

**Public Private Partnership**

**Request for Proposal**

**for**

**Setting up of**

**Medical College and Upgradation of**

**\*\*\*\*\* Hospital**

**(Name of Issuing Authority)**

*For official use only*

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**Model**  
**Request for Proposal (RFP)**





## **Disclaimer**

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this RFP.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select the Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## Glossary

<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bidder</b>	As defined in Clause 1.2.1
<b>Bid</b>	As defined in Clause 1.2.1
<b>Bid Due Date</b>	As defined in Clause 1.1.5
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Bidders</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in Clause 1.1.5
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Concession</b>	As defined in Clause 1.1.3
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1(a)
<b>Damages</b>	As defined in Clause 2.2.1 (c)
<b>Estimated Project Cost</b>	As defined in Clause 1.1.1
<b>Feasibility Report</b>	As defined in Clause 1.2.3
<b>Financial Capacity</b>	As defined in Clause 2.2.2
<b>Financial Bid</b>	As defined in Clause 1.2.1
<b>Government</b>	Government of [India]
<b>Grant</b>	As defined in Clause 1.2.6 (a)
<b>Highest Bidder</b>	As defined in Clause 1.2.6 (b)
<b>Jt. Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Member</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Award
<b>Member</b>	Member of a Consortium
<b>Net Worth</b>	As defined in Clause 2.2.4
<b>Official Website</b>	As defined in Clause 1.2.10
<b>Premium</b>	As defined in Clause 1.2.6 (a)
<b>Project</b>	As defined in Clause 1.1.1
<b>Pre-qualification</b>	As defined in Clause 1.2.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in the Disclaimer
<b>Selected Bidder</b>	As defined in Clause 3.4.2
<b>SPV</b>	As defined in Clause 2.2.6
<b>Technical Bid</b>	As defined in Clause 1.2.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above.



# **Invitation for Proposals**



## 1. INTRODUCTION<sup>§</sup>

### 1.1 Background<sup>1</sup>

1.1.1 The [President of India/Governor of \*\*\*\*\*] represented by the [\*\*\*\*\*] (the “**Authority**”) having its principal office at \*\*\*\*\* is engaged in the development and operation of medical colleges and hospitals. And as part of this endeavour, the Authority has decided to undertake operation and augmentation of the [District Hospital at \*\*\*\*\*] and allowing the utilisation of the facilities of the “**Hospital**” for developing and operating a “**Medical College**” with an annual intake of [\*\*\*\*\*] MBBS students (the “**Project**”) through Public Private Partnership. Authority has, therefore, decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded. [A brief description of the Project may be seen in the Information Memorandum of the Project at the Authority’s website [www.\\*\\*\\*\\*\\*](http://www.*****) / Official Website].

Brief particulars of the Project are as follows:

<b>Name of the Project</b>	<b>Scope of Project</b>	<b>Estimated Project Cost (excluding Medical College) (In Rs. cr.)</b>
Establishment of a [**] seat Medical College and augmentation of attached [**] bedded Hospital on	Design, Finance, Augment, Operate and Transfer the Hospital; Design Build, Finance and Operate the	[.....]

#### <sup>§</sup>**Instructions for Bidders**

**Note 1:** The provisions in curly brackets shall be suitably modified by the Bidder after the RFP is issued. (See Appendix-VIII)

**Note 2:** Blank spaces contain formats that are to be used by the Bidder after the RFP is issued. (See Appendix-VIII)

**Note 3:** Footnotes marked “\$” in the relevant Clauses of the RFP are for guidance of the Bidders. In case of Appendices, the footnotes marked “\$” or in other non-numerical characters shall be omitted by the Bidders while submitting their respective Bids. (See Appendix-VIII)

#### <sup>1</sup>**Instructions for customisation of this document by the Authority**

This Model Request for Proposals (the “RFP”) may be customised for project-specific use in accordance with the instructions below:

**Note I:** Serially numbered footnotes in this RFP are for guidance of the Authority and should be omitted from the RFP before it is issued to prospective Bidders. (See Appendix-IX)

**Note II:** All project-specific provisions in this RFP have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFP to prospective Bidders. The square parenthesis should be removed after carrying out the required modification. (See Appendix-IX)

**Note III:** The asterisks in this RFP should be substituted by project-specific particulars before issuing the RFP to prospective Bidders. (See Appendix-IX)

**Note IV:** Notes I, II, III and IV shall be omitted prior to issue of this RFP.

PPP	Medical College utilising the facilities of the Hospital	
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The Authority intends to award the Project through an open competitive bidding process in accordance with the procedure set out herein.

- 1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”) shall be responsible for development, management, and operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the “**Concession Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.3 The scope of work will broadly include the [augmentation / upgrading the Hospital; development of Medical College; and management, operation and maintenance thereof] in accordance with the terms of the Concession Agreement. The detailed terms and conditions for grant of the concession are set forth in the Concession Agreement, including *inter alia* the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.4 The indicative capital cost of the Project, excluding the Medical College, has been specified in Clause 1.1.1 above (the “**Estimated Project Cost**”). The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

## 1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project.



The first part (the “**Technical Bid**”) of the process involves Pre-qualification (the “**Pre-qualification**”) of interested parties/ consortia who submit a Bid in accordance with the provisions of this RFP (the “**Bidder**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). The second part of the process involves the financial proposals (the “**Financial Bid**”) of the Bidders pre-qualified in the Technical Bid. The Technical Bid and Financial Bid shall collectively be referred as Bid (the “**Bid**”). Prior to participation in the Bidding Process, the Bidder shall pay to the Authority a sum of Rs \*\*\*\*\* (Rupees \*\*\*\*\*), in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of \*\*\*\*\* and payable at \*\*\*\*\*, as the cost of the Bid process.<sup>2</sup> The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date.

Government of India has issued guidelines (see Appendix-VII) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 At the Pre-qualification stage, the Technical Bids of the Bidders would be evaluated and only those Bidders that are pre-qualified by the Authority shall be eligible for the second part of the Bidding Process comprising opening and evaluation of their Financial Bids.
- 1.2.3 The Bidding Documents include the draft Concession Agreement for the Project which is enclosed. The Feasibility Report prepared by the [Authority/ consultants of the Authority] containing the broad parameters of the Project (the “**Feasibility Report**”) is also enclosed. Subject to the provisions of Clause 2.1.2, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of Rs. ....<sup>3</sup> (the “**Bid Security**”), refundable no later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority in the format provided at Appendix-IV. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the

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<sup>2</sup> The cost of RFP may be determined at the rate of Rs. 10,000 (ten thousand) for every Rs. 100 (one hundred) crore or part thereof comprising the Estimated Project Cost. Thus, the cost of an RFP document for a project of Rs. 500(five hundred) crore shall be Rs. 50, 000 (fifty thousand).

<sup>3</sup>The Authority may prescribe a Bid Security not exceeding 2% of the Estimated Project Cost.

Bidder from time to time. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date for the purposes of encashment thereof by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5 Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project including implementation thereof.

1.2.6 (a) Bids are invited for the [financial grant required by a Bidder for implementing the Project (the “**Grant**”). A Bidder may, instead of seeking a Grant, offer to pay a premium to the Authority in the form of Concession Fee in terms of the Concession Agreement (the “**Premium**”). The concession period and other terms are pre-determined, as indicated in the draft Concession Agreement, and the [Grant/ Premium] shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.7, the Project will be awarded to the Highest Bidder.

(b) In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is [offering the highest Premium, and where no Bidder is offering a Premium, it shall mean the Bidder seeking the lowest Grant.] Subject to the provisions of Clause 1.2.7, the Project will be awarded to the Highest Bidder.

(c) In case a Bidder seeks a Grant, it shall specify the amount thereof in its Bid. For the avoidance of doubt, it is clarified that a Bidder who seeks Grant cannot offer any Premium. The Grant shall be disbursed in accordance with the provisions of [Article 29] of the draft Concession Agreement.

(d) In case a Bidder offers a Premium, it shall specify the amount thereof payable annually commencing from the day falling after 365 (three hundred and sixty five) days of occurrence of the Operations Date, and which shall be increased for each subsequent year by an additional [5% (five per cent)] of the Premium for the previous Accounting Year, subject to a maximum of [50% (fifty per cent)] of the Gross Revenue in the respective year, in accordance with the provisions of [Article 30] of the draft Concession Agreement.

(e) A Bidder who seeks a Grant, or offers a Premium, shall nevertheless be required to commence payment of a Revenue Share of [1% (one per cent)] of the Gross Revenue from [365 (three hundred and sixty five)] days after the Operations Date, which shall be increased by [1% (one per cent)] for every period of 1(one) year thereafter subject to a limit of [20% (twenty per cent)] of the Gross Revenue of such year, in accordance with the provisions of [Article 30] of the draft Concession Agreement.

1.2.7 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

1.2.8 The Concessionaire shall, in consideration of its investment and services, be entitled to [levy and collect user charges] in accordance with [Article 31] of the draft Concession Agreement.

1.2.9 All queries by prospective Bidders must be sent only via email to the following email address only: \*\*\*\*\*

All communications pertaining to the RFP shall clearly bear the following identification/ title:

RFP Notice No. \*\*\*\*\*  
“RFP for \*\*\*\*\*Project”

1.2.10 The Official Website is:

[http://www.\\*\\*\\*\\*\\*](http://www.*****)

Bidders are advised to visit this website regularly to keep them updated, for any changes/ modifications related to this RFP.

### 1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

<b>Event Description</b>	<b>Date</b>
1. Sale of Bidding Documents	[To be specified]
2. Last date for receiving queries	[25 days from date of RFP]
3. Pre-Bid Conference - 1	[30 days from date of RFP]
4. Authority response to queries latest by	[35 days from date of RFP]
5. [Pre-Bid Conference – 2] <sup>4</sup>	[40 days from date of RFP]
6. Authority’s additional response, if any	[45 days from date of RFP]
7. Bid Due Date	[60 days from date of RFP]
8. Opening of Technical Bids	[On Bid Due Date: At least 60 days from the date of RFP]
9. Announcement of qualified Bidders	[Within 15 days of Bid Due date]
10. Opening of Financial Bid	[Within 21 days of Bid Due

<sup>4</sup> In case of complex projects, the number of Pre-Bid Conferences could be more than two. For repetitive projects, one Pre-Bid Conference would suffice.

	Date]
11. Letter of Award (LOA)	[Within 30 days of opening of Financial Bid]
12. Validity of Bids	120 days of Bid Due Date
13. Signing of Concession Agreement	Within 30 days of award of LOA

#### **1.4 Pre-Bid Conference**

The date, time and venue of the Pre-Bid Conference shall be:

Date: \*\*\*\*\*

Time: 1100 hrs

Venue: \*\*\*\*\*

## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 Scope of Bid

- 2.1.1 The Authority wishes to receive Bids under this RFP from capable Bidders. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 The Feasibility Report and Project Information Memorandum of the Project are being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report and Project Information Memorandum shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report and Project Information Memorandum.
- 2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.4 The Technical Bid and Financial Bid should be furnished in the format at Appendix-I and Appendix-VI respectively along with all enclosures, duly signed by the Bidder's authorised signatory. The Financial Bid shall clearly indicate the bid amount, in both figures and words, in Indian Rupees. The bid amount shall consist of [a Grant or a Premium, as the case may be,] to be quoted by the Bidder. [Grant shall be payable by the Authority to the Concessionaire and the Premium shall be payable by the Concessionaire to the Authority, as the case may be,] as per the terms and conditions of this RFP and the provisions of the Concession Agreement. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.5 The Bidder shall deposit a Bid Security of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* ) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-IV.
- 2.1.6 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 120 (one hundred and

twenty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.

- 2.1.7 The Bidder should submit a Power of Attorney as per the format at Appendix–II, authorising the signatory of the Bid to commit the Bidder.
- 2.1.8 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix–III.
- 2.1.9 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.10 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.10 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

## **2.2 Eligibility of Bidders**

- 2.2.1 For determining the eligibility of Bidders for submission of Bids hereunder, the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) A Bidder may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified<sup>§</sup>. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above,

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<sup>§</sup> The provisions of sub-clauses (i), (iii) and (v) shall not apply to government companies.

a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (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 of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 20% (twenty per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 20%(twenty 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), 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% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- (vi) such Bidder, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

(d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated at least 30 (thirty) days prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Bid Due Date.

*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

[(e) Other eligibility conditions shall include:<sup>5</sup>]

2.2.2 To be eligible for Qualification, a Bidder shall fulfil the following condition of eligibility:

**Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of [Rs. \*\*\*\*\* (Rupees.\*\*\*\*\*)]<sup>6</sup> at the close of the preceding financial year. The Bidder’s Net Cash Accruals for the 5 (five) preceding financial years must be positive.

In case of a Consortium the combined Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above condition of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

2.2.3 **O&M Experience:** In the event that the Bidder does not have the requisite O&M experience, as detailed below, it shall enter into a suitable agreement, within 3 (three) months from the Appointed Date (as defined in the Concession Agreement), with entity(ies) having such O&M experience relating to the performance of its O&M obligations, failing which the Concession Agreement shall be liable to termination. The requisite “**O&M Experience**” shall be mean:

(i) Category I: Experience of operating and managing at least 1 (one) recognized medical college with an associated hospital, duly recognized under applicable law and regulations, for the past 5 (five) financial years preceding the Bid Due Date; and

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<sup>5</sup> Other specific conditions of eligibility or restrictions, if any, may be stated here, such as limit on bids in order to prevent the same entity from acquiring more than a pre-determined number of projects.

<sup>6</sup> This amount should be 50% (fifty per cent) of the Estimated Project Cost of the Project for which Bids are being invited.



- (ii) Category II: Experience of operating and managing at least 1 (one) 300 bedded hospital which is NABH accredited, for the past 5 (five) financial years preceding the Bid Due Date.

For avoidance of doubt, O&M experiences of two or more entities cannot be combined for meeting the requirement under one category of O&M Experience. However, two different entities can fulfil the requirement under the two categories.

- 2.2.4 The Bidder shall enclose with its Technical Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following<sup>s</sup>:

Certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4. For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

- 2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

- 2.2.6 Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming a SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Bid may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, in the format at Appendix-III, signed by all the other Members of the Consortium;

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<sup>s</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to their financial other obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid in the event of being qualified. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
  - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member;
  - (iv) commit that each of the members, whose Financial Capacity will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
  - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
  - (vi) and include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Appointed Date is achieved in accordance with the Concession Agreement; and

- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the [Central/ State Government, or any entity controlled by it,] from participating in any project (PPP or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit an Bid, either individually or as member of a Consortium.

2.2.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, 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, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.9 In computing the Financial Capacity of the Bidder/ Consortium Members under Clauses 2.2.2 and 2.2.4, the Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Members, a person who controls, is controlled by, or is under the common control with such Bidder or Consortium Members, as the case may be (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% (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 by operation of law.

2.2.10 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with Section 3 below;
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein; and

2.2.11 [While qualification is open to persons from any country, the following provisions shall apply:]

- [(a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;]

[then the qualification of such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive, and binding on the Bidder.]

[The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.]<sup>7</sup>

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1

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<sup>7</sup> The provisions of this Clause 2.2.11 may be modified from time to time in accordance with the extant instructions of the Government.

(one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.13 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated at least 30 (thirty) days prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Bid Due Date.

2.2.14 This RFP is not transferable.

2.2.15 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

### **2.3 Change in Ownership**

2.3.1 By submitting the Bid, the Bidder acknowledges that it will be qualified on the basis of Financial Capacity of those of its Consortium Members who shall until the 2nd (second) anniversary of the date of commercial operations of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in the control of a Consortium Member whose Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with this RFP, the Bidder shall be deemed to have the

knowledge of the same, and shall inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to the Appointed Date under the Concession Agreement, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall, at the discretion of the Authority, be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall, at its sole discretion, be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

## **2.4 Number of Bids and costs thereof**

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.5 Site visit and verification of information**

Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, demand, location, surroundings, state of clinical and para-clinical facilities, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

## **2.6 Acknowledgement by Bidder**

- 2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the Bidding Documents;
  - (b) received all relevant information requested from the Authority;
  - (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above;
  - (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for

submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

## **2.7 Right to accept or reject any or all Bids**

2.7.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding 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 therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.7.2 The Authority reserves the right to reject any Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected.

2.7.3 If disqualification/ rejection of a Bidder occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or

- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.4 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder. The Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or otherwise.

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

2.7.6 The Authority may, in its sole discretion and on grounds of reciprocity, disqualify a Bidder, if any or all of its constituents are entities incorporated in a country where an entity incorporated in India does not have similar rights of bidding for contracts contemplated hereunder.

## **B. DOCUMENTS**

### **2.8 Contents of the RFP**

This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

#### **Invitation for Bid**

Section 1.	Introduction
Section 2.	Instructions to Bidders
Section 3.	Criteria for Evaluation
Section 4.	Fraud & Corrupt Practices
Section 5.	Pre-Bid Conference
Section 6.	Miscellaneous



## **Appendices**

- I. Letter comprising the Technical Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium
- IV. Bank Guarantee for Bid Security
- V. Joint Bidding Agreement for Consortium
- VI. Letter comprising the Financial Bid
- VII. Guidelines of the Department of Disinvestment
- VIII. List of Bid-specific provisions
- IX. List of Project specific provisions

### **2.9 Clarifications**

- 2.9.1 Bidders requiring any clarification on the RFP may notify the Authority only by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The Authority will post all the queries and its responses on the official Website without identifying the source of queries.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

### **2.10 Amendment of RFP**

- 2.10.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued hereunder shall be hosted on the website of \*\*\*\*\*.
- 2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.<sup>§</sup>

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<sup>§</sup> While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

## **C. PREPARATION AND SUBMISSION OF BID**

### **2.11 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 translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### **2.12 Format and signing of Bid**

2.12.1 The Bidder shall provide all the information sought under this RFP. The Authority 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 to rejection.

2.12.2 The Bid shall be typed or written in indelible ink. It shall be duly signed in digital form by the authorised signatory of the Applicant. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Application. The Bid shall contain page numbers.

### **2.13 Submission of Bids**

2.13.1 The Bidder shall submit the Bid no later than the date and time specified as the Bid Due Date, on the e-procurement platform of the Authority at the Official Website, duly signed in digital form by the authorised signatory of the Bidder, by uploading the complete and legible scanned/digital copies of the Technical and Financial Bids in pdf/digital format (i.e. scanned copy of original signed documents and the supporting documents). The documents submitted in the Bid should be scanned in at least 100 dpi with black and white option.

2.13.2 The Bid is to be submitted on the document downloaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the document used for submission by the Bidder and the version uploaded by the Authority, the latter shall prevail.

2.13.3 The documents comprising the Bid referred to in Clause 2.13.1 shall include:

- (i) Technical Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Bid Security in the format at Appendix-IV;



ADDRESS: \*\*\*\*\*  
TELEPHONE NO: \*\*\*\*\*  
E-MAIL ADDRESS: \*\*\*\*\*

2.13.6 Bids submitted by special messenger, fax, telex, telegram, e-mail , or in any way other than on the specified e-platform for bidding, shall not be entertained and shall be rejected.

## **2.14 Bid Due Date**

2.14.1 The Bid specified in Clause 2.13.1 should be submitted before 11.00 hours IST on the Bid Due Date, on the Official Website as per the format and in the manner and form as detailed in this RFP.

2.14.2 [For the purpose of submission of the Bid on the Official Website, registration of the Bidder with Official Website is mandatory. For any assistance regarding e-tendering, the Bidder may go to the helpdesk on the Official Website. A Bidder who is already registered need not register again. However, the Bidder is required to have a Class-III Digital Certificate issued by a licensed Certifying Authority (CA).]

2.14.3 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

2.14.4 Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.15 Contents of the Bid**

2.15.1 The Technical Bid shall be furnished in the format at Appendix–I along with all the information and documents (complete in all respects) as requested in this RFP.

2.15.2 The Financial Bid shall be furnished in the format at Appendix–VI and shall consist of a [Grant or Premium, as the case may be,] to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the [Grant or Premium, as the case may be, required by it or offered by it, as the case may be,] to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

2.15.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.15.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

## **2.16 Modifications/ substitution/ withdrawal of Bids**

- 2.16.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that the modification, substitution or withdrawal is received by the Authority prior to the closing time on the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the closing time on the Bid Due Date.
- 2.16.2 Any alteration/ modification in the Bid or additional information or material supplied subsequent to the closing time on the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **D. EVALUATION PROCESS**

### **2.17 Opening and Evaluation of Bids**

- 2.17.1 The Authority shall open the Technical Bids at 1300 hours IST on the Bid Due Date, at the place specified in Clause 2.13.5 and in the presence of the Bidders who choose to attend.
- 2.17.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.
- 2.17.4 Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

### **2.18 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation of the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the

statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

## **2.19 Tests of responsiveness**

2.19.1 Prior to evaluation of Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of the RFP. A Technical Bid shall be considered responsive if:

- (a) it is received as per the specified format;
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.3;
- (c) it is signed and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Bid Security as specified in Clause 2.1.5
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (f) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (g) it contains information in formats same as those specified in this RFP;
- (h) it contains certificates from its statutory auditors<sup>§</sup> in the formats specified at Appendix-I of the RFP;
- (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification;
- (k) the original documents as stipulated under Clause 2.13.4 have been submitted by the Bidder; and
- (l) it is not non-responsive in terms hereof.

2.19.2 A Financial Bid not conforming with the format specified at Appendix-VI shall not be considered as responsive to the requirements of the RFP.

2.19.3 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

## **2.20 Clarifications**

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<sup>§</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (h). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

- 2.20.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.20.2 If a Bidder does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

## **E. PRE-QUALIFICATION AND BIDDING**

### **2.21 Submission of Bid**

The Bidder shall submit its Bid in the form and manner to be set out in this RFP.

### **2.22 Pre-Qualification and notification**

After the evaluation of Technical Bids, the Authority would announce a list of qualified Bidders who will be eligible for opening of their Financial Bids. All communications relating to Pre-qualification shall be uploaded on Official Website. The Authority will not entertain any query or clarification from Bidders who fail to pre-qualify.

### **2.23 Proprietary data**

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

### **2.24 Correspondence with the Bidder**

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

## **F. BID SECURITY**

### **2.25 Bid Security**

- 2.25.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.5 and 2.1.6 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rupees one thousand crore), in favour of the Authority in the format at Appendix–IV (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed

between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

- 2.25.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at [\*\*\*\*\*] (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.25.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.25.4 Save and except as provided in Clause 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 180 (one hundred and eighty) days from the Bid Due Date. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.25.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 2.25.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.25.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.25.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- (a) a Bidder submits a non-responsive Bid;
  - (b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
  - (c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;



- (d) the Selected Bidder fails within the specified time limit -
  - (i) to sign and return the duplicate copy of LOA; or
  - (ii) to sign the Concession Agreement; or
  - (iii) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
- (e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Bids

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder's competence and capability is proposed to be established by the Financial Capacity.

#### 3.2 Financial information for purposes of evaluation

- 3.2.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.2.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.2.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2, and provide details as per format at Annex-II of Appendix-I.

#### 3.3 Pre-Qualification of Bidders

- 3.3.1 The credentials of eligible Bidders shall be measured in terms of their Financial Capacity.

#### 3.4 Selection of Bidder

- 3.4.1 Subject to the provisions of Clause 2.7.1, the Bidders qualified in the Technical Bid shall be informed individually about the time of opening of the Financial Bids. The Authority shall open the Financial Bids of the Bidders qualified in the Technical Bid on the scheduled date and time in the presence of the authorized representatives of the Bidders who may choose to attend..
- 3.4.2 The Bidder whose Bid is adjudged as responsive in terms of Clause 2.19 and who quotes the [highest Premium offered to the Authority, and in the event that no Bidder offers a Premium, then the Bidder quoting the lowest Grant to be paid by the Authority] shall ordinarily be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.4.3 In the event that two or more Bidders quote the same amount of [Premium or Grant, as the case may be] (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

- 3.4.4 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the second and third highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said second Highest Bidder shall be the Selected Bidder.
- 3.4.5 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.4.4, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.4.6 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected 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 Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.4.7 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

### **3.5 Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

### **3.6 Bid Parameter**

The Bid shall comprise a [Grant or a Premium, as the case may be], to be quoted by the Bidder in accordance with the provisions of the Concession Agreement.

The Bidder who offers the [highest Premium, and in case no Bidder offers a Premium, then the Bidder requiring the lowest Grant] shall ordinarily be the Selected Bidder. The [Grant/Premium] comprising the Bid shall be offered in accordance with the provisions of Clause 1.2.6.

## 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder if it determines that the Bidder or the Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. . In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or Concession Agreement, or otherwise, if a Bidder or Concessionaire, as the case may be, is found by the Authority 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 Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority 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, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, 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 Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the

Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

## **5. PRE-BID CONFERENCE**

- 5.1 A Pre-Bid Conference of the potential Bidders shall be convened at the designated date, time and place. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) 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.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, 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 with the Bidding Process, and waives to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Concession Agreement and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) Concession Agreement;
  - (b) the RFP.
- i.e. the Concession Agreement at (a) above shall prevail over the RFP at (b) above.



# Appendices



APPENDIX-I

**Letter Comprising the Technical Bid**  
(Refer Clause 2.13.3)

Dated:

To,

.....  
.....  
.....

Sub: Bid for the ..... Project

Dear Sir,

With reference to your RFP document dated ....., I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Bidder for the aforesaid project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the development, augmentation, operation and management of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

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

7. I/ We declare that:

(a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;

- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document;
  - (c) I/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 Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.6 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.<sup>‡</sup>

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<sup>‡</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule .....hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13<sup>th</sup> July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VII thereof.I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (PPP or otherwise), and no bar subsists as on the date of Bid.

16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.

17. I/ We acknowledge and agree that in the event of a change in control of a Member whose Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/we further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to commencement of the Appointed Date under the Concession Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall, at the sole discretion of the Authority, be liable to be terminated under and in accordance with Clause 2.3.2 of the RFP without the Authority being liable to us in any manner whatsoever.

18. I/ 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 the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

19. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

20. I/ We have studied all the Bidding Documents carefully and also surveyed the \*\*\*\*\*. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.

21. The Statement of Legal Capacity as per format provided at Annex-III in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.

22. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.

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

24. I/ We have the required O&M Experience in accordance with the Clause 2.2.3 of the RFP.

OR

I/We agree and undertake to enter into a suitable agreement with entity(ies) having the required O&M Experience in accordance with Clause 2.2.3 of the RFP.

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

26. I/ We offer a Bid Security of Rs..... (Rupees ..... only) to the Authority in accordance with the RFP Document.

27. The Bid Security in the form of a {Demand Draft/ Bank Guarantee} has been submitted.

28. The documents accompanying the Bid, required to be submitted in original as specified in Clause 2.13.4 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid for ..... Project” and the documents specified in Clause 2.13.3 have been uploaded/ are being uploaded on the Official Website.

29. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.

30. The {Premium / Grant} has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement , our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

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

32. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till the Appointed Date in accordance with the Concession Agreement.}§

33. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

34. I/ We hereby undertake to submit this Technical Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

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

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead Member

---

§ This Paragraph shall be omitted if the Bidder is not a Consortium.

ANNEX-I

**Particulars of the Bidder**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a)Name:
  - (b)Designation:
  - (c)Company:
  - (d)Address:
  - (e)Telephone Number:
  - (f)E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
  - (c) Information regarding the role of each Member should be provided as per table below:



Sl. No.	Name of Member	Role <sup>§</sup>	Percentage of equity in the Consortium <sup>§§</sup>
1.			
2.			
3.			
4.			

<sup>§</sup>The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.2.6 (d) and Annex-II.

<sup>§§</sup>The percentage of equity should be in accordance with Clause 2.2.6 (a), (f) and (g).

6. The following information shall also be provided for the Bidder, including each Member of the Consortium:

**Name of Bidder/ member of Consortium:**

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEX-II

**Financial Capacity of the Bidder**

*(Refer to Clauses 2.2.2 and 2.2.4 and 3.2 of the RFP)*

**Name of single entity Bidder/ Consortium:**

(In Rs. crore<sup>§</sup>)

Bidder type <sup>§§</sup>	Member Code <sup>£</sup>	Net Cash Accruals					Net Worth <sup>££</sup>
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	Year 1 (8)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
<b>TOTAL</b>							

**Name & address of Bidder's Bankers:**

<sup>§</sup>For conversion of US Dollars to rupees, the rate of conversion shall be Rupees [70 (seventy)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees 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.

<sup>ss</sup>A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

<sup>£</sup> Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Financial Capacity relates to an Associate of the Applicant or its Member, write “Associate” along with Member Code.

<sup>££</sup>The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

### **Instructions:**

1. The single entity Bidder or Lead Member of the Consortium, as the case may be, shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the single entity Bidder or Lead Member of the Consortium and its Associates where the Bidder is relying on its Associate’s financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation. In case the Applicant is an AIF or Foreign Investment Fund, Net Cash Accruals shall mean Net Income – (Unrealised Revenue + Unrealised Expenses).
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFP document.
6. The Bidder shall provide an Auditor’s Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 of the RFP document.

ANNEX-III

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Ref. Date:

To,

.....  
.....  
.....

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.<sup>§</sup>

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf<sup>§</sup> and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

---

<sup>§</sup> Please strike out whichever is not applicable.

APPENDIX-II

**Power of Attorney for signing of Bid<sup>s</sup>**

*(Refer Clause 2.2.5)*

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) 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 Bid for the ..... Project proposed or being developed by the ..... (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

<sup>s</sup> To be submitted in original.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *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 executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' 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.*
- *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 Bidders 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.*

APPENDIX-III

**Power of Attorney for Lead Member of Consortium<sup>§</sup>**

*(Refer Clause 2.2.5)*

Whereas the ..... (“the **Authority**”) has invited applications from interested parties for the ..... Project (the “Project”).

Whereas, ....., ....., ..... and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

**NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

We, .....having our registered office at ....., M/s. ....having our registered office at ....., M/s. ....having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

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<sup>§</sup> To be submitted in original.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney 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 Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF .....2.....

For .....  
(Signature)  
.....  
(Name & Title)

For .....  
(Signature)  
.....  
(Name & Title)

For .....  
(Signature)  
.....  
(Name & Title)

Witnesses:

- 1.
- 2.
- .....

(Executants)

(To be executed by all the Members of the Consortium)



Notes:

- *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 executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' 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.*
- *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 Bidders 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.*

## **Bank Guarantee for Bid Security**

*(Refer Clauses 2.1.5 and 2.25.1)*

B.G. No. Dated:

1. In consideration of you, ....., having its office at ....., (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to receive the Bid of .....(a company registered under the Companies Act, 1956/2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Project on PPP basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.5 read with Clause 2.1.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. .... (Rupees ..... only) (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 Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
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 Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including

failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents 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. .... (Rupees ..... only).

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 inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority 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 Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. 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.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority 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 Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents 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 Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority 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 Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority 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.

8. 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.
9. 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.
10. It shall not be necessary for the Authority 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 Authority 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.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. 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.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees ..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

By the hand of Mr./Ms ....., its ..... and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX-V

**Joint Bidding Agreement**

*(Refer Clause 2.13.3)*

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

**AMONGST**

1. .... Limited, a company incorporated under the Companies Act, 1956/2013<sup>¥</sup> and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)
3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

**AND**

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>§</sup>

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS,**

- (A) [The President of India /Governor of \*\*\*\*\*] represented by [\*\*\*\*\*] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the **Bids**”) by its Request for Proposal No. ....

---

<sup>¥</sup> A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organised and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

<sup>§</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

dated ..... (the “**RFP**”) for selection of Bidder for [development, augmentation, operation and management of the \*\*\*\*\*] (the “**Project**”).

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other Bidding Documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

**2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Financial Member of the Consortium; and}

{(c) Party of the Third Part shall be the Financial Member of the Consortium;  
and}

{(d) Party of the Fourth Part shall be the Financial Member/ Other Member  
of the Consortium.}

## **5. Joint and Several Liability**

5.1 The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till the Appointed Date under and in accordance with the Concession Agreement.

5.2 The Parties do hereby undertake and declare that 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 Consortium; and 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 Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member.

## **6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows::

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose Net Worth have been reckoned for the purposes of qualification in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

**7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the

charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or



prospects or business of such Party in the fulfillment of its obligations under this Agreement.

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Appointed Date under the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

**9. Miscellaneous**

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of LEAD MEMBER by:  (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED  SECOND PART  (Signature) (Name) (Designation) (Address)
SIGNED, SEALED AND DELIVERED THIRD PART  (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED FOURTH PART  (Signature) (Name) (Designation) (Address)

In the presence of:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

*Notes:*

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-VI

**Letter comprising the Financial Bid**

*(Refer Clause 2.1.4)*

(On Bidder's letter head)

(Date and Reference)

To,

.....

.....

.....

Dear Sir,

Subject: Financial Bid for ..... Project

I/We, ..... (Bidder's name) herewith submit the following Financial Bid for undertaking the Project in accordance with the Bidding Documents and the Concession Agreement:

[I/We require a Grant of Rs..... (Rupees.....)].

OR

[I/We offer a Premium of Rs..... (Rupees .....).]

I/We agree that this offer shall remain valid for a period of 120 (one hundred and twenty) days from the Bid Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

[Note: The Financial Bidis to be submitted strictly as per this format on the Official Website only.]

APPENDIX-VII

**Guidelines of the Department of Disinvestment**

*(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II  
Government of India  
Department of Disinvestment

Block 14, CGO Complex  
New Delhi.  
Dated 13<sup>th</sup> July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

## APPENDIX-VIII

### List of Bid-specific provisions<sup>§</sup>

#### A. Clauses with currency-based footnotes

1. Introduction
2. Clause 2.2.1 (c): Eligibility of Bidders.
3. Clause 2.2.4: Eligibility of Bidders.
4. Clause 2.10.3: Amendment of RFP.
5. Clause 2.19.1 (h): Test of responsiveness.

**Note:** The above footnotes marked “\$” shall not be deleted. They shall remain in the RFP to be issued to prospective Bidders.

#### B. Appendices with non-numeric footnotes

All non-numeric footnotes in the Appendices shall be retained in the respective Appendices for guidance of the Bidders. These shall be omitted by the Bidders while submitting their respective Bids.

#### C. Appendices where curly brackets are used

1. Appendix I: Letter comprising the Bid: Paras 27, 30 and 32.
2. Appendix V: Joint Bidding Agreement: Recital 3 and 4; Clauses 4 and 6.

**Note:** The curly brackets should be removed after the provisions contained therein are suitably addressed by the Bidders.

#### D. Appendices with blank spaces

All blank spaces in the Appendices shall be retained in the RFP. These shall be filled up when the format of the respective Appendix is used.

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<sup>§</sup> This Appendix-VIII contains a list of Clauses and Appendices that would need to be suitably modified for reflecting bid-specific provisions. This Appendix-VIII may, therefore, be included in the RFP document to be issued to prospective Bidders.

## APPENDIX-IX

### List of Project-specific provisions<sup>8</sup>

#### A. Clauses with serially numbered Footnotes (Fn)

1. Clause 1.1: Background (Fn. 1)
2. Clause 1.2.1: Brief description of Bidding Process (Fn. 2).
3. Clause 1.2.4: Brief description of Bidding Process (Fn. 3)\*.
4. Clause 1.3: Schedule of Bidding Process (Fn. 4)\*
5. Clause 2.2.1 (e): Eligibility of Bidders (Fn. 5)\*.
6. Clause 2.2.2: Financial Capacity (Fn.6\*).
7. Clause 2.2.11: Eligibility of Bidders (Fn. 7)\*.

**\*Note:** The Clauses to which these Footnotes relate also include square parenthesis or asterisks which may be addressed simultaneously. Such square parenthesis or asterisks have not been listed in (B) or (C) below.

#### B. Clauses with square parenthesis

1. Glossary: Government.
2. Clause 1.1.1: Background.
3. Clause 1.1.3: Background.
4. Clause 1.2.3: Brief description of Bidding Process.
5. Clause 1.2.6: Brief description of Bidding Process.
6. Clause 1.2.8: Brief description of Bidding Process.
7. Clause 2.1.4: Scope of Bid.
8. Clause 2.2.7: Eligibility of Bidders
9. Clause 2.13.3: Submission of Bids.
10. Clause 2.14.2: Bid Due Date.
11. Clause 2.15.2: Contents of the Bid
12. Clause 2.25.2: Bid Security.
13. Clause 3.4: Selection of Bidder
14. Clause 3.6: Bid Parameter

#### C. Clauses with asterisks

1. Cover Page: Project Title
2. Clause 1.1.1: Background
3. Clause 1.2.1: Brief description of Bidding Process.
4. Clause 1.2.9: Brief description of Bidding Process.
5. Clause 1.2.10: Brief description of Bidding Process.
6. Clause 1.4: Pre-Bid Conference.

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<sup>8</sup> This Appendix-IX contains a list of Clauses and Appendices that would need to be suitably modified, prior to issue of the RFP document, for reflecting project-specific provisions. This Appendix-IX should be omitted before issuing the RFP document to prospective Bidders.

7. Clause 2.1.5: Scope of Bid.
8. Clause 2.10.2: Amendment of RFP.
9. Clauses 2.13.4 and 2.13.5: Submission of Bids.
10. Clause 2.14.1 and 2.14.2: Bid Due Date.
11. Clause 2.25.2: Bid Security

**D. Appendices with serially numbered Footnotes (Fn)**

1. Appendix IX: List of Project-specific Provisions: (Fn. 8).

**E. Appendices with square parenthesis**

1. Appendix I Annex I: Financial Capacity of the Bidder
2. Appendix IV: Bank Guarantee for Bid Security: Para 9 and 13.
3. Appendix V: Joint Bidding Agreement: Recital A.
4. Appendix-VI: Letter Comprising the Financial Bid

**F. Appendices with asterisks**

1. Appendix-I: Letter comprising the Technical Bid: Para 20 and 27.
2. Appendix V: Joint Bidding Agreement: Recital A.