2.9.3 In case the Bidder does not fulfil the qualification criteria, the Technical Bid of such Bidder will not be opened and evaluated further. In such cases, the RFP envelope containing the Technical Bid, Financial Bid will be returned unopened after completion of evaluation of qualification requirement

**2.9.4 Bid Evaluation Criteria and Comparison of Bids:**

- i The DMICDC Neemrana Solar Power Company Limited will examine the bid to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed and whether the bid is generally in order.
- ii Arithmetical errors will be rectified on the following basis. If there is discrepancy between word and figures, the amount in word will prevail. If the bidder/s do not accept the correction of the errors, such bids will be rejected and the bid security, may be forfeited.
- iii DMICDC Neemrana Solar Power Company Limited will award Contract to the successful bidder whose bid has been determined to be the lowest evaluated bid after all correction / loading, if any. **The bid shall be evaluated based on the Net Present Value (NPV) derived from the quoted cost of the project and estimated fuel & maintenance cost for the 10 year period of the 5 X 500 KVA Engineered DG Power System .**

**Illustration for Price Bid Evaluation**

**5 X 500 KVA Engineered DG Power System**

Sr. No.	Supply & Erection & commissioning Cost for 5 X 500 KVA DG power plant, (Rs. Cr.)	Fuel & Maintenance Cost of DG power plant for 7 MU / Yr for 10 year,* (Rs. Cr.)	NPV of F&M cost of 5 X 500 KVA power plant for 10 years @ 12% discount rate (Rs. Cr.)	NPV of supply & Maintenance and F&M cost for 5 X 500 KVA DG power plant (Rs. Cr.)
<b>Bidder 1</b>	1.5	87.5	1.24	50.64
<b>Bidder 2</b>	2.000	80.5	1.5	47

Fuel Cost shall be estimated based on the present fuel cost & guaranteed fuel consumption at full load for 16 hours/ day & partial load for 8 hrs / day. Maintenance cost shall be the AMC price bid by the bidder.

The bid with the lowest NPV cost will be considered as the L1 bid and the Bidder will be selected as the Contractor.

For the above example, total bid NPV will be calculated as

Bidder 1 : Bid<sub>NPV</sub>= 50.64 Cr

Bidder 2 : Bid<sub>NPV</sub>= 47 Cr

**Bidder2 will be declared as the lowest bidder.**

**2.10 Negotiations**



- 2.10.1 The Selected Bidder may, if necessary be invited for negotiations. The negotiations shall generally be for verifying the reasonability of the price of the Bid and if necessary for seeking reasonable discounts; but will focus more towards re-confirming the obligations of the Bidder under this RFQ cum RFP. Issues such as deployment of Key Personnel, understanding of the Scope of Work, methodology and quality of the work plan shall be discussed during negotiations. In case the Selected Bidder fails to reconfirm its commitment, the DMICDC Neemrana Solar Power Company Limited reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.
- 2.10.2 The Client may review the Curriculum Vitae (herein after called as CV) of all proposed professional personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of the Client.
- 2.10.3 The Client will not normally consider substitutions except in cases of incapacity of key personnel for reasons of health. Similarly, after award of contract the Client expects all of the proposed key personnel to be available during implementation of the project as per contract. The Client will not consider substitutions during contract implementation except under exceptional circumstances up to a maximum of 15 (fifteen) percent of key personnel (considering equal weighting for each key personnel) and that too by only equally or better qualified and experienced personnel.

## **2.11 Award of Contract**

- 2.11.1 After selection, a Letter of Award (the "LOA") will be issued, in duplicate, by DMICDC Neemrana Solar Power Company Limited to the Successful Bidder. The Successful Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event, the duplicate copy of the LOA duly signed by the Successful Bidder is not received by the stipulated date, the Client may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Client on account of failure of the Successful Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

### **2.11.2 A. Performance Security:**

Performance Security equivalent to 10 (ten) percent of the total cost of Financial Bid – supply & Maintenance Services for 10 Years / Contract Value shall be furnished from a nationalised/ Scheduled Bank, before signing of the contract, in form of a Bank Guarantee substantially in the form specified at Annexure - 5 of the Contract. For the successful bidder the Performance Security for the supply will be retained by DMICDC Neemrana Solar Power Company Limited until the completion of the warranty period & the performance security for the Maintenance services shall be released 180 (One hundred and eighty) days after the completion of the maintenance contract..

### **2.11.2 B. Mobilisation Advance**

Mobilisation advance security equal to 110% of value of mobilisation advance shall be furnished from a nationalize/scheduled bank, before releasing of mobilisation advance, in form a bank guarantee, substantially in the form specified at Annexure – 5a of the Contract. Recovery of mobilisation advance shall be made in proportion to

the payments made to the S&M Contractor at each stage as per the payment schedule indicated Article No.18.2. The bank guarantee will be retained by DMICDC Neemrana Solar Power Company Limited until the full recovery of mobilisation advance.

### **2.11.3 Execution of Contract:**

After acknowledgement of the LOA and furnishing of Performance Security as aforesaid by the Successful Bidder, it shall execute the Agreement within 30 (thirty) days from the date of issue of LOA. The Successful Bidder shall not be entitled to seek any deviation in the Agreement.

### **2.11.4 Commencement of Assignment:**

The Successful Bidder is expected to commence the Project on the date of Commencement of Services as prescribed in the General Conditions of Contract. If the Successful Bidder fails to either sign the Agreement or commence the project as specified herein, DMICDC Neemrana Solar Power Company Limited may invite the second ranked Bidder for contract signing. In such an event, the Bid Security/ Performance Security, as the case may be, of the first ranked Bidder shall be liable to be forfeited by DMICDC Neemrana Solar Power Company Limited.

## **2.12 Confidentiality**

Information relating to evaluation of Bids and recommendations concerning awards of contract shall not be disclosed to the bidders who submitted the Bids or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.

## **2.13 Fraud and Corrupt Practices**

2.13.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFQ cum RFP, DMICDC Neemrana Solar Power Company Limited will reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, DMICDC Neemrana Solar Power Company Limited will, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security, as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, inter alia, time, cost and effort of DMICDC Neemrana Solar Power Company Limited, in regard to the RFQ cum RFP, including consideration and evaluation of such Bidder's Bid.

2.13.2 Without prejudice to the rights of DMICDC Neemrana Solar Power Company Limited under this Clause, hereinabove and the rights and remedies which DMICDC Neemrana Solar Power Company Limited may have under the LOA or the Agreement, if an Bidder, as the case may be, is found by DMICDC Neemrana Solar Power Company Limited to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFQ cum RFP issued by DMICDC Neemrana Solar Power Company Limited during a period of 2 (two) years from the date such Bidder,

as the case may be, is found by DMICDC Neemrana Solar Power Company Limited to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

## **2.14 Pre - Bid Meeting**

- 2.14.1 Pre-Bid Meeting of the Bidders will be convened on **2<sup>nd</sup> December 2016 at 11.00 AM** at the official address. A maximum of two representatives of each Bidder will be allowed to participate on production of an authorisation letter from the Bidder.
- 2.14.2 During the course of Pre-Bid Meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Client. The Client will endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive selection process.

## **2.15 Miscellaneous**

- 2.15.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process and for all disputes and differences whatsoever, which shall at any time hereafter arise between the Parties hereto, touching or concerning this Agreement or its interpretation or effect or to the rights, duties, obligations and liabilities of the Parties hereto or either of them under or by virtue of this Agreement or otherwise as to any other matter in any way connected with or arising out of or in relation to the subject matter of this Agreement, Courts at New Delhi shall have exclusive jurisdiction.
- 2.15.2 DMICDC Neemrana Solar Power Company Limited, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
1. suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
  2. consult with any Bidder in order to receive clarification or further information;
  3. retain any information and/or evidence submitted to the Client by, on behalf of and/or in relation to any Bidder; and/or
  4. Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- 2.15.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases DMICDC Neemrana Solar Power Company Limited its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for 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 hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 2.15.4 All documents and other information provided by DMICDC Neemrana Solar Power Company Limited or submitted by the Bidder to DMICDC Neemrana Solar Power Company Limited shall remain or become the property of Client. Bidders to treat all information as strictly confidential. DMICDC Neemrana Solar Power Company

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Limited will not return any Bid or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Contractor to DMICDC Neemrana Solar Power Company Limited in relation to the services shall be the property of Client.

2.15.5 DMICDC Neemrana Solar Power Company Limited reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

**2.16 Tentative Schedule for Selection Process**

DMICDC Neemrana Solar Power Company Limited will endeavour to the following schedule:

Sr. No.	Description	Estimated Time D, Days	Reference from D
1.	Date of Issue of RFQ cum RFP	Zero Date (D)	(D)
2.	Last date for receiving queries/requests for clarifications	D+5	D + 5 (D1)
3.	Pre-bid Meeting	D1 + 2	D + 7 (D2)
4.	Client's response to queries/requests for clarifications	D2 + 3	D + 10 (D3)
5.	Bid Due Date& Opening of Envelope 1	D3 + 11	D + 21 (D4)
6	Responsiveness check and intimation to qualifying bidders with schedule of opening of Envelope 2	D4 + 2	D + 23 (D5)
7	Opening of Envelope 2 – Technical Bid	D5 + 2	D + 25 (D6)
8	Evaluation of Technical Bids and intimation to qualifying bidders who's financial bids will be opened	D6 + 2	D + 27(D7)
9	Clarifications from bidders, if any	D7 + 3	D + 30 (D8)
10	Intimation to bidders qualifying for financial bid opening with date of opening envelope	D8 + 2	D + 32 (D9)
11	Opening of Envelope 3	D9 +1	D + 33 (D10)
12	Evaluation of financial bid	D10 +2	D + 35 (D11)
13	Selection and declaration of the Contractor	D11 + 2	D + 37

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**2.17 Data sheet**

Reference	Description
Section 1, Point 1	Objective and Description of the Project: The DG Power System at Neemrana, Rajasthan is a unique initiative of DMICDC Neemrana Solar Power Company Limited Project and has been conceived as the First Smart Micro-Grid Project in the country demonstrating the concept of integration of Solar Power with industrial Diesel Generator sets. It's a project that not only produces green power but also endeavours to save on CO <sub>2</sub> emissions by cutting down on diesel consumption. The project has the latest cutting edge technological breakthroughs in the field of Solar Generation & Smart Grid from Japan.
Section 1, Point 3	The method of selection process is Net Present Value (NPV).
2.2.1	The name of Client is: "DMICDC Neemrana Solar Power Company Limited"
2.2.11	The validity of the Bid is for 180 (one hundred and eighty) days from the Bid Due Date.
2.3	Clarification must be requested on or before. Bidders shall share the MS Word file in soft copy of pre-bid queries at the time of requesting clarifications. The address for requesting clarification is: Managing Director, <b>DMICDC Neemrana Solar Power Company Limited,</b> Room No. 341B, 3rd Floor, Hotel Ashok, Diplomatic Enclave, 50-B Chanakyapuri, New Delhi – 110021, India
2.3.3	Date & Time of pre bid meeting – <b>02<sup>nd</sup> Dec, 2016</b> at 1500 hrs, at the Official Address.
2.3.3	The last date of submission of Bid is 16 <sup>th</sup> December 2016, 3.00 PM (IST). The address for submission of Bid is, Managing Director, <b>DMICDC Neemrana Solar Power Company Limited,</b> Room No. 341B, 3rd Floor, Hotel Ashok, Diplomatic Enclave, 50B , Chanakyapuri, New Delhi – 110021, India
2.8.3	Bidders must submit: <ul style="list-style-type: none"> <li>• Qualification Bid : Two copies (one original + one copy) and one soft copy (PDF Format)</li> <li>• Technical Bid: Two copies (one original + one copy) and one soft copy (PDF Format).</li> <li>• Financial Bid: One Original hard copy.</li> </ul>
Article 2.2	Duration of Project: -  <b>The Contractor shall construct and commission the 5 X 500 KVA Engineered DG Power System not later than 3 months from the date of issue of Letter of Award (LoA).</b> The completion periods have been derived from the "Project Completion Schedule" and will be applicable from the date of signing of the Contract Agreement. PERT chart should be submitted along with technical proposal.

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Reference	Description
Section 6, 6.4.4 (a)	The extent of sub-contracting would be restricted to thirty (30%) percent of the contract price. DMICDC Neemrana Solar Power Company Limited will be provided by the bidder with particulars (name, financial and technical back ground, excluding prices) of sub-vendors.

### **Section 3. Qualification and Technical Requirements of Bid – Standard Forms**

Form 3A:	Technical Requirements Bid Submission Form
Form 3B:	Format for Technical Requirements Bid (Eligible Projects)
Form 3C:	Format for Technical Requirements Bid (Net Worth of Bidder)
Form 3D:	Format for Joint Bidding Agreement (in case of JV / Consortium)
Form 3E:	Format for Power of Attorney for Authorised representative
Form 3F:	Format for Power of Attorney for Lead Member of JV
Form 3G:	Format of Bank Guarantee for Bid Security
Form 3H:	Technical Bid Submission Form
Form 3I:	Bidder's Experience
Form 3J:	Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the DMICDC Neemrana Solar Power Company Limited
Form 3K:	Description of Approach, Methodology and Work Plan for Performing the Project
Form 3L:	Team Composition and Task Assignments
Form 3M:	Curriculum Vitae (CV) for Proposed Professional Staff (with one page of summary of experience)
Form 3N:	Staffing schedule
Form 3O:	Work Schedule



### **3.1 Form 3A: Technical Requirements Bid Submission Form**

*(To be submitted on the Letter head of the Bidder / Lead Member of the Consortium)*

*[Location, Date]*

To,

Managing Director  
**DMICDC Neemrana Solar Power Company Limited,**  
Room No. 341B, 3<sup>rd</sup> Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110 021, India

**RFQ cum RFP dated *[Date]* for selection of Bidder for *[Name of Project]***

Dear Sir,

With reference to your RFQ cum RFP Document dated *[date]*, we, having examined all relevant documents and understood their contents, hereby submit our Qualification Bid for selection as *[name of project]*. The Bid is unconditional and unqualified.

We are submitting our Bid as *sole Bidder*

We understand you are not bound to accept any Bid you receive.

Further:

1. We acknowledge that DMICDC Neemrana Solar Power Company Limited will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Supply cum Maintenance Contractor, and we certify that all information provided in the Bid and in the supporting documents are true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Supply cum Maintenance contractor for the aforesaid Project.
3. We shall make available to DMICDC Neemrana Solar Power Company Limited any additional information it may deem necessary or require for supplementing or authenticating the Bid.
4. We acknowledge the right of DMICDC Neemrana Solar Power Company Limited to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 (three) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
  - a) We have examined and have no reservations to the RFQ cum RFP, including any Addendum issued by DMICDC Neemrana Solar Power Company Limited;



- b) We do not have any conflict of interest in accordance with the terms of the RFQ cum RFP;
  - c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFQ cum RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with DMICDC or any other public sector enterprise or any government, Central or State; and
  - d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Bid that you may receive nor to select the contractor, without incurring any liability to the Bidders.
  8. We declare that we are not a member of any other Consortium / JV applying for selection as a contractor.
  9. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Supply and Maintenance for the Project or which relates to a grave offence that outrages the moral sense of the community.
  10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that neither we nor any of our consortium members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFQ cum RFP.
  11. We further certify that no investigation by a regulatory authority is pending either against us or against our affiliates or against our CEO or any of our Directors / Managers / employees.
  12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by DMICDC Neemrana Solar Power Company Limited in connection with the selection of contractor or in connection with the selection process itself in respect of the above mentioned Project.
  13. We agree and understand that the bid is subject to the provisions of the RFQ cum RFP document. In no case, shall we have any claim or right of whatsoever nature if the Project is not awarded to us or our proposal is not opened or rejected.
  14. We agree to keep this offer valid for one hundred eighty (180) days from the Bidding Date (BDD) specified in the RFQ cum RFP.
  15. A Power of Attorney in favour of the authorised signatory to sign and submit this Bid and documents is attached herewith.

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16. In the event of our being selected for the Supply & Maintenance , we agree to enter into a Contract in accordance with the contract prescribed in the RFQ cum RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
17. We have studied RFQ cum RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by DMICDC Neemrana Solar Power Company Limited or in respect of any matter arising out of or concerning or relating to the selection process including the award of Supply and Maintenance contract.
18. The Technical and Financial Bid is being submitted in a separate envelop. This Technical Requirements Bid read with the Technical and Financial Bid shall constitute the application which shall be binding on us.
19. We agree and undertake to abide by all the terms and conditions of the RFQ cum RFP Document.

We remain,

Yours sincerely,

Authorized Signature *[In full and initials]:*

Name and Title of Signatory:

Name of Organisation:

Address:

*(Name and seal of the Applicant/Member in Charge)*

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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3.2 Form 3B: Format for Technical Requirements Bid Eligible Projects)

*(To be submitted on the Letter head of the Bidder / Lead Member of the Consortium)*

**Project Specific Experience**

[Using the format below, provide information on each project for which your firm, and each associate for this project, was legally contracted either individually as a corporate entity or as one of the major companies within a JV/ Consortium for carrying out supply services similar to the ones requested under this project]

- Use projects with copy of proof of experience as required for meeting the qualification criteria prescribed.
- Projects without the proof of experience from respective client will not be considered.
- Exhibit projects in the last five years.

Project Name and project cost:	Approx. value of the contract (INR in Crore):
Country: Location within country:	Duration of project (months):
Name of Client:	Total no. of staff-months of the project:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore):
Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff – months provided by associated entities:
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of Associated Entities, If any:	
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the project:	

Firm's Name:

Authorized Signature:

Note: For the purposes of evaluation of Bidders, INR 65.00 (INR Sixty Five only) per USD shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to USD as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in USD shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

**3.3 Form 3C: Format for Technical Requirements Bid (Average Net Worth & Turnover of Bidder)**

*(To be submitted on the Letter head of the Bidder )*

**Average Net worth**

Sr. No.	Financial years	Net worth of the contracting business of Bidder (INR)
1.	2013 – 14	
2.	2014 – 15	
3.	2015 – 16	
4.	<b>Average</b>	<i>[indicate sum of above divided by 3]</i>

**Average Annual Turnover**

Sr. No.	Financial years	Annual Turnover of the contracting business of Bidder (INR)
1	2013 – 14	
2	2014 – 15	
3	2015 – 16	
4	<b>Average</b>	<i>[indicate sum of above divided by 3]</i>

**Certificate from the Statutory Auditor**

This is to certify that *[name of company]* *[registered address]* has made the turnover shown above against the respective years.

Name of Statutory

Designation

Name of firm

Membership Number of Auditor

Seal of Audit firm

**Note:**

1. In case the bidder does not have a statutory auditor, it may provide the certificate from its Chartered Accountant.

### 3.4 Form 3E: Format for Power of Attorney for Authorised Representative

Know all men by these presents, We, *[name of organization and address of the registered office]* do hereby constitute, nominate, appoint and authorise Mr. / Ms. *[name]*, son/ daughter/ wife of *[name]*, and presently residing at *[address]*, who is presently employed with/ retained by us and holding the position of *[designation]* as our true and lawful attorney (hereinafter referred to as the "Authorised Representative"), with power to sub- delegate to any person, to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as *[name of project]*, to be developed by DMICDC Neemrana Solar Power Company Limited (the "Client") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Client, representing us in all matters before the Client, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Client in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us until the entering into of the Contract with the Client.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, *[name of organization]*, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS *[date in words]* DAY OF *[month]* *[year in 'yyyy' format]*.

For *[name and registered address of organization]*

*[Signature]*

*[Name]*

*[Designation]*

Witnesses:

1. *[Signature, name and address of witness]*

2. *[Signature, name and address of witness]*

Accepted

*[Signature]*

*[Name]*

*[Designation]*

*[Address]*

Notes:

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1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under seal affixed in accordance with the required procedure.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and other documents such as a resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
3. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed The Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

### **3.5 Form 3G: Format of Bank Guarantee for Bid Security**

BG No.

Date:

1. In consideration of you, DMICDC Neemrana Solar Power Company Limited, a company incorporated under the Companies Act, 1956 or 2013 or any other applicable statute, having its registered office at Room No 341 B, 3rd Floor, Hotel Ashok, Diplomatic Enclave, 50B Chanakyapuri New Delhi – 110021 (hereinafter referred to as the “Client” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) having agreed to receive the proposal of **[Name of company]**, a company registered under the Companies Act, 1956 or 2013 or any other applicable statute and having its registered office at *[registered address of company]*, [and acting on behalf of a Consortium comprising of *[name of company]*, *[name of company]* and *[name of company]*] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns), for appointment as Supply and Maintenance Contractor for *[name of project]* (hereinafter referred to as the “S&M Contractor”) pursuant to the RFQ cum RFP Document dated *[date]* issued in respect of the Supply & Maintenance and other related documents including without limitation the draft contract for S&M services (hereinafter collectively referred to as “RFQ cum RFP Documents”), we *[Name of the Bank]* having our registered office at *[registered address]* and one of its branches at *[branch address]* (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of relevant clause of the RFQ cum RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFQ cum RFP Document by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Client an amount of Rs..... *[in figures]* (*[in words]*) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said RFQ cum RFP Document.
2. Any such written demand made by the Client stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the RFQ cum RFP Document shall be final, conclusive and binding on the Bank. We, the Bank, further agree that the Client shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFQ cum RFP Document including, Document including without limitation, failure of the said Bidder to keep its Bid valid during the validity period of the Bid as set forth in the said RFQ cum RFP Document, and the decision of the Client that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Client and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Client is disputed by the Bidder or not, merely on the first demand from the Client stating that the amount claimed is due to the Client by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFQ cum RFP Document including without limitation, failure of the said Bidder to keep its Proposal valid during the validity period of the bid as set forth in the said RFQ cum RFP Document for

any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... *[in figures] ([in words])*.

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date and a further claim period of thirty (30) days or for such extended period as may be mutually agreed between the Client and the Bidder, and agreed to by the Bank, and shall continue to be enforceable until all amounts under this Guarantee have been paid.
5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, the Client shall be entitled to treat the Bank as the principal debtor. The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said RFQ cum RFP Document or to extend time for submission of the Bids or the Bid validity period or the period for conveying of Letter of Acceptance to the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said RFQ cum RFP document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said RFQ cum RFP document or the securities available to the Client, and the Bank shall not be released from its liability under these presents by any exercise by the Client of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Client or any indulgence by the Client to the said Bidder or by any change in the constitution of the Client or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to *[Name of bank along with branch address]* and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
9. It shall not be necessary for the Client to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Client may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Client in writing.



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11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs..... *[in figures] ([in words])*. The Bank shall be liable to pay the said amount or any part thereof only if the Client serves a written claim on the Bank in accordance with paragraph 8 hereof, on or before [date].

Signed and Delivered by *[name of bank]*

By the hand of Mr. /Ms.*[name]*, it's *[designation]* and authorised official.

*(Signature of the Authorised Signatory) (Official Seal)*

**Notes:**

- The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

### **3.6 Form 3H: Technical Bid Submission Form**

*[Location, Date]*

To,

Managing Director

DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 3rd Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110021, India

**RFQ cum RFP dated *[date]* for selection of Supply & Maintenance Contractor for *the 5 X 500 KVA Engineered DG Power System*.**

Dear Sir,

With reference to your RFQ cum RFP Document dated *[date]*, we, having examined all relevant documents and understood their contents, hereby submit our Technical bid for selection as *[name of project]*. The bid is unconditional and unqualified.

We are submitting our bid as *sole bidder*

If negotiations are held during the period of validity of the bid, we undertake to negotiate in accordance with the RFQ cum RFP. Our bid is binding upon us, subject only to the modifications resulting from technical discussions in accordance with the RFQ cum RFP.

We understand you are not bound to accept any bid you receive.

Further:

1. We acknowledge that DMICDC Neemrana Solar Power Company Limited will be relying on the information provided in the bid and the documents accompanying the bid for selection of the Contractor, and we certify that all information provided in the bid and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such bid are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Supply and Maintenance Contractor for the aforesaid Project.
3. We shall make available to DMICDC Neemrana Solar Power Company Limited any additional information it may deem necessary or require for supplementing or authenticating the bid.
4. We acknowledge the right of DMICDC Neemrana Solar Power Company Limited to reject our bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 (three) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the bidder, nor been expelled from

any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

6. We declare that:
  - e) We have examined and have no reservations to the RFQ cum RFP, including any Addendum issued by the Client;
  - f) We do not have any conflict of interest in accordance with the terms of the RFQ cum RFP;
  - g) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFQ cum RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with DMICDC or any other public sector enterprise or any government, Central or State; and
  - h) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any bid that you may receive nor to select the S&M Contractor, without incurring any liability to the bidders.
8. We declare that we are not a member of any other Consortium / JV applying for selection as an S&M Contractor.
9. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the S&M services for the Project or which relates to a grave offence that outrages the moral sense of the community.
10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that neither we nor any of our consortium members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFQ cum RFP.
11. We further certify that no investigation by a regulatory authority is pending either against us or against our affiliates or against our CEO or any of our Directors/ Managers/ employees.
12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by DMICDC Neemrana Solar Power Company Limited in connection with the selection of S&M Contractor or in connection with the selection process itself in respect of the above mentioned Project.
13. We agree and understand that the proposal is subject to the provisions of the RFQ cum RFP document. In no case, shall we have any claim or right of whatsoever nature if the

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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S&M services for the Project is not awarded to us or our proposal is not opened or rejected.

14. In the event of our being selected for the S&M, we agree to enter into a Contract in accordance with the contract prescribed in the RFQ cum RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
15. We have studied RFQ cum RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by DMICDC Neemrana Solar Power Company Limited or in respect of any matter arising out of or concerning or relating to the selection process including the award of S&M.
16. The Financial Bid is being submitted in a separate cover. This Technical Bid read with the Financial Bid shall be binding on us.
17. We agree and undertake to abide by all the terms and conditions of the RFQ cum RFP Document.

We remain,

Yours sincerely,

Authorized Signature *[In full and initials]:*

Name and Title of Signatory:

Name of Firm:

Address:

*(Name and seal of the Applicant/Member in Charge)*

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**3.7 Form 3I: Bidder's Experience**

[Using the format below, provide information on each assignment for which your firm, and each associate for this project, was legally contracted either individually as a corporate entity or as one of the major companies within a JV for carrying out S&M services similar to the ones requested under this project.]

- USE 5 (FIVE) BEST PROJECTS WITH COPY OF PROOF OF EXPERIENCE.
- EXHIBIT PROJECTS IN THE LAST FIVE YEARS.
- PROJECTS WITHOUT THE PROOF OF EXPERIENCE FROM CLIENT WILL NOT BE CONSIDERED FOR EVALUATION.

Assignment Name and project cost:	Approx. value of the contract (in INR in Crore):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore):
Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff – months provided by associated vendors:
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of Associated Consultants, If any:	
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the assignment:	

Firm's Name:

Authorized Signature:

Note: For the purposes of evaluation of Bids, INR 65.0(INR Sixty Five only) per USD shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to USD as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in USD shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Please limit the description of the project to four (04) single sided pages (two double sided pages) A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

**3.8 Form 3J: Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client**

A: On the Terms of Reference

- 1.
- 2.
- 3.
- 4.
- 5.

B: On the data, services and facilities to be provided by the client

- 1.
- 2.
- 3.
- 4.
- 5.

C: On Technical Bid

- 1.
- 2.
- 3.

D: General Comments

- 1.
- 2.

### **3.9 Form 3K: Description of Approach, Methodology and Work Plan for Performing the Assignment**

Project Management and Technical approach with methodology and work plan are key components of the Technical Bid. The bidder is suggested to present its Technical Bid divided into the following chapters:

- a) Technical Approach and Methodology,
  - b) Work Plan, and
  - c) Organization and Staffing.
- **Technical Approach and Methodology:** In this chapter the bidder should explain the understanding of the objectives of the project, approach to the services, methodology for carrying out the activities to obtain the expected output and the degree of detail of such output. The S&M contractor should highlight the problems to be addressed along with their importance and explain the execution approach the bidder would adopt to address them. The bidder should also explain the proposed methodologies to adopt and highlight the compatibility of those methodologies with the proposed approach.
  - **Work Plan:** In this chapter the bidder should propose the main activities of the project, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client) and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form 3O.
  - **Organization and Staffing.** In this chapter the bidder should propose the structure and composition of the proposed team. The bidder should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.



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**3.10 Form 3L: Team Composition and Task Assignments**

<b>1. Professional / Design staff</b>				
<b>Name of staff</b>	<b>Firm</b>	<b>Area of expertise</b>	<b>Position assigned</b>	<b>Tasks assigned</b>

<b>2. Site Supervision staff</b>				
<b>Name of staff</b>	<b>Firm</b>	<b>Area of expertise</b>	<b>Position assigned</b>	<b>Tasks assigned</b>

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**3.11 Form 3M: Curriculum Vitae (CV) for Proposed Professional Staff (with one page of summary of experience)**

1.	Proposed position	
2.	Name of firm	
3.	Name of staff	[First] [Middle] [Surname]
4.	Date of birth	[March 20, 2013]
5.	Nationality	
6.	Education	[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and year of obtainment starting from the latest degree]
7.	Membership of Professional Organizations	
8.	Training & Publications	[Indicate significant training since education degrees (under 5) were obtained]
9.	Countries of Work Experience	[List countries where staff has worked in the last ten years]

10.	Languages	Language	Proficiency (good/ fair/ poor)		
			Speaking	Reading	Writing
		English			

11.	Employment record [Starting with present position, list in reverse order every employment held by staff member since graduation]	Name of Organization	Position held	Duration
				YYYY to present
12.	Details of tasks assigned			
13.	Work Undertaken that Best Illustrates Capability to Assigned Handle the Tasks Assigned	[Among the assignments in which the Staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks assigned] Name of assignment or project: Year: Location: Client: Project Cost: Main project features: Positions held:		

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		Activities performed:
14.		Name of assignment or project: Year: Location: Client: Project Cost: Main project features: Positions held: Activities performed:
15.	Certification	I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Signature	Signature
Date: [dd/mm/yyyy]	Date: [dd/mm/yyyy]
Name of staff member:	Name of Authorized Signatory:

**Note:**

Please restrict the number of pages per CV to four (04) pages (two sheets if printed both sides). The one-page summary shall be over and above the four (04) page CV. Pages in the CV greater than these limits shall not be considered for evaluation.



**Form 30: Work Schedule**

(Attach the Project Completion Schedule here)

Note : The bidders will refer the overall project completion schedule enclosed as in Article-2.2 for submitting their own Project Completion Schedule if their project completion schedule differs with the project completion schedule given in the Article-2.2 of the bid document.

The bidders will provide justification for the schedule prepared in case their schedule differs with the schedule given in their bid document.

## **Section 4. Financial Proposal – Standard Forms**

- Form 4A: Financial Proposal Submission Form
- Form 4B: Format for Cost of Supply
- Form 4C: Format for Cost of Maintenance Services

#### 4.1 Form 4A: Financial Proposal Submission Form

[Location]

[Date]

To,

Managing Director,  
DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 03rd Floor, Hotel Ashok  
Diplomatic Enclave, 50B Chanakyapuri,  
New Delhi – 110021

India

Dear Sir,

**Subject: Services for [name of project].**

We, the undersigned, offer to provide the Supply and Maintenance services for [name of project] in accordance with your Request for Qualification cum Request for Proposal dated [date] and our Proposal. We are pleased to submit our financial bid as per the **Form 4B & Form 4C**

Our Financial bid shall be binding upon us subject to the modifications resulting from arithmetic correction, if any, up to expiration of the validity period of the bid, i.e. [date].

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

We understand you are not bound to accept any bid you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:



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**4.2 Form 4B: Cost of Services**

Sr. No.	ITEMS	AMOUNT (In Rupees)
<b>DG 5 x 500 KVA Diesel Power Generator Plant)</b>		
1	<b><i>Supply, Transport, Storage, Erection, Commissioning &amp; Testing (herein after called as Supply) Services of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Area</i></b>	
<b>Total Cost of the Supply for the 5 X 500 KVA Engineered DG Power System</b>		

**Note:**

1. The Price quoted by the Contractor should be in Indian Currency Only.
2. The entire price quoted should include Cost towards Insurance, Packaging, Freight, All Applicable State and Central Taxes and Duties etc.
3. The client will not reimburse any other amount over and above quoted by bidder.
4. Payment shall be made as per approved billing schedule to be submitted by bidder.

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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**4.3 Form 4C: Cost of Annual Maintenance (AMC ) Services**

Sl. No.	DESCRIPTION OF WORK	AMOUNT (IN RUPEES)
<b>1DG 5 X 500 KVA Diesel Power Generator Plant)</b>		
1	Year wise Annual Maintenance Charges for 5 X 500 KVA Diesel Generator Power Plant. Total Maintenance period will be 10 years)(The bidder shall submit AMC cost for each year 1-10 <sup>th</sup> year separately in formatted fashion)	

**Note:**

1. The Price quoted should be in Indian Rupees Only.
2. The Price quoted should be inclusive of all applicable State and Central taxes. The client will not reimburse any other amount over and above quoted by bidder.
3. Client reserves the right to convert the AMC to Comprehensive Maintenance Contract at any time during the 10 year period.

## Section 5. Terms of Reference

### 5.1. SITE DESCRIPTION

#### 5.1.1 LOCATION

- The proposed sites are located in Neemrana Industrial Park, Japanese Zone, Neemrana, Dist: Alwar, Rajasthan, India.
- One site is identified for development of solar power projects. of 1.00 MWp Solar and 5 X 500 KVA DG Site Location is located adjacent to Delhi – Jaipur (NH 8) Highway.
- These sites are approximately 120 kms. from New Delhi and 180 kms. from Jaipur.
- The Alwar district is surrounded by State of Haryana in North, Jhunjhunun in the North-West, Bharatpur in East, Dausa in South and Sikar in West.

Neemrana Industrial Area,  
Japanese Zone, Neemrana

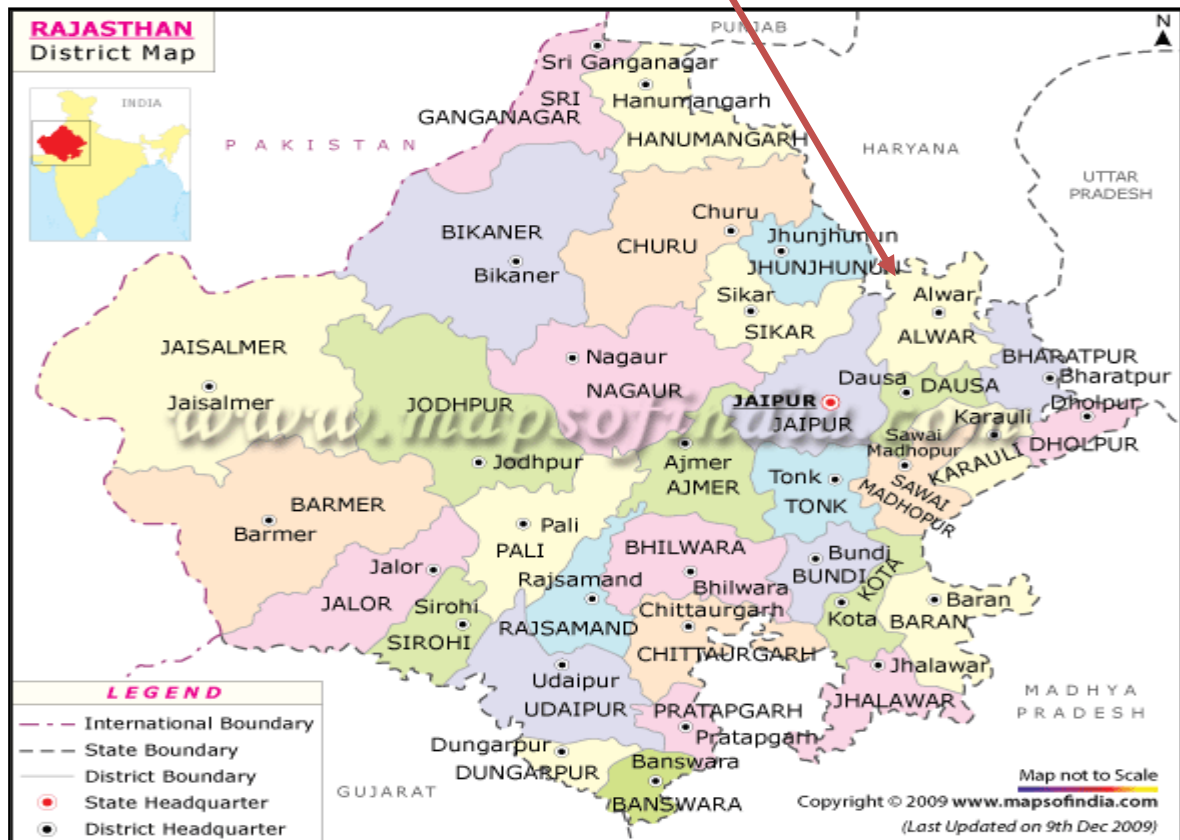


Figure 1: Rajasthan State Map

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

**5.1.2 SITE LOCATION DETAILS**

Sr. No.	Data	Description
1	<b>Project Promoter</b>	DMICDC Neemrana Solar Power Company Limited, New Delhi
2	<b>Project Capacity</b>	1.00 MWp Solar PV Project and 5 X 500 KVA Diesel Generator
3	<b>Project Area- 1(1.00MWp Solar PV Project + 5 x 500 KVA DG Set)</b>	
A	Latitude	27° 58' 10.48" N
B	Longitude	76° 23' 13.71" E
C	Altitude	277 m
D	Area Available	10 Acres
E	Nature of Land	Plain
4	<b>Connectivity</b>	
A	Nearest Railway Station & Distance	Alwar @ 50 kms (Approx.)
B	Nearest National Highway & Distance	New Delhi – Jaipur (NH – 8) @ 0.5 kms (Approx.)
C	Nearest Airport & Distance	New Delhi @ 120 kms (Approx.)
D	Nearest Port & Distance	Mumbai @ 1200 kms (Approx.)
C	Average Temp., °C	24.2      25.3
D	Wind Speed, m/s	2.50
6	<b>Power Evacuation – 1.00 MWp Solar and 5 x 500 KVA DG Set</b>	
A	Evacuation – 24x7	Sale to M/s MIKUNI India Pvt. Ltd.: Pre identified in Neemrana Industry in Neemrana Industrial Area through Micro Grid / Smart Grid Technology
B	Scope of DG Supply contractor	Terminal point of DG Supply contractor shall be from HSD Day tank to LT terminal of 415 /11 KV Transformer.

## 5.2. DETAILED SCOPE OF SERVICES:

### 5.2.4 Services to be Performed

- Except as otherwise mentioned in this document, the Bidder shall perform or cause to be performed all services required in connection with the Supply, Transportation, Storage, Installation ( including civil works ), Commissioning, start-up, demonstration and testing of each part and Facilities (the 'Services') associated with supply of 5 X 500 KVA Engineered Diesel Generator Power System, in accordance with the provisions of this document as follows: (i) all engineering and design services required for a completely engineered Power System (ii) construction infrastructure services, civil and structural construction, mechanical and electrical erection and installation services and commissioning, start-up and testing of each part / equipment and the Power System, including all relevant licensing and permitting, and (iii) provision of all necessary labour, construction, utilities, tools, supplies and other consumables; (iv) Maintenance of the Power System including repair / replacement of the part / equipment and services.

### 5.2.4 Parallel Operation of DG with Solar & Integration with Micro-Grid Controller

**The S&M contractor shall provide necessary equipment for synchronising and parallel operation of DG sets with the solar project. Also, the Client shall be providing the Micro-grid controller which is being supplied under a grant from Japan and the DG Supply contractor shall be responsible for integration of the DG power System with the Micro-grid controller such that the DG sets can be controlled thru the micro-grid controller.**

**The 5 X 500 KVA DG set shall be monitored and controlled thru SCADA which shall be supplied by the Client. S&M contractor to provide suitable devises for interconnecting & monitoring of the DG with the SCADA.**

5.2.2. Bidder may indicate additional cost for extending warranty for another 2 Yrs.,

### Equipment / Plant (Ex-Works.) to be supplied

6. Except as otherwise expressly set forth in this document, the bidder shall perform or cause to be performed all activities required in connection with Engineering, Design, Manufacture, Supply, Procure, , Transportation, Storage, Insurance and Delivery of all equipment, materials, special tools and other supplies as well as Operating Manuals and other necessary documents for Operation, Maintenance and repairs of the supplies (Ex-Works), to be provided as specified in or reasonably to be inferred from this document, all of which shall be performed within India "(the Supplies (Ex-works))".

7. Unless otherwise expressly limited in the Technical Specifications (Section – 6 hereto), the bidder's obligation cover the provision of all Supplies including plant, equipment and spares and the performance of all Services required for the design, manufacture including procurement, quality assurance, transportation, insurance, storage, construction, installation, associated civil, structural and other construction works, pre-commissioning and delivery of the Supplies and performance of Services for the completion of the Power System and carrying out performance guarantee tests and putting into successful operation of the Power System in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications and putting the Power System into commercial operation.
8. The bidder shall, unless specifically excluded in the contract, perform all such work and/or supply all such items and materials not specifically mentioned in the contract but that can be reasonably inferred from the contract as being required for attaining completion of the Power System and Operation and Maintenance of the Power System as if such work and/or items and materials were expressly mentioned in the contract.

#### **5.2.4 Engineering, Design, Construction and Project Management**

##### **i Engineering and Design**

9. Bidder shall submit the drawings schedule within 5 days on receipt of LOA (Notice to proceed) confining of the following but not limited to the number of the approved for the approval of drawings. Bidder shall provide or cause to provide all engineering and design services necessary for completion of the Power System in conformity with the contract document, including but not limited to (a) preparation of (i) the conceptual design and (ii) the engineering and design necessary to describe and detail of the Power System; (b) provision of the criteria for the detailed design provided by Client's consultants / suppliers of equipment, materials and systems for incorporating in to the Power System (if any), and (c) preparation of drawings, layouts, bills of material, schedules, progress reports and estimates. Bidder shall co-operate with the engineering efforts and otherwise accommodate the requirements of the inter-connection parameters. The reference tender drawings (Project Layouts and SLD) have been provided in Appendix 3 provided that, with respect to the Utility, and Client's other contractors. The contractor shall provide all assistance for interface engineering of Solar Project, Micro Grid Controller and DG Sets.

##### **i Construction and Construction Management**

10. The Bidder shall develop a Power Plant construction schedule and shall carry out, supervise, co-ordinate and ensure the expeditious construction of the Power Plant in accordance with Article-2.2 hereto and the other terms and provisions of the Contract. The Bidder shall supply all materials, supplies and equipment required in the performance of the Services. Bidder shall inspect or cause to be inspected all materials and equipment to be incorporated in the Power Plant and shall reject all those items not in compliance with the contract. Bidder also shall carry out and supervise the manner of incorporation of the materials and equipment in to the Power Plant and the workmanship with which such materials are incorporated. The Bidder shall establish and track Project management control systems and provide

construction and construction management services in accordance with the standards of performance set forth in the contract agreement.

#### **5.2.4 Documentation and Manuals**

- i The bidder shall submit to the Client, five (5) hard copies + two (2) CD-ROMs in editable format of all the design documents, including those intended for the Client's approval in accordance with the contract agreement. In addition, the bidder shall provide erection manuals or any other documents as required.

These manuals should generally include but not limited to the following:

1. Erection procedure manuals for equipment
2. Operation and Maintenance manuals for equipment
3. Manufacturing quality plans from equipment manufacturers
4. Recommended spares and mandatory spares lists for equipment to be supplied and erected.

These documents shall be in four (4) sets of hard bound copies plus three (3) CD-ROMs in editable formats.

- ii The bidder shall, within seven (7) days after receipt of the Notice to Proceed, submit to the Client the project execution schedule and the quality assurance program and jointly finalise these documents for commencing the site activities. The Client shall have the right, at its own expense, to audit the bidder's implementation of the quality control manual and the bidder shall forthwith correct, or cause to be corrected, any deficiencies identified by the Client.
- iii All the documents shall have their test contents in English language only.

#### **5.2.4 Project Execution and Management**

##### **i Site Office**

- a. The bidder shall, within ten (10) days after receipt of the Letter of Award (LoA) establish their portable office at site for commencing and monitoring their site activities.
- b. The bidder shall provide the Client and its designees (including the Project Manager, PMC Consultant, and the Utility) with reasonable access at the Power Plant site and the bidder's site office at all times upon reasonable prior notice and use its best efforts to arrange for Client's (and its designees) reasonable access to the manufacturing, production, engineering and fabrication premises of the contractor and all subcontractors, including access to design and construction drawings, sufficient to permit Client (or its designees) to inspect work being performed and to monitor compliance by contractor and subcontractors with the terms hereof.



**ii Reporting Requirements**

- a. Within Seven (7) days after the Commencement Date, the S&M Contractor shall submit to the Client a MS Project / Primavera software based “Detailed Project Execution Schedule” supplementing the Contract Schedule as provided at Appendix 4 describing comprehensively and in adequate detail the Design, Engineering, Manufacturing, Delivery, Procurement, Fabrication, Construction and Testing activities required to complete Contractor’s obligations, and which shall be satisfactory to Client in all respects. The contractor shall provide the baseline schedule, work breakdown structure and detailed billing schedule within seven days from the commencement date.
- b. The Detailed Schedule shall include all significant engineering, manufacturing, fabrication, delivery, procurement, construction and related activities divided into specific, identifiable tasks according to their importance and sequence of installation.
- c. The Detailed Schedule shall have the capability to highlight selected activities by time period and type of activity. The Detailed Schedule shall be updated fortnightly / monthly as agreed with Client.
- d. Contractor shall submit fortnightly progress reports to the Client and Representative, as follows:
  1. PROJECT MANAGER  
DMICDC Neemrana Solar Power Company Limited  
1.00 MW DG Power Project  
Japanese Industrial Zone,  
Neemrana, Rajasthan
  2. Managing Director,  
DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 3rd Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110021, India  
Phone: 011-26118884-8 Fax: 011-26118889  
Email: contactus@DMICDC.com

The progress reports shall be submitted in hard copies as well as through email, where the reports are to be submitted out of the site.

- e. Contractor shall also submit exception reports on critical activities, every fortnight as per 5.2.6.2 d, highlighting the critical activities envisaged, if any, in the project execution program, which may affect the completion of the project as per the project schedule.
- f. Contractor shall also suggest remedial action for mitigating the impact of the envisaged critical activities and maintaining the project progress as per schedule.

**5.2.4 Clean-up and Waste Disposal**

11. S&M Contractor shall keep the power system site reasonably clean and otherwise free from accumulation of waste materials, rubbish and other debris resulting from

performance of the S&M Contractor's obligations. S&M Contractor's labour camp and housing colony shall be maintained tarred at hygienic standards and shall be kept reasonably free from debris, litter and malodour on or before Final Performance Acceptance. The S&M Contractor shall remove from the power plant site area all petroleum, waste materials, rubbish and other debris, as well as all tools, construction equipment, machinery and surplus material which the Client does not hold title, and shall make the power plant area in a neat, clean and usable condition. The S&M Contractor shall remove, transport and dispose-off hazardous material transported into the power plant site or any subcontractor or created, used or handled as part of contractor's or any subcontractor's construction activities at the power plant site.

12. The S&M Contractor shall notify Client immediately upon the discovery of presence of any hazardous material on, or the release of hazardous material on or from, the power plant site. All clean up and disposal activities of contractor (including, without limitation, the transportation and disposal of any hazardous materials taken from the power plant site) shall be conducted in accordance with all Applicable Laws and Applicable Permits. All these shall be applicable during the O&M period also in mutatis mutandis.

#### **5.2.4 Labour and Personnel**

##### **i Site Organization**

13. The contractor shall provide all labour and personnel required in connection with the services including without limitation (a) professional engineers licensed in accordance with any applicable licensing requirements in India; (b) a project manager, construction manager and lead structural, mechanical and electrical engineers, required numbers of supervisory personnel necessary up to the commissioning stage, all of whom shall have had extensive DG power plant experience in power plants of similar technology and magnitude and shall be reasonably proficient in the English language and local language (Hindi); (c) a project manager who shall be fully acquainted with the project, shall be reasonably proficient in the English language and local language (Hindi) and shall have the authority to administer the contract agreement on behalf of the contractor; (d) quality assurance personnel, all of whom shall directly report to the contractor's home office managers and not to the project personnel located at the power project site; (e) all field construction labour including skilled, semi-skilled and un-skilled labour, craftsmen and technicians.
14. The S&M contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in India or any other Authority, that are necessary for the performance of the contract. S&M Contractor shall be responsible for the expenses related to travel, boarding, lodging and allowances etc. for its personnel.
15. Within ten (10) days of the Letter of Award, S&M contractor shall submit for Client's approval, the resumes of any or all key personnel to be employed in connection with the project. If the Client raises no objection to the resumes, within five (5) days, the resumes shall be deemed to have been approved. If the Client raises objection to the resumes within five (5) days, giving reasons therefore, then the contractor shall

provide resumes of the replacement personnel, within seven (7) days of such objection, and the foregoing provisions shall apply thereto.

16. Prior to 45 the Scheduled Completion Date, S&M Contractor shall submit for Client's approval, the resumes of any or all key personnel to be employed in connection with the Maintenance of the project. If the Client raises no objection on the resumes, within five (5) days, the resumes shall be deemed to have been approved. If the Client raises objection to the resumes within five (5) days, giving reasons therefore, then the contractor shall provide resumes of the replacement personnel, within seven (7) days of such objection, and the foregoing provisions shall apply thereto.
17. The S&M contractor shall not remove any project personnel approved by the Client and any other individual in a supervisory or lead position, without prior notice to the Client. The right of appointment and removal of the contractor's personnel is vested only with the contractor and the role of the Client in this regard will be merely consultative.

**i Permitting**

18. S&M Contractor shall obtain and maintain in effect all Applicable Permits, at his expense, required in connection with contractor's performance of its obligations hereunder (collectively, "Contractor Permit"), including without limitation (a) licenses to permit contractor to do business in the jurisdictions where the obligations under the contract agreement are to be performed. (b) Construction and other permits required to be obtained with respect to the contractor's obligations of Supplies and Services, including safety regulations and applicable guidelines for gas based power plant installation, (c) Applicable Permits necessary to move, transport, deliver construction and other types of equipment and materials to and from the power project site, and (d) any permit required during the Maintenance period of the power system.
19. S&M Contractor shall also obtain in the name of the Client, at contractor's cost at the appropriate stage of construction those Applicable Permits of the type listed not limited to referred in **Annexure 3** hereto, required to be obtained in Client's name in connection with the completion and Operation and Maintenance of the power system (collectively, "Other Construction Permits")
20. All Applicable Permits to be assignable to the Client as and when so required by the Client.

**5.2.4 S&M Contractor Permits**

21. Annexure 3 hereto lists all the, S&M Contractor Permits as of the date of the contract agreement. If contractor at any time becomes aware, whether as a result of notice from the Client, of any Applicable Permit not listed on Annexure 3 hereto that contractor is required or recommended to obtain and that is of the type listed on the Annexure 3 hereto, contractor shall promptly give notice thereof to the Client and S&M Contractor shall be responsible for obtaining such Applicable Permit at the S&M Contractor's cost.

**5.2.4 Inspection and Expediting**

22. S&M Contractor shall perform all inspections, expediting and quality surveillance as are required for performance of his obligation in the contract agreement. S&M Contractor's responsibilities under this clause shall include inspecting all materials and equipment that comprise or will comprise the power System, including supplies or that are to be used in performance of S&M contractor's obligations under the contract agreement, including the start-up, testing and Maintenance of the power plant. S&M Contractor shall perform such detailed inspection of all work in progress at intervals appropriate to the stage of manufacture or production, construction or fabrication as is necessary to ensure that such work is proceeding in accordance with the contract agreement and the design documents and to protect Client against defects and deficiencies in such work. On the basis of such inspections, contractor shall keep Client continuously informed of the progress and quality of all work and shall provide Client with written and certified reports with deficiencies revealed through such reports and the measures proposed by the S&M Contractor to remedy such deficiencies. Client or Representative shall have the option, at Client's expense, of being present at all such inspections; provided that Contractor's obligations to give notice of any such inspection shall be limited to those agreed obligations contained in the Procedure Manual.
23. In the event that the progress and quality of the work is not proceeding in accordance with the contract agreement and design documents, Client or Representative ( Third Party Inspection Agency appointed by the Client) shall be entitled to make recommendations to S&M Contractor or any Subcontractor for the purpose of remedying such deficiencies, and in case of quality, if Contractor fails to do so, Client may reject any equipment and in that situation S&M Contractor shall make good such rejection either by replacement or re-execution of such of these works.
24. No inspection performed or failed to be performed by Client or Representative hereunder shall not be a waiver of any of S&M Contractor's obligations hereunder or not be construed as an approval or acceptance of any of the S&M Contractor's obligations under the contract agreement, hereunder. In addition, Contractor shall secure for Client and its designees the inspection rights.
25. No part of the power system of foundations shall be covered up on the project site without the S&M Contractor carrying out any test and/or inspection required under the Contract Agreement. The S&M Contractor shall give a reasonable notice to the Client or Representative, whenever any such part of the project or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract Agreement.
26. The S&M Contractor shall uncover any part of the project or foundations, or shall make openings in or through the same as the Client or Representative may from time to time require at the site, and shall reinstate and make good such part or parts.
27. The S&M Contractor shall maintain one set of approved drawings data sheet and quality assurance plan for goods supplies, civil works, installation works for inspection of the client or his representative.

#### **5.2.4 Commencement of Supplies and Services**

- i Following issuance of the "Letter of Award", the S&M Contractor shall commence performance of the site activities in accordance to the approved project execution schedule as approved by the Client or Representative.
- ii All the inspection notices shall be addressed to:  
  
**Managing Director,  
DMICDC Neemrana Solar Power Company Limited,  
Room No. 341B, 3<sup>rd</sup> Floor, Hotel Ashok, Diplomatic Enclave,  
50B Chanakyapuri, New Delhi – 110021, India  
Phone: 011-26118884-8 Fax: 011-26118889  
Email: contactus@dmicdc.com, tenders@dmicdc.com**
- iii The consignments shall be addressed to:  
  
**Project Manager,  
DMICDC Neemrana Solar Power Company Limited,  
1.00 MW DG Power Project  
Japanese Industrial Park  
Neemrana –  
District Alwar, Rajasthan**
- iv Each consignment shall be marked with the following details:
  - (i) Name of the Project
  - (ii) Equipment Name
  - (iii) Contract Number
  - (iv) Client CST Number
  - (v) Number of package
- v Every package shall have the packing slip kept inside the packing, clearly mentioning the component part number, quantity, etc.
- vi A complete set of reference drawings and manuals shall also be kept inside the packing.

#### **5.2.4 Co-ordination with other contractors, agencies**

- The Contractor shall permit other Contractor, agencies, if any, employed by the Client at the project site to introduce and store materials in those areas of the project site under Client's direct control and perform their respective services. Contractor shall co-operate with Client and other Contractors of Client to co-ordinate Contractor's Supplies and Services with the work and services of such other Contractors.

#### **5.2.4 Labour Relations**

- Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for making all payments in connection herewith.
- Contractor shall be responsible for all labour relations matters relating to the Services and shall at all times use its best efforts to maintain harmony among the personnel employed in connection with the Services and shall enter into all necessary labour agreements with such personnel. Contractor shall at all times comply with all applicable employment laws and labour welfare legislation and use its best efforts and judgement as an experienced Contractor to adopt and implement policies and practices to avoid work stoppages, slowdowns, disputes, strikes and lockouts.

#### **5.2.4 Compliance with Applicable Laws**

- Contractor shall comply with and shall cause the project and all components thereof (including, without limitation, the Design, Engineering, Construction and Operation of the power plant) to comply, or to be capable of complying, with all Applicable Laws and Applicable Permits as they may be in effect from time to time during Contractor's performance hereunder up to the date of Provisional Performance Acceptance as well as Final Performance Acceptance of the power plant (and thereafter upon mutual agreement on terms and conditions).

#### **5.2.4 Contractor's Insurance Obligations**

- i The Contractor shall at its expense take out insurance and maintain in effect, or cause to be taken out and maintain in effect during the obligations for Supplies and performance of the Services (Construction as well as Maintenance )
- ii The Contractor will ensure assignment of the insurance policy in the name of Client. The contractor shall be responsible or cause to be responsible to take out insurance cover accidental instances of damage occurring to the equipment during transportation, handling, storage, on-site handling, erection, testing and commissioning of the project.
- iii The contractor shall be responsible or cause to be responsible to take out insurance cover accidental instances of damage occurring to the equipment on account of fire, floods, strike or any other unexpected event during the Supplier's obligation period.
- iv The contractor shall lodge claims for damages with the underwriters on behalf of the Client and follow-up for settlement of all such claims to the entire satisfaction of the Client.
- v The contractor shall also be responsible for taking insurance cover under the Workmen's Compensation Act for the staff and labour force engaged by him and his sub-contractors for execution of the contract.
- vi All accidents occurring at site during the tenure of the contract period shall be reported by the contractor to the client and relevant authorities and shall also



disburse the compensation due to the personnel under the Rajasthan State Labour Act and as directed by the Department of Labour, Govt. of Rajasthan / Electrical Inspector to the Govt. of Rajasthan / Directorate of Health & Safety, Govt. of Rajasthan.

- vii In case of failure of the contractor to disburse such compensation as due to be payable to the staff / labour, the client shall have the right to disburse such compensation amounts on behalf of the contractor and recover such amounts from the claims of the contractor related to the subject contract.
- viii All insurance premiums to be paid for the insurance covers during the tenure of the contract period shall be borne by the contractor.
- ix Copies of all insurance policies, receipt of insurance premiums paid, etc shall be submitted to the Client for the purpose of information and records.

#### **5.2.4 Employee Identification, Project site Security**

- Contractor shall provide a method, which shall be subject to the reasonable approval of client, of checking the employees of the contractor, its Subcontractors and Client's suppliers and contractors in and out of the areas in which the Services are to be performed hereunder. Contractor shall be responsible for the security of the project and the project site at all times while the Services including O&M services are being performed provided that Contractor shall co-ordinate such security.

#### **5.2.4 Safety and Security Precautions**

- Contractor shall implement and administer a safety and health program for the project which shall include: (a) development of a project safety manual establishing Contractor and its Subcontractor safety guidelines and requirements (including a fall prevention program); (b) conducting of weekly project safety meetings with its subcontractors; (c) development, implementation and enforcement of procedures for advising Subcontractors of and correction of safety violations and deficiencies, and (d) taking of all other actions necessary to provide a safe work environment in accordance with Applicable Laws and Applicable Permits. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to avoid damage, injury or loss to: (a) all persons employed by Contractor or Subcontractors in connection with the Supplies and Services and all other persons who may be affected thereby; (b) all materials and equipment to be incorporated in to the project, whether in storage on or off the project site, under the care, custody or control of the Contractor or any Subcontractor, and (c) other physical property at the project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. During commissioning, start-up, testing and Operation & Maintenance of the power plant, Contractor shall require all Subcontractors working on the project site to comply with all safety requirements in effect at all such times.

- 5.2.4** Up to the Commercial Operation Date of the power plant, Contractor shall supply such security and take such steps to secure and protect Supplies, the project, and all necessary ancillary Common Components and the project from loss, damage or



destruction as Contractor shall reasonably deem necessary and prudent..**Protection of Physical Property**

- Contractor shall do all things necessary or expedient to protect any and all parallel, converging and intersecting power and telephone lines in close proximity of the project site, sewer lines, drainage ditches, fences, walls and all physical property of others from damage as a result of its performance of the Services. Without limiting the generality of the foregoing, Contractor shall maintain all contractor constructed roads within the project site in good repair. In the event that any such physical property is damaged or destroyed in the course of the performance of the Service due to reasons attributable to Contractor or any Subcontractor, Contractor shall rebuild, restore or replace such damaged or destroyed physical property.

#### **5.2.4 Protection of Project Site**

- Contractor shall provide and shall ensure that its Subcontractors provide, proper and ample protection from damage or loss to the project, project site, materials, construction equipment and tools during its performance of the Services. In the event that the project or any such items are destroyed or damaged, the project during the construction period , Contractor shall rebuild, restore or replace such damaged or destroyed items, the project.

#### **5.2.4 Releases and Waivers**

- Upon Final Performance Acceptance, Contractor shall provide to Client releases and waivers in appropriate form of all liens and encumbrances, legal and equitable, against Client, the project site, the facilities, the Real Estate Rights and all other project property and equipment arising out of or in connection with the Supplies obligations Services performed under the Contract Agreement.

**Section 6. Standard Form of Contract**

**SUPPLY AND MAINTENANCE (S&M) AGREEMENT**

**FOR**

**SUPPLY, TRANSPORTATION, STORAGE, INSURANCE,  
ERECTION, TESTING AND COMMISSIONING OF  
5X500KVA ENGINEERED DIESEL GENERATOR POWER  
SYSTEM & MAINTENANCE FOR A PERIOD OF 10 YEARS**

**AT**

**NEEMRANA INDUSTRIAL PARK, JAPANESE ZONE,  
NEEMRANA, RAJASTHAN**

\_\_\_\_\_ DAY OF \_\_\_\_\_ 2016

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## Agreement

This agreement is executed on this the ..... day of ....., 2016, at \_\_\_\_\_.

### BETWEEN

**DMICDC Neemrana Solar Power Company Limited** a company incorporated under the Companies Act, 1956 or Companies Act 2013 or any other applicable statute to the extent applicable, having its Registered Office at Room No. 341B, 3rd Floor, Ashoka Hotel, Diplomatic Enclave, 50B, Chanakyapuri, New Delhi – 110021, Represented by its Chairman / Managing Director / Director Mr ....., who has been duly authorized by the Board of Directors vide Resolution dated \_\_\_\_, \_\_\_\_, \_\_\_\_, certified copy of the said resolution is annexed herewith as Annexure – I, to sign and execute this Agreement and to do all necessary acts, deeds and things on behalf of the Company, (Hereinafter referred to as the “**DMICDC - NSPCL**”, which expression shall unless repugnant to the context or meaning thereof shall mean and include its legal successors, liquidators, executors, nominees, administrators and assignees etc.) ..... **OF THE ONE PART**

### AND

..... (Insert the Name of the successful Bidder) a company incorporated under ..... Act having registered office at, Represented by its Chairman/ Managing Director / Director...Mr....., who has been duly authorized by the Board of Directors vide Resolution dated \_\_\_\_, \_\_\_\_, \_\_\_\_, certified copy of the said resolution is annexed herewith as Annexure-II, to sign and execute this Agreement and to do all acts, deeds and things on behalf of the company,. (Hereinafter referred as a “**S&M Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, representatives etc.) **OF THE OTHER PART**

**WHEREAS** the Government of India has entrusted to DMICDC-NSPCL for the Development & Construction of total 1.00 MW DG Power System (1.00 MWp Solar PV Power Project & 1.0 MW Engineered Diesel Generator plant ( with 1 MW standby DG sets ) integrated with smart micro grid will feed power to pre identified Japanese Industry) at Neemrana Industrial Park, Neemrana, Rajasthan (Hereinafter referred to as “**DG Power System**”)

**AND WHEREAS**, DMICDC-NSPCL accordingly invited bids (Bid Specification No.DMICDC-NSPCL/MD/DG/NEEMRANA/01/2016) with 6 nos. appendix for short listing of bidders for



**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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Supply & Maintenance (S&M) of 5 X 500 KVA Engineered Diesel Generator Power System to be integrated with the above referred DG Power System for Supply & Maintenance of the same for 10 (Ten) years and shortlisted certain bidders including, *inter alia*, the selected bidder.

**AND WHEREAS**, after evaluation of the bids received, DMICDC-NSPCL accepted the bid of the selected bidder / Contractor and issued its Letter of Acceptance No. .... dated ..... (Hereinafter called the “**LoA**” and **annexed at Annexure 1 annexed hereto**) to the selected bidder for erection, procurement and construction basis and comprehensive operation & maintenance of said DG Power System at the contract price specified hereinafter, requiring the selected bidder/contractor to *inter alia*:

- a. deliver to the DMICDC-NSPCL a legal opinion from the legal counsel of the selected bidder/contractor with respect to the authority of selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LoA; and;
- b. Execute this Agreement within 15 (fifteen) days of the date of issue of LOA.

The RfQ – cum – RfP documents (along with all of its annexures and appendices) will be part of this contract.

**AND WHEREAS**, the Contractor has fulfilled the requirements specified in Recital mentioned herein above;

**NOW THEREFORE** in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, DMICDC-NSPCL hereby covenants to pay the S&M Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE – 1:

### Interpretation & Definitions of the Terms and Conditions of the Contracts:

#### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in **Article 27**) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

#### 1.2 Interpretation:

- 1.2.1 In the contract (as defined below), unless the context requires otherwise the words and expressions define below shall have same meaning herein after assigned to them.
- 1.2.2 references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.2.3 references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- 1.2.4 references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.2.5 the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.2.6 the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- 1.2.7 References to “**Erection / Construction**” includes, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the said 5 X 500 KVA Engineered DG Power System and maintenance for a period of 10 years and other activities incidental to the erection of solar power plant shall be construed accordingly;

- 1.2.8 references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “**develop**” shall be construed accordingly;
- 1.2.9 any reference to any period of time shall mean a reference to that according to Indian standard time;
- 1.2.10 any reference to day shall mean a reference to a calendar day;
- 1.2.11 any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- 1.2.12 references to any date, period or Project milestone shall mean and include such date, period or Project milestone as may be extended pursuant to this Agreement;
- 1.2.13 any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- 1.2.14 the words importing singular shall include plural and vice versa;
- 1.2.15 references to any gender shall include the other and the neutral gender;
- 1.2.16 save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of DMICDC-NSPCL hereunder or pursuant hereto in any manner whatsoever;
- 1.2.17 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or DMICDC-NSPCL’s PMC Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or DMICDC-NSPCL’s PMC Consultant, as the case may be, in this behalf and not otherwise;
- 1.2.18 the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- 1.2.19 references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- 1.2.20 the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine

pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

- 1.2.21 Time shall be of the essence in the performance of the ‘Parties’ respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.

Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the DMICDC-NSPCL shall be provided free of cost and in three copies, and if the DMICDC-NSPCL is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 Priority of Agreements and Errors / Discrepancies**

- 1.3.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).

- 1.3.2 Subject to the provisions of Clause 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

#### **1.4 Joint and Several Liability**

- 1.4.1 If the Contractor has formed a Consortium of not more than 3 (three) persons for implementing the DG Power System:
- (a) These persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the DMICDC-NSPCL for the performance of the Agreement; and
  - (b) The Contractor shall ensure that no change in the composition of the Consortium is effected without the prior consent of the DMICDC-NSPCL.
- 1.4.2 In case of Consortium, Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the DMICDC-NSPCL shall be entitled to rely upon any such action, decision or communication of the Lead Member. The DMICDC-NSPCL shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the inter se allocation of payments among members of the Consortium.

## **PART II**

### **ARTICLE - 2**

#### **Scope of the Project**

##### **2.1 Scope of the Project:**

The Contractor is responsible for Design, Engineering, Manufacture, Supply, Procure, , Transportation, Storage, Insurance, Erection, Testing and Commissioning of 5 X 500 KVA Engineered Diesel Generator Power System which is to be integrated with 1 MWp Solar PV Power & feeding to pre-identified Neemrana based Japanese Industry and & *Maintenance for a period of 10 years* for the 5 X 500 KVA Engineered DG Plant. at Neemrana Industrial Park, Japanese Zone, Neemrana, Dist: Alwar, Rajasthan, India. The Solar project shall be implemented separately by the Client.

Under the agreement the scope of the project & shall mean and include;

- a) Erection & Commissioning of the said 5 X 500 KVA Engineered Diesel Generator Power System on the site set forth in and in conformity with the specifications & tender drawings set forth in **Appendix-1& Appendix-2 and Appendix-3** respectively.
- b) Maintenance of the said 5 X 500 KVA Engineered DG Power System for 10 years from the date of commissioning set forth in **Article 14**.
- c) .
- d) All other material / goods equipment other than above shall be procured by the Contractor.

**2.2 The Contractor shall construct and commission the 5 X 500 KVA Engineered DG Power System not later than 3 months from the date of issue of Letter of Award (LoA).**

## **ARTICLE - 3**

### **Obligations of the Contractor**

#### **3.1 Obligations of the Contractor:**

##### **3.1.1 General obligations:**

Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction, testing and maintenance of the 5 X 500 KVA Engineered DG Power System for 10 years and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

- 3.1.2 The Contractor shall comply with all applicable laws and applicable permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Subject to the provisions of Clauses 3.1.1 and 3.1.2, the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the 5 X 500 KVA Engineered DG Power System from the Appointed Date until the end of the Construction Period at the Contractor's cost.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the 5 X 500 KVA Engineered DG Power System during the Defects Liability Period at the Contractor's cost to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 16.2 (i.e. Remedying defects).
- 3.1.6 The Contractor shall remedy any and all loss or damage to the 5 X 500 KVA Engineered DG Power System during the Maintenance Period as per the Annual Maintenance Contract ,
- 3.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits and obtain and keep in force and effect such applicable permits in conformity with the applicable laws;
  - (b) Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Engineered DG Power System.
  - (c) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
  - (d) Ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
  - (e) Not do or omit to do any act, deed or thing which may in any manner be violate of any of the provisions of this Agreement;
  - (f) Support, cooperate with and facilitate the DMICDC-NSPCL in the implementation and operation and maintenance of the Project in accordance with the provisions of this Agreement;



- (g) Ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
  - (h) Keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The DMICDC-NSPCL's Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
  - (i) Cooperate with other contractors employed by the DMICDC-NSPCL and personnel of any public authority; and
  - (j) The Contractor shall be responsible for arrangement of temporary construction power and water required to complete under this contract to fulfil his obligations at site.
- 3.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works of erection and commissioning of said Solar Power Project.

### **3.2 Obligations Relating to Sub - contracts and Any Other Agreements**

- 3.2.1 The Contractor shall not sub-contract any Works in more than 30% (thirty per cent) of the total erection of the DG Power System and shall carry out Works directly under its own supervision and through its own personnel in at least 70% (seventy percent) of the total work of erection of the 5 X 500 KVA Engineered DG sets. The Parties further agree that all obligations and liabilities under this Agreement for the 5 X 500 KVA Engineered DG Power System shall at all-time remain with the Contractor.
- 3.2.2 In the event any sub-contract for Works, or the aggregate of such subcontracts with any Sub-contractor, exceeds 5% (five percent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the DMICDC-NSPCL prior to entering into any such sub-contract. The DMICDC-NSPCL shall examine the particulars of the sub-contractor from the capability, efficiency, experience, national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith.
- 3.2.3 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement or any other agreement that may be entered into by the Contractor, and no default under any notwithstanding anything contained in the agreements with its Sub-contractors such agreement shall excuse the Contractor from its obligations or liability hereunder.

### **3.3 Employment of Foreign Nationals**

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment / residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Sub-contractors or their sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.



### **3.4 Contractor's Personnel**

- 3.4.1 The Contractor shall ensure that the personnel engaged by it or by its Subcontractors in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.
- 3.4.2 The DMICDC-NSPCL's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Subcontractor's personnel. Provided that any such direction issued by the DMICDC-NSPCL's Engineer shall specify the reasons for the removal of such person.
- 3.4.3 The Contractor shall on receiving such a direction from the DMICDC-NSPCL's Engineer order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 3.4.2. The Contractor shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.

### **3.5 Advertisement on DG Power System**

The said 5 X 500 KVA Engineered DG Power System or any part thereof shall not be used in any manner to advertise any commercial product or services.

### **3.6 Contractor's Care of the Works**

The Contractor shall bear full risk in and take full responsibility for the care of the Works and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate and during comprehensive operation and maintenance period, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the DMICDC-NSPCL.

### **3.7 Electricity, Water and Other Services**

The Contractor shall be responsible for procuring of all power, water and other services that it may require.

### **3.8 Unforeseeable Difficulties**

Except as otherwise stated in the Agreement:

- (a) The Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) The Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

### **3.9 DMICDC-NSPCL's Reliance on S&M Contractor's Representations**

The DMICDC-NSPCL has engaged the S&M Contractor relying upon the representations, "assurances and Warranties made by the Contractor including the representation that the Contractor has, the experience, skill and resources to perform the Works or supply the goods and to design: 'engineer, supply, construct, erect and complete in all respects said 5 X 500 KVA Engineered DG power System for the purpose and deliver the same to the DMICDC-NSPCL in accordance with the Contract, and Contractor acknowledges such reliance by the DMICDC-NSPCL and the acceptance of the Contractor for such engagement.

### **3.10 Contractor to Perform as per the Scope of Work**

Without prejudice to the foregoing, except as otherwise expressly set forth in the contract as within the scope of DMICDC-NSPCL's obligations under the contract, the Contractor shall erect & commission the 5 X 500 KVA Engineered DG power System or perform or cause to be performed all work and services required in connection with the design, engineering, supply of equipment, procurement (including, without limitation, all transportation services in connection therewith), and other works and services including maintenance for 10 years on a lump sum price basis and otherwise in accordance with this Contract.

The work to be performed or goods to be supplied by the Contractor under the Contract shall without prejudice to the generality of the foregoing include but not be limited to the following:

- a) All engineering and design services required for a completely engineered Plant including necessary documentation:
- b) Provision of all equipment, systems and materials that will be merchantable, new and of first class quality. Contractor's Equipment, Temporary Works and all other items, whether of a temporary or permanent nature including those required for the design.
- c) Receipt of above at site including preservation during storage and stores management;

### **3.11 Engineering and Design**

The Contractor shall provide all design and engineering for design, engineering, supply of equipment, installation, testing in accordance and conformity with the Contract & good Engineering Practices and of International Standard, including preparation and submission of;

- a) The engineering and detailed designs / drawings necessary to describe and detail the Works and the Project.
- b) Preparation of design, engineering Drawings, plans, bill of material, schedule.
- c) Designed drawings shall be approved by DNSPCL/HITACHI/NEEDO

### **3.12 Design / Erection Documents**

- a) The Contractor shall be responsible for preparation of design documents, detailed designs / drawings in conformity with the Technical Specifications in sufficient detail to satisfy and comply with, all Applicable Permits including regulatory approvals, to provide suppliers and construction personnel sufficient instruction to execute the

Works, and to describe the operation and maintenance of the completed Works. The DMICDC-NSPCL shall have the right to review and inspect the preparation of design and construction documents.

- b) Each of the design and construction documents shall, when considered ready for use, be submitted to the DMICDC-NSPCL for pre-construction review and approval upto fullest of satisfaction.
  - c) Construction and erection shall not commence prior to the written approval of DMICDC-NSPCL for the design / construction documents.
  - d) Construction shall be in accordance with such construction documents; and
- 3.12.1 If the Contractor wishes to modify any design / document which have previously been submitted for such pre-construction review, the Contractor shall immediately notify the DMICDC-NSPCL, and shall subsequently submit revised documents to the DMICDC-NSPCL for pre-construction review and approval.
- 3.12.2 If the DMICDC-NSPCL instructs that further design / construction documents are necessary for carrying out either pre-construction review or the Works, the Contractor shall upon receiving the DMICDC-NSPCL instructions prepare such design / construction documents at no extra cost.
- 3.12.3 The Contractor at his cost shall rectify errors, omissions, ambiguities, inconsistencies, inadequacies and other defects.

### **3.13 Manuals**

Contractor shall submit to DMICDC-NSPCL, specifications and documents including data sheets, plans and drawings, and other information and documents required for the Project. In addition, Contractor shall provide Operation & Maintenance Manual;

The "**Operation & Maintenance Manual**" shall incorporate relevant technical details, procedures and sequences in respect of Plant including all sub-systems.

- 3.13.1 The Contractor shall obtain all instruction manuals and special directions required for preparation of the Operation and Maintenance Manual from equipment Manufacturers and/or vendors or shall itself provide any such written instructions when they are not available from such Manufacturers and/or vendors. The Operation and Maintenance Manual shall be based on a generally accepted standard of professional care, skill, diligence and competence applicable to engineering and operating practices, shall be consistent with utility practices and shall be prepared so that operation and maintenance of the plant in accordance with the Operating and maintenance manual shall, under anticipated operating conditions, result in operation of the project at the capacity, efficiency, reliability, safety and maintainability levels contemplated by the Contract and shall in no way impair any Warranty / Guarantee on equipment, Materials or Services relating to the Project including those being furnished by Contractor or Sub-contractors under the Contract. For the purpose of Operating and Maintenance Manual, the Contractor shall comply with an approved standard system of Equipment. The final Operating and Maintenance manual shall be submitted in hardcopy (3 Sets) and softcopy (1 Set).

### **3.14 Labour and Personnel**

The Contractor shall make his own arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing feeding and transport Contractor shall provide all labour and personnel required in connection with Work and shall be liable for all risks on account of their safety security, accidents and mis-

happenings both physically and monetarily and the Contractor hereby indemnifies the DMICDC-NSPCL for any loss and / or damages sustained by the DMICDC-NSPCL in that regard, and / or for defending any action thereof and for the consequent loss of business as a result of delay in implementation of the Project whether directly or indirectly.

### **3.15 Labour Laws**

The Contractor shall comply with and shall ensure that he/his Sub-contractors comply with all the relevant labour laws applicable to his Sub-contractors employees, and shall duly pay and afford and cause his Sub-contractors to pay and afford to them all their legal rights. The Contractor shall require all such employees to obey all Applicable Laws and regulations concerning safety at Work. Contractor shall be responsible for all labour relation matters relating to the Work or Supply of Goods and shall at all times use its best efforts to maintain harmony among the personnel employed in connection with the Work or supply of Goods whether by the Contractor or his Sub-contractors and shall enter into all necessary labour agreements with such personnel. Contractor and his Sub-contractors shall at all times comply with all Applicable Permits and Applicable Laws relating to employment including but not limited to Contract labour regulations, Workmen Compensation Act, Employee State Insurance and Provident Fund regulations, retrenchment Compensation etc. and labour welfare and use its best efforts and judgment as an experienced Contractor to adopt and implement policies and practices to avoid Work stoppages, slowdowns, disputes, strikes, lockouts and other labour strife and disagreement.

### **3.16 Transporting ,Storage, Covering and Handling of Plant**

All the activities such as transportation, storage, covering, loading, unloading and handling etc. are in the scope of S&M Contractor only. DMICDC-NSPCL shall not be responsible for any acts, results and effect arising thereof.

### **3.17 Supply under Guarantees / Warrantees:**

- 3.17.1 Notwithstanding anything to the contrary contained in these General Conditions of Contract, any taxes, duties and levies including the stamp duty levied by the Government of India or any State Government in India or local authorities or any Government Instrumentality or outside India on the equipment and Materials to be provided by the contractor in pursuance of any Warranties under the Contract including any replacements and / or repairs to be carried out under such Warranty, which the Contractor is required to supply free of Cost to the DMICDC-NSPCL shall be to the Contractor's account.
- 3.17.2 The contractor shall make arrangements for coordination with the equipment suppliers for procurement of the recommended spares, warranty guarantee replacements during the Operation & Maintenance periods of ten (10) years for the 5 X 500 KVA diesel generator plant.
- 3.17.3 The bidders shall include all the contingency costs as may be necessary for repairs, replacements and incidental claims during the post-commissioning phase as well as during the Operation and Maintenance phases of 5 X 500 KVA DG plants.
- 3.17.4 All correspondence with the equipment suppliers, follow-up and settlement of the replacements under warranty / guarantee claims shall be executed by the contractor up to the receipt of the damaged / replacement equipment in part / total and shall

provide all the correspondence copies to DMICDC-NSPCL regarding the proceedings of the warranty / guarantee claims.

### **3.18 Work and Safety Regulations**

The Contractor shall ensure proper safety of all the workmen, materials and equipments belonging to him or to DMICDC-NSPCL, working at the Site. The Contractor shall also be responsible for provision of all safety notices and safety equipment required both by the relevant legislations and the DMICDC-NSPCL, as he may deem necessary.

- 3.18.1 All equipment used in construction and erection by Contractor or his Sub contractors shall meet Indian and International Standards of safety and where such standards do not exist, the Contractor shall ensure these to be absolutely safe. All equipments shall be strictly operated and maintained by the Contractor or his Sub contractors in accordance with manufacturers operation manual and safety instructions and as per Guidelines and Rules of the DMICDC-NSPCL in this regard.
- 3.18.2 In case any accident occurs during the construction / erection or either associated activities undertaken by the Contractor thereby causing any minor, major or fatal injuries to his employees due to any reason, whatsoever, it shall be the responsibility of the Contractor to promptly inform the same to the DMICDC-NSPCL in prescribed form and also to all the authorities envisaged under the Applicable Laws.
- 3.18.3 The contractor shall follow-up the regulatory procedures with the statutory authorities till the final settlement of the accident formalities, payment of compensation to the personnel affected / injured / deceased in the accident and shall also ensure the treatment to be made available to the affected / injured personnel.
- 3.18.4 All correspondence with the equipment suppliers, follow-up and settlement of the replacements under warranty / guarantee claims shall be executed by the contractor up to the receipt of the damaged / replacement equipment in part / total and shall provide all the correspondence copies to DMICDC-NSPCL regarding the proceedings of the warranty / guarantee claims.
- 3.18.5 In case of failure of the contractor to complete all the relevant and legal formalities resulting out of the accident, DMICDC-NSPCL reserves the right to complete all the relevant and legal formalities including payment of the compensation amounts to the affected personnel recover the cost from the contractor.

### **3.19. Subcontracts**

#### **3.19.1 Major Speciality Contractors, Subcontractors and Equipment Suppliers**

All vendors, suppliers, contractors and subcontractors providing supplies, equipment, materials, construction equipment and materials or services directly or indirectly to Contractor under this Agreement are herein referred to as 'Subcontractors' any such contracts entered into between Contractor and Subcontractors are herein referred to as "Subcontracts"; provided that DMICDC-NSPCL's other contractors shall not be deemed a "Subcontractor" hereunder. The Contractor shall not subcontract either the whole of the Services or Supplies.

**The total quantum of work under the “subcontracts” shall not exceed thirty percent (30%) of the total scope of work of the Contractor for the entire project.**

The contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agent or employee as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees and for the avoidance of doubt, either Party shall be deemed by virtue of the Agreement to have neither any contractual obligation to nor any relationship with any Subcontractor of the other Party.

Any Subcontract with Subcontractor whose subcontract exceed the value of INR 10, 00,000 shall comply with the following requirements:

- i) If so requested by DMICDC-NSPCL, the Contractor shall provide a copy of any subcontract(with financial, confidential information and commercial terms deleted) entered into with Subcontractor including details of all drawings and other technical documents referred therein ;
- ii) The Contractor shall use its best endeavours to include in any Subcontract terms entitling Contractor to transfer and assign the Subcontract and any rights and/or obligation there under in favour of DMICDC-NSPCL without Subcontractor’s consent, upon termination of the Contractor’s employment. Upon termination of the Agreement (if any), the Contractor shall, at the written request of DMICDC-NSPCL, exercise such right. This Article Clause 3.19.1 (ii) expressly survives the termination of this Agreement.

### **3.19.2 Subcontractor Warranties**

Contractor shall, for the protection of DMICDC-NSPCL, obtain from all Subcontractors all normally available warranties on all machinery, equipment, services, materials, supplies and other items used and installed hereunder and such warranties shall not be amended, modified or otherwise discharged. Contractor shall enforce such warranties to the extent thereof possible until such time as they are transferred to DMICDC-NSPCL pursuant to the following sentence. Upon the first to occur of (i) the expiration of any of the warranties provided by Contractor pursuant to **Article 3.17** hereof, and (ii) termination of this Agreement, Contractor shall assign to DMICDC-NSPCL or enforce on DMICDC-NSPCL’s behalf, to the extent then valid and enforceable, effective as of such date, all of Contractor’s rights under all such Subcontractor warranties and shall deliver to DMICDC-NSPCL copies of relevant extracts from all such warranties and the related technical specifications. Nothing in this Article Clause 3.19.2 shall derogate from the obligations of Contractor to provide the warranties described in, and to comply with the provisions of, **Article 3.17** hereof. This Article Clause 3.19.2 expressly survives the termination of this Agreement.

### **3.19.3 Review and Approval Not Release of Contractor’s Liability**

The review, approval and consent by DMICDC-NSPCL as to the Approved Subcontractors or as to Contractor’s entering into any Subcontract with any approved Subcontractor shall not relieve Contractor of any of its duties, liabilities or obligations under this Agreement, and Contractor shall be liable hereunder to the same extent as if any such Subcontract had not been entered into. Any inspection, review or



approval by DMICDC-NSPCL permitted under this Agreement of any portion of the services or of any work in progress by Contractor or Subcontractors shall not relieve Contractor of any duties, liabilities or obligations under this Agreement.

#### **3.19.4 Payment to Subcontractor**

Contractor shall be responsible for making payments to Subcontractor and shall indemnify and hold DMICDC-NSPCL harmless against default by Contractor on making such timely payment to Subcontractor.

In case of default by the Contractor in making payment to the Subcontractor, DMICDC-NSPCL shall be entitled to deduct appropriate amounts from the payments due to be made by DMICDC-NSPCL to the Contractor or from the Performance Bond provided by the Contractor.

## ARTICLE 4

### OBLIGATIONS OF DMICDC-NSPCL

#### 4.1 Obligations of DMICDC-NSPCL

- 4.1.1 DMICDC-NSPCL shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 DMICDC- NSPCL shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.

#### 4.2 Access and Right to Use of the Site

The DMICDC- NSPCL shall grant the Contractor right of access to, and make available the Site to the Contractor in accordance with the terms of the DMICDC-NSPCL's property rights at the time of execution of this Agreement. Such right and use of the Site may not be exclusive to the Contractor, in the execution of the Works, no persons other than the Contractor or his duly appointed authorized representative, Sub-contractor and workmen, shall be allowed to do work on the Site, except by the special permission, in writing of the DMICDC- NSPCL.

#### 4.3 Notice to Proceed

DMICDC-NSPCL shall issue the Notice to proceed only on or after the Agreement has become effective in accordance with Article 8.2. hereof and the commencement Date shall occur only after DMICDC-NSPCL has provided Contractor access to and use of the Site as described in Article 8.2. hereof.

#### 4.4 Permits and Real Estate Rights

DMICDC-NSPCL shall obtain and maintain in effect the Real Estate Rights and Contractor shall obtain and maintain all Applicable Permits listed in **Annexure 3** hereto, required in connection with the ownership and Operation and Maintenance of the 5 X 500 KVA Engineered DG Power System. **Annexure 3** hereto lists all Permits as of the date of this Agreement. If DMICDC-NSPCL at any time becomes aware, of any Applicable Permit not listed on **Annexure 3** hereto that is required or recommended to obtain, DMICDC-NSPCL shall promptly give notice thereof to Contractor and Contractor shall be responsible for obtaining such Applicable Permits.

#### 4.5 Permit Support

With respect to Permits, DMICDC-NSPCL shall provide support to Contractor, which support include : (a) attendance at meetings with Contractor and third party designated by Contractor, (b) assistance in preparation of responses to inquiries by Governmental Agencies, (c) assistance in presentations at hearings of Governmental Agency, (d) provision of all necessary information and documents required by Contractor in connection with obtaining any Permits and (e) such other services as Contractor may reasonably request from time to time.



#### **4.6 Utilities**

DMICDC-NSPCL shall provide the facilities, components and services to be provided by DMICDC-NSPCL.

#### **4.7 Confiscations, Rejections**

- (a) DMICDC-NSPCL shall not be liable for any confiscation or consequential damages or charges arising by reason of any failure by the Contractor to comply with its obligations under Article 4.8.
- (b) DMICDC-NSPCL shall not be liable for any confiscation or consequential damages or charges. Contractor shall redeem or if necessary replace any such confiscated goods without addition to the Contract Price or other entitlement to payment. If DMICDC-NSPCL is required to pay any such consequential damages or charges by the relevant Governmental Agency, the same shall be recoverable from the Contractor and may be deducted from any monies due or to become due hereunder to contractor.

#### **4.8 Owner Security**

At any point of time, DMICDC-NSPCL reserves the right to deploy its own security (if required). DMICDC-NSPCL shall supply such security and take such steps to secure and protect the project, and all necessary ancillary common components and the project from loss, damage or destruction as DMICDC-NSPCL shall reasonably deem necessary and prudent. DMICDC-NSPCL shall co-ordinate any such security measures with Contractor's project security plan required to be provided by Contractor and DMICDC-NSPCL shall co-operate with Contractor in the implementation of any such security measures for project, and such necessary ancillary Common Components, and the project.

#### **4.9 Owner Labour Relations**

DMICDC-NSPCL shall be responsible for all labour relation matters relating to the services being performed by them and DMICDC-NSPCL's other contractors on the project site and shall at all times comply with all applicable employment laws and welfare legislations.

#### **4.10 Safety Precautions: Protection of Project Site**

DMICDC-NSPCL shall implement and administer a safety and health program for DMICDC-NSPCL's other suppliers and contractors. DMICDC-NSPCL shall maintain the access road to the project site and all other constructed roads within the project site required in good condition. DMICDC-NSPCL shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (a) Contractor or and Subcontractor in connection with the services and all persons and affected thereby, and (b) the project and other property at the project or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

#### **4.11 DMICDC-NSPCL's Other Obligations**

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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DMICDC-NSPCL shall also obtain and maintain insurance as it may be required by them in addition to that provided by Contractor.

## **Article 5**

### **REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and Warranties of the Contractor**

The Contractor represents and warrants to the DMICDC- NSPCL that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and / or other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities

which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (j) no representation or warranty by it contained herein or in any other document furnished by it to DMICDC- NSPCL or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the DMICDC- NSPCL in connection therewith;
- (l) all information provided by the selected bidder / members of the Consortium in response to the Request for Qualification cum Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (m) nothing contained in this Agreement shall create any contractual relationship or obligation between the DMICDC-NSPCL and any Subcontractors, designers, or agents of the Contractor.

## **5.2 Representations and Warranties of DMICDC - NSPCL**

**DMICDC-NSPCL represents and warrants to the Contractor that:**

- (a) it has full power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the DMICDC-NSPCL's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Site and has the power and authority to grant the right of use in respect thereof to the Contractor;

## **5.3 Disclosure**

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In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has not been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

## ARTICLE 6

### DISCLAIMER

#### 6.1 Disclaimer

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the bid submitted, Scope of the Project, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, suitability and availability of access routes to the Site and all information provided by the DMICDC-NSPCL or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the DMICDC-NSPCL makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the DMICDC-NSPCL in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the DMICDC-NSPCL shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the DMICDC-NSPCL shall not be liable in any manner for such risks or the consequences thereof.

## CONSTRUCTION AND MAINTENANCE

### Article 7

#### Performance Security

##### 7.1 Performance Security

7.1.1 The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the DMICDC-NSPCL, within 10 (ten) days of the date of this Agreement, an irrevocable and unconditional guarantee from a Bank in the form set forth in **Annexure 5**(the “**Performance Security**”) for an amount equal to 10% (Ten percent) of the Contract Price. The Performance Security shall be valid till 180 (One hundred and eighty) days with additional claim period of fifteen (15) days beyond the final acceptance testing. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the DMICDC-NSPCL shall release the Bid Security to the Contractor. For the avoidance of doubt, the parties expressly agree that the Contractor shall provide, no later than 30 (thirty) days prior to the expiry of the Performance Security for the defects Liability Period specified in Clause 16.1.1, a Performance Security in respect of the extended Defects Liability Period specified in Clause 16.2 for an amount equal to 5% (five per cent) of the Contract Price. The performance guarantee validity shall be extended if necessary for facilitating rectification of all the defects and will be released 180 days from the date of issuance of the Final Acceptance Certificate (FAC).

##### **Bank Guarantee towards Operation and Maintenance:**

- a. The Contractor shall within 15 days from the date of commissioning, furnish a Bank Guarantee equivalent to 10% of Maintenance Price of the 10 years Maintenance fees towards Maintenance Performance Security, in the form set forth in **Annexure 6** (the “**O & M Performance Security**”) which shall be valid for one year from Final Acceptance Certificate (FAC) with additional claim period of 90 days.
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the DMICDC-NSPCL, in accordance with the provisions of Clause 7.1.3, the DMICDC-NSPCL may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 7.1.3 In the event the Contractor fails to provide the Performance Security within 10 (ten) days of this Agreement, it may seek extension of time for a period not exceeding 20 (twenty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the O&M Price for each day until the Performance Security is provided.

## **7.2 Appropriation of Performance of Security**

- 7.2.1 Upon occurrence of a Contractor's Default, the DMICDC-NSPCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.
- 7.2.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the DMICDC-NSPCL shall be entitled to terminate the Agreement in accordance with **Article 22**. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the DMICDC-NSPCL shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with **Article 22**.
- 7.2.3 **Release of Performance Security:** DMICDC-NSPCL shall return the Performance Security to the Contractor 180 (One hundred and eighty) days from the date of issuance of the Final Acceptance Certificate for the Services under this Agreement. Notwithstanding the aforesaid, the Parties agree that the DMICDC-NSPCL shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.

## **7.3 Retention Money**

- 7.3.1 From every payment for Works due to the Contractor in accordance with the provisions of Article 18, the DMICDC-NSPCL shall deduct ten per cent (10%) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (herein after called as the "**Retention Money**").
- 7.3.2 Upon occurrence of a Contractor's Default, the DMICDC-NSPCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.
- 7.3.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided, require the DMICDC-NSPCL to refund the Retention Money deducted by the DMICDC-NSPCL under the provisions of Clause 7.3.1. Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.
- 7.3.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the DMICDC-NSPCL shall discharge the bank guarantees furnished by the Contractor under the provisions of Clause 7.3.3 and refund the balance of Retention Money remaining with the DMICDC-NSPCL after adjusting the amounts appropriated under the provisions of Clause 7.3.2 and the amounts refunded under the provisions of Clause 7.3.3.



- 7.3.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 7.3 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under **Article 22**.

## ARTICLE 8

### RIGHT OF WAY

#### 8.1 The Site

The site of the 5 x 500 KVA Engineered DG Power System (the “**Site**”) shall comprise the site described in **Annexure No. 7** in respect of which the Right of Way shall be provided by DMICDC-NSPCL to the Contractor. The DMICDC-NSPCL shall be responsible for:

- (a) acquiring and providing Right of Way on the Site in accordance with the alignment finalized by the DMICDC-NSPCL, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- (b) Obtaining licenses and permits for environment clearance for the DG Power System.

#### 8.2 Delivery of Possession of Site to the Contractor

- 8.2.1 Signing of the Agreement, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid evidence of giving the Right of Way to the Contractor and possession of the site for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

#### 8.3 Damages for Delay in Handing Over the Site

- 8.3.1 In the event, the Right of Way to any part of the Site or site is not provided by the DMICDC-NSPCL on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, DMICDC-NSPCL shall extend such delayed period to commission the project.

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 10.3 shall be restricted only to failure of the DMICDC-NSPCL to provide the Right of Way.

- 8.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Right of Way is granted within 90 (ninety) days of the Appointed Date or with respect to the parts of the Site, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 8.3.1.

#### 8.4 Site to be free from Encumbrances

Subject to the provisions of Clause 8.2, the Site shall be made available by the DMICDC-NSPCL to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the DMICDC-NSPCL on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to

be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

#### **8.5 Protection of Site from Encroachments**

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 8.2, and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security threat over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the DMICDC-NSPCL and undertake its removal at its own cost and expenses.

#### **8.6 Special / Temporary Right of Way**

The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the DG Power System and the performance of its obligations under this Agreement.

#### **8.7 Access to DMICDC-NSPCL and DMICDC-NSPCL's PMC Consultant**

8.7.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of DMICDC-NSPCL and DMICDC-NSPCL's PMC Consultant and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the DMICDC-NSPCL has un-restricted access to the Site during any emergency situation, as decided by the DMICDC-NSPCL's PMC Consultant.

#### **8.8 Geological and Archaeological Finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the DMICDC-NSPCL or the concerned Government Instrumentality.

The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the DMICDC-NSPCL forthwith of the discovery thereof and comply with such

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instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the DMICDC-NSPCL. It is also agreed that the DMICDC-NSPCL shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

## ARTICLE 9

### UTILITIES AND TREES

#### 9.1 Shifting of Obstructing Utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the DMICDC-NSPCL, cause shifting of any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Operation and Maintenance of the DG Power System in accordance with this Agreement. The actual cost of such shifting, as approved and communicated by the entity owning the utility, shall be paid by the Contractor and reimbursed by the DMICDC-NSPCL to the Contractor. In the event of any delay in such shifting by the entity owning the utility beyond a period of 30 (thirty) days from the date of notice by the Contractor to the entity owning the utility and to the DMICDC-NSPCL, the Contractor shall be entitled to Damages in a sum calculated in accordance specified in Clause 8.3.1 for the period of delay, and to Time Extension in accordance with Clause 10.4 for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

#### 9.2 New Utilities

In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.1, the Contractor shall be entitled to a reasonable Time Extension as determined by the DMICDC-NSPCL's PMC Consultant.

#### 9.3 Felling of Trees

The DMICDC-NSPCL shall assist the Contractor in obtaining the Applicable Permits for felling of trees to be identified by DMICDC-NSPCL for this purpose if and only if such trees cause a Material Adverse Effect on the construction or operation and maintenance of the DG Power System (if required). For the avoidance of doubt, the Parties agree that if any felling of trees hereunder requires permission, the Applicable Permit thereof shall be procured by the DMICDC-NSPCL within the time specified in the Agreement.

## ARTICLE 10

### DESIGN AND CONSTRUCTION OF THE DG POWER SYSTEM

#### 10.1 Obligations prior to Commencement of Works

10.1.1 Within 15 (fifteen) days of the issuance of Letter of Award (LoA), the Contractor shall:

- (a) Appoint its representative, duly authorised to deal with the DMICDC-NSPCL in respect of all matters under or arising out of or relating to this Agreement;
- (b) Appoint a design director (the “**Design Director**”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs, drawings for his scope of work;
- (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) Make its own arrangements for quarrying of materials needed for the DG Power System under and in accordance with the Applicable Laws and Applicable Permits.

10.1.2 The DMICDC-NSPCL has, prior to the date of this Agreement, appointed a representative (the “**DMICDC-NSPCL’s PMC Consultant**”) to discharge the functions and duties specified in this Agreement. DMICDC-NSPCL shall notify to the Contractor the name, address DMICDC-NSPCL’s PMC Consultant forthwith.

10.1.3 Within 15 (fifteen) days of the execution of this Agreement, the Contractor shall submit to the DMICDC-NSPCL and **DMICDC-NSPCL’s** PMC Consultant, a programme (the “**Programme**”) for the Works, developed using networking techniques like MS Project or Primavera software’s.

#### 10.2 Design and Drawings

10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Tender Drawings, Standards set forth in **Appendix 3**. In the event, the Contractor requires any relaxation in design standards, the alternative design criteria for such section shall be provided for review of the DMICDC-NSPCL’s PMC Consultant.

#### 10.3 Construction of the DG Power System

10.3.1 The Contractor shall construct the DG Power System as per the technical specification provided in bid / tender document. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the Works. From the Appointed Date shall be the scheduled completion date (the “**Scheduled Completion Date**”) and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.

10.3.2 The Contractor shall construct the DG Power System in accordance with the Project Completion Schedule set forth in **Article-2.2**. In the event, that the Contractor fails to

achieve any Project Milestone or the Scheduled Completion Date within the specified days from the date, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the DMICDC-NSPCL, **it shall pay Damages to the DMICDC-NSPCL** of a sum calculated at the rate of 0.05% (zero point zero five percent) of the Contract Price for delay of each day reckoned from the date specified; and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this Clause 10.3.2 shall be refunded by the DMICDC-NSPCL to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause shall be without prejudice to the rights of the DMICDC-NSPCL under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in Clause 10.4.2.

- 10.3.3 The DMICDC-NSPCL shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the DMICDC-NSPCL without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 15 (fifteen) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed **5% (five percent)** of the Contract Price.

#### **10.4 Extension of Time for Completion**

- 10.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:
- a) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under **Article 13**);
  - (b) occurrence of a Force Majeure Event;
  - (c) any delay, impediment or prevention caused by or attributable to the DMICDC-NSPCL, the DMICDC-NSPCL's personnel or the DMICDC-NSPCL's other Contractors on the Site; and
  - (d) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.
- 10.4.2 The Contractor shall, no later than 7 (seven) business days from the occurrence of an event or circumstance specified above clause 10.4.1, inform the DMICDC-NSPCL's PMC Consultant by notice in writing, with a copy to the DMICDC-NSPCL, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 7 (seven) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance. Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the



aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.

- 10.4.3 In the event of the failure of the Contractor to issue to the DMICDC-NSPCL's PMC Consultant a notice in accordance with the provisions of Clause 10.4.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.4.4, the DMICDC-NSPCL shall be discharged from all liability in connection with the claim.
- 10.4.4 The DMICDC-NSPCL's PMC Consultant shall, on receipt of the claim in accordance with the provisions of Clause 10.4.2, examine the claim expeditiously within the time frame specified herein. In the event, the DMICDC-NSPCL's PMC Consultant requires any clarifications to examine the claim, the DMICDC-NSPCL's PMC Consultant shall seek the same within 7 (seven) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the DMICDC-NSPCL's PMC Consultant requesting for clarification, furnish the same to the DMICDC-NSPCL's PMC Consultant within 3 (three) days thereof. The DMICDC-NSPCL's PMC Consultant shall, within a period of 20 (twenty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension. Provided that when determining each extension of time under this Clause 10.4 the DMICDC-NSPCL's PMC Consultant shall review previous determinations and may increase, but shall not decrease, the total Time Extension.
- 10.4.5 If the event or circumstance giving rise to the notice has a continuing effect:
- (a) a fully detailed claim shall be considered as interim;
  - (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the DMICDC-NSPCL's PMC Consultant may reasonably require; and
  - (c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the DMICDC-NSPCL's PMC Consultant shall examine the same in accordance with the provisions of Clause 10.4.4 within a period of 30 (thirty) days of the receipt thereof.

## **10.5 Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the DMICDC-NSPCL in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the DMICDC-NSPCL under this Agreement including the right to termination under Clause 22.1.1.



## 10.6 Operation and Maintenance Manual

No later than 30 (Thirty) days prior to the Project Completion Date, the Contractor shall, in consultation with the DMICDC-NSPCL's PMC Consultant evolve a operation and maintenance manual (the "**Operation and Maintenance Manual**") for the regular and preventive maintenance of the DG Power System in conformity with the Specifications and Standards, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the DMICDC-NSPCL's PMC Consultant. The DMICDC-NSPCL's PMC Consultant shall review the Operation and Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

## ARTICLE 11

### QUALITY ASSURANCE, MONITORING AND SUPERVISION

#### 11.1 Quality of Materials and Workmanship

The Contractor shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

#### 11.2 Quality Control System

11.2.1 The Contractor shall establish a Quality Control Mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”) annexed at **Appendix 4**.

11.2.2 The Contractor shall, within 30 (thirty) days issuance of Letter of Award (LoA), submit to the DMICDC-NSPCL’s PMC Consultant the detailed Quality Assurance Plans which shall include the following:

- a. organization, duties and responsibilities, procedures, inspections and documentation;
- b. field quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and pro forma for testing and calibration in accordance with the Specifications for DG PV Power Plant issued by DMICDC-NSPCL relevant IS / IEC standards and Good Industry Practice; and
- c. Internal quality audit system.
- d. Manufacturing Quality Plan of the equipment manufacturers for monitoring the stage wise inspection, testing and acceptance of the equipment to be supplied by the bidder.

The DMICDC-NSPCL’s PMC Consultant shall convey its comments to the Contractor within a period of 10 (ten) days of receipt of the Contractor’s QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

11.2.3 The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

11.2.4 The cost of testing of Construction, Materials and workmanship under this **Article 11** shall be borne by the Contractor.

#### 11.3 Methodology

The Contractor shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the DMICDC-NSPCL’s PMC Consultant for review the methodology proposed to be adopted for executing the Works, giving details of

equipment to be deployed, site management and measures for ensuring safety. The DMICDC-NSPCL's PMC Consultant shall complete the review and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

#### **11.4 Inspection and Technical Audit by the DMICDC-NSPCL**

The DMICDC-NSPCL or any representative authorized by the DMICDC-NSPCL in this behalf may inspect and review the progress and quality of the construction of DG Power System and issue appropriate directions to the DMICDC-NSPCL's PMC Consultant and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

#### **11.5 External Technical Audit**

At any time during construction, the DMICDC-NSPCL may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the DMICDC-NSPCL, shall be notified to the Contractor and the DMICDC-NSPCL's PMC Consultant for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the DMICDC-NSPCL's PMC Consultant under this Agreement.

#### **11.6 Inspection of Construction Records**

The DMICDC-NSPCL shall have the right to inspect any or all records, papers, documents, etc of the Contractor relating to the Project.

#### **11.7 Fortnightly Progress Reports**

During the Construction Period, the Contractor shall, no later than 3 (three) days after the close of each fortnight, furnish to the DMICDC-NSPCL and the DMICDC-NSPCL's PMC Consultant a fortnightly report on progress of the Works and shall promptly give such other relevant information as may be required by the DMICDC-NSPCL's PMC Consultant

#### **11.8 Inspection**

11.8.1 The DMICDC-NSPCL's PMC Consultant and its authorized representative shall at all reasonable times:

- a. have full access to all parts of the Site and to all places from where natural materials are being obtained for use in the Works; and
- b. during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

11.8.2 The Contractor shall give the DMICDC-NSPCL's PMC Consultant and its authorized agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

11.8.3 The DMICDC-NSPCL's PMC Consultant shall submit a monthly inspection report (the "**Inspection Report**") to the DMICDC-NSPCL and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the DMICDC-NSPCL's PMC Consultant shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

### **11.9 Samples**

The Contractor shall submit the following samples of cube test reports to the DMICDC-NSPCL's PMC Consultant during construction of the foundations:

- a. Cube test reports and standard samples of foundation materials; and
- b. Samples of such other Materials as the DMICDC-NSPCL's PMC Consultant may require.

### **11.10 Inspection and Testing of Materials before Despatch**

- 11.10.1 Contractor shall send inspection call for all the dispatches to be effected in advance at least 7 days prior to dispatch.
- 11.10.2 Upon receiving written clearance from DMICDC-NSPCL dispatch can be effected. Waiver of inspection will be at the sole discretion of the DMICDC-NSPCL and such clearance shall be obtained in writing from DMICDC-NSPCL or representative by contractor.

### **11.11 Examination of Work Before Covering Up**

In respect of the work which the DMICDC-NSPCL's PMC Consultant is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the DMICDC-NSPCL's PMC Consultant whenever any such work is ready and before it is covered up. The DMICDC-NSPCL's PMC Consultant shall then either carry out the examination, inspection or testing without unreasonable delay or promptly give notice to the Contractor that the DMICDC-NSPCL's PMC Consultant does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the DMICDC-NSPCL's PMC Consultant to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the DMICDC-NSPCL's PMC Consultant within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the DMICDC-NSPCL's PMC Consultant, the Contractor shall be entitled to assume that the DMICDC-NSPCL's PMC Consultant would not undertake the said inspection.

### **11.12 Test Certificate**

Contractor shall submit Test Certificates and Type Test Reports/certificates as applicable as per QAP for all the goods and components parts.

### 11.13 Tests

- 11.13.1 For determining that the Works conform to the Specifications and Standards, the DMICDC-NSPCL's PMC Consultant shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement and in accordance with Good Industry Practice for quality assurance. The test checks by the DMICDC-NSPCL's PMC Consultant shall comprise at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 11.13.2 In the event that results of any tests conducted under this Clause 11.13 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the DMICDC-NSPCL's PMC Consultant in this behalf. The DMICDC-NSPCL's PMC Consultant shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

### 11.14 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, Design or Workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the DMICDC-NSPCL's PMC Consultant shall reject the Plant, Materials, Design or Workmanship by giving notice to the Contractor with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the DMICDC-NSPCL's PMC Consultant requires the Plant, Materials, Design or Workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the DMICDC-NSPCL to incur any additional costs, such cost shall be recoverable by the DMICDC-NSPCL from the Contractor; and may be deducted by the DMICDC-NSPCL from any monies due to be paid to the Contractor.

### 11.15 Remedial Work

- 11.15.1 Notwithstanding any previous test or certification, the DMICDC-NSPCL's PMC Consultant may instruct the Contractor to:
- a. remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
  - b. remove and re-execute any work which is not in accordance with and the provisions of this Agreement and the Specification and Standards; and
  - c. execute any work which is urgently required for the safety of the DG Power System, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a **Force Majeure Event**, the provisions of **Article 20.6** shall apply.

- 11.15.2 If the Contractor fails to comply with the instructions issued by the DMICDC-NSPCL's PMC Consultant under Clause 11.15.1, within the time specified in the DMICDC-NSPCL's PMC Consultant's notice or as mutually agreed, the DMICDC-NSPCL's PMC Consultant may advise the DMICDC-NSPCL to have the work executed by another agency. The cost so incurred by the DMICDC-NSPCL for undertaking such work shall, without prejudice to the rights of the DMICDC-NSPCL to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the DMICDC-NSPCL from any monies due to be paid to the Contractor.

#### **11.16 Delays During Construction**

In the event the Contractor does not achieve any of the Project Milestones or the DMICDC-NSPCL's PMC Consultant has reasonably determined that the rate of progress of Works is such that Completion of the DG Power System is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 7 (seven) days of such notice, by a communication inform the DMICDC-NSPCL's PMC Consultant in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

#### **11.17 Quality Control Records and Documents**

The Contractor shall hand over to the DMICDC-NSPCL's PMC Consultant a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

#### **11.18 Video Recording / Photographs**

During the Construction Period, the Contractor shall provide to the DMICDC-NSPCL for every calendar quarter, a Video Recording / Photographs, which will be compiled into a 3 (three) hour compact disc or digital video disc/ Photographs, as the case may be, covering the status and progress of Works in that quarter. The video recording / Photographs shall be provided to the DMICDC-NSPCL no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

#### **11.19 Suspension of Unsafe Construction Works**

- 11.19.1 Upon recommendation of the DMICDC-NSPCL's PMC Consultant to this effect, the DMICDC-NSPCL may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the DMICDC-NSPCL's PMC Consultant, such work is unsafe and detrimental to the project.
- 11.19.2 The Contractor shall, pursuant to the notice under Clause 11.19.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the DMICDC-NSPCL and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the DMICDC-NSPCL's PMC Consultant to inspect such remedial measures forthwith and make a report to the DMICDC-NSPCL recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the DMICDC-NSPCL's PMC Consultant, the DMICDC-NSPCL shall either revoke such suspension or instruct the Contractor to carry out such other and further

remedial measures as may be necessary in the reasonable opinion of the DMICDC-NSPCL, and the procedure set forth in this Clause 11.19 shall be repeated until the suspension hereunder is revoked.

- 11.19.3 Subject to the provisions of Clause 20.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the DMICDC-NSPCL, the Preservation Costs shall be borne by the DMICDC-NSPCL.
- 11.19.4 If suspension of Works is for reasons not attributable to the Contractor, the DMICDC-NSPCL's PMC Consultant shall determine any Time Extension to which the Contractor is reasonably entitled.



## ARTICLE 12

### COMPLETION CERTIFICATE

#### 12.1 Tests on Completion

- 12.1.1 At least 30 (thirty) days prior to the likely completion of the DG Power System, or a Part thereof, the Contractor shall notify the **DMICDC-NSPCL's** PMC Consultant of its intent to subject the DG Power System or a Part thereof, to Tests. The date and time of each of the Tests shall be determined by the **DMICDC-NSPCL's** PMC Consultant in consultation with the Contractor and notified to the DMICDC-NSPCL who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the **DMICDC-NSPCL's** PMC Consultant or provide such assistance as the **DMICDC-NSPCL's** PMC Consultant may reasonably require for conducting the Tests. In the event of the Contractor and the **DMICDC-NSPCL's** PMC Consultant failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 7 (seven) days' notice to the **DMICDC-NSPCL's** PMC Consultant.
- 12.1.2 All Tests shall be conducted in accordance with the applicable standards. The **DMICDC-NSPCL's** PMC Consultant shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be and review the results of the Tests to determine compliance of the DG Power System or a part thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the **DMICDC-NSPCL's** PMC Consultant during the course of any Test that the performance of the DG Power System or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defect or deficiencies. Upon completion of each Test, the **DMICDC-NSPCL's** PMC Consultant shall provide to the Contractor and the DMICDC-NSPCL copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the **DMICDC-NSPCL's** PMC Consultant may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the DG Power System or Part thereof with the Specifications and Standards.

#### 12.2 Provisional Certificate

- 12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the DG Power System, save and except the Works for which Time Extension has been granted under Clause 10.4, the **DMICDC-NSPCL's** PMC Consultant shall at the request of the Contractor, issue a Provisional Certificate of completion substantially within thirty (30) days, in the form set forth in **Article 12.2**(the "**Provisional Certificate**") if the Tests for and in respect of the completed works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (herein after called as the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the DG Power System for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of issues of Provisional Certificate, and those parts of the works in respect of which time extension has been granted, within the extended



period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all works for which time extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections, if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed works cannot be safely and reliably placed in service of the Users thereof.

- 12.2.2 Upon issue of Provisional Certificate, the provisions of **Articles 14 and Article 16** (Defects Liability) shall apply to the completed parts of the DG Power System and the property and ownership of all such completed Works shall vest in the DMICDC-NSPCL.
- 12.2.3 If the **DMICDC-NSPCL's** PMC Consultant determines that the DG Power System or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the DMICDC-NSPCL and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this **Article 12**.
- 12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the DMICDC-NSPCL may, at any time after receiving a report from the **DMICDC-NSPCL's** PMC Consultant under that Clause, direct the **DMICDC-NSPCL's** PMC Consultant to issue a Provisional Certificate under Clause 12.2.1 and such direction shall be complied forthwith.
- 12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 18.1 by the amount attributable to works which have been withdrawn.

### **12.3 Completion of Remaining Works**

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons solely attributable to the DMICDC-NSPCL or due to Force Majeure, the DMICDC-NSPCL shall be entitled to recover Damages from the Contractor in accordance with the provisions of Clause 10.3.2 of this Agreement.

### **12.4 Completion Certificate - Final Acceptance Certificate (FAC)**

- 12.4.1 Upon completion of all works, including the items specified in the Punch List and the **DMICDC-NSPCL's** PMC Consultant determining the Tests to be successful, it shall forthwith issue within thirty (30) days to the Contractor and the DMICDC-NSPCL a certificate substantially in the form set forth in Article 12.4 (the "**Completion Certificate - FAC**").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the DMICDC-NSPCL may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from

the Contractor an amount equal to 125% (one hundred and twenty five per cent) of the actual cost of removal incurred by the **DMICDC-NSPCL**.

- 12.4.3 Without prejudice to the obligations of the Contractor specified in **Articles 14 and Article 17**, the property and ownership of all the completed Works forming part of the DG Power System shall vest in the **DMICDC-NSPCL**.

#### **12.5 Rescheduling of Tests**

If the **DMICDC-NSPCLs** PMC Consultant certifies to the DMICDC-NSPCL and the Contractor that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## ARTICLE 13

### CHANGE OF SCOPE

#### 13.1 Change of Scope

13.1.1 The DMICDC-NSPCL may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications / alterations to the Works ("**Change of Scope**") before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this **Article 13**.

13.1.2 Change of Scope shall mean:

- (a) Change in specifications of any item of Works;
- (b) any additional/deletion of work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the DMICDC-NSPCL of executing, maintaining or operating the DG Power System, (iii) improve the efficiency or value to the DMICDC-NSPCL of the completed DG Power System, or (iv) otherwise be of benefit to the **DMICDC-NSPCL**, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details and the amount of reduction in the Contract Price to the DMICDC-NSPCL to consider such Change of Scope. The DMICDC-NSPCL shall, within 10 (ten) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this **Article 13** or reject the proposal and inform the Contractor of its decision. For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without the express consent of the DMICDC-NSPCL, save and except any Works necessary for meeting any Emergency.

#### 13.2 Procedure for Change of Scope

13.2.1 In the event of the DMICDC-NSPCL determining that a Change of Scope is necessary, it may direct the **DMICDC-NSPCL's** PMC Consultant to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated there under (the "**Change of Scope Notice**").

13.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the DMICDC-NSPCL and the **DMICDC-NSPCL's** PMC Consultant such information as is necessary, together with preliminary documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:

- (i) break down of the quantities, unit rates and cost for different items of work;
- (ii) proposed design for the Change of Scope; and
- (iii) proposed modifications, if any, to the Project Completion Schedule of the DG Power System. For the avoidance of doubt, the Parties expressly agree that, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope, unless the parties mutually agree to the contrary, the total value of change of scope orders shall not exceed 20% (Twenty percent) of the Contract Price.

13.2.3 Upon reaching an agreement, the DMICDC-NSPCL shall issue an order (the “**Change of Scope Order**”) requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the DMICDC-NSPCL may:

- (a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the DMICDC-NSPCL till the matter is resolved in accordance with **Article 25**; or
- (b) proceed in accordance with Clause 13.5.

13.2.4 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works undertaken by the Contractor under this **Article 13**.

### **13.3 Payment for Change of Scope**

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

### **13.4 Restrictions on Change of Scope**

13.4.1 No Change of Scope shall be executed unless the DMICDC-NSPCL has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 20% (twenty per cent) of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this **Article 13**, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

### **13.5 Power of the DMICDC-NSPCL to undertake Works**

13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the DMICDC-NSPCL may, after giving notice to the Contractor and considering its reply thereto, award such works or services to

any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the **DMICDC-NSPCL**, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/or maintenance of works carried out by other agencies.

- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the DG Power System. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 13.5.

## ARTICLE 14

### MAINTENANCE OF 5 X 500 KVA ENGINEERED DG POWER SYSTEM

#### 14.1 5 X 500 KVA Engineered Diesel Generator Sets

The Contractor shall provide experienced, non-expatriate technical support through its personnel during the Term of this contract to perform the Maintenance of the plant.

The scope of services to be provided by the Contractor during the Maintenance period shall include, but not limited to, the following:

##### 14.2.1 the Maintenance Contractor shall:

1. Deploy and supervise Maintenance and Repair of the Facility.
2. Strictly follow and maintain all the data collection procedures and records for the purpose of facilitating the data review and evaluation for the purpose of establishing the performance efficacy of the DG Plant..
3. Shall maintain the diesel generator sets in healthy working condition.
4. Shall ensure timely requests to the client for supply of any item outside the scope of the Maintenance contractor for efficient maintenance of the diesel generator power plant sections.
5. Shall arrange in advance the data collection formats and reporting formats for data submission to the client.
6. Attend within reasonable time-frame to any break-downs in the DG Plant

##### 14.2.2 DG Plant Maintenance for ten (10) years

Consequent to the issuance of the Final Acceptance Certificate by the client and commencement of the Operation & Maintenance period of the DG power plant, , the Maintenance Contractor shall :

1. Deploy and implement Maintenance and Repair of the Facility.
2. Strictly follow and maintain all the maintenance data, procedures, protocols and records for the purpose of facilitating the maintenance..
3. Shall maintain the diesel generator sets in healthy working condition.
4. Shall ensure timely requests to the client for supply of any item outside the scope of the maintenance contractor for efficient maintenance of the diesel generator power plant sections.
5. Shall arrange in advance the data collection formats and reporting formats for data submission to the client.
6. Attend within reasonable time-frame to any break-downs in the DG power plant
7. Shall be responsible for carrying out all routine and periodic inspections and maintenance activities. Carry out Annual Overhaul of the DG plant as per maintenance schedule. The cost of spares for the overhaul or breakdown shall be borne by the Client. However, the Client reserves the right to change to a

comprehensive maintenance policy ( which will include the supply of all spares ) at any time during the 10 Year Maintenance Period.

7. Administer and pay Contractor's personnel; and shall comply with the applicable Indian welfare/labour laws and other applicable laws relating to conditions of work and wages and rights, hours of work, and occupational health and safety and all other statutory requirements.
8. Ensure the safety of the Facility, and Contractor's staff employed at the Site through the development and observance of an appropriate safety program. All mandatory personal safety gear like safety shoes, safety helmets, electrical gloves for electrical staff, safety goggles wherever essential, etc shall be provided and made mandatory to the maintenance staff throughout the period of the Maintenance contract.
9. Deploy experienced and skilled professionals in the job of Maintenance of the Facility to ensure efficient maintenance, however Contractor shall also give adequate training to Owner's operation contractor.;
10. Contractor shall obtain all Clearances necessary for Contractor to do business and services in India, including Clearances required for any of its employees, contractors or sub-contractors.
11. Contractor shall, maintain existing procedures necessary to comply with all Directives, including those related to prevention of injury to persons or damage to property at and in connection with the Facility.
12. Procure and maintain the insurance as required hereof covering all manpower.
13. Contractor shall advise the client to keep the reasonable and agreed stock of the spares and consumables and procure the same as and when necessary.. Maintain and update Spare Parts lists during the Term / extended Term (if Applicable);
14. Assist to Maintain, control, store, inventory, order, receive and stock, as appropriate utilities, Spare Parts, tools, supplies, chemicals, lubricants and other consumables. Contractor has to store all inspected goods in well condition and tag it properly. On requirement, goods can be retrieved within reasonable time.
15. Monitor the quality and quantity of all goods, services and materials.
16. Manage Health, Safety and Environmental aspects, including all firefighting equipment. The fire engine and all fire related equipment as provided shall be kept in good working condition.
17. The Contractor shall procure at their own cost staff uniforms, safety equipment, all required Personal Protection Equipment (PPEs) for its personnel The S&M Contractor shall be responsible for the efficient and effective maintenance of the entire 5 X 500 KVA DG power plant and equipments therein.
18. The S&M Contractor shall bear all cost pertaining to provisions of safety items, uniform, computer or other office equipments etc of their employees The Contractor shall manage and perform maintenance of the Facility in accordance to the pre-decided and/or supplier recommended maintenance cycle of the Facility equipment and its various components in accordance to prudent industrial practice.
19. Any abnormalities in facility have to be informed by S&M Contractor to owner by telephone / mobile / email / sms etc. immediately and in writing within 08 hrs.
20. Predictive, breakdown preventive, routine maintenance and repairs; including periodic overhauls of all equipment;



**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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21. Unplanned major repair and maintenance;
22. Periodic scheduled outages and equipment inspections/ tests (including statutory / otherwise) major maintenance, repairs and overhauls (including procurement specification and requisition). Respective reports shall be given to the Owner.
23. Call any external agencies/additional personnel or OEM personnel for repairing/maintenance of the Facility or the part/equity thereof.
24. Co-ordinate the settings of all protective relays as required for safe and trouble-free operation of the DG Plant ;
- 25.
26. Prepare the data collection formats and other documentation as per the Maintenance plans and submit to the Owner the daily, fortnightly, monthly, Quarterly and Annually Maintenance Plans.
27. Keep Owner informed of the Project's electric generating capacity and of any impairment of its ability to generate electricity.
28. Notify the Owner promptly upon obtaining knowledge of any potential warranty claim;
29. Notify the Owner promptly upon obtaining knowledge of any event which may give rise to a claim under an insurance policy maintained by the Owner or the Contractor and prepare such information as is required relating to Facility operations and costs to submit insurance claims and assist the Owner in submitting and pursuing such claims;
30. Participate in meetings as and when requested by the Owner with respect to issues relating to the Maintenance and Repair of the Facility;
31. Prepare any reports to Client / any other agency designated by the Client.
32. The Contractor shall maintain the DG Power Plant including its associated tanks, pumps and pipelines, control panels, etc. for a period of 10 years from the date of PAC and till the 10<sup>th</sup> Anniversary of the PAC.
33. The Contractor will furnish necessary details regarding technical competence, qualification and number of different grades of personnel to be deputed at site along with proposed maintenance (preventive) schedule for a period of 10 years from the date of Final Acceptance Testing.
34. The maintenance staff of the Contractor shall be available on call for 24 hours every day
35. The Contractor's representatives/employees shall conform to all general regulations in force at site and to any special conditions affecting by local administration issued by Owner.
36. Owner reserves the right to ask the Contractor to remove / transfer any staff of the Contractor from site without assigning any reason whatsoever. Instructions issued in writing to the Contractor in this matter shall be binding and the Contractor shall replace the transferred / removed person with a suitable person immediately.
37. All persons deployed by the Contractor for regular Maintenance must remain in proper uniform while on duty. The Contractor shall supply uniforms, raincoats, toolset, gloves, gumboots and other items required for carrying out the services.
38. Owner shall have power to disallow any maintenance personnel, if found unsuitable. The Contractor shall have to replace such persons within 24 hours.



39. The contractor shall ensure that all safety measures are taken at the site to avoid the accidents to his employees or his co-contractor's employees.
40. The contractor shall comply with the provision of all relevant Acts of Central or State Governments including payment of Wages Act 1936, Minimum Wages Act 1948, Employer's Liability Act 1938, Workmen's Compensation Act 1923, Industrial Dispute Act 1947, Maturity Benefit Act 1961, Employees State Insurance Act 1948, Contract Labor (Regulations & Abolishment) Act 1970, Companies Act 1956, Companies Act 2013 as the extent applicable or any modification thereof or any other law relating whereto and rules made there under from time to time.
41. In order to ensure longevity, safety of the core equipment and optimum performance of the system the contractor should use only genuine OEM spares of high quality standards.
42. The Contractor shall immediately report the accidents, if any, to the Engineer In charge & to all the concerned authorities as per prevailing laws of the state.
43. The Contractor shall provide his maintenance staff at the power Plant for day-to-day Operation and Maintenance. The maintenance personnel shall be qualified, certified by competent authorities and well trained so that they can handle any type of maintenance quickly and timely. The responsibility of providing suitable Personal Protection Equipments rests solely with the Contractor.
44. The security of the DG Power Plant will rest with the Contractor, till such time, the DG power plant is not handed over to the Owner.
45. The maintenance personnel shall be in a position to check and test all the equipment regularly, so that, preventive maintenance, could be taken well in advance to save any equipment from damage. Abnormal behavior of any equipment shall be brought to the notice of Owner not later than 2 hours for taking appropriate action.
46. All repairing & replacement works are to be completed by the Contractor within 24 hours from the time of occurrence of fault or defect. If it is not possible to set right the equipment within this time, the Contractor shall notify the Owner indicating nature of fault & cause of damage etc. within 12 hours from the time of occurrence of the fault.
47. During Maintenance, if there is any loss or damage to any component of the DG power plant due to miss-management / miss-handling or due to any other reasons, what so ever, the Contractor shall be responsible for immediate replacement / rectification of the same. The damaged component may be repaired, if it is understood after examination that after repairing performance of the components shall not be degraded, otherwise the defective components shall have to be replaced by new one without any extra cost to the Owner.
48. Normal and preventive maintenance of the DG Power Plant such as cleaning of engine surface, tightening of all electrical connections, Line accessories, associated switch gear on the HT side.
49. Keeping & recording log sheet as per approved format for the DG Power Plant to be submitted after Final Acceptance Testing of the DG Power Plant..
50. The Contractor shall preserve all recorded data in either manual or through computer format and shall submit to Owner quarterly.
51. During 10 years maintenance period, the Contractor shall refill the Liquefied CO<sub>2</sub> Extinguisher as per manufacturer's recommendation before expiry.

52. Mandatory spares are listed at relevant schedule of Bid Proposal sheet are those which are considered essential by the Owner. The Owner reserves the right to buy any or all of these spares. The S&M Contractor shall furnish the itemized and total prices.
53. In compliance with the requirements of tender documents, the prices for mandatory spares must be given separately, and shall be used for bid evaluation purposes. All mandatory spares shall be delivered at site. Bidder shall maintain the mandatory spares, consumables & various components of SPV plant for smooth running during O&M period. Bidder shall also replenish the consumed mandatory spares during the O&M period to maintain the stock. The bidder shall also mention the source of supply.
54. Repairing or replacement whatever necessary, and cleaning of all joineries as and when necessary.
55. Any Maintenance work which is not mentioned or included here but necessary for the plant shall be undertaken by the Contractor.
56. In case of any untoward accident /incident /mishap at the project location the Owner shall not be responsible for the same and any consequence raised / occurred due the same shall be dealt solely by the Contractor Lodging of any FIR / any legal matter etc. shall be solely handled / managed by the Contractor.

#### 14.2.4.3 DIESEL STORAGE TANK

- a). The S&M Contractor shall be responsible for providing the diesel storage tank alongwith mandatory civil structures, pumps, filters etc. b). The diesel storage tank shall be provided with a float level indicator mounted on the graduated scale in litres / kilo litres for assessing the fuel capacity available in the fuel from outside.
- c). A level gauge also shall be provided for recording the actual level of the fuel inside the tank. The gauge glass pipe shall be of toughened material, fully transparent and the inner surface shall not get opaque by the contact of the fuel (diesel), throughout its life cycle. It should be able to withstand the weather conditions in -the State of Rajasthan in Alwar District in all seasons throughout the year.
- d). Lightning protection against lightning strikes during the monsoon season shall be provided for the diesel storage tank.
- e). Separate earthing electrode stations shall be provided for the lightning protection system
- f). The tank shell shall be earthed at two locations and the earth strips connected to the nearest earthing grid. The GI earth strip shall not be less than 50 x 6 mm size. Minimum two (2) earthing electrodes shall be provided on either side of the tank for the tank shall earthing. Both these earthing electrodes shall be inter-connected.

## ARTICLE 15

### SUPERVISION AND MONITORING DURING MAINTENANCE

#### 15.1 Inspection by the Contractor

15.1.1 The **DMICDC-NSPCL's** PMC Consultant shall undertake regular inspections to evaluate continuously the compliance with the Operation and Maintenance Requirements.

#### 15.2 Inspection and Payments

15.2.1 The **DMICDC-NSPCL's** PMC Consultant may inspect the DG Power System at any time, but at least once every month, to ensure compliance with the Maintenance Requirements. It shall make a report of such inspection (“**Maintenance Inspection Report**”) stating in reasonable detail the Defects or deficiencies, if any, with particular reference to the Operation and Maintenance Requirements, the Operation and Maintenance Manual, and the Operation and Maintenance Programme, and send a copy thereof to the **DMICDC-NSPCL** and the Contractor within 10 (ten) days of such inspection.

15.2.2 After the Contractor submits to the **DMICDC-NSPCL's** PMC Consultant the Monthly Maintenance Statement for the DG Power System pursuant to Clause 19.6, the **DMICDC-NSPCL's** PMC Consultant shall carry out an inspection within 10 (ten) days to certify the amount payable to the Contractor. The **DMICDC-NSPCL's** PMC Consultant shall inform the Contractor of its intention to carry out the inspection at least 3 (three) business days in advance of such inspection. The Contractor shall assist the **DMICDC-NSPCL's** PMC Consultant in verifying compliance with the Maintenance Requirements.

15.2.3 For each case of non-compliance of Maintenance Requirements as specified in the inspection report of the **DMICDC-NSPCL's** PMC Consultant, the **DMICDC-NSPCL's** PMC Consultant shall reduce the payment of Maintenance fees to the extent of unattended works.

15.2.4 Any deduction made on account of non-compliance will not be paid subsequently even after establishing the compliance thereof. Such deductions will continue to be made every month until the compliance is procured.

#### 15.3 Tests

For determining that the DG Power System conforms to the Maintenance Requirements, the **DMICDC-NSPCL's** PMC Consultant shall require the Contractor to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Contractor shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the **DMICDC-NSPCL's** PMC Consultant and furnish the results of such tests forthwith to the **DMICDC-NSPCL's** PMC Consultant.

#### **15.4 Reports of Unusual Occurrence**

The Contractor shall, during the Maintenance Period, send to the DMICDC-NSPCL and the **DMICDC-NSPCL**'s PMC Consultant, by facsimile or e-mail, a report stating accidents and unusual occurrences on the DG Power System relating to the safety and security of the Users . A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of month. For the purposes of this Clause 15.4, accidents and unusual occurrences on the DG Power System shall include:

- (a) accident, death or severe injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) flooding of site; and
- (d) any other unusual occurrence.

## ARTICLE 16

### DEFECTS LIABILITY

#### 16.1 Defects Liability Period

- 16.1.1 The Contractor shall be responsible for all the defects and deficiencies, except usual wear and tear in the DG Power System or any part thereof, till the expiry of a period of 3 (three) months commencing from the date of Provisional Certificate (the “**Defects Liability Period**”). Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence on certification by the PMC Consultant on the completion of the equipment erection and issuance of the punch list of defects. The Final Acceptance Certificate (FAC) shall be issued on rectification of all the defects and certification by the PMC Consultant to that effect and issuance of the Final Acceptance Certificate by DMICDC-NSPCL. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the DG Power System or any part thereof shall form a part of the Maintenance obligations of the Contractor as specified in **Article 14**.

#### 16.2 Remediating Defects

The Contractor shall repair or rectify all defects and deficiencies observed by the **DMICDC-NSPCL**'s PMC Consultant during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the **DMICDC-NSPCL**'s PMC Consultant in this behalf, or within such reasonable period as may be determined by the **DMICDC-NSPCL**'s PMC Consultant at the request of the Contractor, in accordance with Good Industry Practice.

#### 16.3 Cost of Remediating Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 16.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the Project;
- (b) Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper operation and maintenance during construction of the DG Power System by the Contractor; and/ or
- (d) failure by the Contractor to comply with any other obligation under this Agreement.

#### 16.4 Contractor's Failure to Rectify Defects

In the event that, the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 16.2, the DMICDC-NSPCL shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the DG Power System conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the DMICDC-NSPCL and the Contractor, be determined by the **DMICDC-NSPCL**'s PMC Consultant. The cost so determined and an amount equal

to 20% (twenty percent) of the cost as Damages shall be recoverable by the DMICDC-NSPCL from the Contractor and may be deducted by the DMICDC-NSPCL from any monies due to the Contractor.

#### **16.5 Contractor to Search Cause**

- 16.5.1 The **DMICDC-NSPCL**'s PMC Consultant may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.
- 16.5.2 In the event any Defect identified under Clause 16.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the **DMICDC-NSPCL**'s PMC Consultant, and shall bear the cost of the examination and rectification of such Defect.
- 16.5.3 In the event such Defect is not attributable to the Contractor, the by **DMICDC-NSPCL**'s PMC Consultant shall, after due consultation with the DMICDC-NSPCL and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the **DMICDC-NSPCL**, and the Contractor shall be entitled to payment of such costs by the **DMICDC-NSPCL**.

#### **16.6 Extension of Defects Liability Period**

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 16.2 have been remedied.

## ARTICLE 17

### DMICDC-NSPCL's PMC CONSULTANT

#### 17.1 Appointment of the DMICDC-NSPCL's PMC Consultant

- 17.1.1 The DMICDC-NSPCL has appointed a consulting engineering firm to be the PMC Consultant under this Agreement (the "**DMICDC-NSPCL's PMC Consultant**").
- 17.1.2 The DMICDC-NSPCL shall notify the replacement of the **DMICDC-NSPCL's PMC Consultant** to the Contractor.
- 17.1.3 The staff of the DMICDC-NSPCL's PMC Consultant shall include suitably qualified engineers and other professionals who are competent to assist the **DMICDC-NSPCL's PMC Consultant** to carry out its duties.

#### 17.2 Duties of DMICDC-NSPCL and DMICDC-NSPCL's PMC Consultant

The **DMICDC-NSPCL's PMC Consultant** shall perform the duties and exercise the DMICDC-NSPCL in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the DMICDC-NSPCL before determining:

- (a) any Time Extension;
  - (b) any additional cost to be paid by the DMICDC-NSPCL to the Contractor;
  - (c) the Termination Payment; or
  - (d) any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding **Rs. 1,000,000** (Rs. ten lakh).
- 17.2.1 No decision or communication of the **DMICDC-NSPCL's PMC Consultant** shall be effective or valid unless it is accompanied by an attested true copy of the approval of the DMICDC-NSPCL for and in respect of any matter specified in Clause 17.2.1.
- 17.2.2 The **DMICDC-NSPCL's PMC Consultant** shall submit regular periodic reports, at least once every month, to the DMICDC-NSPCL in respect of its duties and functions under this Agreement. Such reports shall be submitted by the **DMICDC-NSPCL's PMC Consultant** within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the **DMICDC-NSPCL's PMC Consultant** shall include in its report, compliance of the recommendations of the Safety Consultant.

#### 17.3 Delegation by the DMICDC-NSPCL's PMC Consultant

- 17.3.1 The **DMICDC-NSPCL's PMC Consultant** may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to **DMICDC-NSPCL's PMC Consultant**, or may revoke any such delegation, under intimation to the DMICDC-NSPCL and the Contractor. Provided, however, that the **DMICDC-NSPCL's PMC Consultant** shall be responsible and liable for all actions and omissions of such personnel.
- 17.3.2 Any failure of the **DMICDC-NSPCL's PMC Consultant** to disapprove any work, Plant or Materials shall not constitute approval and shall therefore not prejudice the right of the DMICDC-NSPCL to reject the work, Plant or Materials, which is not in



accordance with the provisions of this Agreement and the Specifications and Standards.

- 17.3.3 Notwithstanding anything stated in Clause 17.3.1 above, the **DMICDC-NSPCL's PMC Consultant** shall not delegate the DMICDC-NSPCL to refer any matter for the DMICDC-NSPCL's prior approval wherever required in accordance with the provisions of Clause 17.2.

#### **17.4 Instructions of the DMICDC-NSPCL's PMC Consultant**

- 17.4.1 The **DMICDC-NSPCL's PMC Consultant** may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the **DMICDC-NSPCL's PMC Consultant** or from an assistant to whom appropriate DMICDC-NSPCL has been delegated under Clause 17.3.
- 17.4.2 The instructions issued by the **DMICDC-NSPCL's PMC Consultant** shall be in writing. However, if the **DMICDC-NSPCL's PMC Consultant** issues any oral instructions to the Contractor, it shall confirm in writing the oral instructions within 2 (two) working days of issuing them.
- 17.4.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 17.4.2, the Contractor shall seek the written confirmation of the oral instructions from the **DMICDC-NSPCL's PMC Consultant**. The Contractor shall obtain acknowledgement from the **DMICDC-NSPCL's PMC Consultant** of the communication seeking written confirmation. In case of failure of the DMICDC-NSPCL's PMC Consultant or its delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.
- 17.4.4 In case of any dispute on any of the instructions issued by the delegated assistant, the Contractor may refer the dispute to the **DMICDC-NSPCL's PMC Consultant**, who shall then confirm, reverse or vary the instructions within [3 (three)] business days of the dispute being referred.

#### **17.5 Determination by the DMICDC-NSPCL's PMC Consultant**

- 17.5.1 The **DMICDC-NSPCL's PMC Consultant** shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the **DMICDC-NSPCL's PMC Consultant**. If such agreement is not achieved, the **DMICDC-NSPCL's PMC Consultant** shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The **DMICDC-NSPCL's PMC Consultant** shall give notice to both the Parties of each agreement or determination, with supporting particulars.
- 17.5.2 Each Party shall give effect to each agreement or determination made by the **DMICDC-NSPCL's PMC Consultant** in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the **DMICDC-NSPCL's PMC Consultant**, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.



## ARTICLE 18

### Payments

#### 18.1 Contract Price:

The Contract Price for the entire scope of Work and supplies is fixed, on lump sum basis and will remain firm throughout the Contract Period. The awarded Contract Price is

Rs. \_\_\_\_\_( Rupees \_\_\_\_\_). The Contract price is not subject to any escalation and variation in price except as otherwise provided (mentioned).

Contract price agreed is Inclusive of all taxes, duties, levy etc., as per applicable rates at the time of raising the Invoice.

The contract is a lumpsum price contract and the payments will be released on completion particular stage / deliverable.

No C Form or any other Form will be issued to contractor by the DMICDC -NSPCL.

DMICDC-NSPCL shall carry out necessary deductions on account of TDS, WCT, Labour cess etc., as per the applicable laws and rates from the bill of contractor.

#### 18.2 Terms of Payment

The DMICDC-NSPCL shall pay the Contractor in the following manner and at the following times, on the basis of the Contract Price and Components.

All the payments will be released after issuance of certificate from **DMICDC-NSPCL's** PMC Consultant.

##### a) Payment terms for the work

**After signing the contract agreement to extent of 10% of contract value shall be paid as Mobilisation Advance against submission of Mobilisation Advance Bank Guarantee.**

Sr. No.	Deliverables	Stage payment, %
1	On Approval of all drawings for 5 X 500 KVA Engineered DG power System	Ten Percent (10%)
2	On Completion of Civil Works for DG Power System.	Ten Percent (10%)
3	Upon arrival of all the 5 Engineered DG sets at site.	Forty Percent (40%)
4	On Erection / Installation and Interconnection of equipment of all 5 units of DG Power System	Twenty Percent (20%)
5	On Completion, Testing and Commissioning of 5 X 500 KVA Engineered DG power System	Ten Percent (10%)
6	On Issuance of Final Acceptance Certificate (FAC) for 5 x 500 KVA Engineered DG Power System	Ten Percent (10%)

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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- Mobilisation Advance will be recovered as per the Clause No. 2.11.2.B.

Note: Bidder to submit the detailed item wise billing for prorated payment for Sr No. 2 to 7 shall be made on approval of break cost if required.

**Terms of payments for Maintenance work**

<b>Sr. No.</b>	<b>Deliverables</b>	<b>Stage payment, %</b>
	On submission of monthly progress report	The Fees for the Maintenance shall be paid in twelve equal monthly instalments of 1/12 (one twelfth) of the yearly AMC fees for 5 X 500 KVA Engineered DG power System. These payments shall be reckoned from the date of commencement of the Maintenance period for the power System.

## ARTICLE 19

### INSURANCE

#### 19.1 Equipment and Goods

All equipment / Goods shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor. DMICDC-NSPCL shall not be liable for any loss or damage, degradation, thereto, except to the extent any such loss or damage is caused solely by the **DMICDC-NSPCL**. Contractor at his sole discretion may maintain adequate, appropriate and prudent insurance cover with respect to such construction equipment. Any Insurance policy carried by the Contractor, any Sub-contractor or any third party on or in respect of any construction equipment shall provide for waiver of the underwriter's right to subrogation against **DMICDC-NSPCL**, the Financing parties, their assignees, subsidiaries, parent companies, affiliates, employees, insurers and underwriters. Contractor shall obtain adequate insurance to cover all goods and equipment.

#### 19.2 Statutory Insurance Benefits

Contractor shall maintain with respect to the Work to be done under the Contract, in each applicable jurisdiction, all statutory insurance benefits and other insurance required by law including, without limitation, unemployment Insurance.

#### 19.3 Insurance against Accident, etc. to Workmen and Other Insurances

Contractor shall, at its sole expense, insure and shall maintain Insurance as required by Indian and all other Applicable Laws for all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by Contractor or its Subcontractors for the purpose of the performance of the Work or supply of Goods. In addition, Contractor shall obtain and maintain all other Insurances required be obtaining and maintaining by him for fulfilling all his obligations under the Contract including Insurances against damages to designs and the like arising out of Services.

#### 19.4 Notice to DMICDC-NSPCL

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the **DMICDC-NSPCL**, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this **Article 19**. Within 15 (fifteen) days of receipt of such notice, DMICDC-NSPCL may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

#### 19.5 Evidence of Insurance Cover

- 19.5.1 All insurances obtained by the Contractor in accordance with this **Article 19** shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority

notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Authority. The Contractor shall act in accordance with the directions of **DMICDC-NSPCL**. Provided that the Contractor shall produce to DMICDC-NSPCL the insurance policies in force and the receipts for payment of the current premium.

- 19.5.2 The Contractor shall ensure the adequacy and validity of the insurance cover policies at all times in accordance with the provisions of this Agreement.

#### **19.6 Remedy for Failure to Insure**

If the Contractor fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the DMICDC-NSPCL shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

#### **19.7 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this **Article 19** shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, **DMICDC-NSPCL**, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### **19.8 Contractor's Waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, DMICDC-NSPCL and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **19.9 Cross Liabilities**

Any such insurance maintained or effected in pursuance of this **Article 19** shall include a cross liability clause such that the insurance shall apply to the Contractor and to DMICDC-NSPCL as separately insured.

#### **19.10 Accident or Injury to Workmen**

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that DMICDC-NSPCL shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, The Contractor shall indemnify and keep indemnified DMICDC-NSPCL from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which DMICDC-NSPCL shall not be liable.

#### **19.11 Insurance against Accident to Workmen**

The Contractor shall effect and maintain during the Agreement such insurances in compliance with the provisions of all statutes relating to Workmen Compensation as may be applicable and notified by Government of India and/or Government of Rajasthan, as may be required to insure the Contractor's personnel and any other persons employed by it on the DG Power System from and against any liability incurred in pursuance of this **Article 19**. Provided that for the purposes of this Clause 19.9, the Contractor's personnel / any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 19.11 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the DMICDC-NSPCL is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the **DMICDC-NSPCL**, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the **DMICDC-NSPCL**.

#### **19.12 Application of Insurance Proceeds**

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, re-construction, re-instatement, replacement, improvement, delivery or installation of the DG Power System and the provisions of this Agreement in respect of construction of works shall apply *mutatis mutandis* to the works undertaken out of the proceeds of insurance.

#### **19.13 Compliance with Policy Conditions**

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

## ARTICLE 20

### FORCE MAJEURE

#### 20.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 20.2, 20.3 and 20.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

#### 20.2 Non - Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site) or any other related event;
- (b) strikes or boycotts (other than those involving the Contractor, Subcontractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the DG Power System for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 20.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgment or order of any court of competent jurisdiction or statutory DMICDC-NSPCL made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the **DMICDC-NSPCL**;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

#### 20.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents construction of the DG Power System by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- (d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

#### **20.4 Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

#### **20.5 Duty to Report Force Majeure Event**

20.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 20 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

20.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable and in any event no later than 10 (ten) days after the Affected Party knew, or sought reasonably to have known, of its occurrence, and shall have given particulars of the probable material



effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

- 20.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 20.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **20.6 Effect of Force Majeure Event on the Agreement**

- 20.6.1 Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:
- (a) upon occurrence of a Non - Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
  - (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event and not exceeding the Insurance Cover for such Indirect Political Event shall be borne by the Contractor and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the DMICDC-NSPCL to the Contractor for the Force Majeure events; and
  - (c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the DMICDC-NSPCL to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

- 20.6.2 Save and except as expressly provided in this Article 20, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.
- 20.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

## **20.7 Termination Notice for Force Majeure Event**

- 20.7.1 If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this **Article 20** and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period,



whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **20.8 Termination Payment for Force Majeure Event**

20.8.1 In the event of this Agreement being terminated on account of a Non - Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 22.5.

Provided that in the event Termination occurs during the Maintenance Period, the **DMICDC-NSPCL's** PMC Consultant shall only determine the value of Works associated with Maintenance.

20.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- (a) any sums due and payable under Clause 22.5; and
- (b) the reasonable cost, as determined by the **DMICDC-NSPCL's** PMC Consultant, of the Plant and Materials procured by the Contractor and transferred to the DMICDC-NSPCL for use in Construction or O&M, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the **DMICDC-NSPCL's** PMC Consultant shall only determine the value of Works associated with Maintenance.

20.8.3 If Termination is on account of a Political Event, the DMICDC-NSPCL shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 22.6.2 as if it were a DMICDC-NSPCL default.

## **20.9 Dispute Resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **20.10 Excuse from Performance of Obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## ARTICLE 21

### SUSPENSION OF CONTRACTOR'S RIGHTS

#### 21.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the DMICDC-NSPCL shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or O&M or any part thereof, and (ii) carry out such Works or O&M itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the DMICDC-NSPCL to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

#### 21.2 DMICDC-NSPCL to Act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the DMICDC-NSPCL for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the DMICDC-NSPCL for all costs incurred during such period. The Contractor hereby licenses and sub-licenses respectively, the DMICDC-NSPCL or any other person authorized by it under Clause 21.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Contractor with respect to the DG Power System and its design, engineering, construction and operation & maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

#### 21.3 Revocation of Suspension

21.3.1 In the event that the DMICDC-NSPCL shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the DMICDC-NSPCL may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

21.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the DMICDC-NSPCL shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

#### 21.4 Termination

21.4.1 At any time during the period of Suspension under this **Article 22**, the Contractor may by notice require DMICDC-NSPCL to revoke the Suspension and issue a Termination Notice. DMICDC-NSPCL shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with **Article 22**.

21.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by DMICDC-NSPCL upon occurrence of a Contractor Default.

## ARTICLE 22

### TERMINATION

#### 22.1 Termination for Contractor Default

- 22.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days or less, the Contractor shall be deemed to be in default of this Agreement (herein after called as the “**Contractor Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the DMICDC-NSPCL or due to Force Majeure. The defaults referred to herein shall include:
- (a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
  - (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.2, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
  - (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule in Article 5.1.2, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
  - (d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the DG Power System without the prior written consent of the **DMICDC-NSPCL**;
  - (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the DMICDC-NSPCL’s PMC Consultant;
  - (f) the Project Completion Date does not occur within the period specified in Schedule in Article 5.1.2 for the Scheduled Completion Date, or any extension thereof;
  - (g) failure to complete the Punch List items within the periods stipulated therefore in Clause 12.2.1;
  - (h) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the DMICDC-NSPCL’s PMC Consultant;
  - (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Operation and Maintenance without the prior approval of the **DMICDC-NSPCL**;
  - (j) the Contractor creates any Encumbrance in breach of this Agreement;
  - (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
  - (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

- (m) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the **DMICDC-NSPCL**, a Material Adverse Effect;
- (n) a resolution for winding up of the Contractor is passed by its members, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (o) Any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- (p) the Contractor submits to the **DMICDC-NSPCL** any statement, notice or other document, in written or electronic form, which has a material effect on the **DMICDC-NSPCL**'s rights, obligations or interests and which is false in material particulars;
- (q) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (r) The Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the **DMICDC-NSPCL**.

22.1.2 Without prejudice to any other rights or remedies which the **DMICDC-NSPCL** may have under this Agreement, upon occurrence of a Contractor Default, the **DMICDC-NSPCL** shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the **DMICDC-NSPCL** shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

22.1.3 After termination of this Agreement for Contractor Default, the **DMICDC-NSPCL** may complete the Works and/or arrange for any other entities to do so. The **DMICDC-NSPCL** and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

## **22.2 Termination for DMICDC-NSPCL Default**

22.2.1 In the event that any of the defaults specified below shall have occurred, and the **DMICDC-NSPCL** fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the **DMICDC-NSPCL** shall be deemed to be in default of this Agreement (the "**DMICDC-NSPCL Default**") unless the default has occurred as a result of any breach of this Agreement

by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

- (a) The DMICDC-NSPCL commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- (b) The DMICDC-NSPCL has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- (c) The DMICDC-NSPCL has failed to provide, within a period of 30 (thirty) days from the Appointed Date, the environmental clearances required for construction of the DG Power System;
- (d) The DMICDC-NSPCL repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (e) The **DMICDC-NSPCL's** Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

22.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an DMICDC-NSPCL Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the **DMICDC-NSPCL**; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the DMICDC-NSPCL of its intention to issue the Termination Notice and grant 15 (fifteen) days to the DMICDC-NSPCL to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

If on the consideration of the **DMICDC-NSPCL's** representation or otherwise, the Contractor does not issue the Termination Notice on such 15<sup>th</sup> day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor. Hence, he forfeits his right to any other remedy on that count.

### **22.3 Termination for DMICDC-NSPCL's Convenience**

Notwithstanding anything stated hereinabove, the DMICDC-NSPCL may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

### **22.4 Requirements After Termination**

Upon Termination of this Agreement in accordance with the terms of this **Article 22**, the Contractor shall comply with and conform to the following:

- (a) Deliver to the DMICDC-NSPCL all Plant and Materials which shall have become the property of the DMICDC-NSPCL under this **Article 22**;
- (b) Deliver all relevant records, reports, Intellectual Property and other licenses pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "**as built**" Drawings for the Works;
- (c) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and vacate the Site within 15 (fifteen) days.



## **22.5 Valuation of Unpaid Works**

22.5.1 Within a period of 45 (forty-five) days after Termination under Clause 22.1, 22.2 or 22.3, as the case may be, has taken effect, the DMICDC-NSPCL's PMC Consultant shall proceed in accordance with Clause 18.5 to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):

- (a) Value of the completed stage of the Works, less payments already made;
- (b) Reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- (c) Value of Operation and Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

22.5.2 The Valuation of Unpaid Works shall be communicated to the **DMICDC-NSPCL**, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

## **22.6 Termination Payment**

22.6.1 Upon Termination on account of Contractor's Default under Clause 22.1, the DMICDC-NSPCL shall:

- (a) Encash and appropriate the Performance Security and Retention Money or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the DMICDC-NSPCL for any losses, delays and cost of completing the Works and Operation & Maintenance, if any;
- (b) Encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- (c) Pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

22.6.2 Upon Termination on account of an DMICDC-NSPCL Default under Clause 22.2 or for **DMICDC-NSPCL**'s convenience under Clause 22.3, the DMICDC-NSPCL shall:

- (a) Return the Performance Security and Retention Money forthwith;
- (b) Encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- (c) Pay to the Contractor, by way of Termination Payment, an amount equal to:
  - (i) Valuation of Unpaid Works;
  - (ii) the reasonable cost, as determined by the DMICDC-NSPCL's PMC Consultant of the Plant and Materials procured by the Contractor and transferred to the



- DMICDC-NSPCL for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
- (iii) the reasonable cost of temporary works, as determined by the DMICDC-NSPCL's PMC Consultant; and
  - (iv) 10% (ten per cent) of the cost of the Works and Operation and Maintenance that are not commenced or not completed and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

22.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the DMICDC-NSPCL with the necessary particulars and in the event of any delay the DMICDC-NSPCL shall pay interest at the Base Rate plus 2% (two percent), calculated at quarterly rates, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the DMICDC-NSPCL of its payment obligations in respect thereof hereunder.

22.6.4 The Contractor expressly agrees that Termination Payment under this **Article 22** shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

#### **Other Rights and Obligations of the Parties**

Upon Termination for any reason whatsoever:

- (a) Property and ownership in all Materials, Plant and Works and the DG Power System shall, as between the Contractor and the **DMICDC-NSPCL**, vest in the **DMICDC-NSPCL** in whole; provided that the foregoing shall be without prejudice to Clause 22.6
- (b) Risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the **DMICDC-NSPCL**; and
- (c) the **DMICDC-NSPCL** shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the DMICDC-NSPCL in accordance with the provisions of this Agreement.

#### **22.7 Survival of Rights**

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.



## **ARTICLE 23**

### **ASSIGNMENT AND CHARGES**

#### **23.1 Restrictions on Assignment and Charges**

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the DMICDC-NSPCL, The DMICDC-NSPCL shall be entitled to decline without assigning any reason.

#### **23.2 Hypothecation of Materials or Plant**

Notwithstanding the provisions of Clause 23.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the DMICDC-NSPCL, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.

## ARTICLE 24

### LIABILITY AND INDEMNITY

#### 24.1 General Indemnity

The Contractor will indemnify, defend, save and hold harmless the DMICDC-NSPCL and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities / enterprises, (the “DMICDC-NSPCL **Indemnified Persons**”) against any and all suits, arbitration and proceedings, actions, demands, temporary and/or mandatory injunctions and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

#### 24.2 Indemnity by the Contractor

24.2.1 Without limiting the generality of Clause 24.1, the Contractor shall fully indemnify, hold harmless and defend the DMICDC-NSPCL and the DMICDC-NSPCL Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

24.2.2 Without limiting the generality of the provisions of this **Article 24**, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the DMICDC-NSPCL Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the DG Power System, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the DMICDC-NSPCL a licence, at no cost to the DMICDC-NSPCL, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the

Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **24.3 Notice and Contest of Claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 24 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **24.4 Defence of Claims**

24.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this **Article 24**, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

24.4.2 If the Indemnifying Party has exercised its rights under Clause 24.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

24.4.3 If the Indemnifying Party exercises its rights under Clause 24.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) The employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement: Provided that if Sub-clauses (b), (c) or (d) of this Clause 24.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **24.5 No Consequential Claims**

Notwithstanding anything to the contrary contained in this **Article 24**, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### **24.6 Survival on Termination**

The provisions of this **Article 24** shall survive Termination.

## ARTICLE 25

### DISPUTE RESOLUTION

#### 25.1 Dispute Resolution

- 25.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 25.2.
- 25.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 25.2 Conciliation:

In the event of any dispute between the Parties, either Party may call upon the DMICDC-NSPCL’s PMC Consultant or such other person as the Parties may mutually agree upon (herein after called as the “**Conciliator**”) to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Managing Director or Board of Directors of the DMICDC-NSPCL and the Managing Director or Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 25.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 25.3.

#### 25.3 Arbitration

- 25.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 25.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 25.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (herein after called as the “**Arbitration Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act as applicable in India. The venue of such arbitration shall be [New Delhi], and the language of arbitration proceedings shall be English.
- 25.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the

event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration Rules.

- 25.3.3 The arbitrators shall make a reasoned award (herein after called as the “**Award**”). Any Award made in any arbitration held pursuant to this **Article 25** shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.
- 25.3.4 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.
- 25.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 25.3.6 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120% (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

#### **25.4 Adjudication by Regulatory Authority, Tribunal or Commission**

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor and DMICDC-NSPCL, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 25.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable law.



## ARTICLE 26

### MISCELLANEOUS

#### 26.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [New Delhi] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

#### 26.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

#### 26.3 Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to Base Rate plus 2 (two) percent, calculated at quarterly rates, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

#### 26.4 Waiver

26.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

26.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **26.5 Liability for Review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the DMICDC-NSPCL or the DMICDC-NSPCL's PMC Consultant of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, or operation and maintenance of the DG Power System nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

## **26.6 Exclusion of Implied Warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

## **26.7 Survival**

26.7.1 Termination shall:

- (a) not relieve the Contractor or DMICDC-NSPCL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

26.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

## **26.8 Entire Agreement**

This Agreement and the Schedules and Annexures together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the

avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the bid / tender document, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### **26.9 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### **26.10 No Partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership or any other form of association between the Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### **26.11 Third Parties**

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement shall be construed to create any duty to standard of care with reference to or any liability to any person not a Party to this Agreement.

#### **26.12 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

#### **26.13 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to DMICDC-NSPCL; provided that notices or other communications to be given to an address outside [New Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to DMICDC-NSPCL;

- (b) in the case of DMICDC-NSPCL, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [Managing Director] of the DMICDC-NSPCL with a copy delivered to the DMICDC-NSPCL's Representative or such other person as the DMICDC-NSPCL may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in [New Delhi] it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### **26.14 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

#### **26.15 Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

#### **26.16 Confidentiality**

The Parties and their representatives shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of DMICDC-NSPCL.

#### **26.17 Copyright and Intellectual Property Rights**

- 26.17.1 As between the Parties the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non - exclusive royalty - free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:
- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works.
  - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works and
  - (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Contractor:

- 26.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) DMICDC-NSPCL for purposes other than those permitted under this Clause 26.17.
- 26.17.3 As between the Parties, DMICDC-NSPCL shall retain the copyright and other intellectual property rights in this Agreement and other documents made by (or on behalf of) DMICDC-NSPCL. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the DMICDC-NSPCL's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the contract.

#### **26.18 Limitation of Liability**

- 26.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under **Article 22 and Article 24**.
- 26.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in **Article 22 and Article 24**, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## ARTICLE 27

### DEFINITIONS

#### 27.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Details	Description
“Accounting Year”	means the financial year commencing from the first day of April of any calendar year and ending on the thirty - first day of March of the next calendar year;
“Affected Party”	shall have the meaning set forth in Clause 20.1;
“Affiliate”	means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “Control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
“Agreement”	means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;
“Applicable Laws”	means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
“Applicable Permits”	means all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the DG Power System during the subsistence of this Agreement;
“Appointed Date”	means that date on which the Letter of Award (LoA) is issued to the Contractor.
“Approval”	shall mean the written approval of the DMICDC-NSPCL and of the statutory authorities wherever such authorities are specified by any codes or otherwise.
“Arbitration Act”	means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment

<b>Details</b>	<b>Description</b>
<b>“Bank”</b>	thereof, as in force from time to time; means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to DMICDC-NSPCL;
<b>“Base Rate”</b>	means the floor rate of interest announced by the State Bank of India for all its lending operations;
<b>“Base Date”</b>	means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty eight) days;
<b>“Bid”</b>	means the documents in their entirety comprised in the proposal submitted by the [bidder/Consortium] in response to the Tender Document in accordance with the provisions thereof;
<b>“Bid Security”</b>	means the bid security provided by the Contractor to DMICDC-NSPCL in accordance with the Bid / Tender Document, and which is to remain in force until substituted by the Performance Security;
<b>"BOM"</b>	Bill of Materials.
<b>“Change in Law”</b>	means the occurrence of any of the following after the Base Date: (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the Base Date; (d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or (e) any change in the rates of any of the Taxes or royalties that have a direct effect on the Project;
<b>“Change of Scope”</b>	shall have the meaning set forth in Article 13;
<b>“Change of Scope Notice”</b>	shall have the meaning set forth in Clause 13.2.1;
<b>“Change of Scope Order”</b>	shall have the meaning set forth in Clause 13.2.3;
<b>“Completion Certificate”</b>	shall have the meaning set forth in Clause 12.4;
<b>“Consortium”</b>	means the group of companies (maximum three companies) which have formed a memorandum of understanding for implementation of this DG Power System;
<b>“Construction”</b>	shall have the meaning set forth in Clause 1.2.7;
<b>“Construction Period”</b>	means the period commencing from the date of issuance of Letter of Award (LoA) and ending on the date of the Commissioning of the DG Power System;
<b>“Contract”</b>	means the documents as set out in the form of Contract Agreement as may be amended, supplemented or modified from time to time by agreement in Writing



Details	Description
<b>"Contractor"</b>	between the Parties. means an independent entity that agrees to furnish certain number of quantity of goods, material, equipment, personnel and / or services that meet or exceed stated requirements or specifications at mutually agreed upon price and within a time frame.
<b>"Contractor Default"</b>	shall have the meaning set forth in Clause 22.1;
<b>"Contract Price"</b>	means the lump sum fixed price as stated in the Contract and as payable by the DMICDC to the Contractor in consideration of it performing all obligations of the Contractor with the provisions of the Contract as set forth in Clause 18.1.
<b>"Contractor's Representative"</b>	means the person named as such in the Contract or other person appointed and from time to time communicated to the DMICDC by the Contractor in his place in accordance as per the terms of the Contract.
<b>"Contract Schedule"</b>	means the commissioning of plant on or before delivery date specified in the agreement as set forth in Schedule in Article 5.1.2.
<b>"Cost"</b>	means all expenditure properly incurred (or to be incurred) by the Contractor, including overhead and similar charges, for the full complete erection and commissioning of DG Power System, including discharge of all of the Contractor's obligations under and in accordance with the Contract.
<b>"Cure Period"</b>	means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall: <ul style="list-style-type: none"> <li>(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;</li> <li>(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and</li> <li>(c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by DMICDC-NSPCL or the DMICDC-NSPCL's PMC Consultant hereunder, the applicable Cure Period shall be extended by the period taken by DMICDC-NSPCL or the DMICDC-NSPCL's PMC Consultant to accord their approval;</li> </ul> <p>This definition may be omitted if the Contractor is not a Consortium.</p>
<b>"Damages"</b>	shall have the meaning set forth in paragraph (w) of Clause 1.2.20;
<b>"Defect"</b>	means any defect or deficiency in Construction of the



Details	Description
<p><b>“Defects Period”</b></p> <p><b>“Delivery Equipment”</b></p> <p><b>“Dispute”</b></p> <p><b>“Dispute Resolution Procedure”</b></p> <p><b>“DMICDC-NSPCL Default”</b></p> <p><b>“DMICDC-NSPCL’s PMC Consultant”</b></p> <p><b>“DMICDC-NSPCL Representative”</b></p>	<p>Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any defect or deficiency. shall have the meaning set forth in Clause 16.1;</p> <p><b>Liability of</b> Means delivery in accordance with the terms of the contract complete in all respect, after approval by the DMICDC-NSPCL.</p> <p><b>Resolution</b> shall have the meaning set forth in Clause 25.1.1; means the procedure for resolution of Disputes set forth in Article 25;</p> <p>shall have the meaning set forth in Clause 22.2.1;</p> <p>shall have the meaning set forth in Article 17;</p> <p>means such person or persons as may be authorised in writing by the DMICDC-NSPCL to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the DMICDC-NSPCL under this Agreement;</p>
<p><b>“Drawings”</b></p>	<p>means all of the drawings, calculations and documents pertaining to the DG Power System as set forth in Appendix--3, and shall include ‘as built’ drawings of the DG Power System;</p>
<p><b>“Document”</b></p> <p><b>“Documentation”</b></p>	<p><b>or</b> means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;</p>
<p><b>"Documents"</b></p>	<p>mean and include all design documents, engineering documents, drawings, calculations, computer media, samples, patterns, models, construction documents, erection documents. Operation and Maintenance Manuals, and other manuals, and the like as well as. all other data and information to be submitted by the Contractor and shall include without limitation, engineering, design and construction drawings, data sheets, specifications, plans, bills of Materials and estimates.</p>
<p><b>“Emergency”</b></p>	<p>means a condition or situation that is likely to endanger the safety or security of the individuals on or about the DG Power System or which poses an immediate threat of material damage to any of the Project Assets;</p>
<p><b>“Encumbrances”</b></p>	<p>means, in relation to the DG Power System, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the DG Power System, where applicable herein but excluding utilities</p>

Details	Description
	referred to in Clause 8.4;
<b>"Final Acceptance Certificate"</b>	is the certificate issued by DMICDC-NSPCL after inspection / witness of the performance tests conducted by the Contractor at site.
<b>"Force Majeure" or "Force Majeure Event"</b>	shall have the meaning ascribed to it in Article 20.1;
<b>"Force Majeure Event"</b>	Shall have the meaning set forth in Clause 20.2 of this Agreement.
<b>"GOI" or "Government"</b>	means the Government of India;
<b>"Goods"</b>	Means all of the equipments, machinery, apparatus, appliances, components and/or other Materials and things, which the Contractor is required to supply to/procure, to load or unload for the DMICDC-NSPCL under the Contract.
<b>"Good Industry Practice"</b>	means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe;
<b>"Government Instrumentality"</b>	means any department, division or subdivision of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the DG Power System or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;
<b>"Indemnified Party"</b>	means the Party entitled to the benefit of an indemnity pursuant to Article 24;
<b>"Indemnifying Party"</b>	means the Party obligated to indemnify the other Party pursuant to Article 24;
<b>"Indirect Political Event"</b>	shall have the meaning set forth in Clause 20.3;
<b>"Instructions by DMICDC-NSPCL"</b>	shall mean any drawings, instructions, details, directions and explanations, in Writing issued by the DMICDC-NSPCL / DMICDC-NSPCL's representatives from time to time during the subsistence of the Contract.
<b>"Insurance Cover"</b>	means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 19, and includes all insurances required to be taken out by the Contractor under Clauses 19.1 and 19.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or

<b>Details</b>	<b>Description</b>
<b>“Intellectual Property”</b>	deemed to be insured and payable in relation to such act or event; means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
<b>“Interim Payment Certificate” or “IPC”</b>	means the interim payment certificate issued by the DMICDC-NSPCL’s PMC Consultant for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;
<b>“Lead Member”</b>	shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement and who is having a committed stake of more than 50% in the Consortium;
<b>“LOA” or “Letter of Award”</b>	means the letter will be issued to the successful bidder by DMICDC-NSPCL after the completion of bid process to Construct and Commission the DG Power System.
<b>"Manuals"</b>	means all the various instruction manuals to be provided as per the Contract by the Contractor and shall include Manuals described in Specifications or General Conditions of Contract.
<b>“Material Adverse Effect”</b>	means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;
<b>“Materials”</b>	are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the DG Power System;
<b>“Micro Grid Concept” means</b>	<ul style="list-style-type: none"> <li>i. a grouping of generating resources and end-user sinks that are placed and operated for the benefit of its members, which maybe one utility “customer”, a grouping of several sites, or displaced sites that nonetheless operate in a coordinated fashion.</li> <li>ii. the supply sources may include reciprocating engine generator sets, micro-turbines, fuel cells, photovoltaic and other small scale renewable generators, storage devices and controllable end-use loads</li> <li>iii. all controlled sources and sinks are interconnected in a manner that enables devices tp perform the micro grid control functions unnecessary for traditional DER.</li> </ul>

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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Details	Description
	iv. the energy balance of the system must be maintained by despatch, and non-critical loads might be curtailed or shed during times of energy shortfall or high costs.
<b>“Mobilisation at Site”</b>	means Establishment of temporary site office, appointment and placement of the Site-in-Charge and office staff at site.
<b>“DG Power System”</b>	means Development & Construction of 5 X 500 KVA Engineered DG Power System at Neemrana Industrial Park, Neemrana, Rajasthan
<b>“MW”</b>	shall mean Mega Watt (1000 kW).
<b>“Non - Political Event”</b>	shall have the meaning set forth in Clause 20.2;
<b>“Notice in Writing” or “Written Notice”</b>	shall mean a notice in writing, typed or printed or hand written characters, sent (unless delivered personally or otherwise proved to have been received) by registered post or by electronic transmission and shall be deemed to have been received when in the ordinary course of post or by electronic media it would have been delivered.
<b>“Operation and Maintenance”</b>	means the Operation and Maintenance of the DG Power System as set forth in Article 14 for the period specified therein;
<b>“Operation and Maintenance Inspection Report”</b>	shall have the meaning set forth in Clause 15.2.1;
<b>“Operation and Maintenance Manual”</b>	shall have the meaning ascribed to it in Clause 10.6;
<b>“Operation and Maintenance Period”</b>	shall have the meaning set forth in Article 14;
<b>“Operation and Maintenance Requirements”</b>	shall have the meaning set forth in Article 14;
<b>“Parties”</b>	means the parties to this Agreement collectively and <b>“Party”</b> shall mean any of the parties to this Agreement individually;
<b>“Performance Security”</b>	shall have the meaning set forth in Clause 7.1;
<b>“Plant”</b>	means, collectively, all the appliances, machinery, equipment, components and other Works, together with all auxiliaries, materials, apparatus, appliances others things whatsoever as an integrated whole, including without limitation all systems and subsystems thereof and related facilities, including without limitation any and all appliances, parts, instruments, accessories and other property that may be incorporated or installed in or attached to or otherwise become part of the Plant or as envisaged in the Contract or which otherwise constitutes a pan of the Plant and located on Site.
<b>“Political Event”</b>	shall have the meaning set forth in Clause 20.4;
<b>“Programme”</b>	shall have the meaning set forth in Clause 10.1.3;
<b>“Project”</b>	means the Construction, Testing and Commissioning and Operation and Maintenance of the DG Power

Details	Description
	System in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of the Project;
<b>“Project Assets”</b>	means all physical and other assets relating to (a) tangible assets such as civil works including foundations, structures, solar power equipments, module mouting structures, and electrical equipments, micro grid controllers, communication systems, transmission lines, other yards for O&M purposes.
<b>“Project Completion Date”</b>	means the date on which the Provisional Certificate is issued and in the event no Provisional Certificate is issued, the date on which the Completion Certificate is issued;
<b>“Project Completion Schedule”</b>	means the progressive Project Milestones set forth in Section 6 - Article 2.1 for completion of the Project Highway on or before the Scheduled Completion Date;
<b>“Project Facilities”</b>	means all the amenities and facilities situated on the Site.
<b>“Project Milestone”</b>	means the project milestone set forth in Section 6 – Article 2.1;
<b>“Provisional Certificate”</b>	shall have the meaning set forth in Clause 12.2;
<b>“Punch List”</b>	shall have the meaning set forth in Clause 12.2.1;
<b>“Quality Assurance Plan” or “QAP”</b>	shall have the meaning set forth in Clause 11.2;
<b>“Re.”, “Rs.” or “Rupees” or “Indian Rupees”</b>	means the lawful currency of the Republic of India;
<b>“Retention Money”</b>	shall have the meaning set forth in Clause 7.3;
<b>“Right of Way”</b>	means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and operation and maintenance of the DG Power System in accordance with this Agreement;
<b>“Scheduled Completion Date”</b>	shall be the date set forth in Clause 10.3.1;
<b>“Scope of the Project”</b>	shall have the meaning set forth in Clause 2.1;
<b>“Section”</b>	means a part of the DG Power System;
<b>“Site”</b>	shall have the meaning set forth in Clause 8.1;
<b>“Specifications and Standards”</b>	means the Specifications and Standards relating to the quality, quantity, capacity and other requirements for the DG Power System, as set forth in Appendix 1, and any modifications thereof or additions thereto, as included in the design and engineering for the DG Power System submitted by the Contractor to and expressly approved by, the DMICDC-NSPCL;
<b>“Sub - Contractor”</b>	means any person or persons to whom a part of the Works or the Operation and Maintenance has been subcontracted by the Contractor and the permitted legal

Details	Description
<p>“<b>Suspension</b>”  “<b>Taxes</b>”</p>	<p>successors in title to such person, but not an assignee to such person;  shall have the meaning set forth in Article 21;  means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the DG Power System charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;</p>
<p>“<b>Termination</b>”  “<b>Termination Notice</b>”</p>	<p>means the expiry or termination of this Agreement;  means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;</p>
<p>“<b>Termination Payment</b>”</p>	<p>means the amount payable by either Party to the other upon Termination in accordance with Article 22.6;</p>
<p>“<b>Tests</b>”</p>	<p>means the tests to determine the completion of Works in accordance with the provisions of this Agreement;</p>
<p>“<b>Time Extension</b>”</p>	<p>shall have the meaning set forth in Clause 10.4.1;</p>
<p>“<b>Turnkey Basis</b>”  “<b>Tender Drawings</b>”</p>	<p>preliminary drawings depicting proposed DG Power System provided along with tender documents to the bidder <b>(Annexed at Appendix 3)</b>.</p>
<p>“<b>Valuation of Unpaid works</b>”</p>	<p>shall have the meaning set forth in Clause 22.5.1;</p>

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

DELIVERED  
For and on behalf of  
[THE NATIONAL HIGHWAYS  
AUTHORITY OF INDIA ] by:

DELIVERED  
For and on behalf of  
THE CONTRACTOR by:

(Signature)  
(Name)  
(Designation)  
(Signature)  
(Name)

(Signature)  
(Name)  
(Designation)  
(Signature)  
(Name)

**Supply, Installation, Commissioning & Maintenance of 5 X 500 KVA Engineered Diesel Generator Power System at Neemrana Industrial Park, Japanese Zone, Rajasthan**

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(Designation)

(Designation)

In the presence of:

1.

2.

{COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium}



## Section 7. ANNEXURES

### 7.1 Annexure – 1 (LETTER OF AWARD)

*(To be issued on the letter head of DMIC)*

Document Ref. No.: \_\_\_\_\_

Date: \_\_\_\_\_

To,

*Name of the Selected Bidder & Address,*

Sub.: Letter of Award (LoA) for ( 5 X 500 KVA Engineered DG Power System) feeding power to pre-identified Neemrana Industry at Neemrana Industrial Park).

Reference: \_\_\_\_\_

Dear Sir,

This has reference to your offer or bid no. \_\_\_\_\_ dated \_\_\_\_\_ submitted on \_\_\_\_\_ and subsequent Minutes of Meeting dated \_\_\_\_\_.

For the 5 x 500 KVA Engineered DG Power System of Supply & Maintenance including but not limited to, carrying out the basic and detailed design, engineering, manufacture, procurement, supply, , transportation to site, storage of materials, loading and unloading, insurance, project management, stores management, civil works, mechanical works, C&I works, electrical works, , erection, installation, testing, commissioning, trial operation, performance testing, putting into successful Commercial operation and and maintenance of the 5 X 500 KVA Engineered DG Power System at Neemrana.

A detailed contract agreement will be entered into between the parties within 15 days from this letter.

Kindly convey your unconditional acceptance within 3 (three) working days from the date of issuance of this letter, duly signed on each page of the copy of this letter.

Thanking You,

Yours Sincerely,

**CEO & Managing Director  
DMICDC – Neemrana Solar Power Company Limited**

**Accepted**

For \_\_\_\_\_

*(Insert the name of the successful bidder)*

**7.2 Annexure – 2: EQUIPMENT TO BE SUPPLIED BY THE CONTRACTOR  
(PLEASE REFER APPENDIX 1 FOR DETAILED SPECIFICATIONS)**

Sr. No.	Particulars	Minimum Quantity
1	Diesel Tank	1 No
2	500 kVA, 415 Volts Diesel Generator Sets( with enclosures and Canopy)	5 Nos.
3	Lightning Arrestors - 9 kV	1 No
4	LV cables	In lot
5	Fire Fighting equipments	In lot
6	GI cable trays with accessory	In lot
7	Control & Relay Panels	In lot
8	Synchronising Panels	In lot

### **7.3 Annexure – 3: Applicable Permits to be obtained by Contractor**

These are the permits to be obtained by S&M Contractor as and when required shall include, but not limited to the followings:

1. Electrical Inspector / Factory Inspector
2. All necessary environmental clearance from the relevant Authority/Board for bidder's scope of work.
3. Chief Controller of Explosives (CCoE) / Fire Safe Authority
4. Labour Department
5. Type Approval from relevant authority for compliance of DG engine to CPCB norms.

**7.4 Annexure – 4 (LIST OF ITEMS: GRANT FROM GOVT. OF JAPAN)**

<b>Sr. No.</b>	<b>Technology</b>	<b>Capacity</b>	<b>Make</b>
1.	Micro Grid Controller	1.00 MW at 11 KV	Hitachi
2.	Telecommunication Systems (SCADA)	-	Hitachi

## 7.5 Annexure – 5 (FORMAT FOR PERFORMANCE BANK GUARANTEE)

(To be stamped in accordance with Stamp Act if any, of the Country of the Issuing Bank)

Bank Guarantee No.....

Date.....

To,

**[Owner's Name & Address]**

Dear Sir,

In consideration of the ..... [Owner's Name]..... (Hereinafter referred to as the “**Owner**” which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s ..... [Contractor's Name]..... with its Registered / Head Office at..... (Hereinafter referred to as the “**Contractor**”, which expression shall unless repugnant to the context or meaning thereof, include its successor’s administrators, executors and assigns), a Contract bearing No..... dated..... valued at ..... for ..... and the same having been unequivocally accepted by the Contractor, and the Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to .....(\*).....% ( ..... percent) of the said value of the Contract to the Owner.

We..... [Name & Address of the Bank]..... is having its Head Office at..... (hereinafter referred to as the ‘Bank’, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Owner, on demand any and all monies payable by the Contractor to the extent of .....(\*)..... as aforesaid at any time up to..... (@)..... [days/month/year] without any demur, reservation, contest, recourse or protest and / or without any reference to the Contractor. Any such demand made by the Owner on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Owner and further agrees that the guarantee herein contained shall continue to be enforceable till the Owner discharges this guarantee. This guarantee shall be assigned to the Financing Parties of the Owner without our consent.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this guarantee, from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Owner and the Contractor or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under these presents by any exercise by

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the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

The Bank also agrees that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to .....(\*)..... and it shall remain in force up to and including .....(@)..... and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s .....[Contractor's Name]..... on whose behalf this guarantee has been given.

Dated this..... day of ..... 20..... at.....

**WITNESS**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Official Address)  
Stamp)

\_\_\_\_\_  
(Designation with Bank

Attorney as per Power of Attorney

No.....

Dated.....

**Notes:**

1. (\*) This sum shall be ten percent (10%) of the Contract Price. (@) This date will be ninety (90) days beyond the Warranty Period as specified in the Contract.
2. (i) The Bank Guarantee from a scheduled Bank in India is acceptable to the Owner at the cost of the Contractor.  
  
(ii) The Bank Guarantee from a foreign and other non-scheduled Bank shall be confirmed by any scheduled Bank in India at the cost of the Contractor.

The stamp papers of appropriate value shall be purchased in the name of guarantee issuing Bank.

**Annexure 5a Form of Bank Guarantee for Mobilization Advance Payments**

**Refer Clause of 2.11.2.B of Contract**

(To be stamped in accordance with Stamp Act, if any, of the country of issuing bank)

Ref: \_\_\_\_\_

Bank Guarantee: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sir,

In consideration of M/s. \_\_\_\_\_ (hereinafter referred as the "Client", which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. \_\_\_\_\_ (hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns), a contract by issue of client's Contract Agreement No. \_\_\_\_\_ dated \_\_\_\_\_ and the same having being unequivocally accepted by the Contractor, resulting in a Contract valued at \_\_\_\_\_ for \_\_\_\_\_ Contract (hereinafter called the "Contract") (scope of work) and the Client having agreed to make an advance payment to the Contractor for performance of the above Contract amounting to (in words and figures) as an advance against Bank Guarantee to be furnished by the Contractor.

We \_\_\_\_\_ (Name of the Bank) having its Head Office at \_\_\_\_\_ (hereinafter referred to as the Bank, which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) do hereby guarantee and undertake to pay the client immediately on demand any or, all monies payable by the Contractor to the extent of \_\_\_\_\_ as aforesaid at any time upto \_\_\_\_\_ @ \_\_\_\_\_ without any reference to the Contractor. Any such demand made by the Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Client discharges this guarantee.

The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the contract by the Contractor. The Client shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Client and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants, contained or implied, in the Contract between the Client and the Contractor any other course or remedy or security available to the Client. The bank shall not be relieved of its obligations under these presents by any exercise by the Client of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.



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The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Client may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is limited to \_\_\_\_\_ and it shall remain in force upto and including \_\_\_\_\_ and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. \_\_\_\_\_ on whose behalf the guarantee has been given.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016 at .

WITNESS:

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

(Official Address)

Designation (with Bank Stamp)

Attorney as per Power of Attorney No. \_\_\_\_\_

Dated: \_\_\_\_\_

Strike out, whichever is not applicable.

Note 1: The stamp papers of appropriate value shall be purchased in the name of bank who issues the "Bank Guarantee".

Note2: (i) The Bank Guarantee from a scheduled Bank in India is acceptable to the Owner at the cost of the Contractor.

(ii) The Bank Guarantee from a foreign and other non-scheduled Bank shall be confirmed by any scheduled Bank in India at the cost of the Contractor

**7.6 Annexure – 6**

**FORMAT FOR Maintenance CONTRACT PERFORMANCE BANK GUARANTEE**

**(To be submitted by Bidder on a Non - Judicial Stamp Paper of Rs. 200/-)**

(Note: The Contractor has to furnish Single Bank Guarantee equivalent to 10% of Contract Value towards Maintenance Performance Security, which shall be valid for one year from the date final acceptance certificate (FAC) with additional claim period of 90 days.

- b. After the completion of first year of Maintenance Period, the Bank Guarantee value for each successive year shall be enhanced by the difference between the previous year Maintenance cost & the succeeding year Maintenance cost. This shall be applicable till the completion of the 10 years Maintenance period for 5 X 500 KVA Engineered DG Power System

Bank Guarantee No..... & Date.....  
(For Rs .....)

Issue date:  
Expiry date:  
Claim period:

Name & Address of the Bank.

To,

CEO & Managing Director,  
Delhi Mumbai Industrial Corridor Development Corporation Limited,  
Room No. 341-B, 3rd Floor, Hotel Ashok,  
Diplomatic Enclave, 50-B, Chanakyapuri,  
New Delhi – 110 021

Whereas M/s..... (hereinafter called the Contractor) have entered into a contract with the Delhi Mumbai Industrial Corridor Development Corporation Limited. (hereinafter called the Owner) for Comprehensive 10 years Operation & Maintenance of the same, vide Contract Agreement No. .... dated.....

1. And whereas under the terms of the said Contract Agreement, the Contractor is to furnish Owner with a Bank Guarantee for an amount of 10% of the Contract Value towards O&M Performance Security and fulfillment of the terms thereof, we..... (Name of the Bank)..... (hereinafter referred to as the Bank) do hereby undertake to pay to the Owner an amount not exceeding Rs..... against any loss or damage caused to or suffered or would be caused to or suffered by the Owner by reason of any breach by the said Contractor (s) of any of the terms or conditions contained in the said contract.
2. We..... (Name of the Bank)..... do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Owner stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Owner by reason of any breach by the same Contractor of any of the terms or conditions contained in the said contract or by reason of the Contractor's failure to perform the said contract. Any such demand made on the

Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs..... Only.

3. We..... (Name of the Bank)..... further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said contract and that it shall continue to be enforceable till all the dues of the Owner under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till..... the Owner certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Contractor (s) and accordingly discharge the guarantee. Unless a demand or claim under this guarantee is made on us in writing up to which the guarantee continues to be enforceable, we shall be discharged from all liability under this guarantee thereafter.
  
4. We..... (Name of the Bank)..... further agree with the Owner that the Owner shall have the fullest liberty, without our consent and without affecting in any manner our obligations hereunder, to vary any of the terms and conditions of the said contract or to extend time of performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Owner against the said contractor(s) and to forebear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reasons of any such variation or extension being granted to the said contractor (s) or for any forbearance, act or omission on the part of the Owner or any indulgence by the Owner to the said contractor(s) or by any such matter of thing whatsoever which under the law relating to sureties would but for this provision have effect of not relieving us.
  
5. We..... (Name of the Bank)..... lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Owner in writing.
  
6. In witness whereof we..... (Name of the Bank)..... have executed this on this the .....day..... of .....2011.

Witness: .....

Signature.....

Name & designation of the Signing

**Authority Bank's Rubber Seal and Full Address**