

No. 244/5/2022-Wind
Ministry of New and Renewable Energy
Atal Akshyay Urja Bhawan, Lodhi Road, New Delhi- 110003

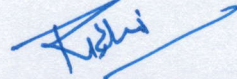
Dated: 14th November, 2022

Circular

Subject: Draft Tender Document for Sea bed leasing for offshore wind energy Projects – Reg.

The undersigned is directed to forward herewith a draft Tender Document along with contractual agreements for sea bed leasing for carrying out study/survey and subsequent development of offshore wind projects under Open Access/Captive/Third Party Sale for stakeholders' consultation.

2. In this regard, it is requested that the comments on the same may be provided to this ministry latest by 28.11.2022, through email at rishikesh.mnre@gov.in.



(Rishikesh Vaishnav)
Scientist 'B', MNRE

Email: rishikesh.mnre@gov.in

To

All Concerned

**Request for Selection (RfS)
Document for Selection of Offshore Wind Power
Developers for Allocation of Sea-bed Lease Rights for
Offshore Wind Power Projects Off the Coast of
Tamil Nadu, India**

RfS No. [Tender reference number/2022-23/TN/PH-I dated: ____]

Tender search code on ISN-ETS: [To be inserted]

*National Institute of Wind Energy
657, 1A2, Velachery - Tambaram Main Rd,
Pallikaranai Marshland, Pallikaranai, Chennai, Tamil
Nadu, 600100*

Tel: –[to be inserted], e-mail : [to be inserted]

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- i. Agreement to lease
- ii. Survey lease Deed Agreement
- iii. Construction and operation Lease Deed Agreement
- iv. Concessionaire Agreement

DISCLAIMER

1. Though adequate care has been taken while preparing the RfS document, the bidder(s) shall satisfy themselves that the document is complete in all respect. Intimation regarding any discrepancy shall be given by the prospective bidders to the office of NIWE immediately. If no intimation is received from any bidder within **30 (Thirty) days from the date of issuance of RfS documents**, it shall be considered that the document is complete in all respect and has been received/ acknowledged by the bidder(s).
2. NIWE reserves the right to modify, amend or supplement this document.
3. This RfS document has been prepared in good faith, and on best endeavor basis. Neither NIWE nor their employees or advisors make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of information, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this document, even if any loss or damage is caused by any act or omission on their part.
4. In case of any discrepancy in the documents uploaded on the websites of, NIWE ISN-ETS and CPPP, the documents uploaded on the ISN-ETS website will prevail.

Place: Chennai

Date: / /2022

BID INFORMATION SHEET

The brief details of the RfS are as under:

(A)	NAME OF WORK/ BRIEF SCOPE OF WORK/ JOB	<p>1. Selection of offshore wind power developers (OWPD) for leasing of sea-bed areas equivalent to 4000MW of offshore wind power projects off the coast of Tamil Nadu, India through International Competitive Bidding</p> <p>2. Grid Connectivity and Long-Term Open Access / Access to grid under general network access (GNA) framework) to grid shall be in the scope of the offshore wind power developer (OWPD).</p> <p>3. The energy generated from offshore wind power projects to be consumed in captive mode or sold to third party under open access framework or sold through merchant sale/power exchange.</p>		
(B)	RfS NO. & DATE	Dated: / /2022		
(C)	TYPE OF BIDDING SYSTEM	SINGLE BID SYSTEM	<input type="checkbox"/>	
		TWO BID SYSTEM	<input type="checkbox" value="Yes"/>	
(D)	TYPE OF RfS/ TENDER	E-TENDER	<input type="checkbox" value="Yes"/>	
		MANUAL	<input type="checkbox"/>	
(E)	COMPLETION/ CONTRACT PERIOD	As mentioned in this RfS Document		
(F)	DOCUMENT FEE/ COST OF RfS DOCUMENT (NON- REFUNDABLE)	APPLICABLE	<input type="checkbox" value="Yes"/>	
		NOT APPLICABLE	<input type="checkbox"/>	
		<p>Amount: INR 5,90,000 (Indian Rupees Five Lakh and Ninety Thousand only) including GST (18%) to be submitted through NEFT/ RTGS transfer in the account of NIWE along with the response to RfS</p>		
(G)	BID PROCESSING FEE	APPLICABLE	<input type="checkbox"/>	
		NOT APPLICABLE	<input type="checkbox" value="Yes"/>	
		<p>Bid processing fees to be submitted through NEFT/RTGS transfer in the account of NIWE, along with the response to RfS.</p>		

(H)	EARNEST MONEY DEPOSIT (EMD)	APPLICABLE	<input type="checkbox"/> Yes
		NOT APPLICABLE	<input type="checkbox"/>
Amount: INR 10.0 million Or INR 100,00,000 (Indian Rupees one Crore) per Project to be submitted in the form of Bank Guarantee along with the response to RfS			
(I)	SECURITY DEPOSIT	APPLICABLE	<input type="checkbox"/> Yes
		NOT APPLICABLE	<input type="checkbox"/>
(J)	DATE, TIME & VENUE OF PRE-BID MEETING	Scheduled as per NIT on ISN-ETS portal and/or NIWE website.	
(K)	OFFLINE & ONLINE BIDSUBMISSION DEADLINE	As per NIT on ISN-ETS portal	
(L)	TECHNO-COMMERCIAL BID OPENING	As per NIT on ISN-ETS portal	
(M)	e-REVERSE AUCTION (e-RA)	There shall be NO e-reverse auction (e-RA) for bidding of offshore wind blocks	
(N)	CONTACT DETAILS OF ISN-ETS Portal	M/s Electronic Tender.com (India) Pvt. Ltd. Gurugram Contact Person: ISN-ETS Support Team Customer Support: +91-124-4229071,4229072 (From 10:00 Hrs to 18:00 Hrs on all working Days i.e. Monday to Friday except Govt. Holidays) Email: support@isn-ets.com	
(O)	NAME, DESIGNATION, ADDRESS AND OTHER DETAILS (FOR SUBMISSION OF RESPONSE TO RfS)	[Name of the person] Designation [Name of Bidding Agency] [Address] [Contact No. :] [Email :]	
(P)	DETAILS OF PERSONS TO BE CONTACTED IN CASE OF ANY ASSISTANCE REQUIRED	Contact details for 3 persons to be inserted Name Contact Number Email	

1. Bids must be submitted strictly in accordance with Section-IV and V of the RfS, on electronic mode only.
2. Bidders are required to quote strictly as per terms and conditions of the RfS documents and not to stipulate any deviations/ exceptions.
3. Any bidder, who meets the Qualifying Requirement and wishes to quote against this RfS, may download the complete RfS document along with its amendment(s) and clarifications if any, from ISN-ETS Portal (<https://www.bharat-electronictender.com>) and/or NIWE website (<https://niwe.res.in/>) and submit their Bid complete in all respect as per terms & conditions of RfS Document on or before the due date of bid submission.
4. Clarification(s)/ Corrigendum(s), if any, shall also be available on the above referred websites.

Bidders are requested to remain updated for any notices/ amendments/ clarifications etc, to the RfS document through the websites <https://www.bharat-electronictender.com> and <https://niwe.res.in/>. No separate notifications will be issued for such notices/ amendments/ clarifications etc, in the print media or individually. Intimation regarding notification on the above shall be updated on <https://niwe.res.in/> and the details will be available only from <https://www.bharat-electronictender.com>

1 *Background & Introduction*

1.1 At the COP26, (Nov. 2021), Hon'ble Prime Minister of India has presented five nectar elements- **PANCHMRIT** to deal with the climate change challenges. These elements were as follows along with its recent updates:

1. To put forward and further propagate a healthy and sustainable way of living based on traditions and values of conservation and moderation, including through a mass movement for 'LIFE' – 'Lifestyle for Environment' as a key to combating climate change
2. To adopt a climate friendly and a cleaner path than the one followed hitherto by others at corresponding level of economic development.
3. To reduce Emissions Intensity of its GDP by 45 percent by 2030, from 2005 level
4. To achieve about 50 percent cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030, with the help of transfer of technology and low-cost international finance including from Green Climate Fund (GCF)
5. To create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030.
6. To better adapt to climate change by enhancing investments in development programmes in sectors vulnerable to climate change, particularly agriculture, water resources, Himalayan region, coastal regions, health and disaster management.
7. To mobilize domestic and new & additional funds from developed countries to implement the above mitigation and adaptation actions in view of the resource required and the resource gap.
8. To build capacities, create domestic framework and international architecture for quick diffusion of cutting-edge climate technology in India and for joint collaborative R&D for such future technologies.

These goals will be an unprecedented contribution of India to climate action. In August 2022, Union Cabinet of Government of India has approved India's updated Nationally determined Contributions (NDCs).

Government of India notified in the 'National Offshore Wind Energy Policy¹-2015' on 6th October 2015 for the development of offshore wind power in the country. The policy provides for offshore wind power development up to a seaward distance of 200 nautical miles from the baseline, i.e., up to the country's Exclusive Economic Zone (EEZ). Ministry of New & Renewable Energy (MNRE) is the Nodal Ministry, and the National Institute of Wind Energy (NIWE) is the Nodal Agency for the development of Offshore Wind Energy in India.

- 1.2 Preliminary studies carried out by NIWE across the coastline of India indicate good potential both off the Southern tip of the country and the West coast for offshore wind farm development in India with a cumulative capacity of 70 GW based on the meso-scale data available in the public domain.
- 1.3 In September 2018, 'Guidelines for Offshore Wind Power Assessment Studies and Surveys²' was made available by NIWE. During July 2022, MNRE has released a 'Strategy paper³ for establishment of

¹ <https://mnre.gov.in/img/documents/uploads/3debf9158b643d8a3e06a7a007f2ef9.pdf>

² <https://mnre.gov.in/img/documents/uploads/a341c6e68bce413392b0383f18a647ef.pdf>

³ https://mnre.gov.in/img/documents/uploads/file_f-1657274400252.pdf

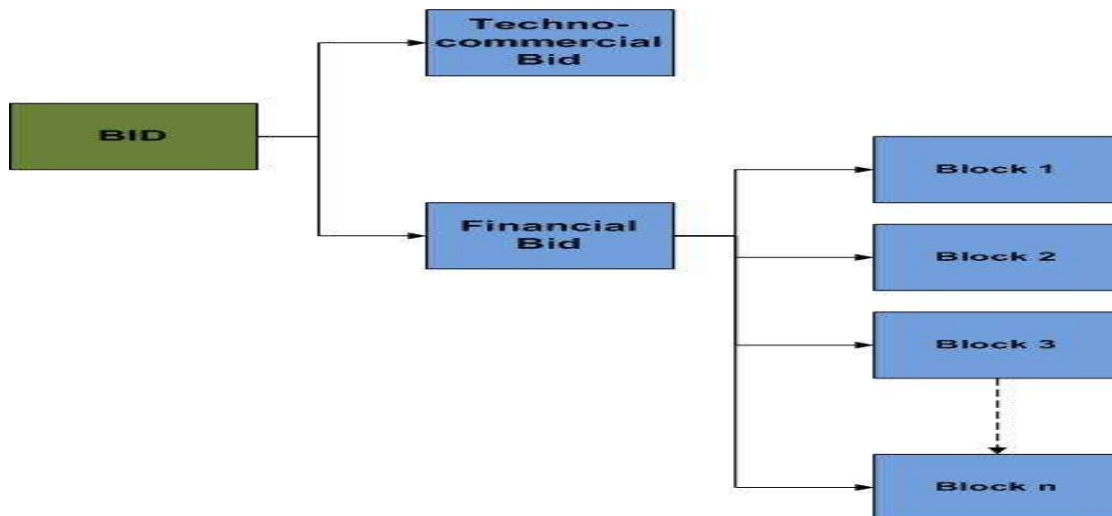
offshore wind energy’ in India. The strategy paper elaborates on multiple offshore wind project development models and provided a long-term offshore wind power project auction trajectory under various proposed development models.

- 1.4 Through this RfS round, it is proposed to lease out sea bed areas for 4 GW equivalent offshore wind project capacity during FY2022-23 this includes specific identified offshore wind sub-blocks B1, B2, B3, B4 and G1 off the coast of Tamil Nadu in the Gulf of Mannar as mentioned in Table 01 and figure 03-08. Developer will have the exclusive rights over the allocated sea block to carry out required study survey and subsequent project development in accordance with this RfS and lease agreements (attached as Annexure A-C).
- 1.5 As per the National offshore wind energy policy 2015, NIWE is the nodal agency and entrusted the responsibility of bidding for offshore wind development in Coast of Tamil Nadu.
- 1.6 The objectives of this RfS are:
 - i) To introduce offshore wind energy as one of the green energy generation sources to contribute towards ‘Net Zero by 2070’ target of the country
 - ii) To develop offshore wind energy projects, related ports and logistics infrastructure and offshore wind expertise
 - iii) To develop required international collaborations for development and implementation of high quality and highly reliable offshore wind power projects, and its operational capabilities
 - iv) To open up new development area for the Indian economy and generate employment
- 1.7 The Bidders will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays etc. as may be available for onshore wind projects in India. It should be noted that 100% FDI (Foreign Direct Investment) are allowed for renewable energy sector in India under automatic route, and no prior government approval is required for the same.
- 1.8 The fiscal incentives/ FDI will not have any bearing on comparison of bids for selection of developers. As equal opportunity is being provided to all Bidders at the time of tendering itself, it is up to the Bidders to avail various tax and other benefits. No claim shall arise on NIWE for any liability, if Bidders are not able to avail fiscal incentives and his will not have any bearing on any of the tender condition.
- 1.9 NIWE does not however give a representation or warranty on the availability of fiscal incentive, and submission of bid by the Bidder shall be independent of such availability or non-availability as the case may be of the fiscal incentives; as per the prevailing incentive mechanism.

2 Invitation for Bids

- 2.1 Each Block will be assigned with a tentative minimum installable offshore wind power capacity. However, the actual MW capacity to be installed by the OWPD in the Block shall be determined pursuant to the finalisation of the detailed project report in accordance with the Survey Lease Deed. In case the OWPD proposes to set up more than 1 (one) offshore wind power facility in the same Block, each such facility would need to be physically identifiable with separate injection points, control systems and metering arrangement.
- 2.2 A single stage, two-envelope bidding procedure will be adopted and will proceed as detailed in the RfS. Bidding will be conducted through the competitive bidding procedures as per the provisions of this RfS. The respective rights of NIWE/ MNRE and the successful Bidder/ OWPD shall be governed by the RfS/ Project Agreements

- 2.3 Bidders shall provide a separate and independent financial Bid for each of the Blocks they are interested in. A Bidder may submit Bids for all the Blocks. However, part/ sub allocations are not allowed, and a Bidder shall not be eligible to be allocated more than 2 (two) Blocks



- 2.4 Interested bidders must necessarily register themselves on the portal <https://www.bharat-electronictender.com> (“ETS portal”) through M/s Electronic Tender.com (India) Pvt. Limited to participate in the bidding under this invitation for bids. It shall be the sole responsibility of the interested bidders to get themselves registered at the aforesaid portal for which they are required to contact M/s Electronic Tender.com (India) Pvt. Limited, New Delhi to complete the registration formalities. Contact details of ISN-ETS is mentioned on the Bid Information Sheet. All required documents and formalities for registering on ISN-ETS are mentioned in the subsequent RfS documents.

Bidders may obtain further information regarding this International Competitive Bidding (ICB) from the registered office of NIWE at the address given on the Bid Information Sheet from 10:00 hours to 17:00 hours on all working days.

For proper uploading of the bids on the ETS portal, it shall be the sole responsibility of the bidders to apprise themselves adequately regarding all the relevant procedures and provisions as detailed in the portal as well as by contacting through M/s Electronic Tender.com (India) Pvt. Limited (ETI) directly, as and when required, for which contact details are also mentioned on the Bid Information Sheet. NIWE in no case shall be responsible for any issues related to timely or properly uploading/ submission of the bid in accordance with the relevant provisions of the Bidding Documents.

- 2.5 Bidders should submit their bid proposal complete in all aspect on or before last date and time of Bid Submission as mentioned on ISN-ETS Portal (<https://www.bharat-electronictender.com>), NIWE website <https://niwe.res.in/> and as indicated in the Bid Information Sheet.
- 2.6 Bidder shall submit bid proposal along with non-refundable RfS Document Fees and Earnest Money Deposit (EMD) complete in all respect as per the Bid Information Sheet. Bidding without the prescribed Document Fees and EMD will be rejected. In the event of any date indicated being declared a holiday, the next working day shall become operative for the respective purpose mentioned herein.
- 2.7 RfS documents which include Offshore Wind Sub-blocks details for this RfS, Eligibility Criteria,

Various Standard and Special Conditions of Contract, Formats, agreement drafts etc. can be downloaded from the ISN-ETS Portal or from NIWE's website. It is mandatory to download official copy of the RfS Document from Electronic Tender System (ISN-ETS) Portal to participate in the RfS. Any amendments)/corrigendum(s)/clarification(s) with respect to this RfS shall be uploaded on ISN-ETS website. The Bidder should regularly check for any Amendment(s)/Corrigendum(s)/Clarification(s) on the above mentioned ISN-ETS website. The same may also be uploaded on NIWE website also. However, in case of any discrepancy, the information available on ISN-ETS website shall prevail.

- 2.8 NIWE reserves the right to cancel/ withdraw/ defer this invitation for bids anytime during bidding the process; without assigning any reason and shall bear no liability towards bidder/s whatsoever consequent upon such a decision.
- 2.9 The technical Bid (first envelope) submitted by the Bidder shall be scrutinized to establish techno-commercial eligibility as per the RfS. On completion of techno-commercial bid evaluation, the responses to the questionnaire (second envelope) of only those Bidders shall be opened whose technical Bids are found to be qualified as per the RfS. The responses will be scored as per the RfS. The financial Bids, i.e., Quoted Lease Rental, in respect of each Block (third envelope) of only those Bidders shall be opened whose evaluated score is equal to or more than the minimum score specified in this RfS. Weights shall be given to the evaluated score and financial Bids. The highest scoring Bidder (i.e., the composite of the evaluated score and financial score) shall be declared the winning Bidder in respect of the Block and awarded the Project. A Bidder shall not be eligible to be allocated more than 2 (two) Blocks. Accordingly, to the extent that a Bidder emerges as the highest scoring Bidder in more than 2 (two) Blocks, they shall be given the choice of Blocks, and the next highest scoring Bidder shall be declared the winning Bidder for such of the Blocks that are not so chosen.

3 *INTERPRETATIONS*

- 3.1 Words comprising the singular shall include the plural & vice versa.
- 3.2 An applicable law shall be construed as reference to such applicable law including its amendments or re-enactments from time to time.
- 3.3 A time of day shall save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time
- 3.4 Different parts of this contract are to be taken as mutually explanatory and supplementary to each other and if there is any differentiation between or among the parts of this contract, they shall be interpreted in a harmonious manner so as to give effect to each part.
- 3.5 The table of contents and any headings or subheadings in the contract has been inserted for case of reference only & shall not affect the interpretation of this agreement.

SECTION-II DEFINITIONS OF TERMS

4 *Following terms used in the documents will carry the meaning and interpretations as described below:*

- 4.1. **“ACT”** or **“ELECTRICITY ACT, 2003”** shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time.
- 4.2. **“AFFILIATE”** shall mean a company that, directly or indirectly, (i) controls, or (ii) is controlled by, or (iii) is under common control with, a company developing a Project or a Member in a Consortium developing the Project and control means ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such company or right to appoint majority Directors.
- 4.3. **“APPROPRIATE COMMISSION”** Unless otherwise stated or the context requires, Appropriate Commission shall mean Central Electricity Regulatory Commission;
- 4.4. **“BID”** or **“PROPOSAL”** shall mean the documents submitted by the Bidder towards meeting the techno-commercial and financial qualifying requirements, along with the price bid submitted by the Bidder as part of its response to the RfS issued by NIWE.
- 4.5. **“BIDDER”** shall mean Bidding Company (including a foreign company) or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company/ Bidding Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require; foreign companies participating in the bidding process shall be registered as companies as per the rules of their country of origin.
- 4.6. **“BIDDING CONSORTIUM”** or **“CONSORTIUM”** shall refer to a group of Companies that collectively submit the response in accordance with the provisions of this RfS under a Consortium Agreement.
- 4.7. **“BID CAPACITY”** shall mean aggregate project capacity of the Offshore Wind Power Project(s) as proposed by the bidder.
- 4.8. **“CAPACITY UTILIZATION FACTOR or CUF”** shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time.
 - 4.8.1. For illustration, CUF shall be calculated based on the annual energy injected and metered at the Delivery Point. In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$.
 - 4.8.2. It may be noted that in the above illustration, the capacity ‘Y’ MW shall refer to the Contracted Capacity in terms of the Power Purchase Agreement (PPA)/Power Sale Agreement (PSA).
- 4.9. **“CHARTERED ACCOUNTANT”** shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act, 1949. For bidders incorporated in countries other than India, “Chartered Accountant” shall mean a person, or a firm practicing in the respective country and designated/ registered under the corresponding Statutes/ laws of the respective country.
- 4.10. **“COMPANY”** shall mean a body corporate incorporated in India under the Companies Act, 2013 or any law in India prior thereto relating to Companies (The Companies ACT 1956), as applicable
- 4.11. **“COMMERCIAL OPERATION DATE (COD)”** shall mean the date as defined in Clause 23 of the

RfS.

- 4.12. **“CONTRACTED CAPACITY”** shall mean the AC capacity in MW contracted with NIWE for development of offshore wind project at the Delivery Point from the Project, based on which the PPA/PSA or Energy Wheeling Agreement (EWA) is to be executed with Third party or with CTU/STU.
- 4.13. **“CONTRACT YEAR”** shall mean the period beginning from the Effective Date of the PPA/PSA/EWA and ending on the immediately succeeding 31st March and thereafter each period of 12 months beginning on 1st April and ending on 31st March provided that:
- i. in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding 31st March, and thereafter each period of 12 (Twelve) Months commencing on 1st April and ending on 31st March, and
 - ii. provided further that the last Contract Year of this Agreement shall end on the last day of the Term of the **Concessionaire Agreement of offshore wind project**
- 4.14. **“CONTROL”** shall mean the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such Company or right to appoint majority Directors.
- 4.15. **“CONTROLLING SHAREHOLDING”** shall mean more than 50% of the voting rights and paid-up share capital in the Company/ Consortium.
- 4.16. **“CENTRAL TRANSMISSION UTILITY (CTU)”** shall mean the Central Transmission Utility as defined in sub-section (10) of section 2 of the Electricity Act 2003.
- 4.17. **“DAY”** shall mean calendar day.
- 4.18. **“EFFECTIVE DATE”** shall mean the date as on **90th day from the date of issuance of Letter of Award (LoA)**, or any other data as applicable, which shall be indicated in the Concessionaire Agreement executed by both the parties.
- 4.19. **“EQUITY”** shall mean Net Worth as defined in Companies Act, 2013.
- 4.20. **“GUIDELINES”** shall mean “Guidelines for offshore wind power Assessment Studies and Survey” issued time to time by the Ministry of New and Renewable Energy including subsequent amendments and clarification thereof, if any, issued until the last date of bid submission of this RfS.
- 4.21. **“GROUP COMPANY”** of a Company means;
- 4.21.1.a Company which, directly or indirectly, holds 10% (Ten Percent) or more of the share capital of the Company or;
 - 4.21.2.a Company in which the Company, directly or indirectly, holds 10% (Ten Percent) or more of the share capital of such Company or;
 - 4.21.3.a Company in which the Company, directly or indirectly, has the power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;
 - 4.21.4.a Company which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Company whether through the ownership of securities or agreement or any other arrangement or otherwise or;
 - 4.21.5.a Company which is under common control with the Company, and control means ownership by one Company of at least 10% (Ten Percent) of the share capital of the other Company or power to direct or cause to be directed the management and policies of such Company whether through the ownership of securities or agreement or any other arrangement or otherwise;

Provided that a financial institution, scheduled bank, foreign institutional investor, Nonbanking Financial Company, and any mutual fund, pension funds and sovereign funds shall not be deemed to be Group Company, and its shareholding and the power to direct or cause to be directed the management and policies of a Company shall not be considered for the purposes of this definition unless it is the Project Company or a Member of the Consortium developing the Project.

- 4.22. **“INTER-CONNECTION POINT/ DELIVERY/ METERING POINT”** shall mean a single point at 220kV or above, where the power from the offshore wind Project(s) is injected into the identified ISTS Substation (including the dedicated transmission line connecting the offshore wind Projects with the substation system) as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the offshore wind power developer shall abide by the relevant CERC/ SERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time
- 4.23. **“JOINT CONTROL”** shall mean a situation where a company has multiple promoters (but none of the shareholders has more than 50% of voting rights and paid-up share capital).
- 4.24. **“LEAD MEMBER OF THE BIDDING CONSORTIUM”** or **“LEAD MEMBER”**: There shall be only one Lead Member, having the shareholding of not less 51% in the Bidding Consortium.
Note: The shareholding of the Lead member in the Project Company (Special Purpose Vehicle) cannot be changed till **01 (one) year after the Commercial Operation Date (COD) of the Project.**
- 4.25. **“LETTER OF AWARD”** or **“LoA”** shall mean the letter issued by NIWE to the selected Bidder for award of the Sea bed Project Area for Lease and offshore wind project development.
- 4.26. **“LIMITED LIABILITY PARTNERSHIP”** or **“LLP”** shall mean a Company governed by Limited Liability Partnership Act 2008 or as amended.
- 4.27. **“LLC”** shall mean Limited Liability Company.
- 4.28. **“MEMBER IN A BIDDING CONSORTIUM”** or **“MEMBER”** shall mean each Company in a Bidding Consortium. In case of a Technology Partner being a member in the Consortium, it has to be a Company.
- 4.29. **“MONTH”** shall mean calendar month.
- 4.30. **“NET-WORTH”** shall mean the Net-Worth as defined in section 2 of the Companies Act, 2013.
- 4.31. **“PAID-UP SHARE CAPITAL”** shall mean the paid-up share capital as defined in Section 2 of the Companies Act, 2013.
- 4.32. **“PARENT”** shall mean a Company, which holds more than 50% voting rights and paid up share capital, either directly or indirectly in the Project Company or a Member in a Consortium developing the Project.
- 4.33. **“OFFSHORE POOLING SUBSTATION/POOLING POINT”** shall mean a point where more than one offshore wind power Project may connect to a common Transmission System. Multiple Offshore wind power Projects can be connected to an offshore pooling substation from where common transmission system shall be **constructed and maintained** by the **CTUIL** to get connected to the onshore ISTS substation. The voltage level for such common line shall be 220 kV or above. Further, the metering of the offshore wind power project pooled power shall be done at the injection point, i.e. the onshore ISTS substation. However, the voltage level of transmission system of individual projects up to the offshore pooling substation may be at 33 kV and above. Sub-meters shall be installed at the offshore pooling substation for metering and forecasting and scheduling of individual Projects. The losses in the common transmission system up to the injection point shall be apportioned to the

individual Projects for the purpose of billing.

- 4.34. **“ONSHORE POOLING SUBSTATION/POOLING POINT”** shall mean a point where more than one offshore wind power Project may connect to an onshore common Transmission System. Multiple offshore wind power Projects can be connected to an onshore pooling substation from where common transmission system shall be constructed and maintained by the **CTUIL** to get connected to the onshore ISTS substation/network. The voltage level for such common line shall be 220 kV or above. Further, the metering of the offshore wind power project pooled power shall be done at the injection point, i.e. the onshore pooling station / ISTS substation. However, the voltage level of transmission system of individual projects up to the offshore pooling substation may be at 33 kV and above. Sub-meters shall be installed at the offshore pooling substation for metering and forecasting and scheduling of individual Projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing.
- 4.35. **“OFFSHORE WIND POWER PROJECT”** is the offshore located wind turbine based electrical power generation project defined by single point of injection into the grid at interconnection/metering point at onshore ISTS substation or in case of sharing of transmission lines, by separate injection at offshore pooling substation point. Each offshore wind power project must also have separate control systems and metering.
- 4.36. **“OFFSHORE WIND SITE RESTORATION FUND”** is the central fund created for restoration of offshore wind project sites after decommissioning of the offshore wind power projects. This fund to be created and operated by the NIWE/MNRE for the said purpose along with its accrued interest. Developers to deposit Site restoration charges in this fund on annual basis as per the guidelines of MNRE/NIWE.
- 4.37. **“PGCIL” or “POWERGRID”** shall mean Power grid Corporation of India Limited.
- 4.38. **“PPA”** shall mean the Power Purchase Agreement signed between the successful Bidder and **Third-Party consumer/Intermediary Procurer** according to the terms and conditions mutually decided by them under the framework of Electricity Act-2003.
- 4.39. **“PROJECT CAPACITY”** shall mean the maximum AC capacity in **MW or MVA** at the Delivery Point that can be scheduled on which the Concession / Connectivity/ Power Purchase /Power Sale /Energy Wheeling Agreement/s shall be signed;
- 4.40. **“PROJECT COMMISSIONING”**: The offshore wind power Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the RfS or defined by the grid operators/NIWE/MNRE from time to time;
- 4.41. **“PROJECT DEVELOPER” or “DEVELOPER” or “OFFSHORE WIND POWER DEVELOPER (OWPD)”** shall mean the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a **offshore wind power Project capacity and the required sea bed area on lease by the bidding agency /MNRE/NIWE** (through a competitive bidding process), including the SPECIAL PURPOSE VEHICLE (SPV) formed by the selected bidder/ consortium for the purpose of setting up of the offshore wind power Project and signing of Energy Wheeling /PPA/PSA agreement/s with respective agencies, as per the prevailing Law and Rules made under Electricity Act 2003 and amendments made in that time to time.
- 4.42. **“PROJECT LOCATION”** shall mean the offshore wind project area /sea-bed area within the NIWE/MNRE identified and allotted offshore wind block/sub-block to OSWD, offshore pooling substation sea bed area, and the submersible power cable route area up to ISTS onshore substation

where the offshore wind power Project is being implemented.

- 4.43. **“PROMOTER”** shall mean Promoter as defined in the Companies Act, 2013.
- 4.44. **“RfS”** or **“RfS DOCUMENT”** or **“BIDDING DOCUMENT(S)”** or **“TENDER DOOCUMENTS”** shall mean the “Request for Selection” document issued by [NIWE]/MNRE/NIWE including standard Set of Agreement (in Drafts) and including Standard Power Purchase /Sale Agreement (PPA/PSA) along with subsequent clarifications and amendments thereof, vide RfS No. _____ dated / /2022.
- 4.45. **“SCHEDULED COMMISSIONING DATE”** or **“SCD”** shall be the date as indicated in by the developer in the lease agreements.
- 4.46. **“Agency”** shall mean the agency (NIWE) inviting the bids for offshore wind power project developments in India.
- 4.47. **“SELECTED BIDDER”** or **“SUCCESSFUL BIDDER”** shall mean the Bidder selected pursuant to this RfS to set up the offshore wind power Project and supply electrical output as per the RfS terms for self or captive consumption or sale to third party/ merchant sale.
- 4.48. **“SITE RESTORATION CHARGES”** shall mean the offshore wind site restoration charges to be paid by the developers on annual basis to NIWE/MNRE and to be used for site restoration after decommissioning of the offshore wind power project/s.
- 4.49. **“STATE TRANSMISSION UTILITY (STU)”** shall mean the Board or the Government Company notified by the respective State Government under Sub-Section I of Section 39 of the Electricity Act, 2003.
- 4.50. **“TOE”** shall mean Tender Opening Event.
- 4.51. **“ULTIMATE PARENT”** shall mean a Company, which owns more than 50% (Fifty Percent) voting rights and paid-up share capital, either directly or indirectly in the Parent and Affiliates;
- 4.52. **“WEEK”** shall mean calendar week;
- 4.53. **“OFFSHORE WIND POWER PROJECT”** or **“OFFSHORE WIND POWER GENERATING SYSTEMS/ STATIONS”** means the wind power project that uses wind energy for conversion into electricity through a wind turbine generator.
- 4.54. **“SURVEY”** shall mean geophysical survey (geophysical examination of the water column, seabed and subsoil, for spatial studies and preparation of geological maps and geological sections defining the seabed condition of different zones to help in designing the foundations structures for such offshore wind turbine generators (wind turbines) for electrical power generations), geotechnical survey (drilling of bore-holes to source scientific information and other data relating to soil and sub-soil condition including assessment of its load bearing capacity with an immediate objective to setup the offshore wind projects), oceanographic survey, environmental survey, wind resource assessment, investigation and exploration
- 4.55. **“APPLICABLE PERMITS”** shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with undertaking the Survey of the Seabed (including, without limitation, the Stage-I clearance set forth in Annexure A of the National Offshore Wind Energy Policy, 2015 and ‘Letter of Consent’ under the Guidelines for Offshore Wind Power Assessment Studies and Surveys issued by NIWE)
- 4.56. **“DATA”** shall mean survey or investigation data such as meteorological, bathymetric, current, side scan sonar data, physical oceanographic data, surface geological maps and sections, magnetic and gravity measurements and anomaly maps, seismic profiles, sections and structure contour maps,

electrical and telluric current survey data, and other information which has a direct or indirect bearing on the offshore wind energy possibilities in the Seabed and collected by the Lessee or its agents or contractors.

- 4.57. **“DECOMMISSIONING”** means decommissioning of wind operated electricity generators (wind turbine) with removal of equipment 15 feet (4.6 meters) below the mudline, machinery, used cables as well as uprooting and demolition of the foundation structures along with removal of the debris as per relevant marine environmental norms and returning the seabed to its original configuration.
- 4.58. **“OFFSHORE WIND TRANSMISSION PROJECT”** means transmission power evacuation system from offshore pooling point (s) to onshore points for the purpose of offshore wind energy project.
- 4.59. **“RESOURCE AND METOCEAN MEASUREMENT”** means measurement of wind profile and other oceanography data by deploying sensors either through fixed platform or floating platform.

This section summarizes the offshore wind developments in India, focusing the Tamil Nadu state. This section also provides detailed information about the proposed project locations and offshore wind blocks/sub-blocks, and primary information available on wind resource of the region, bathymetry, distance from coasts and coordinates of each of the offshore wind sub-block (table 01) which is on the offer through this RfS for offshore wind project development.

5 *Key provisions of for offshore wind projects*

- 5.1 Project development shall be carried out by the prospective developers in these zones as referred in Table 01 (figure 03-08). The power generated from such projects shall be either used for captive consumption under open access mechanism or sold to any entity through a bilateral power purchase agreement or shall be sold through Power Exchanges without any financial assistance from the GoI.
- 5.2 Benefits like provision of power evacuation infrastructure from the offshore pooling delivery point, waiver of transmission charges, Renewable Energy Credits with Multipliers, Carbon Credit benefits etc. as determined by the Government of India / State Govt's from time to time shall be applicable.
- 5.3 The development of offshore wind energy project shall be taken up by the selected OWPD within the stipulated period and the power off-take will be the sole responsibility of the OWPD
- 5.4 NIWE or its designated agency would issue a 'letter of consent' to the selected OWPD for carrying out the offshore wind measurement and other surveys after obtaining requisite clearances from concerned Ministries/ Department as per the National offshore Wind Energy policy.
- 5.5 MNRE shall, in respect of each Project, enter into an agreement to lease ("Agreement to Lease") with the successful Bidder for such Project selected based on this RfS (i.e., the Bidding Company/ Lead Member of the Bidding Consortium);
- 5.6 After completions of the terms & condition of Agreement to lease, the developer have to sign the Survey lease deed to carry out the study survey in the allocated sea bed.
- 5.7 Subject to procurement of the permits and clearances in accordance with the Agreement to Lease (including, without limitation, the letter of consent from NIWE), MNRE shall enter into a survey lease deed (the "Survey Lease Deed") with the successful Bidder (i.e., the Bidding Company/ Lead Member of the Bidding Consortium) to grant a lease of the seabed to the successful Bidder for a period of 5 (five) years which can be extended by additional 2 years in order to carry out study survey and development activities necessary to prepare a detailed project report and advance a project to financial close;
- 5.8 Subject to completion of the survey and submission/ finalisation of the detailed project report in terms of the said Survey Lease Deed: MNRE shall enter into a construction and operation lease deed ("C&O Lease Deed") with the special purpose vehicle to be incorporated by the successful Bidder. This lease deed shall grant a lease of the seabed to the OWPD to undertake the construction and operation of the Project;
- 5.9 Along with the signing of C&O Lease Deed, NIWE shall enter into a concession agreement (the "Concession Agreement") with the OWPD to grant a concession for designing, building, financing, constructing, commissioning, operating, maintaining and decommissioning the Project.

- 5.10 The term of the lease granted under the C&O Lease Deed, and the period of the concession under the Concession Agreement shall be 35 (thirty-five) years, inclusive of the construction and decommissioning periods.
- 5.11 The tentative Flow chart for the bidding process is shown in following flow diagram.

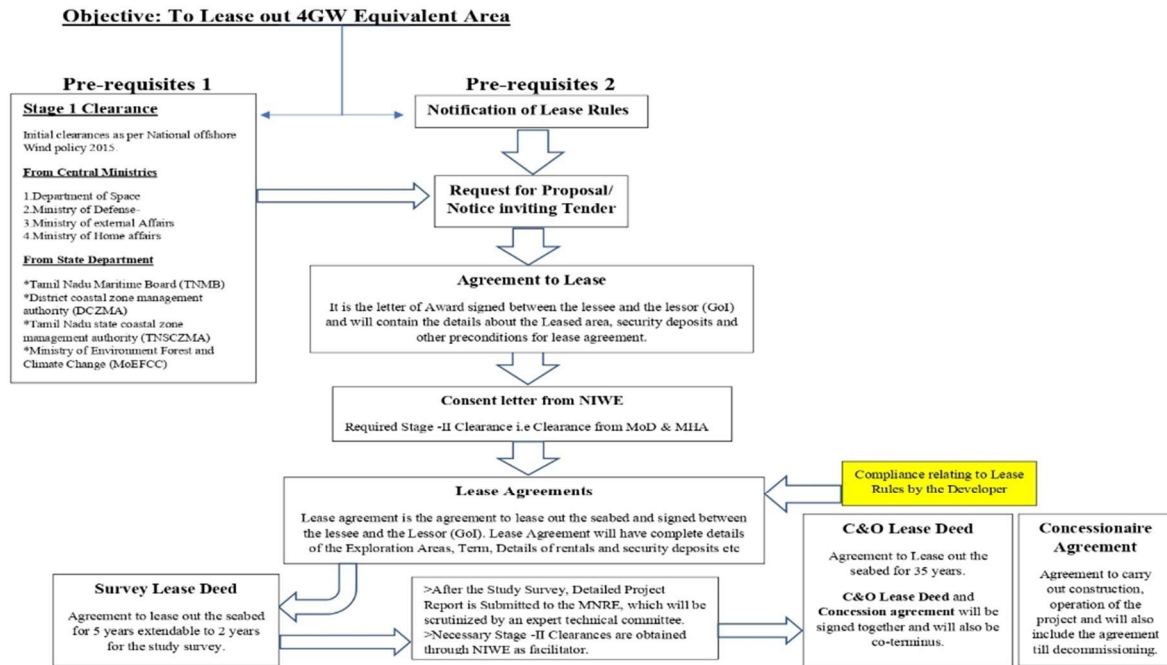


Figure 01: Flow chart for leasing out 4 GW offshore wind equivalent sea-bed area

6 Connectivity with the Grid

- 6.1 The strategy paper has detailed the scope of work for project developer with CTU/PGCIL with regard to the connectivity of the grid and the same is shown in following figure 02 below.
- 6.2 Evacuation of power from the offshore pooling delivery point to the onshore meeting /interconnection point shall be the responsibility of CTU for all the offshore wind project development models.
- 6.3 The developer shall set up the offshore wind project(s), including the offshore pooling station at the voltage level of 220 kV. Metering for the purpose of energy accounting shall be done at respective onshore pooling station.

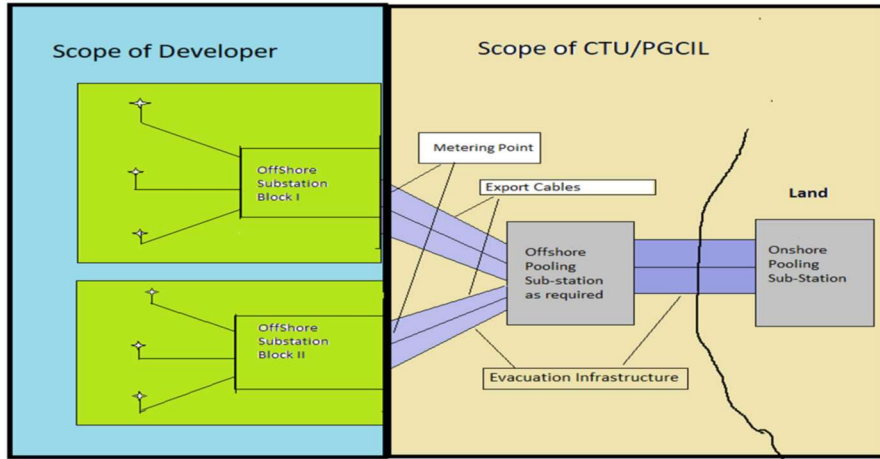


Figure 02 : Scope of work for developers and CTU/PGCIL for offshore wind project

The Table 01 below indicates the Subblocks on offer under model 3 of the strategy paper for development of offshore wind energy projects off Tamil Nadu Coast

Potential	Subzone ID/State	Sea-bed Area (Sq. km)	Indicative mean Wind Speed range @150m height	Indicative water depth (m) range (as per GEBCO data)	Tentative minimum Potential @4.5 MW per Sq.km	Min & max Distance from each phase/zone to shore (km)
3.9 – 5.2 GW	B1-TN	203	10-11 m/s	20-40 m	912	10 & 39
	B2-TN	184			828	
	B3-TN	157	705			
	B4-TN	180	20-50 m	809		
	G1-TN	146		655		

Table 01: Sub-blocks on offer under offshore wind projects in Tamil Nadu

The proposed blocks on offer for offshore wind energy development off Tamil Nadu coast under model 3 are detailed in Figure03 to 08 along with their boundary coordinates.

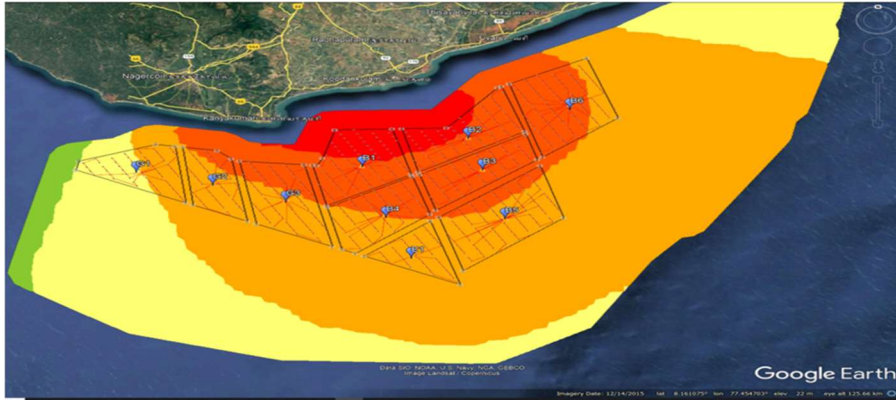


Figure03: Proposed Blocks for Offshore Wind Projects in TN coast

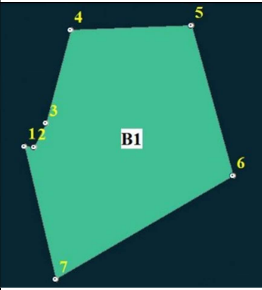
Subzone	Boundary ID	Latitude	Longitude
 B1	1	7° 58' 54.388" N	77° 36' 47.167" E
	2	7° 58' 52.553" N	77° 37' 10.645" E
	3	7° 59' 51.953" N	77° 37' 40.661" E
	4	8° 3' 45.171" N	77° 38' 42.508" E
	5	8° 3' 56.248" N	77° 43' 43.811" E
	6	7° 57' 41.337" N	77° 45' 26.782" E
	7	7° 53' 22.047" N	77° 38' 4.212" E

Figure 04: B1 block of TN coast

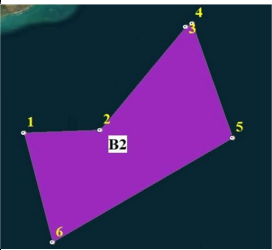
Subzone	Boundary ID	Latitude	Longitude
 B2	1	8° 3' 58.094" N	77° 44' 34.028" E
	2	8° 4' 6.740" N	77° 48' 29.235" E
	3	8° 9' 41.505" N	77° 52' 54.989" E
	4	8° 9' 52.445" N	77° 53' 15.464" E
	5	8° 3' 41.902" N	77° 55' 19.875" E
	6	7° 58' 2.686" N	77° 46' 3.081" E

Figure 05: B2 block of TN coast

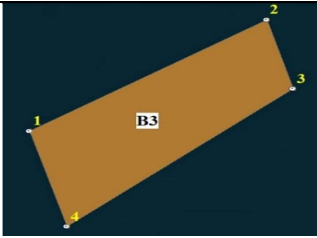
Subzone	Boundary ID	Latitude	Longitude
 B3	1	7° 57' 40.785" N	77° 46' 9.651" E
	2	8° 3' 22.533" N	77° 55' 25.626" E
	3	7° 59' 50.352" N	77° 56' 28.635" E
	4	7° 52' 47.732" N	77° 47' 37.567" E

Figure 06: B3 block of TN coast

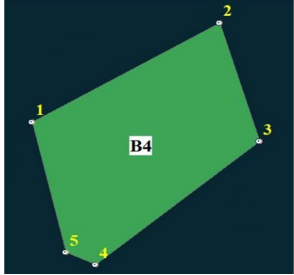
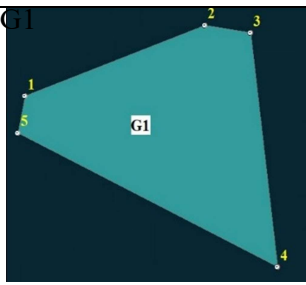
Subzone	Boundary ID	Latitude	Longitude
 B4	1	7° 53' 6.477" N	77° 38' 7.821" E
	2	7° 57' 28.145" N	77° 45' 32.350" E
	3	7° 52' 15.332" N	77° 47' 7.840" E
	4	7° 46' 49.888" N	77° 40' 38.563" E
	5	7° 47' 22.398" N	77° 39' 27.587" E

Figure 07: B4 block of TN coast

Sub zone	Boundary ID	Latitude	Longitude
 G1	1	7° 59' 17.147" N	77° 16' 23.377" E
	2	8° 1' 37.474" N	77° 23' 5.669" E
	3	8° 1' 22.411" N	77° 24' 47.594" E
	4	7° 53' 37.782" N	77° 25' 48.045" E
	5	7° 58' 3.584" N	77° 16' 7.744" E

Figure

08: G1 block of TN coast

8. Scope of Work

- 8.1 Under this RfS, the offshore wind power developer shall be required to set up offshore wind power projects, with the primary objective of using the power in captive mode or sale of power to third party under open access or through merchant sale or through power exchange as per the prevailing regulatory framework under Electricity Act-2003.
- 8.2 Under this RfS, the successful Bidder shall be required to undertake surveys of the seabed and associated development activities towards preparation of a detailed project report and advance a project to financial close, and the OWPD shall be required to set up an offshore wind power project, inclusive of offshore pooling station at the voltage level of 220 kV (each project to be developed on each of the identified Blocks is referred to as “**Project**”, and collectively as the “**Projects**”).
- 8.3 Except sea-bed area lease to be provided by the Government of India, the other project related scope including the identification of land for onshore manufacturing, assembly, storage of wind turbine components, wind turbine and other components transport, installation, commissioning, and ownership of the offshore wind power project, along with obtaining connectivity, LTA under the General Network Access (GNA) framework and necessary approvals and interconnection with the ISTS network for supply/self-use of power will be under the scope of the offshore wind power developer (OWPD).
- 8.4 The offshore wind power projects to be selected under this RfS provides for deployment of state-of-the-art offshore wind power technology. However, the selection of developers for sea-bed leasing for offshore wind power project development would be technology agnostic.

9 Total area /capacity offered

- 9.1 Selection of offshore wind power project developers for allocation of sea-bed areas on lease for proposed installation of a total offshore wind capacity of **4,000 MW** (equivalent) will be carried out through e-bidding auction process.
- 9.2 The actual MW capacity to be installed by the developer in the allocated block shall be determined at the stage of Survey Lease Deed agreement. The actual MW capacity to be installed shall be determined after detailed survey carried out by the developer and at the time of preparing the detailed project report (DPR).
- 9.3 In case the OWPD wishes to set up more than ONE Project in the same or more than one sub-block/s; then the Projects would need to be physically identifiable with separate injection points, control systems and metering arrangement.

10 Maximum Eligibility for Contracted Capacity Allocation for a Bidder

The following conditions shall be applicable to the Bidders for submission of bids against this RfS:

10.1 A Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit a single bid offering a minimum quantum of Contracted Capacity (allocated seabed block).

Note: In case a common Company/Companies directly or indirectly hold(s) more than 10% but less than 26% shareholding in more than one Bidder participating in the RfS, each of such Bidders will be required to submit the Disclosure as per Format 7.8A. In all other cases, Format 7.8 will be applicable.

10.2 Developers shall provide individual Bids for each block separately.

10.3 The evaluation of bids shall be carried out as described in Section-VIII of the RfS. The methodology for Allocation of Sea-bed areas is elaborated in Section-VIII of the RfS.

10.4 Subject to the exception as per Clause 10.1 above, multiple bids for the same offshore wind sub-block (e.g. B1, B2, B3, B4 and G1) from same company including its Parent/ Ultimate Parent/Affiliates/Group Companies shall make all the bids submitted by the group invalid. Only ONE bid per each interested block is to be submitted by the company/developer/consortium.

11 Connectivity with the Grid

11.1 The OSW Project may be designed for interconnection with the ISTS in accordance with the prevailing CERC regulations in this regard. For interconnection with the grid and metering, the OWPD shall abide by the applicable Grid Code, Grid Connectivity Standards, Regulations on Communication System for transmission of electricity and other regulations/procedures (as amended from time to time) issued by Appropriate Commissions and Central Electricity Authority (CEA).

11.2 The OWPD shall coordinate the CTU and enter into an agreement with CTU for the connectivity as per scheduled commissioning date.

11.3 It is the responsibility of the CTU to establish network from the coupling pooling station to onshore sub-station within the scheduled commissioning date.

11.4 The OWPD shall be required to follow the Revised Connectivity Procedure as per the general network access regulation 2022 issued by CTU as well as other Regulations issued by CERC/CEA as amended/updated from time to time. The Bidders are free to choose the offshore/onshore ISTS substations for Interconnection of the OSW Project to the Grid on a Pan-India basis. While doing so, the Bidders shall apply due diligence while choosing the proposed substation, and may choose their substations from any one of the following options:

- i. Existing substations having available margin as indicated by the respective substation owner.
- ii. Existing substations/ substations under construction where augmentation is under process or plans for augmentation have been announced.
- iii. Substations approved under the updated plan made available by the Minutes of meeting for Northern, Eastern, Western and Southern Region committees and as displayed by the CTU on its website, <https://webapps.powergrid.in/ctu/u/Default.aspx> subject to availability of requisite margin for grant of connectivity.

- 11.5 The transmission connectivity to the OWPD may be provided by the CTU, as the case may be, prior to commissioning of the project on the request of the OWPD, to facilitate testing and allow flow of infirm power generated into the grid to avoid wastage of power.
- 11.6 Metering arrangement of each OSW Project shall have to be adhered to in line with relevant clause of the **Concessionaire Agreement**. Two or more OSW Projects can be connected to a common offshore pooling substation from which the pooled power can be transferred to the onshore ISTS substation through a common transmission line subject to the following conditions:
- i. Acceptance of such an arrangement by CTU/ RLDC.
 - ii. Energy injected by each OSW Project will be recorded and jointly signed by respective OWPDs and copies of the same will be submitted to CTU as required.
 - iii. The energy accounts are divided and clearly demarcated for the power supplied by the OSW Project and are issued by the CTU/RLDC/SLDC/STU/RPC concerned.
 - iv. In case of offshore Pooling substation, losses in the transmission line between the offshore Pooling substation and the onshore ISTS substation, shall be apportioned among the OWPDs who share such a Pooling arrangement, based on their monthly generation.
- 11.7 The OWPD shall comply with CERC/SERC regulations on Forecasting, Scheduling and Deviation Settlement, as applicable and are responsible for all liabilities related to LTA and Connectivity under the GNA framework. The scheduling of the power from the OSW Project as per the applicable regulation shall be the responsibility of the OWPD and any financial implication on account thereof shall be borne by the OWPD. In order to remove potential discrepancies and ambiguities, the OWPDs are hereby instructed that, as part of scheduling of power from the OSW Project, they will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/Discom, as per the Regulations in force, under intimation to NIWE. NIWE may facilitate in identification of any discrepancy and assist the OWPD for its early rectification without any liability on NIWE. The OWPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

12 Energy Supply by the Offshore Wind Power Developer

- 12.1 **Criteria for Energy Supply** The Bidders will declare the annual CUF of the OSW Projects at the time of submission of detailed project report (DPR) to MNRE/NIWE, and the OWPDs will be allowed to revise as per the performance guarantee stipulated by the bilateral power purchase agreements with the entity.
- 12.2 **Shortfall in Energy Supply** If for any Operational Year, it is found that the OWPD has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the OWPD, on account of reasons primarily attributable to the OWPD, such shortfall shall be dealt as per the applicable provisions of the bilateral PPA.

13 Commissioning of OSW Projects

Commissioning of the OSW Project shall be carried out by the OWPD in line with the procedure set by the CTU/STU. Commissioning certificates shall be issued by NIWE after successful commissioning report from the CTU/STU.

13.1 Part Commissioning

The part commissioning of the OSW Project shall be accepted by NIWE subject to the following conditions:

- i) The minimum capacity for acceptance of first part commissioning shall be 100 MW or 50% of the allocated OSW Project capacity, whichever is lower. Minimum capacity for acceptance of first part commissioning shall be 100 MW. A project capacity of up to 500 MW or less can be commissioned in maximum **three** parts and from 501MW to 1000 MW OSW project capacity can be commissioned in maximum **five parts**.
- ii) The OSW projects with capacity more than 500 MW can be commissioned in parts of at least 200 MW each, with last part being the balance capacity.

However, the Scheduled Commissioning Date will not get altered due to part commissioning. In case of part-commissioning of the OSW Project, sea-bed area corresponding to the part capacity being commissioned, shall be required to be demonstrated by the OWPD prior to declaration of commissioning of the said part capacity. Irrespective of dates of part commissioning, the Contract will remain in force for a period of 35 years from the Scheduled Commissioning Date or from the date of full commissioning of the projects, whichever is earlier.

13.2 Commissioning Schedule and Liquidated Damages Not Amounting to Penalty for Delay in Commissioning

- a. The Scheduled Commissioning Date (SCD) for commissioning of the full capacity of the OSW Project shall be the date as on **48 months** from the Effective Date of the **Concessionaire Agreement** (Annexure D) (for e.g. if Effective Date of the Contract is 07.01.2022 and effective date of then SCD shall be 06.01.2027).
- b. The maximum time period allowed for commissioning of the full OSW Project capacity with applicable liquidated damages, shall be limited to the date as on **365 days** from the **SCD** or the extended SCD (if applicable) (for e.g. if extended SCD of the OSW Project is 07.01.2027, then the above deadline for OSW Project commissioning shall be 07.01.2028).
- c. In case of delay in commissioning of the OSW Project beyond the SCD above, as part of the liquidated damages, the total Security Deposit amount for the OSW Project shall be encashed on per-day-basis until the Commercial Operating date.
- d. In case Commissioning of the OSW Project is delayed beyond the date as per Clause 13.2.b above, the OSW project capacity shall stand reduced/amended to the OSW Project Capacity commissioned and the Contract for the balance capacity will stand terminated and shall be reduced from the selected/allocated OSW Project Capacity.

14 Early Commissioning

The OWPD shall be permitted for full commissioning as well as part commissioning of the OSW Project even prior to the SCD, subject to availability of transmission connectivity and Short Term/Medium Term/ Long-Term/General Network Access. Early commissioning of the OSW Project will be allowed solely at the risk and cost of the OWPD. In such cases, OWPD shall be fully responsible for use/sale of energy generated from OSW projects as allowed under this RfS.

15 Obtaining RfS Documents

Interested bidders have to download the official copy of RfS & other documents after login into the ISN-ETS portal by using the Login ID & Password provided by ISN-ETS during registration. The bidder shall be eligible to submit/ upload the bid document only after logging into the ISN-ETS portal and downloading the official copy of RfS.

16 Cost of Documents

Prospective Bidders are required to submit their offshore wind power project proposals in response to this RfS document along with a non-refundable processing fee as mentioned in the Bid Information Sheet. A Bidder will be eligible to participate in the bidding process only on submission of entire financial amounts as per the Bid Information Sheet. Payments against Cost of RfS document shall be done only through NEFT/RTGS (electronic transfer), and the Bidder shall submit the transaction receipt, as part of the online bid submission.

The bank details of NIWE are available at website, <https://niwe.res.in/>.

NIWE bank Account Details:

Account No: 2874101011793

IFSC code: CNRB 0002874

MICR code: 600015094

Address: Canara Bank

NIOT Branch (Branch code 2874)

Valachery Tambaram high Road

Pallikarani Chennai- 600100

Bids submitted without cost of the RfS document and/or Bank Guarantee against Earnest Money Deposit (EMD) (including partial submission of any one of the respective amounts), may be liable for rejection by NIWE.

17 Project Scope & Technology Selection

Under this RfS, the OWPD shall set up the offshore wind power Project and the dedicated transmission network up to the Interconnection/Delivery Point, at its own cost. All approvals, permits and clearances required for setting up of the offshore wind power Project and/or dedicated transmission network up to the Interconnection/ Delivery Point (along with connectivity and LTA / GNA), including those required from State Government and local bodies, shall be in the scope of the OWPD. The NIWE will facilitate in getting the approval from the respective departments but the scope lies with the OWPD. The offshore wind projects to be selected under this scheme provide for deployment of state of the art- offshore wind power technology. However, the selection of offshore wind power projects/developers would be technology agnostic. Bay construction at offshore wind pooling station shall be under the scope of the OWPD.

18 Clearances Required from the State Government and Other Local Bodies

- a. Stage-I and Stage-II clearances as specified in the ‘National offshore wind Policy- 2015’:

Sl. No	Ministry/Department	Stage-I Clearances	Stage-II Clearances (or NoCs)
1.	Ministry of Environment & Forests	In-Principle Clearance	EIA and CRZ clearance
2.	Ministry of Defence	In-Principle Clearance	Clearance related to defence & security aspects, related to army, Navy, Air force, DRDO and other such institutions under MoD.
3.	Ministry of External Affairs	In-Principle Clearance	Clearance for development of offshore wind energy project within the maritime zones of india.
4.	Ministry of Home Affairs	In-Principle Clearance	Clearance regarding deployment of foreign nationals in offshore wind energy block
5.	Ministry of Civil Aviation	No clearance needed at this stage	Clearance for construction near aviation radars/aerodromes. No clearance/NOC required for all other locations.
6.	Ministry of Petroleum & natural gas	No clearance needed at this stage	Clearance for project near major ports. No objections certificate to operate away from shipping lanes.
7.	Ministry of shipping	No clearance needed at this stage	Clearance for project near Major ports. No objection certificate to operate away from shipping lanes
8.	Department of space	In-Principle Clearance	Clearance from security angle with regard to Dept of space installation and for minimum safety distance to be maintained from the Dept of space installations.
9.	Department of Telecommunication	No clearance needed at this stage	No objection certificate to operate outside subsea communication cable zones.

10.	Ministry of Mines	No clearance needed at this stage	No objection certificate to operate outside mining Zones.
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- b. Any other clearances as may be legally required in order to establish and operate the offshore infrastructure Project – like Oil and Gas exploration or pipelines.

NIWE will facilitate the stage-II clearance and coordinate with concerned Ministries/ Departments for grant of clearances/ non objection certificates. Additional clearances/ approvals may be required from State Government bodies for creating evacuation infrastructure, logistics etc. The OWPD may directly apply for such clearances/ approvals to the concerned State Government bodies

The OWPD should apply for all the necessary approvals, permits and clearances not more than 30 days from the Effective Date of Agreement to lease, which shall be complete in all respects, incorporating the clarifications/changes as required by the concerned authorities. The above timeline shall be adhered to, in order to examine cases where the OWPD faces delay in grant of the necessary approvals and permits, for a period substantially greater than the standard period of grant of approval by the respective organizations.

19 Earnest Money Deposit (EMD)

- 19.1 Earnest Money Deposit (EMD) of **INR 1 Crore** (Rs.1,00,00,000) per offshore wind power Project in the form of Bank Guarantee according to Format 7.3A and valid for **09 months** from the last date of bid submission, shall be submitted by the Bidder along with their bid, failing which the bid shall be summarily rejected. The Bank Guarantees towards EMD have to be issued in the name of the Bidding Company/ Lead Member of Bidding Consortium. In the event of encashment of EMD, the encashed amount shall include all applicable taxes.
- 19.2 The Bidder shall furnish the Bank Guarantees towards EMD from any of the Scheduled Commercial Banks as listed on the website of Reserve Bank of India (RBI) and amended as on the date of issuance of bank guarantee. Bank Guarantee issued by foreign branch of a Scheduled Commercial Bank is to be endorsed by the Indian branch of the same bank or State Bank of India (SBI).
- 19.3 The EMD shall be valid as per the timelines stipulated above. However, shortfall in the EMD validity, if any, up to a period of seven (7) days shall be acceptable. Further, an additional shortfall only in the following cases shall be acceptable: If bidder has submitted the EMD with validity as per original bid submission date or as per any revised submission date and if the deadline for submission of bids has been extended further, the Bid Guarantee shall be acceptable provided, the EMD is valid for more than two months from the actual date of bid submission and the Bidder submits the EMD extension for the requisite period within seven days from the date of actual bid submission, if required.
- 19.4 NIWE has agreed to accept the EMD in the form of an unconditional and irrevocable Bank Guarantee instead of the cash deposit with the clear position intimated to the bidder that the EMD Bank Guarantee shall be encashable for being appropriated by NIWE in terms of the guarantee as in the case of appropriation of the cash deposit lying with NIWE

19.5 Forfeiture of EMD

The EMD shall be encashed by NIWE in following cases:

- a. If the bidder withdraws or varies the bid after due date and time of bid submission and during the validity of bid;
- b. In case, NIWE offers to execute the Lease agreements (Annexure A, B & C) with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Clause 20 of the RfS or does not execute the operations as per Lease Agreement (Annexure A, B & C) within the stipulated time period;
- c. If after issuance of LoA, it is found that the documents furnished by the bidders as part of response to RfS are misleading or misrepresented in any way;
- d. If the bidder fails to furnish required Security Deposit/POI in accordance with Clause 20 of the RFS.

20 Security Deposit/Payment on Order Instrument (POI)

- 20.1 Bidders selected by NIWE based on this RfS shall submit a refundable security deposit (the “**Security Deposit**”) for a value @ INR [*to be inserted*]/MW prior to signing of the Agreement to Lease. It may be noted that successful Bidder (i.e., the Bidding Company/ Lead Member of the Bidding Consortium) shall submit the Security Deposit according to the Format 7.3B with a validity period up to (and including) the date of furnishing, pursuant to the Agreement to Lease, of a security deposit in respect of conducting the survey pursuant to the Survey Lease Deed. On receipt and after successful verification of the total Security Deposit in the acceptable form, the EMD shall be returned by NIWE to the successful Bidder. It may be noted that Agreement to Lease will be signed only upon successful verification of the Security Deposit submitted by the successful Bidder. The EMD shall be submitted separately for each Project/ Block being bid for. The EMDs are required to be submitted in the name of the entity signing the Agreement to Lease (i.e., the Bidding Company/ Lead Member of the Bidding Consortium)
- 20.2 The successful Bidder shall furnish the Security Deposit from any of the scheduled commercial banks as listed on the website of Reserve Bank of India and amended as on the date of issuance of the Security Deposit. Bank guarantee issued by foreign branch of a scheduled commercial bank is to be endorsed by the Indian branch of the same bank or State Bank of India. The bank guarantee towards Security Deposit has to be issued in the name of the Bidding Company/ Lead Member of the Bidding Consortium.
- 20.3 The format of the bank guarantees prescribed in the Format 7.3 A (EMD)/ 7.3 B (Security Deposit) shall be strictly adhered to and any deviation from the above formats shall result in rejection of the EMD/ Security Deposit and consequently, the Bid. In case of deviations in the formats of the bank guarantee, the Agreement to Lease shall not be signed.
- 20.4 NIWE has agreed to accept the Security Deposit in the form of an unconditional and irrevocable bank guarantee instead of the cash deposit with the clear position intimated to the Bidder that the Security Deposit shall be encashable for being appropriated in terms of the guarantee as in the case of appropriation of the cash deposit.
- 20.5 The successful Bidder for the Project selected based on this RfS is required to sign Agreement to Lease with MNRE within the timeline as stipulated in Clause 21 of the RfS. In case the successful Bidder does not submit the requisite documents as per Clause 21 of the RfS, or does not meet eligibility criteria upon submission of documents or does not execute the Agreement to Lease within the stipulated time period, then the bank guarantee equivalent to the amount of the EMD shall be encashed

from the bank guarantee available (i.e. EMD or Security Deposit) as liquidated damages not amounting to penalty, the selection of the successful Bidder shall stand cancelled and the successful Bidder expressly waives off its rights and objections, if any, in that respect.

- 20.6 The bank guarantees have to be executed on non-judicial stamp paper of appropriate value as per Stamp Act relevant to the place of execution.
- 20.7 All expenditure towards execution of bank guarantees such as stamp duty, etc. shall be borne by the Bidders. Any Bank Guarantee or amendment to be submitted as part of the bidding process/ contract execution, shall be effective only when the BG issuance message is transmitted by the issuing bank through SFMS to Canara Bank IFSC: CNRB 0002874, Client Name: National Institute of Wind Energy and a confirmation in this regard is received by NIWE. Message Type: IFN760COV is to be used by the issuing bank.
- 20.8 In case of bank guarantees issued by foreign branch of a scheduled commercial bank, the same is to be endorsed by the Indian branch of the same bank or State Bank of India, and the endorsing bank would be required to provide the SFMS confirmation.
- 20.9 After the bidding process is over, NIWE shall release the bank guarantees towards EMD of the unsuccessful Bidders within 15 (fifteen) days after the issuance of the LoA.
- 20.10 **Payment on Order Instrument (POI):** As an alternative to submission of Security Deposit as above, the OWPD also has an option to submit a letter of undertaking issued by either of the following three organizations, viz. (i) Indian Renewable Development Agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited. This Letter of Undertaking shall be issued as “Payment on Order Instrument” (POI), wherein the POI issuing organization undertakes to pay in all scenarios under which the Security deposit would be liable to be encashed by NIWE within the provisions of RfS/PPA. This instrument would have to be furnished as per Format 7.3 C of the RfS, within the timeline stipulated in the agreements.

21 Power Purchase Or Sale Agreement (PPA) OR Wheeling Agreement

- 21.1 Under the offshore wind power project developers can enter into Power Purchase/Sale Agreement (PPA/PSA) with any third party under open access or for merchant sale or for sale on power exchange. A copy of standard PPA/PSA to be executed between Power consumer and the selected OWPD will be made available on ISN-ETS Portal. The copies of such bilateral agreements PPA or Energy Wheeling Agreement signed for captive purpose shall be deposited with the NIWE/MNRE within 60 days from its execution.

Note: PPA/PSA/EWA will be executed between Power consumer/s and the OWPD as per the breakup of the cumulative offshore wind project capacity awarded to the Bidder. The Bidder shall provide the project breakup for the cumulative contracted capacity quoted, in the Covering Letter (Format 7.1), which can be changed by the OWPD prior to signing of Concessionaire /lease agreement. Further, for each offshore wind power Project, the bidder shall provide hourly generation profile for a representative day for a single year, indicating tentative energy (MWh) and power (MW) to be supplied under the PPA/PSA. The final project configuration, adding up to the cumulative capacity awarded to the Bidder, may be intimated to MNRE& NIWE at the time of signing of Concessionaire agreement and C&O lease Deed agreements, which shall then remain unchanged subsequent to signing

of these agreements. Delays in connectivity and/or LTA/GNA for the offshore wind power Project(s) on account of changes in the project parameters from the data as submitted in the Covering Letter (Format 7.1), shall be at the risk and cost of the Successful Bidder. The PPA(s)/PSA/EWA will be signed after only signing of **Concessionaire agreement and C&O Lease deed Agreement** for the respective offshore wind power Project.

- 21.2 The EMD shall be submitted by the OWPD prior to signing of **Agreement to Lease**. Before signing of Agreement to Lease between MNRE and the OWPDs, NIWE will verify the shareholding of the Project Company along with a copy of complete documentary evidence. If at this stage, it is found that the documents furnished by the OWPDs are false / misleading or misrepresented in any way, then the provisions contained in this RFS will be not be applicable.
- 21.3 Successful bidders will have to submit the required documents to NIWE within 90 days from the issue of LoA. In case of delay in submission of documents beyond the period as mentioned above, NIWE shall not be liable for delay in verification of documents and subsequent delay in signing of Lease Agreements (Annexure A, B & C). irrespective of the date of signing of **Agreement to Lease**, In extraordinary cases of unavoidable delay on the part of MNRE in signing the Agreement to Lease, the effective date of Agreement to Lease shall be the date of signing of **Agreement to Lease**.
- 21.4 NIWE will be not be obliged to buy any power as per generation schedule, to be provided by the OWPDs under this RfS, required under grid regulations. All the power and energy generated from the offshore wind power project is to be either used under captive mode or sale to third party or sale on power exchange or for merchant sale. The records in this regard to be furnished to MNRE/NIWE/Other agencies as may be required on annual basis or time to time as demanded by these agencies.
- 21.5 In addition to the above, the Successful Bidder shall also submit a detailed L-2 Schedule for the Project prior to the signing of PPA. Broad details to be captured in the Schedule are the seabed procurement; order, supply and erection status of various Project components; financial arrangement/ tie up etc. NIWE shall provide the standard L-2 Schedule template to the Successful Bidder after the issuance of LOA.
- 21.6 The OWPDs are required to provide a detailed project report (DPR) to NIWE/MNRE after the survey and exploration studies are completed. The DPR is to be submitted immediately after completion of the Survey/explorations. (The details regarding the DPR refer Annexure B- model survey lease deed Agreement)
- 21.7 On acceptance of the DPR by the MNRE/NIWE the developer will enter into C&O Lease deed agreement (Annexure C) with MNRE and NIWE will enter into a Concessionaire agreement (Annexure D) with the OWPD.
- 21.8 The DPR may include the detailed project site/location information, approach, wind resource, outcome and results of the offshore surveys/studies carried out, wind turbine micro-siting plan, Annual Energy Generation estimates along with assumptions used, tentative activities to be taken up and timelines, project implementation plan, resource planning, approvals and NoCs requirements, Power cable

routes, connecting sub-station (offshore and onshore) details, with technical specifications, Wind turbine and other key component's detailed specifications, and expected project costs and its breakdown.

22 Land Arrangements for the project

The OWPD shall be entirely responsible for acquiring the land required near the sea coast if any, from state or port authorities for staking various offshore wind turbine components/ subsystems for setting up the projects and NUWE/MNRE shall not be held responsible for the same in any manner.

23 Commercial Operation Date (COD)

Commercial Operation Date (COD) shall be the actual date of commissioning of the offshore wind power Project, as indicated on the Commissioning Certificate, upon successful commissioning of the full capacity of the offshore wind power Project. The 35-year tenure of Concessionaire agreement /C&O lease deed agreement shall be as per the provisions of offshore wind power development guidelines. Any energy produced and flowing into the grid before COD shall not be at the cost of NIWE under this scheme and developers will be free to make short term sale to any organization or use in captive mode individually.

24 Integrity Pact

In respect of this Project, the independent external monitor ("IEM") would be monitoring the execution of the Project Agreements to oversee implementation and effectiveness of the Integrity Pact ("IP") Program based on the IP executed with the successful Bidder, as per Format 7.15. The names of IEMs who have been appointed in terms of the IP which will form a part of the Project Agreements are:

- a) [to be inserted], E Mail ID: [to be inserted]
- b) [to be inserted], E Mail ID: [to be inserted]

The above-mentioned IEMs are authorized to examine/ consider all references made to it under this RfS/ Project Agreements. The successful Bidder/ OWPD, in case of any dispute(s)/ complaint(s) pertaining to this Project may raise the issue either with the designated nodal officer in NIWE or directly with the IEM at NIWE office at following address:

National Institute of Wind Energy,
657, 1A2, Velachery - Tambaram Main Rd, Pallikaranai Marshland, Pallikaranai, Chennai,
Tamil Nadu, 600100
Kind Attn.: [to be inserted]
Telephone No.: [to be inserted]
Fax No.: [to be inserted]
E-mail: [to be inserted]

The IEM has the right to access without restriction to all Project documentations of the employer including that provided by the successful Bidder/ OWPD. The successful Bidder/ OWPD will also grant the IEM, upon their request and demonstration of a valid interest, unrestricted and unconditional access to his Project documentations. The same is applicable to subcontractors. The

IEM is under contractual obligation to treat the information and documents of the successful Bidder/ OWPD/ subcontractors / JV partners / Member with confidentiality.

The Nodal officer for necessary coordination in this regard shall be as under:

- (i) [to be inserted].
- (ii) [to be inserted].

25 Minimum Paid up share Capital to be held by project promoter

- 25.1 The Bidder shall provide complete information in their bid in reference to this RfS about its promoters and upon issuance of LoA, the OWPD shall indicate its shareholding in the company indicating the controlling shareholding before signing of Agreement to Lease. The Bidder shall declare the above information regarding its Promoter(s) as per Format.
- 25.2 No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the **Concessionaire Agreement/ C&O Lease deed agreement (Annexure A,B,C& D)** . However, in case the project is being set up by a listed Company, this condition will not be applicable.

Following shall not be considered as change in shareholding as mentioned above:

- i. Infusion of Fresh equity capital amongst the existing shareholders/promoters at the time of Bid Submission to meet equity requirements.
 - ii. Conversion of CCDs, CCPs etc. already issued to existing shareholders.
 - iii. Death, marriage, Divorce, minor attaining major (any legal heir who was minor at the time of signing of), insolvent, insane of existing shareholders.
 - iv. Transfer of shares within the members of Immediate Promoter Group only.
 - v. Transfer of shares to IEPF
 - vi. Issue of Bonus Shares
- 25.3 In case of the selected Bidder itself executing the **Concessionaire Agreement (Annexure D)**, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 01 (one) year after the COD, except with the prior approval of NIWE. However, in case the offshore wind power Project is being set up by a listed Company, this condition will not be applicable.
 - 25.4 In case of companies having multiple promoters (but none of the shareholders having more than 51% of voting rights and paid-up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01(one) year after COD.
 - 25.5 In case of offshore wind power project being executed through SPECIAL PURPOSE VEHICLE (SPV)s: The Selected Bidder executing the project, if being a single company, shall ensure that its

shareholding in the SPECIAL PURPOSE VEHICLE (SPV)/ Project Company executing the Concessionaire Agreement (Annexure D), shall not fall below 51% at any time prior to 01 (one) year after the COD, except with the prior approval of NIWE. In the event the selected Bidder is a consortium, then the combined shareholding of the consortium members in the SPECIAL PURPOSE VEHICLE (SPV)/ Project Company executing the Concessionaire Agreement (Annexure D), shall not fall below 51% at any time prior to 01(one) year after COD, except with the prior approval of NIWE. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

- 25.6 OPWD shall not change in the shareholding without a written consent to MNRE/NIWE. The Transfer of controlling shareholding of the company developing the project within the same group of companies will however be allowed after COD with the permission of NIWE/MNRE, subject to the condition that, the management control remains within the same group of companies

26 *Project Development and Technical Requirements*

26.1 Guidelines for offshore Wind Power assessment study and survey.

The studies and surveys for offshore wind resource assessment together with oceanographic, bathymetric, geophysical and geotechnical and other related studies for offshore wind development will have to be carried strictly as per the Guidelines that would be amended or revised from time to time.

26.2 Decommissioning offshore wind projects

The bidder will be responsible for decommissioning of Offshore Wind projects and associated components and subsystem and either reuse, recycle, or responsibly dispose of all materials removed as stated in lease rules 2022.

26.3 Guidance on environmental and health and offshore safety requirements as per the India laws and as per the applicable laws

27 *Instructions to Bidders for Structuring of Bid Proposals in Response to RfS*

27.1 The bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit single response to RfS. Submission of bid proposals by Bidders in response to RfS shall be in the manner described below.

- i. Covering Letter as per Format 7.1.
- ii. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium shall be provided in original as per format attached hereto as Format 7.2.
- iii. In the event any Member of the Bidding Consortium (other than Lead Member) is a foreign entity, it may submit Board Resolutions in place of Power of Attorney for the purpose of fulfilling the requirements under this clause. Provided that such Board Resolutions shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board Resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.
- iv. Bank Guarantee against Earnest Money Deposit (EMD) as per Format 7.3 A.
- v. Board Resolutions, as per prescribed formats enclosed as per Format 7.4 duly certified by the Company Secretary or the Director of the relevant Bidder, as applicable to the Bidder and mentioned hereunder:
 - a. Board Resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favor of the person signing the response to RfS and in the event of selection of the offshore wind power projects and to sign the lease agreements (Annexure A,B & C) with MNRE **and Concessionaire Agreement with** (Annexure D) NIWE
 - b. Board Resolution from each of the Consortium Members in favour of the person signing Consortium Agreement.
 - c. Board Resolution from the Bidding Company committing 100% (One Hundred Percent) of the

- equity requirement for the offshore wind power Project/ Board Resolutions from each of the Consortium Members together in aggregate committing to 100% (One Hundred Percent) of equity requirement for the offshore wind power Project (in case of Bidding Consortium); and
- d. Board Resolutions from each of the Consortium Members and Lead member contributing such additional amount over and above the percentage limit (specified for the Lead Member and other member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the offshore wind power Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions in the Consortium Agreement.
 - vi. In case of a Consortium, the Consortium Agreement between the Members in the Consortium as per Format 7.5 along with Board resolution from each Member of the Consortium for participating in Consortium.
 - vii. Format for Financial Requirements as per Format 7.6 along with the certificate from practicing Chartered Accountant/ Statutory Auditors showing details of computation of the financial credentials of the Bidder.
 - viii. Undertaking regarding no willful default and no major litigation pending as per Format 7.7
 - ix. A disclosure statement as per Format 7.8/7.8A regarding participation of any related companies in the bidding process.
 - x. **Attachments**
 - i. Memorandum of Association, Article of Association needs to be attached along with the bid. The bidder should also highlight the relevant provision which highlights the objects relating to Power/ Energy/ Renewable Energy/ Wind Power plant development/Offshore wind power project development.
 - In case, there is no mention of the above provisions in the MoA/ AoA of the bidding company, the same has to be amended and submitted prior to signing of Lease Agreements, if the bidder is selected as Successful bidder.
 - If the selected bidder wishes to execute the project through a Special Purpose Vehicle (SPECIAL PURPOSE VEHICLE (SPV)), the MoA/ AoA of the SPECIAL PURPOSE VEHICLE (SPV) highlighting the relevant provision which highlights the objects relating to Power/ Energy/ Renewable Energy/ Onshore/Offshore Wind Power plant development has to be submitted prior to signing of PPA.
 - ii. Certificate of Incorporation of Bidding Company/ all member companies of Bidding Consortium.
 - iii. A certificate of shareholding of the bidding company, its Parent and Ultimate Parent (if any) duly certified by a practicing Chartered Accountant/ Company Secretary as on a date within 30 days prior to the last date of bid submission. NIWE reserves the right to seek additional information relating to shareholding in promoter companies, their parents/ ultimate parents and other group companies to satisfy themselves that RfS conditions have been complied with and the bidder will ensure submission of the same within the required time lines.
 - iv. Certified copies of annual audited accounts for the last financial year, i.e. FY 2021-22 (if available) or 2020-21, and provisional audited accounts, along with certified copies of Balance Sheet, Profit & Loss Account, Schedules and Cash Flow Statement supported with bank statements as on the date at least 7 days prior to the due date of bid submission (if

applicable), shall be required to be submitted.

- v. Details of all types of securities/instruments which are pending conversion into equity whether optionally or mandatorily.

28 Important Notes and Instructions to Bidders

- 28.1 Wherever information has been sought in specified formats, the Bidders shall fill in the details as per the prescribed formats and shall refrain from any deviations and referring to any other document for providing any information required in the prescribed format.
- 28.2 The Bidders shall be shortlisted based on the declarations made by them in relevant schedules of RfS. The documents submitted online will be verified before signing of Lease agreements (Annexure A,B & C) with MNRE and Concessionaire Agreement (Annexure D) in NIWE.
- 28.3 If the Bidder/Member in a Bidding Consortium conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its response to RfS, in any manner whatsoever, NIWE reserves the right to reject such response to RfS and/or cancel the Letter of Award, if issued, and the Bank Guarantee/POI provided up to that stage shall be encashed. Bidder shall be solely responsible for disqualification based on their declaration in the submission of response to RfS.
- 28.4 If the bidder/ Member in a bidding consortium conceals any material information or makes wrong statement or misrepresents facts or makes a misleading statement in its response to RfS is discovered after the Effective Date of Lease Agreements (Annexure A,B & C), consequences specified in to Lease Agreements (Annexure A,B & C) shall apply.
- 28.5 Response submitted by the Bidder shall become the property of the NIWE/MNRE and NIWE shall have no obligation to return the same to the Bidder. However, the EMDs submitted by unsuccessful Bidders shall be returned as specified in Clause 19 of the RfS.
- 28.6 All documents of the response to RfS (including RfS and subsequent Amendments/ Clarifications/ Addenda/Letters/Formats etc) submitted online must be digitally signed by the person authorized by the Board as per Format 7.4.
- 28.7 The response to RfS shall be submitted as mentioned in PQQ of the RfS. No change or supplemental information to a response to RfS will be accepted after the scheduled date and time of submission of response to RfS. However, NIWE reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the response to RfS.
- 28.8 The Bidder shall make sure that the correct, valid and operative Pass-Phrase to decrypt the relevant Bid-part is submitted into the 'Time Locked Electronic Key Box (EKB)' after the deadline of Bid submission, and before the commencement of the Online Tender Opening Event (TOE) of technical bid.
- 28.9 All the information should be submitted in English language only. In case of foreign bidders having

documents in other than English language, then the documents shall be translated in English language by certified translator and submitted.

- 28.10 Bidders shall mention the name of the contact person and complete address and contact details of the Bidder in the covering letter.
- 28.11 Response to RfS that are incomplete, which do not substantially meet the requirements prescribed in RFS, will be liable for rejection by NIWE.
- 28.12 Response to RfS not submitted in the specified formats will be liable for rejection by NIWE.
- 28.13 Bidders delaying in submission of additional information or clarifications sought will be liable for rejection.
- 28.14 Non-submission and/ or submission of incomplete data/ information required under the provisions of RFS shall not be constructed as waiver on the part of NIWE of the obligation of the Bidder to furnish the said/information unless the waiver is in writing.
- 28.15 The Central Electricity Regulatory Commission shall be the appropriate commission to exercise the regulatory and adjudicatory jurisdiction in regard to matters between OWPD and NIWE as well as OWPD and offshore wind power buying customers. Subject to the above, only Chennai Courts shall have exclusive jurisdiction in all matters pertaining to this RFS.
- 28.16 All the financial transactions to be made with NIWE, delay charges and any additional charges (if required), shall attract 18% GST on each transaction, irrespective of the same being mentioned in the RFS/ Concessionaire Agreement (Annexure D).

29 *Non-Responsive Bid*

The electronic response to RfS submitted by the bidder along with the documents submitted online to NIWE shall be scrutinized to establish “Responsiveness of the bid”. Each bidder’s response to RfS shall be checked for compliance with the submission requirements set forth in this RFS.

Any of the following conditions shall cause the Bid to be “non-responsive”:

- (a) Non-submission of the requisite Cost of RfS and/ or Processing Fees as mentioned in the Bid Information Sheet.
- (b) Response to RfS not received by the due date and time of bid submission.
- (c) Non-submission of correct, valid and document for both Technical and Financial Bid (Price Bid) Parts after the deadline of Bid Submission, and before the commencement of the Online Tender Opening Event (TOE) of Technical Bid.
- (d) Any indication of tariff in any part of response to the RfS, other than in the financial bid.
- (e) Data filled in the Electronic Form of Financial Bid (Second Envelope), not in line with the instructions mentioned in the same electronic form.
- (f) Except for the scenario as per Clause 10.1 above, in case it is found that the Bidding Company

including Ultimate Parent Company/ Parent Company/ Affiliate/ Group Companies have submitted more than one response to each individual offshore wind sub-block under this RfS, then all these (multiple) bids submitted for the particular offshore wind sub-block/s shall be treated as non-responsive and rejected.

(g) Non-submission or partial submission of EMD in acceptable form along with response to RfS.

In any of the above cases, the bid shall not be considered for bid opening and evaluation process.

30 Method of Submission of Response to RfS by the Bidder

30.1 Documents to be Submitted Offline

The Bidder has to submit original of following documents **offline**.

- a. Bank guarantee towards EMD as mentioned in the Bid Information Sheet (as per Format 7.3A).
- b. Pass-phrases for techno-commercial and financial Bids submitted on the ETS portal.

No documents will be accepted in person, on or before the date of bid submission.

Bank Guarantee against EMD needs to be submitted in both online and offline modes. The bidders will be required to submit the bank guarantee, either in person or through post, at the office of NIWE until the date as on 2 working days after the closing date of bid submission. The 2-day duration will be counted from the date of bid submission.

For e.g., if the bid submission deadline is 18:00 hrs on 22.01.2022, the above deadline will expire at 18:00 hrs on 24.01.2022. In case the above deadline being a holiday, the next working day in NIWE will be the deadline for submission of Bank Guarantees.

Note: In all cases, the Bank Guarantee against EMD (if applicable), shall be issued on or before the bid submission deadline. These instruments issued after the expiry of the deadline will be rejected.

The bidding envelope shall contain the following sticker:

Selection of Offshore Wind Power Developers for Setting up of 4,000 MW Offshore Wind Power Projects in Tamil Nadu, India	
<i>Cumulative area of seabed the offshore wind projects applied for</i>	<i>Sq. Km</i>
<i>No. of Projects Bid for</i>	
<i>RfS Reference No.</i>	<i>dated:</i>

<i>Submitted by</i>	<i>(Enter Full name and address of the Bidder)</i>
<i>Organization ID (OID) on EPS portal</i>	<i>(Enter the OID through which the Bid has been submitted online on ETS portal)</i>
<i>Authorized Signatory</i>	<i>(Signature of the Authorized Signatory) (Name of the Authorized Signatory) (Stamp of the Bidder)</i>
<i>Bid Submitted to</i>	(Designation, Name of Bidding Agency Address Tel No. 011- Email -)

30.2 **Documents to be Submitted Online**

Detailed instructions to be followed by the Bidders for online submission of response to RfS as stated as in RfS clause 43. The bidders shall strictly follow the instructions mentioned in the electronic form in respective techno-commercial bid and financial bid while filling the form.

If the Bidder has submitted bid online and fails to submit the Bank Guarantee for requisite amount offline within 2 working days from last date of bid submission, then the same shall be treated as incomplete bid and Cost of RfS, Processing fee submitted at this stage will be encashed and the EMD(s) shall be returned and the submitted bid will stand cancelled.

All documents of the response to RfS submitted online must be digitally signed and uploaded on the website, <https://vyvww.bharat-electronictender.com> which should contain the following:

Preliminary qualification

The preliminary qualification criteria as mentioned in clause 41, will qualify the bidder in regard to the bidder's organization, legal, safety, environmental and quality assurance, net worth and turn over which are considered as the basic preliminary qualifications required by the bidder. The bidders who pass the preliminary qualification criteria will participate for scoring the responses in the techno-commercial evaluation criteria.

The bidder who 'Pass' in all the preliminary qualification criteria's will only be considered eligible for the techno-commercial evaluation. The scoring would be such that each criterion will be considered "PASS" if satisfactory certificate/ Letter/Policy is provided and will be considered "FAIL" if not provided.

The Bidder shall upload single preliminary qualification document containing **scanned copies** of the documents as mentioned in clause (43) duly signed and stamped on each page by the authorized signatory

Techno-commercial criteria

i. Technical Bid (First Envelope)

The Bidder shall upload single technical bid containing **scanned copies** of the following documents duly signed and stamped on each page by the authorized signatory as mentioned below.

- (a) Formats - 7.1, 7.2, 7.3 A, 7.4, 7.5, 7.6, 7.7, 7.8/7.8A and 7.9 as elaborated in Clause 26 ix, 27 of the RfS.
- (b) All attachments elaborated in Clause (26Viii,27) of the RfS, under the sub-clause IX: Attachments, with proper file names.
- (c) All supporting documents regarding meeting the eligibility criteria.
- (d) Scanned Copies of NEFT/RTGS/DD/Pay order details towards Cost of RfS Document as mentioned in Bid Information Sheet.
- (e) Scanned Copies of requisite amount of Bank Guarantee towards EMD as mentioned in the Bid Information Sheet.

The Bidder will have to fill the Electronic Form provided at the ISN-ETS portal as part of Technical Bid.

Submission of Pass-phrases: In line with Clause 27.8, the Bidder shall be required to submit the Pass-Phrase to decrypt the relevant Bid-part is submitted into the 'Time Locked Electronic Key Box (EKB)' after the deadline of Bid submission, and before the commencement of the Online Tender Opening Event (TOE) of Techno-commercial bid.

ii. Financial Bid (Second Envelope)

Bidders shall submit the single Financial Bid containing the scanned copy of following document(s):

- (a) Covering letter as per Format - 7.10 of the RfS
- (b) Only Single Lease fees (in Rs. Per Sq. Km of sea-bed area) bid for all the offshore wind power Projects applied for, shall have to be filled online in the Electronic Form provided at the ISN-ETS portal.

The instructions mentioned in the Financial Bid Electronic Form have to be strictly followed without any deviation, else the bid shall be considered as non- responsive.

Important Note:

- (a) The Bidders shall not deviate from the naming and the numbering formats of envelopes mentioned above, in any manner.
- (b) In each of the envelopes, all the documents enclosed shall be indexed and flagged appropriately, with the index list indicating the name of the document against each flag.
- (c) All the envelopes shall be properly sealed with the signature of the Authorized Signatory running across the sealing of the envelopes.
- (d) In case the Bidder submits the online documents on ISN-ETS within the bid submission deadlines and fails to submit the offline documents in the office of NIWE within the bid submission deadlines, the online bid of the Bidder shall not be opened and shall be 'archived' on the ISN-ETS portal. Similarly, bids submitted offline but without any online submission on ISN-ETS portal shall not be opened and the EMD shall be returned to the respective bidder.
- (e) In case of submission of Bank Guarantee against EMD online on or before the bid submission

deadline, and non-submission of the hard copy of the Bank Guarantee to NIWE within the date as on 2 working days subsequent to bid submission deadline, the respective bidder will be debarred from participating in any of the tenders issued by NIWE, for a period of 12 (Twelve) months, starting from the last date of bid submission of this RfS.

31 Notice Board Display

Detailed instructions to be followed by the Bidders for online submission of response to RfS as stated in RfS. The bidders shall strictly follow the instructions mentioned in the electronic form in respective technical bid and financial bid while filling the form. The OWPD will have to put a notice board (at least 180 cm x 120 cm) at its offshore wind power project site on all boundary points prominently displaying the following message before the commencement of the survey and exploration / construction activity for offshore wind power project

<p>Offshore Wind Power Project(s) Owned and operated by _____ (insert name of the OWPD) [Under RfS for Selection of Offshore Wind Power Developers for Setting up of Offshore Wind Power Projects by NIWE Village:....., Tehsil....., District....., State.....</p>

32 Validity of the Response to RfS

The bidder shall submit the response to RfS which shall remain valid up to 180 (One Hundred Eighty) days from the last date of submission of response to RfS (“Bid Validity”). NIWE reserves the right to reject any response to RfS which does not meet the validity requirements.

33 Bid Preparation Cost

The bidder shall be responsible for all the costs associated with the preparation of the response to RfS and participation in discussions and attending pre-bid meeting(s) etc. NIWE shall not be responsible in any way for such costs, regardless of the conduct or outcome of the bid process.

34 Clarification/Pre-Bid Meeting/Enquiries/Amendments

34.1 Clarifications/ Doubts, if any, on RfS document may be emailed and/ or through ISN- ETS portal. The format for submission of clarification is available on the portal.

34.2 NIWE will make efforts to respond to the same in the Pre-Bid Meeting to be held as mentioned in the Bid Information Sheet. A compiled list of such questionnaire and NIWE’s response will be uploaded in the ISN-ETS portal <https://www.bharat-electronictender.com>. If necessary, amendments, clarifications, elaborations shall be issued by NIWE which will be notified on NIWE and ISN-ETS web site. No separate reply/intimation will be given for the above, elsewhere.

34.3 A Pre-Bid Meeting shall be held as mentioned in the Bid Information Sheet (Venue to be notified later on NIWE’s website).

35 Right of NIWE to Reject a Bid

NIWE reserves the right to reject any or all of the responses to RfS or cancel the RfS or annul the bidding process for any project at any stage without assigning any reasons whatsoever and without thereby any liability. In the event of the tender being cancelled at any stage, the processing fee (excluding GST, if amount credited to NIWE’s account), without any interests, and EMD submitted by the bidders shall be returned to the respective bidders.

36 Post Award Compliances

36.1 Timely completion of all the milestones i.e. signing of Lease agreements with MNRE and Concessionaire Agreement (Annexure D) with NIWE, Commissioning etc. will be the sole responsibility of OWP. NIWE shall not be liable for issuing any intimations/ reminders to OWPs for timely completion of milestones and/or submission of compliance documents.

36.2 Any checklist shared with OWP by NIWE for compliance of above-mentioned milestones to be considered for the purpose of facilitation only. Any additional documents required as per the conditions of Guidelines. RFS and Agreement to lease/ Concessionaire Agreement (Annexure A,B,C&D) must be timely submitted by the OWP.

37 Points of Contact in NIWE

Following officers / departments are to be contacted by the bidders/OWPs based on the stage of bidding and offshore wind power project implementation under this RFS.

- i. Bid submission upto issuance of LoA:
 - a. Details as per Bid Information Sheet
- ii. Subsequent to issuance of LoA upto offshore wind power Project Commissioning: -
 - a. Power Systems Division

(Officer name)	(contact no)
(Designation)	(Email ID)
Officer name	(Contact no.)
(Designation)	(Email ID)
(Officer name)	(contact Details)
(Designation)	

- iii. Subsequent to Project Commissioning: -

(Officer name)	(contact no)
(Designation)	(Email ID)

Officer name	(Contact no.)
(Designation)	(Email ID)
(Officer name) (Designation)	(contact Details)

Short listing of Bidders will be based on following Criteria:

38 General Eligibility Criteria

38.1 Bidders participating in the RfS will be required to meet the following eligibility criteria (as applicable). The Bidder shall be a Company as defined in the section II of this RfS.

38.2 Bidding Consortium with one of the Companies as the Lead Member. Consortium shortlisted and selected based on this RfS has to necessarily form a offshore wind power Project Company and get it registered under the Companies Act, 2013 prior to signing of Lease Agreements (Annexure A,B & C), keeping the original shareholding of the Bidding Consortium unchanged. In case applications for multiple offshore wind power project or offshore wind sub-zones have been made by a Consortium, separate offshore wind power Project Companies can be formed for each of the offshore wind power project /offshore wind Sub-zone bid. For the avoidance of doubt, it is hereby clarified that the shareholding pattern of the offshore wind power Project Company shall be the identical to the shareholding pattern of the Consortium as indicated in the consortium agreement (Format 7.5)

38.3 A foreign company can also participate on standalone basis or as a member of consortium at the RfS stage. In case of foreign company participating on standalone basis and its selection as successful Bidder, it has to form a “Special Purpose Vehicle” (SPV), i.e. an Indian Company registered under the Companies Act, 2013 as its subsidiary Company, with at least 51% shareholding in the SPECIAL PURPOSE VEHICLE (SPV), before signing of Agreement to Lease. In case a Foreign Company is selected as the successful Bidder, it shall comply with all the laws and provisions related to Foreign Direct Investment in India.

In case the foreign company participating as a member of consortium, Clause 37.3 of the RfS shall be applicable

38.4 In line with the O.M. issued by the Department of Expenditure, Ministry of Finance, vide No. 6/18/2019-PPD Dated 23.07.2020 and subsequent amendments and clarifications thereto, the Bidder shall meet the following criteria for its bid to be considered for evaluation under the RfS.

- i. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority (as defined in the OM as referred above).
- ii. “Bidder” in this reference, means any person or firm or company, including any member of a consortium, every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in this tender.
- iii. “Bidder from a country which shares a land border with India” for the purpose of this clause, means:
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entirely incorporated, established or registered in such a country, or
 - c. An entity substantially controlled through entities incorporated, established or

- registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country, or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium where any member of the consortium falls under any of the above.
- iv. In support of the above, the Bidder shall be required to submit necessary Undertaking, as per Format 7.8/7.8A of the RfS.
 - v. Other provisions of the referred OM dated 23.07.2020, except SI. 11 of the OM, will also be applicable for this tender. Any interpretation of the above clauses will be made in line with the referred OM, including subsequent amendments and clarifications thereto.
- 38.5 Limited Liability Partnership (LLPs) are not eligible for participation. However, Limited Liability Companies (LLC) shall be eligible. If such LLC are selected as a successful bidder, they will have to register as a Company under the Indian Companies Act-2013, before signing of the Agreement to Lease.
- 38.6 A Bidder which has been selected as Successful Bidder based on this RfS can also execute the offshore wind power Project through a Special Purpose vehicle (SPV) i.e. a Project Company especially incorporated/acquired as a subsidiary Company of the successful bidder for setting up of the offshore wind power Project, with at least 51% shareholding in the special purpose vehicle (SPV) which has to be registered under the Indian Companies Act, 2013, before signing of Lease Agreements. Multiple special purpose vehicle (SPV)s may also be utilized for executing more than one project.
- 38.7 Any consortium, if selected as Successful Bidder for the purpose of development of Offshore wind project, shall incorporate an offshore wind power Project company with equity participation by the Members in line with consortium agreement (to be submitted along with the response to RfS) before signing of Lease Agreements (Annexure A,B & C) with MNRE, i.e. the Project Company incorporated shall have the same shareholding pattern as that indicated in the Consortium Agreement given at the time of submission of response to RfS. This shall not change till the signing of Lease Agreements (Annexure A,B & C) and the Controlling Shareholding (held by the Lead Member holding not less than 51% of the voting rights and paid-up share capital) shall not change from submission deadline of response to RfS up to one year after COD of the offshore wind power Project, except with the prior approval of NIWE. Transfer of controlling shareholding within the same group of companies will however be allowed after COD with the permission of NIWE, subject to the condition that, the management control remains within the same group of companies.
- 38.8 The Bidder or any of its Affiliates should not be a willful defaulter to any lender, and that there is no major litigation pending or threatened against the Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the offshore wind power Project. The bidder shall submit an undertaking to this effect.
- 38.9 For avoidance of doubt, it is clarified that the fully owned subsidiary Company as mentioned in Clauses 37.3 and 37.6 above should be an immediate subsidiary of the bidder, without any intermediaries involved. The following illustrations are provided to clarify the same.

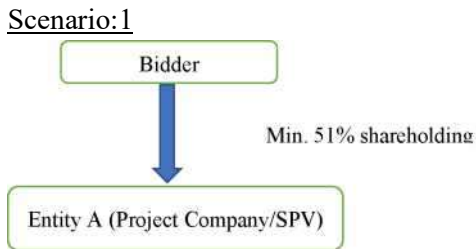


Figure 09

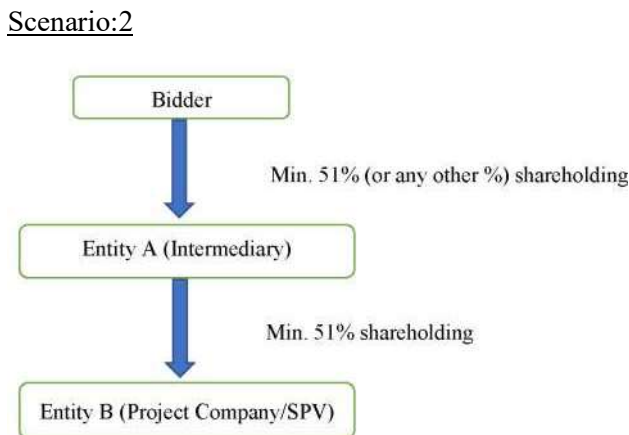


Figure 10

As per provisions of the RfS, only Scenario 1 will be permissible under this RfS.

In order to participate in this PQQ the bidders must have a minimum eligibility criterion given as under the preliminary qualification criteria clause

39 Technical Eligibility Criteria

39.1 In order to participate in the technical eligibility, the bidders should satisfy minimum eligibility criterion called the preliminary qualification criteria mentioned in Clause (42). The Technical Eligibility will be based on the track record of the offshore wind farm development that includes the experience in offshore project from survey to decommissioning, which also includes development and management plans. Scores are given to each criterion and based on the scoring by each bidder the final technical score out of 70 is calculated.

40 Commercial Eligibility Criteria

40.1 The interested bidder must fulfil the minimum financial requirement of an average annual net worth to the tune of Rs. 2500 crores / Rs. 25000 million (or its equivalent to be converted on exchange rate (as notified on RBI's website) prevailing on last date of submission of PQQ) during the last 3 financial years.

- 40.2 The Bidder would be required to submit annual audited accounts for the last three FY, along with net worth certificate from a practicing Chartered Accountant/Statutory Auditor to demonstrate fulfilment of the criteria. In case of foreign companies, the Bidders shall be required to submit the annual audited accounts for the last three respective financial years as per the general norm in the country where the Bidder or its Affiliate(s) is/ are located.
- 40.3 Provisional balance sheets of the bidder will not be acceptable. In this case, the bidder will be required to meet the QR on the strength of its Affiliates/Parent Companies, who undertake to contribute the required equity funding and Security Deposit in case the Bidder(s) fail to do so in accordance with the PQQ.
- 40.4 In case of JV or consortium of companies, the combined experience and financial capabilities must meet this minimum requirement and it is not necessary that each individual member needs to meet the minimum requirement. For this purpose, the Net-Worth to be met by each Member of the Consortium shall be computed in proportion to the equity commitment made by each member in the Project Company to be incorporated subsequent to award of work. (For example, if two companies A and B form a Consortium with equity participation in 70:30 ratio and submit a single bid, total Net-Worth to be met by the Consortium is Rs. 2500 Crores. Minimum requirement of Net-Worth to be met by company A would be Rs. 1750 Crores and to be met by company B would be Rs. 750 Crores).
- 40.5 The Bidder may seek qualification on the basis of financial capability of its Affiliate(s). In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Affiliate(s). In such cases, the Bidder shall be required to submit Board Resolutions from the respective Affiliate(s), undertaking to contribute the required equity funding and Security Deposit/POI in case the Bidder(s) fail to do so in accordance with the RfS. In case of non-availability of the Board Resolution as required above, a letter from the CEO/ Managing Director of the respective Affiliate(s), undertaking the above, shall be required to be submitted and the requisite Board Resolution from the Affiliate(s) shall be required to be submitted prior to signing of Lease Agreements (Annexure A,B & C) .
- 40.6 For the purposes of meeting financial requirements, only latest unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty six percent (26%) equity in each Company whose accounts are merged in the audited consolidated account.
- 40.7 A Company/Consortium would be required to submit annual audited accounts for the last financial year, 2021-22, or as on the day at least 7 days prior to the bid submission deadline, along with net worth, annual turnover and PBDIT certificate (as applicable) from a practicing Chartered Accountant/ Statutory Auditor to demonstrate fulfilment of the criteria. In case of foreign companies, the Bidders shall be required to submit the annual audited accounts for the last respective financial year as per the general norm in the country where the Bidder or its Affiliate(s) is/ are located, or provisional accounts as on the day at least 7 days prior to the bid submission deadline.

Note: In case of foreign Bidders, in the event the Bidder is unable to furnish the audited annual accounts for the previous financial year as per the prevalent norm in the respective country, the Bidder shall submit the annual audited accounts of the last financial year for which the audited accounts are available. This, however, would be acceptable, subject to the condition that the last date of response to this RfS falls on or within the deadline for completion of audit of annual accounts of companies, as stipulated by the laws/rules of the respective country, and the Bidder shall submit the corresponding

documentary evidence against the same. In case the annual accounts or provisional accounts as on the day at least 7 days prior to the bid submission deadline, are submitted in a language other than English, a certified English translation from an approved translator shall be required to be submitted by the Bidder.

- 40.8 For meeting the above financial eligibility criteria, if the data is provided by the Bidder in a foreign currency, equivalent Indian Rupees of Net Worth and other financial parameters will be calculated by the Bidder using Reserve Bank of India's reference rates prevailing on the date of closing of the accounts for the respective financial year.
- 40.9 In case of any currency for which RBI reference rate is not available, Bidders shall convert such currency into US Dollar (USD) as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion. After such conversion, Bidder shall follow the procedure/submit document as elaborated in Clause 39.9 above.
- 40.10 In case the response to RfS is submitted by a Consortium, then the financial requirement to be met by each Member of the Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company.

Note: Wherever applicable, audited accounts for the last FY, 2021-22 will be required to be submitted for meeting the qualification requirements. In case the audited annual accounts of FY2021-22 are not available, then, audited annual accounts of FY 2020-21 can be considered.

41 Bid Evaluation**41.1 Evaluation Criterion for Allocation of Blocks**

- 41.2 The Offshore wind developer would be selected in a single stage 2 envelop basis, where the developer has to qualify the techno-commercial / financial criteria and the H1 bidder will be decided based on the score described at the subclause 40.1 below
- 41.3 The preliminary qualification will have the details regarding the bidder's organization, consortium memberships, legal criteria's, net worth and average turn over for previous 3 years.
- 41.4 The bidders who pass the preliminary qualification criteria will participate for scoring the responses in the technical evaluation criteria.
- 41.5 A bidder can procure maximum up to 2 GW competitively in a single round, with each zone at 1GW.
- 41.6 Each bidder can submit a single preliminary and techno-commercial bid but separate financial bid for each zone.
- 41.7 Normalized Weightage given to Techno-commercial proposal is 70% and financial Lease fee is 30%
- 41.8 The bidder while selecting the blocks can mention his preference on each block, which would later be assessed in the case of a tie.
- 41.9 If a bidder is selecting only 1 sub-block, then that would be considered as his first preference (only be considered in case of a tie).
- 41.10 Calculating scores:

$$41.11 \quad S_t = \frac{T}{T_H} * 100$$

S_t - Bidder Techno-commercial bid score

T- Technical score of respective bidder.

T_H - Highest technical score acquired by a bidder under the tender/bid.

$$41.12 \quad S_F = \frac{L}{L_H} * 100$$

S_f - Bidder financial bid score

L- Lease rentals quoted by the respective bidder

L_H - Highest lease rental quoted by a bidder

$$41.13 \quad S = (S_t * 0.7) + (S_F * 0.3)$$

S – Final Score of a bidder

Highest scoring bidder is declared as the winning bidder.

If multiple companies submitting bids for the same block are tied on marks:

1st tie breaker: Company scoring higher marks on technical capability

2nd tie breaker: The order of preference given by the bidder for selecting a particular zone.

42 Preliminary evaluation criteria

The following criteria will qualify the bidder in regard to the bidder’s organization, legal, safety, environmental and quality assurance, which are considered as the basic preliminary qualifications required by the bidder. The bidders who pass the preliminary qualification criteria will participate for scoring the responses in the technical evaluation criteria. The bidder who ‘Pass’ in all the preliminary qualification criteria’s will only be considered eligible for the technical evaluation.

The scoring would be such that each criterion will be considered “**PASS**” if satisfactory certificate/ Letter/Policy is provided and will be considered “**FAIL**” if not provided.

SL.No	Criteria	Description	Pass/Fail
1.	Commissioned <u>at least</u> 100MW of onshore renewable energy capacity in India	Evidence of commissioning certificate, issued in the name of bidder/ member/ affiliate by the competent governmental authority and/ or counterparty	
2.	Commissioned <u>at least</u> 200MW of offshore wind energy capacity globally	Evidence of commissioning certificate, issued in the name of bidder/ member/ affiliate by the competent governmental authority and/ or counterparty	
3.	Environmental policy	Copy of policy attachment	
4.	Health and safety policy	Copy of policy attachment	
5.	Quality assurance policy	Copy of Quality assurance certificate by an accredited body	
6.	Absence of major litigation or willful default	‘No-litigation certificate’ or Policy attachment or signed letter conforming absence of major litigation or willful default from each bidder or consortium.	
7.	Anti-bribery	Policy attachment or signed letter conforming anti-bribery from each bidder or consortium.*	
8.	Antifraud	Policy attachment or signed letter conforming anti-fraud from each bidder or consortium.*	
9.	Anti-slavery	Policy attachment or signed letter conforming anti-slavery from each bidder or consortium.*	
10.	Anti-collusion	Policy attachment or signed letter conforming anti-collusion from each bidder or consortium.*	
11.	Tax compliance	Policy attachment or signed letter conforming Tax compliance from each bidder or consortium.*	
12.	National security	Policy attachment or signed letter conforming no breach in national security	
13.	Net worth	Minimum net worth should be Rs. 25000 million	

14.	Turn Over	Minimum turn over should be Rs. 10000 million	
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*A self -declaration by the bidder in the prescribed format with the seal and signature of the authorized official. (Formats from 7.11- 7.14)

42.1 The bidders meeting the minimum qualifying requirements will be shortlisted for the next stage of tender for Techno-commercial and quoting lease fee per Sq.km towards allocation of blocks. The highest discovered (H1) lease price per sq.km per year will have to be paid by the bidder during the conduction of study survey period of 5 year extendable to 7 years. The lease fee would be non-refundable and the developer shall pay quoted fee until commissioning of the offshore wind farm for each allotted block. The developer will thereafter pay floor price of Rs. 1 lakh per Sq.km per year as defined in the lease rules 2022 by MNRE till the validity of the lease. The details of the evaluation criteria are given below.

42.2 Bid evaluation will be carried out considering the information furnished by Bidders as per provisions of this RfS. The detailed evaluation procedure and selection of bidders are described in subsequent clauses in this Section.

Questionnaire related to organization and contact details is attached in after the format for covering letter Format 7.01

43 Techno-Commercial Evaluation of Bidders

43.1 The first envelope (Technical Bid submitted online) of only those bidders will be opened by NIWE whose required documents as mentioned are mentioned in the RfS are received by NIWE. Bid opening (online) will be done only after the deadline for submission of Bank Guarantee.

For e.g., if the bid submission deadline is 18:00 hrs on 05.01.2022, the online bid opening will be conducted on 08.01.2022. In case of the above date being a holiday, the bids will be opened on the next working day.

43.2 NIWE will examine all the documents submitted by the Bidders and ascertain meeting of eligibility conditions prescribed in the RfS. During the examination of bids, NIWE may seek clarifications/additional documents to the documents submitted etc. from the Bidders if required to satisfy themselves for meeting the eligibility conditions by the Bidders. Bidders shall be required to respond to any clarifications/additional documents sought by NIWE within 07 (seven) days from the date of such intimation from NIWE. All correspondence in this regard shall be made through email/ISN-ETS portal only. It shall be the responsibility of the Bidder to ensure that the email id of the authorized signatory of the Bidder is functional. The Bidder may provide an additional email id of the authorized signatory in the covering letter. No reminders in this case shall be sent. It shall be the sole responsibility of the Bidders to remove all the discrepancies and furnish additional documents as requested. NIWE shall not be responsible for rejection of any bid on account of the above.

43.3 The response to RfS submitted by the Bidder shall be scrutinized to establish Techno Commercial eligibility as per the RfS.

43.4 The technical bids shall be assigned the marks out of 100 on the following basis. The bids will be organized in the order of highest to lowest mark.

43.5 The detailed criteria of the next stage of tender will be through a consultation process with the shortlisted companies/ group companies

Area	Criteria	Description	Marks
Technical	Total capacity of offshore Wind developed (MW)	Minimum 100 MW	Maximum marks 10
	Experience in managing marine surveys for offshore wind development	Minimum 1	Maximum marks 10
	Experience in offshore wind transmission (No. of offshore transmission systems developed)	Minimum 1	Maximum marks 10
	Project management experience (infrastructure in wind or oil and gas sector)	Minimum Project developed worth Rs.50,000 million	Maximum marks 10
	Offshore Decommissioning plan	Centralized decommissioning teams dedicated to planning, permitting, contracting and executing decommissioning projects.	Maximum marks 3
	No. of years of experience in owing or operating offshore	Minimum 3 years	Maximum marks 10
	Experience of Project management team	Minimum 5 years post qualification experience in relevant field.	Maximum marks 3
	O&M Support (O&M infrastructure in their particular country)	Score involves taking the following factors: <ul style="list-style-type: none"> • Port facility • No of O&M Vessels • Man power fleet. 	Maximum marks 3
	Development Plan records	Offshore wind Development plan and strategy.	Maximum marks 3
	Health, safety plan & accidental records	Records based on: <ul style="list-style-type: none"> • Work place injuries record • Incident severity score • Incident severity score improvement • Accident frequency rate • Accident severity rate 	Maximum marks 5
	Environmental clearance plan records	Based on the experience of having managed a full EIA	Maximum marks 3

		process and submitted an environmental statement for wind projects or offshore infrastructure project.	
Financial	Average Net worth	Minimum value Rs. 25000 million	Maximum marks 10
	Annual turnover of last 3 years	Rs.10000 million	Maximum marks 10
	Fund raising experience and funding requirements for project	Marks would be awarded based on the experience and satisfactory plan provided	Maximum marks 10
TOTAL SCORE			100

(Break up weightage for the same)

Criteria	Marks	Break up of weightage
Total capacity of offshore Wind developed (MW)	10 marks	0- 10 Minimum 100MW 2: 100 – 300 MW 4: 300 – 500 MW 6: 500 -700 MW 8: 700 -1000 MW 10: > 1GW developed
Experience in managing marine surveys for offshore wind development	10 marks	0- 10 Minimum 1 campaign 2: 1 Campaign Managed 4: 2 Campaigns managed 6: 3 Campaign managed 8: 4 Campaign managed 10: > 5 Campaign managed
Experience in offshore wind transmission (no. of offshore transmission systems developed)	10 marks	0-10 Developed for minimum 50MW 2: 1 system developed with at least 50 MW 4: 2 system developed with at least 50 MW capacity 6: 3 systems developed with at least 50 MW capacity 8: 4 systems developed with at least 50 MW capacity 10: More than 3 system developed, each of at least 100 MW capacity.
Project management experience (Infrastructure in Oil and Gas or wind sector)	10 marks	0-10 Developed project worth Rs. 50,00 million. 2: 1 Project completed of at least Rs 50,000 million in value 3: 2 Project completed of at least Rs 50,000 million in value 4: 3 Project completed of at least Rs 50,000 million in value 5: 5 projects completed of at least Rs. 50,000 million in Value

		7:6 Project completed of at least Rs 50,000 million in value 8: 7 Project completed of at least Rs 50,000 million in value 10: more than 7 projects completed of at least Rs. 50,000 million in Value
Decommissioning plan	3 marks	0-3 Marks would be given according to the proposed plan
No. of years of experience in owning or operating offshore	10 marks	0-10 Minimum 3 years operatorship experience in offshore wind 2: Operatorship experience of 3-5 years 4: Operatorship experience of 5-7 years 6: Operatorship experience for 7-9 years 8: Operatorship experience for 9-10 years 10: Operatorship experience greater than 10 years
Experience of Management team	3 marks	0-3 Marks would be given according to the proposed plan
O&M Support plan	3 marks	0-3 Marks would be given according to the proposed plan
Development Plan	3 marks	0-3 Marks would be given according to the proposed plan
Health and safety plan & accidental records	5 marks	0-5 Marks would be given according to the proposed plan
Environmental clearance plan records	3 marks	0-3 Marks would be given according to the proposed plan
Average Net worth	10 marks	0-10 Average worth Rs.25,000 million 2: Net worth of Rs.25,000 million -Rs.50,000 million 4: Net worth of Rs.50,000 million -Rs.60,000 million 6: Net worth of Rs.60,000 million -Rs.80,000 million 8: Net worth of Rs.80,000 million -Rs.1,00,000 million 10: Net worth Greater than Rs 1,00,000 million
Average Annual turn over for last 3 years	10 marks	0-10 Average turnover of Rs.10000 million 2: Turnover of Rs.10000 million - Rs.20,000 million 4: Turnover of Rs.20,000 million - Rs.30,000 million 6: Turnover of Rs.30,000 million – Rs.50,000 million 8: Turnover of Rs.50,000 million - Rs.70,000 million 10: Turnover of > Rs.70,000 million
Fund raising experience	5 marks	0-5 1: Fund raising experience of Rs.5,000 million to Rs10,000 million 2: Fund raising experience of Rs.10,000 million to Rs.30,000 million 3: Fund raising experience of Rs.30,000 million to Rs.40,000 million 4: Fund raising experience of Rs.40,000 million to Rs.50,000 million

		5: Fund raising greater than Rs. 50,000 million
Fund raising plan	5 marks	0-5 Marks would be given according to the proposed plan.

44 **Documents to be submitted**

1. Commissioning certificate of onshore renewable energy projects done in India
2. Commissioning certificate of the offshore wind project globally.
3. Commissioning certificate of infrastructure projects in relevant field (Oil & gas or onshore wind projects)
4. A 'no-litigation certificate' or Policy attachment or signed letter conforming absence of major litigation or willful default from each bidder or consortium.
5. Letter signed by the bidder indicating or conforming to the eligible criteria (A self-declaration letter as per the prescribed format provided with the seal and signature by authorized official).
(Format 7.11-7.14)
 - a. Anti-bribery
 - b. Antifraud
 - c. Anti-slavery
 - d. Anti-collusion
6. Relevant Tax document from the concerned tax authority indicating tax compliances
7. Policy attachment or signed letter conforming no breach in national security
8. Relevant and up-to-date Environment policy of the bidder organization
9. Relevant and up-to-date health and safety policy of the bidder organization
10. ISO 9001:2015 quality accreditation equivalent certificate indicating quality assurance
11. Net worth and annual turnover Details submitted in the balance sheet duly signed by the companies Auditor or chartered Accountant
12. Details of the management team along with the team members qualification and experience and organization structure (including the technical and administrative officials)
13. Plans to be submitted
 - a. Development plan for carrying out the survey/ methodology to be adopted for carrying out studies and survey (including details of equipment's and sensors used)
 - b. Decommissioning plan for carrying out survey
 - c. Environmental clearance plan (EIA/EMP)
 - d. O & M support plan of equipment and sensors for the purpose maintaining the continuity of survey data.
(Documents proving experience may also be provided if relevant)
14. Transportation and installation testing certificates should be submitted for proving the transmission experience
15. Studies and Survey completion certificate/ letter issued by the concerned Department or authority in the respective countries where the survey has been previously carried out by the bidder/developer.

Selection process and privilege of the shortlisted bidder

The selection will done by

1. All the responses received within the stipulated date i.e.@ 5.00 PM will be evaluated by a committee against the criteria mentioned in section-III of this

document.

2. Only the shortlisted bidders will be eligible to participate in the next phase of the selection procedure of the proposed site allocation of 4000 MW equivalent sea bed area off the coast of Tamil Nadu.
3. GoI will carry out further consultation with the selected bidders in order to structure the next stage of the bidding (Notice Inviting Tender) and finalize the important parameters including site demarcation, pre-tender data, grid connectivity, support mechanism etc.,

45 Financial Bid Evaluation

- 45.1 In this step evaluations of Techno-Commercially Qualified Bids shall be done based on the “Quoted Sea-bed Lease Fees” in Rs. Lakh/Sq.km of sea-bed area quoted by the Bidder in the Electronic Form of Financial Bid.
- 45.2 Second Envelope (containing Quoted Sea-bed Lease fees in Rs. Lakh/Sq.Km of Sea-bed area) of only those bidders shall be opened whose technical bids are found to be qualified as per the RfS.
- 45.3 The Bidder including its Parent, Affiliate or Ultimate Parent or any Group Company will have to submit a single bid (single application) per offshore wind sub-block (B1-B4 and G1) quoting a single Sea-bed Lease fees in Indian Rupee Lakh/Sq.km of sea-bed area for the offshore wind project applied for. **The sea-bed lease fees has to be quoted in Indian Rupee Lakh per Sq.Km of sea-bed area up to two places of decimal only (e.g. Rs.xx.xx lakh/Sq.km).** If it is quoted with more than two digits after decimal, digits after first two decimal places shall be ignored. (For e.g. if the quoted tariff is INR 02.337 lakh/sq.km of sea-bed area, then it shall be considered as INR 2.33 only).
- 45.4 In this step, evaluation will be carried out based on the sea-bed lease fees quoted by Bidders and the Bidders will be organized in the order of H1 (highest quoted lease fees), H2, H3.....Hn (Lowest quoted Lease fees).
- 45.5 On completion of Techno-Commercial bid evaluation, if it is found that only one or two Bidder(s) is/are eligible for the next stage, opening of the financial bid of the Bidder(s) will be at the discretion of NIWE. Thereafter, NIWE will take appropriate action as deemed fit.
- 45.6 All the bidders with above methodology will be ranked with H1(highest quoted lease fees), H2..Hn (Lowest quoted Lease fees). After arranging all the bidders in this fashion, the bucket filling process shall be followed till the allocation of all the blocks of offshore wind equivalent sea-bed area

46 Issuance of LoAs

At the end of selection process, a Letter of Award (LoA) will be issued to the successful Bidders for each offshore wind energy Project/offshore wind sub-block. In case of a Consortium being selected as the

successful Bidder, the LoA shall be issued to the Lead Member of the Consortium.

In all cases, NIWE decision regarding selection of Bidder through this RfS Auction or other- wise based on “Quoted Lease Fees in Rs. Lakh/Sq.Km” or annulment of tender process shall be final and binding on all participating bidders.

SECTION-XI

SAMPLE FORMS AND FORMATS FOR BID SUBMISSION

SAMPLE FORMS & FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the RfS. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Section 4 and other submission requirements specified in the RfS.

Format 7.1

COVERING LETTER

(The Covering Letter should be submitted on the Letter Head of the Bidding Company / Lead Member of Consortium)

Ref. No. _____

Date: _____

From: _____ (Insert name and address of Bidding Company Lead Member of Consortium)

Tel.#: Fax#:

E-mail address#

To,

NIWE

657, 1A2, Velachery - Tambaram Main Rd, Pallikaranai Marshland, Pallikaranai,
Chennai, Tamil Nadu 600100

Sub: Response to RfS No.....dated..... for (Insert title of the RfS)

Dear Sir/ Madam,

We, the undersigned [*insert name of the 'Bidder'*] having read, examined and understood in detail the RfS including Qualification Requirements in particular, terms and conditions for the sea-bed area leasing for development of offshore wind power project as specified by the bidding agency, hereby submit our response to RfS.

We confirm that in response to the aforesaid RfS, neither we nor any of our Ultimate Parent Company/ Parent Company/ Affiliate/ Group Company has submitted response to RfS other than this response to RfS, directly or indirectly, in response to the aforesaid RfS (as mentioned in Format 7.8 under Disclosure)

OR

We confirm that in the response to the aforesaid RfS, we have a Group Company who owns more than 10% but less than 26% in the bidding company as well as other companies who may participate in this RfS, and accordingly, we have submitted requisite undertaking as per Format 7.8 A in this regard (strike out whichever not applicable).

We also confirm that we including our Ultimate Parent Company/ Parent Company/ Affiliate/ Group Companies directly or indirectly have not submitted response to RfS for beyond the allocates seabed areas response to RfS.

We are submitting RfS for the development of following Project(s): -

Project Number (In case more than one bid for this	/Bid Capacity (MW)	Location of Project / Offshore wind sub-block	Interconnection Point Details	Proposed CUF	Project Preference*
		B1/B2/B#/B4/G 1			

****The preferences of the Projects shall be considered only for the last successful bidder whose total quoted capacity is more than the balance capacity***

1. We give our unconditional acceptance to the RfS, dated *[Insert date in dd/mm/yyyy]*, standard PPA and PSA documents attached thereto, issued by NIWE. In token of our acceptance to the RfS, PPA and PSA documents along with the amendments and clarifications issued by [NIWE], the same have been digitally signed by us and enclosed with the response to RfS. We shall ensure that the PPA is executed as per the provisions of the RfS and provisions of PPA and shall be binding on us. Further, we confirm that the Project shall be commissioned within the deadline as per Clause 9 of the RfS. We further undertake that we shall demonstrate possession of 100% area of the identified land, within the timelines as per the RfS.
2. Earnest Money Deposit (EMD):-*(Please read Clause 19 carefully before filling)*
We have enclosed EMD of INR ...*(Insert Amount)*, in the form of Bank Guarantee no *[Insert bank guarantee number]* dated*[Insert date of bank guarantee]* as per Format 7.3 A from*[Insert name of bank providing bank guarantee]* and valid up to in terms of Clause No. 19 of this RfS. The total capacity of the Wind Project offered by us is MW *[Insert cumulative capacity proposed]*, (strike off whichever is not applicable)
3. We hereby declare that in the event our Project(s) get selected and we are not able to submit Bank Guarantee/POI of the requisite value(s) towards Security Deposit, on issue of LoA by NIWE for the selected Projects and/ or we are not able to sign PPA with NIWE within the timeline as stipulated in the RfS for the selected Projects, NIWE shall have the right to encash the EMD submitted by us and return the balance amount (if any) for the value of EMD pertaining to unsuccessful capacity.
4. We have submitted our response to RfS strictly as per Chapter 7 (Sample Forms and Formats) of this RfS, without any deviations, conditions and without mentioning any assumptions or notes in the said Formats.
5. Acceptance: -
We hereby unconditionally and irrevocably agree and accept that the decision made by NIWE in respect of any matter regarding or arising out of the RfS shall be binding on us. We hereby expressly waive and withdraw any deviations from the provisions of the RfS and all claims in respect of the process
We also unconditionally and irrevocably agree and accept that the decision made by NIWE in respect of award of Projects according to our preference order as above and in line with the provisions of the RfS, shall be binding on us.
6. Familiarity with Relevant Indian Laws & Regulations: -
We confirm that we have studied the provisions of the relevant Indian Laws and Regulations

1.Name (in case of a JV or Consortium, names of all the members to be included, highlighting the lead bidder)	
2.Full postal address	
3.A short description of the business and the organization of the Bidder as well as the ownership structure (should be confined to approx. 500 words). Enclosed?	Yes/No
4.Legal Status of Bidder (e.g., public limited company, private limited company, a limited liability partnership,)	
5.Date of registration or establishment (in case of consortium or JV, date of incorporation of each member of consortium or JV be mentioned along the status of consortium or JV	
6.Country of registration and (if applicable) business registration number (in case of consortium/JV, details of all the members to be provided	

A2 Bidder representative:

1. Name of authorized representative of the Bidder/Lead Bidder	
2. Authorized representative's contact details (full postal address, telephone number, e-mail address)	
Is the Bidder a consortium/joint venture	Yes/No
1. Details on each member of the consortium/joint venture (see A1.1-6 above)	
2. Explain the consortium/joint venture structure, the role of each consortium or JV member, their respective shareholdings and how relationships will operate (should be confined to approx. 1000 words). A representative figure, detailing out the construct of the Consortium/JV may be enclosed, for clarity.	Yes/No
3. Details on authorized representative of the consortium or JV (see A2 above)	

A4 Multiple applications

<p>1. Are any consortium or JV members part of other pre-qualification application(s) for this tender?</p> <p>If "yes", then provide the names of the relevant consortium/joint venture members, and information of measures taken/planned in order to maintain confidentiality and avoid distortion of the tender process (should be confined to approx. 500 words)</p>	
<p>2. Are any organizations associated with the Bidder applying for prequalification for this tender? (For example, a company within the same group).</p> <p>If "yes", then provide identification and relationship to the organization, and information of measures taken/ planned in order to maintain confidentiality and avoid distortion of the tender process (should be confined to approx. 250 words)</p> <p><i>(A member of the bidder (an individual company) cannot participate in the submission of more than one application for prequalification.)</i></p>	

Format 7.2

FORMAT FOR POWER OF ATTORNEY

(Applicable Only in case of Consortium)

(To be provided by each of the other members of the Consortium in favor of the Lead Member)

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

KNOW ALL MEN BY THESE PRESENTS THAT M/s _____ having its registered office at _____, _____ and M/s _____ having its registered office at _____, (Insert names and registered offices of all Members of the Consortium) the Members of Consortium have formed a Bidding Consortium named _____ (insert name of the Consortium if finalized) (hereinafter called the 'Consortium') vide Consortium Agreement dated..... and having ..agreed to _____ appoint

M/s..... as the Lead Member of the said Consortium do hereby constitute, nominate and appoint M/s..... a company incorporated under the laws of _____ and having its Registered/ Head Office at _____ as our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the response to RfS No.....

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

- i) To submit on behalf of Consortium Members response to RfS.
- ii) To do any other act or submit any information and document related to the above response to RfS Bid.

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

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

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

For and on behalf of Consortium Member

M/s.....

----- (Signature of person authorized by the board)

(Name

Designation

Place:

Date:)

Accepted

(Signature, Name, Designation and Address
of the person authorized by the board of the Lead Member)

Attested

(Signature of the executant)

(Signature & stamp of Notary of the place of execution)

Place: -----

Date: -----

Lead Member in the Consortium shall have the controlling shareholding in the Company as defined in section-6, Definition of Terms of the RFS.

Format 7.3A

FORMAT FOR BANK GUARANTEE TOWARDS EARNEST MONEY DEPOSIT (EMD)

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

Reference:.....

Bank Guarantee No.:

Date:

In consideration of the.....*[Insert name of the Bidder}* (hereinafter referred to as 'Bidder') submitting the response to RfS inter alia for Selection of Wind Power Developers for conducting study survey under Competitive Bidding (Tranche-XIII) in response to the RfS No. dated_issued by Name of NIWE(hereinafter referred to as NIWE) and NIWE considering such response to the RfS of *[Insert the name of the Bidder}* as per the terms of the RfS, the ____*[Insert name & address of bank}* hereby agrees unequivocally, irrevocably and unconditionally to pay to NIWE at *[Insert Name of the Place from the address of SECT}* forthwith without demur on demand in writing from NIWE or any Officer authorized by it in this behalf, any amount upto and not exceeding Rupees_*[In.sc/V amount not less than that derived on the basis of Rs.Lakhs per sq.km of cumulative capacity proposed}*, only, on behalf of M/s_*[Insert name of the Bidder}*.

This guarantee shall be valid and binding on this Bank up to and including_____*[insert date of validity in accordance with Clause No. 19 of this RfS}* and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to INR _____ (Indian Rupees __ only). Our Guarantee shall remain in force until _____*[insert date of validity]* NIWE shall be entitled to invoke this Guarantee.

The Guarantor Bank hereby agrees and acknowledges that the NIWE shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by NIWE, made in any format, raised at the above-mentioned address of the Guarantor Bank, in order to make the said payment to NIWE.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by _____*[Insert name of the Bidder}* and/ or any other person. The Guarantor Bank shall not require NIWE to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against NIWE in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at New Delhi shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly NIWE shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to enforce any security held by NIWE or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

This BANK GUARANTEE shall be effective only when the Bank Guarantee issuance message is transmitted by the issuing Bank through SFMS to IDFC First Bank and a confirmation in this regard is received by NIWE.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to INR _____ (Indian Rupees _____ Only) and it shall remain in force until _____ [Date to be inserted on the basis of Clause No. 19 of this RfS}.

We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if NIWE serves upon us a written claim or demand.

Signature: _____

Name: _____

Power of Attorney No.: _____.

For

_____ [Insert Name and Address of the Bank}

Contact Details of the Bank:

E-mail ID of the Bank:

Banker's Stamp and Full Address.

Dated this _____ day of _____, 20 ____.

FORMAT FOR SECURITY DEPOSIT

(To be submitted separately for each Project)

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

Reference:.....

Bank Guarantee No.:

Date:

In consideration of the*[Insert name of the Bidder]* (hereinafter referred to as 'selected Wind Power Developer') submitting the response to RfS inter alia for *[Insert title of the RfS]* of the capacity of MW, at *[Insert name of the place]*, for supply of power there from on long term basis, in response to the RfS dated issued by Name of NIWE (hereinafter referred to as NIWE) and NIWE considering such response to the RfS of *[Insert name of the Bidder]* (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Project of the Offshore Wind Power Developer and issuing Letter of Award No. to*(Insert Name of selected Wind Power Developer)* as per terms of RfS and the same having been accepted by the selected OWPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Offshore Wind Power Developer or a Project Company, M/s ___{a Special Purpose Vehicle (SPECIAL PURPOSE VEHICLE (SPV)) formed for this purpose}, if applicable].

As per the terms of the RfS, the *[Insert name & address of Bank]* hereby agrees unequivocally, irrevocably and unconditionally to pay to NIWE at *[Insert Name of the Place from the address of the NIWE]* forthwith on demand in writing from NIWE or any Officer authorised by it in this behalf, any amount up to and not exceeding Indian Rupees _____ [Total Value] only, on behalf of M/s ___*[Insert name of the selected Offshore Wind Power Developer Project Company]*

This guarantee shall be valid and binding on this Bank up to and including _____ and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to INR _____ (Indian Rupees ___ only).

Our Guarantee shall remain in force until NIWE shall be entitled to invoke this Guarantee till

The Guarantor Bank hereby agrees and acknowledges that NIWE shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by NIWE, made in any format, raised at the above-mentioned address of the Guarantor Bank, in order to make the said payment to NIWE.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and

notwithstanding any objection by _____ *[Insert name of the selected Wind Power Developer/ Project Company as applicable]* and/ or any other person. The Guarantor Bank shall not require NIWE to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against NIWE in respect of any payment made hereunder

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at New Delhi shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly NIWE shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Wind Power Developer/ Project Company, to make any claim against or any demand on the selected Wind Power Developer/ Project Company or to give any notice to the selected Wind Power Developer/ Project Company or to enforce any security held by NIWE or to exercise, levy or enforce any distress, diligence or other process against the selected Wind Power Developer/ Project Company.

This BANK GUARANTEE shall be effective only when the Bank Guarantee issuance message is transmitted by the issuing Bank through SFMS to IDFC First Bank and a confirmation in this regard is received by NIWE.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to NIWE and may be assigned, in whole or in part, (whether absolutely or by way of security) by NIWE to any entity to whom NIWE is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to INR _____ (Indian Rupees _____ only) and it shall remain in force until _____ We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if NIWE serves upon us a written claim or demand.

Signature: _____

Name: _____

Power of Attorney No.: _____

For

_____ *[Insert Name and Address of the Bank]* _____

Contact Details of the Bank:

E-mail ID of the Bank:

Banker's Stamp and Full Address.

Dated this __ day of __, 20

Witness:

1

Signature

Name and Address

2

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Security Deposit shall be executed by any of the Scheduled Commercial Banks as listed on the website of Reserve Bank of India (RBI) and amended as on the date of issuance of Bank Guarantee. Bank Guarantee issued by foreign branch of a Scheduled Commercial Bank is to be endorsed by the Indian branch of the same bank or State Bank of India (SBI)..

FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY IREDA/REC/PFC (IN LIEU OF SECURITY DEPOSIT)

No.

Date

NIWE,

Registered

Reg: M/s _____(insert name of the PPA signing entity) (Project No. __(insert project ID issued by NIWE) - Issuance of Payment on Order Instrument for an amount of Rs._____

Dear Sir,

1. The Ministry of New and Renewable Energy, Government of India vide its letter dated 12th March 2020 has decided that to facilitate the promotion of solar and wind power development and implementation of the project by the Solar and Wind Power Developers who have entered into financing and funding agreements with IREDA/REC/PFC, the security by way of Security Deposit in the form of Security Deposit given by the Developers be allowed to be substituted by Letter of Undertaking/ Payment on Order Instrument issued by Non-Banking Finance Companies under the control of the Ministry of New and Renewable Energy and Ministry of Power. NIWE and other nodal agencies appointed by the Government of India with whom the power developers have entered into Power Purchase Agreement may accept the same in place of Security Deposit. The Ministry of New and Renewable Energy vide letter dated 12.03.2020 has, inter-alia, decided as under:

6. After carefully examining the matter, the Ministry have decided as follows:

b) (i) NIWE on behalf of MNRE (henceforth called implementing agencies) may release the Security Deposit of any project if RE developers are able to replace the same with Letter (s) of Undertaking to pay in case situation of default of RE developer in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC), the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP). These three financial institutions - IREDA or PFC or REC may issue such Letter(s) of Undertaking to pay only after securing their financial interests taking into account the security(ies) available with them as per their policy and after due diligence. These non-banking financial institutions would ensure that the security(ies) available with them are enough to cover full risk or exposure, which may arise on account of issue of such Letter (s) of Undertaking. Such Letter(s) may be termed as "Payment on Order instrument" and will have same effect as that of a Bank Guarantee issued by any public sector bank. This "Payment on Order instrument" would have terms and conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the implementing agencies on demand within stipulated time.

(ii) RE developers can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions mentioned above (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies.

(iii) For future projects, RE developers would be at liberty to either pledge Bank Guarantee(s) or Letter(s) of Undertaking as stated above towards Security Deposit.

(iv) The above decisions may be treated as amendments to the respective Standard Bidding Guidelines (SBG) (solar/wind) and notified accordingly.

(v) Implementing agencies shall not accept the instrument of 'Letter of Undertaking' as described above or in any other form, from any other non- banking financial institutions or bank, except IREDA, PFC & REC.

2. It is to be noted that M/s. _____(insert name of the POI issuing Agency) (**‘IREDA/REC/PFC’**) has sanctioned a non-fund based limit loan of Rs. _____ (Rupees ___ only) to M/s _____ under the Loan Agreement executed on _____ to execute Renewable Energy Projects.
3. At the request of M/s _____, on behalf of _____(insert name of the SPECIAL PURPOSE VEHICLE (SPV)), this Payment on Order Instrument (POI) for an amount of Rs. _____ (Rupees ___(in words)). This Payment on Order Instrument comes into force immediately.
4. In consideration of the [Insert name of the Bidder] (hereinafter referred to as selected Wind Power Developer') submitting the response to RfS inter alia for selection of Contracted Capacity of..... MW, at [Insert name of the place] under RfS for_(insert name of the RfS), for supply of power there from on long term basis, in response to the RfS dated _____ issued by Solar Energy Corporation of India Ltd (hereinafter referred to as NIWE) and NIWE considering such response to the RfS of [insert the name of the selected Wind Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Wind Power Project of the Offshore Wind Power Developer or a Project Company, M/s {a Special Purpose Vehicle (SPECIAL PURPOSE VEHICLE (SPV)) formed for this purpose}, if applicable]. As per the terms of the RfS, the _____[insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to NIWE at [Insert Name of the Place from the address of the NIWE] forthwith on demand in writing from NIWE or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees [Total Value] only, on behalf of M/s _____[Insert name of the selected Offshore Wind Power Developer / Project Company],
5. In consideration of the above facts, IREDA/REC/PFC, having its registered office at _____, agrees to make payment for the sum of Rs. _____lakhs (in words _____) to NIWE on the following conditions:-
 - i) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of _____ days of receipt of request from NIWE within the validity period of this letter as specified herein;
 - ii) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against NIWE;
 - iii) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and

- shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
- iv) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (NIWE and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc;
 - v) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
 - vi) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by NIWE made in any format within the validity period. IREDA/REC/PFC shall not require NIWE to justify the invocation of the POI against the SPECIAL PURPOSE VEHICLE (SPV)/OWPD, to make any claim against or any demand against the SPECIAL PURPOSE VEHICLE (SPV)/OWPD or to give any notice to the SPECIAL PURPOSE VEHICLE (SPV)/OWPD;
 - vii) The POI shall be the primary obligation of IREDA/REC/PFC and NIWE shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPECIAL PURPOSE VEHICLE (SPV)/OWPD;
 - viii) Neither NIWE is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against NIWE in respect of the payment made under letter of undertaking;
6. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto _____ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs _____ and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.
 7. In pursuance of the above, IREDA/REC/PFC and NIWE have signed an Umbrella Agreement dated _ setting out the terms and conditions for issue of letter of undertaking by IREDA/REC/PFC to NIWE and the said terms and conditions shall be read as a part of this letter of undertaking issued for the project of the project of PP mentioned above.

Thanking you,

Yours faithfully

For and on behalf of M/s. _____

(Name of the POI issuing agency)

(_____)

General Manager (TS)

Copy to:-

M/s. PP _____

_____ As per their request.

(_____)

General Manager (TS)

FORMAT FOR BOARD RESOLUTIONS

The Board, after discussion, at the duly convened Meeting on [Insert date], with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956 or Companies Act 2013, as applicable, passed the following Resolution:

1. **RESOLVED THAT** Mr/ Ms, be and is hereby authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to RfS vide RfS No. ___for___(insert title of the RfS), including signing and submission of all documents and providing information/ response to RfS to Name of NIWE, representing us in all matters before NIWE, and generally dealing with NIWE in all matters in connection with our bid for the said Project. ***(To be provided by the Bidding Company or the Lead Member of the Consortium)***

2. **FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 or Companies Act, 2013, as applicable and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest total equity in the Project. ***(To be provided by the Bidding Company) [Note: In the event the Bidder is a Bidding Consortium, in place of the above resolution at SI. No. 2, the following resolutions are to be provided]***

FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 or Companies Act, 2013, as applicable and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest (%) equity [Insert the % equity commitment as specified in Consortium Agreement} in the Project. ***(To be provided by each Member of the Bidding Consortium including Lead Member such that total equity is 100%)***

FURTHER RESOLVED THAT approval of the Board be and is hereby accorded to participate in consortium with M/s ----- [Insert the name of other Members in the Consortium} and Mr/ Ms....., be and is hereby authorized to execute the Consortium Agreement. ***(To be provided by each Member of the Bidding Consortium including Lead Member) And***

FURTHER RESOLVED THAT approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated..... executed by the Consortium as per the provisions of the RfS. ***[To be passed by the Lead Member of the Bidding Consortium]***

**Certified True Copy
(Signature, Name and Stamp of Company Secretary)**

Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the

Company Secretary/ Director.

- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act, 1956 or Companies Act, 2013 as applicable may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.

FORMAT FOR CONSORTIUM AGREEMENT

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

THIS Consortium Agreement (“Agreement”) executed on this _____ Day of _Two_____ Thousand _____ between M/s _____ *[Insert name of Lead Member]* a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “**Member-1**”, which expression shall include its successors, executors and permitted assigns) and M/s _____ a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “**Member-2**”, which expression shall include its successors, executors and permitted assigns), M/s _____ a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “**Member-n**”, which expression shall include its successors, executors and permitted assigns), *[The Bidding Consortium should list the details of all the Consortium Members]* for the purpose of submitting response to RfS and execution of Power Purchase Agreement (in case of award), against RfS No. _____ dated _____ issued by Name of NIWE(NIWE) a Company incorporated under the Companies Act, 2013, and having its Registered Office at 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi - 110023

WHEREAS, each Member individually shall be referred to as the “Member” and all of the Members shall be collectively referred to as the “Members” in this Agreement.

WHEREAS NIWE desires to purchase Power under RfS for_(insert title of the RfS);

WHEREAS, NIWE had invited response to RfS vide its Request for Selection (RfS) dated _____

WHEREAS the RfS stipulates that in case response to RfS is being submitted by a Bidding Consortium, the Members of the Consortium will have to submit a legally enforceable Consortium Agreement in a format specified by NIWE wherein the Consortium Members have to commit equity investment of a specific percentage for the Project.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the Members in this Bidding Consortium do hereby mutually agree as follows:

1. We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s _____), shall act as the Lead Member as defined in the RfS for self and agent for and on behalf of Member-2,_____,Member-n,_____, and to submit the response to the RFS,
2. The Lead Member is hereby authorized by the Members of the Consortium and Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.
3. Notwithstanding anything contrary contained in this Agreement, the Lead Member shall always be liable for the equity investment obligations of all the Consortium Members i.e. for both its own liability as well as the liability of other Members.
4. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective equity obligations. Each Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this

Agreement.

5. Subject to the terms of this Agreement, the share of each Member of the Consortium in the issued equity share capital of the Project Company is/shall be in the following proportion:

Name	Percentage
Member 1	...
Member 2	...
Member n	...
Total	100%

6. The Lead Member, on behalf of the Consortium, shall inter alia undertake full responsibility for liaising with Lenders or through internal accruals and mobilizing debt resources for the Project.
7. In case of any breach of any equity investment commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences thereof.
8. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents
9. It is further specifically agreed that the financial liability for equity contribution of the Lead Member shall not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of its scope of work or financial commitments.
10. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at New Delhi alone shall have the exclusive jurisdiction in all matters relating thereto and arising thereunder.
11. It is hereby further agreed that in case of being selected as the Successful Bidder, the Members do hereby agree that they shall furnish the Security Deposit in favor of the authority in terms of the RfS.
12. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the response to RfS.
13. This Agreement
- a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
 - b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and
 - c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of NIWE.

IN WITNESS WHEREOF, the Members have, through their authorized representatives, executed these present on the Day, Month and Year first mentioned above.

For M/s ----- [Member 1]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated __)

Witnesses:

1) Signature -----

Name:

Address:

2) Signature -----

Name:

Address:

For M/s [Member 2]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated __)

Witnesses:

1) Signature -----

Name:

Address:

2) Signature -----

Name:

Address:

For M/s ----- [Member n]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated __)

1) Signature -----

Name:

Address:

2) Signature -----

Name:

Address:

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

FORMAT FOR FINANCIAL REQUIREMENT

(This should be submitted on the Letter Head of the Bidding Company/ Lead Member of Consortium)

Ref. No. _____

Date: _____

From: _____ *(Insert name and address of Bidding Company Lead Member of*

Consortium')

Tel. #: Fax#:

E-mail address#

To

Sub: Response to RfS No. _____ dated _____ for _____.

Dear Sir/ Madam,

We certify that the Bidding Company/Member in a Bidding Consortium is meeting the financial eligibility requirements as per the provisions of the RfS. Accordingly, the Bidder, with the support of its Affiliates, (strike out if not applicable) is fulfilling the minimum Net Worth criteria, by demonstrating a Net Worth of Rs..... Cr. (..... in words) as on the last date of Financial Year 2020-21/2019-20 or as on the date at least 7 days prior to the bid submission deadline (Strike out wherever not applicable).

This Net Worth has been calculated in accordance with instructions provided in the RfS.

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the Net Worth by Bidding Company and/ or its Affiliate(s) as per following details:

Name of Bidding Company	Name of Affiliate(s) whose net worth is to be considered	Relationship with Bidding Company*	Net Worth (in Rs. Crore)
Company 1			

Total			

The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/ chartered accountant is required to be attached with the format.

**Exhibit (ii): Applicable in case of Bidding Consortium
(To be filled by each Member in a Bidding Consortium separately)**

Name of Member: {Insert name of the Member}

Net Worth Requirement to be met by Member in Proportion to the Equity Commitment: INR
----- Crore (Equity Commitment (%) * Rs. [] Crore)

For the above calculations, we have considered Net Worth by Member in Bidding Consortium and/ or its Affiliate(s) per following details:

Name of Consortium Member Company	Name of Affiliate(s) whose net worth is to be	Relationship with Bidding Company* (If any)	Net Worth (in Rs. Crore)	Equity Commitment (in %age) Bidding	Committed Net Worth (in Rs. Crore)
Company 1					
—					
—					
Total					

* The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format

Further, we certify that the Bidding Company/ Member in the Bidding Consortium, with the support of its Affiliates, (strike out if not applicable) is fulfilling the minimum Annual Turnover Criteria, by demonstrating an Annual Turnover of INR_____ (_____ in words) as on the end of Financial Year 2020-21/2019-20 or as on the day at least 7 days prior to the bid submission deadline (choose one). (Strike out if not applicable)

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the Annual Turnover by Bidding Company and/ or its Affiliate(s) as per following details:

Name of Bidding Company	Name of Affiliate(s) whose Annual Turnover is to be considered	Relationship with Bidding Company*	Annual Turnover (In Rs. Crore)
Company 1			
Total			

The column for "Relationship with Bidding Company" is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format.

**Exhibit (ii): Applicable in case of Bidding Consortium
(To be filled by each Member in a Bidding Consortium separately)**

Name of Member: {Insert name of the Member}

Annual Turnover Requirement to be met by Member in Proportion to the Equity Commitment: INR ----- Crore (Equity Commitment (%) * Rs. [] Crore)

For the above calculations, we have considered Annual Turnover by Member in Bidding Consortium and/or its Affiliate(s) as per following details:

Name of Consortium Member Company	Name of Affiliate(s) whose Annual Turnover is to be considered	Relationship with Bidding Company* (If Any)	Annual Turnover (in Rs. Crore)	Equity Commitment (in %age) in Bidding Consortium	Proportionate Annual Turnover (in Rs. Crore)
Company					
—					
—					
Total					

* The column for "Relationship with Bidding Company" is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format

Further, we certify that the Bidding Company/ Member in the Bidding Consortium, with the support of its Affiliates, (strike out if not applicable) is fulfilling the minimum Profit Before Depreciation Interest and Taxes (PBDIT) criteria, by demonstrating a PBDIT of INR ____ (in words) as on the end of Financial Year 2020-21/2019-20 or as on the day at least 7 days prior to the bid submission deadline. (Strike out if not applicable)

Exhibit (i): Applicable in case of Bidding Company

For the above calculations, we have considered the PBDIT by Bidding Company and/ or its Affiliate(s) as per following details:

Name of Bidding Company	Name of Affiliate(s) whose PBDIT is to be considered	Relationship with Bidding Company*	PBDIT (in Rs. Crore)
Company 1			
Total			

**The column for “Relationship with Bidding Company” is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format.*

Exhibit (ii): Applicable in case of Bidding Consortium

(To be filled by each Member in a Bidding Consortium separately)

Name of Member: {Insert name of the Member}

PBDIT Requirement to be met by Member in Proportion to the Equity Commitment: INR — Crore
 (Equity Commitment (%) * Rs. [] Crore)

For the above calculations, we have considered PBDIT by Member in Bidding Consortium and/ or its Affiliate(s) as per following details:

Name of Consortium Member Company	Name of Affiliate(s) whose PBDIT is to be considered	Relationship with Bidding Company* (If Any)	PBDIT (in Rs. Crore)	Equity Commitment (in %age) in Bidding Consortium	Proportionate PBDIT (in Rs. Crore)
Company					
Total					

--	--	--	--

** The column for "Relationship with Bidding Company" is to be filled only in case the financial capability of Affiliate has been used for meeting Qualification Requirements. Further, documentary evidence to establish the relationship, duly certified by a practicing company secretary/chartered accountant is required to be attached with the format*

(Signature & Name of the Authorized Signatory) (Signature and Stamp of CA)
Membership No.
Regn. No. of the CA's

Firm:

Date:

- Note: (i) Along with the above format, in a separate sheet on the letterhead of the Chartered Accountant's Firm, provide details of computation of Net Worth and Annual Turnover duly certified by the Chartered Accountant.
- (ii) Certified copies of Balance sheet, Profit & Loss Account, Schedules and Cash Flow Statements are to be enclosed in complete form along with all the Notes to Accounts.
- (iii) In case of the Bidder choosing to meet the Liquidity criteria through an In-principle sanction letter, such document shall be separately submitted by the bidder as part of the bidder's Response to RfS.

UNDERTAKING

(To be submitted on the letterhead of the bidder)

We hereby provide this undertaking to -----, in respect to our response to RfS vide RfS No. _____ dated __, that M/s _____ (insert name of the Bidder), or any of its Affiliates is not a willful defaulter to any lender, and that there is no major litigation pending or threatened against M/s _____ (insert name of the Bidder) or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake this project.

(Signature & Name of the Authorized Signatory)

FORMAT FOR DISCLOSURE

(To be submitted on the letterhead of the bidding company/Each Member of Consortium)

DISCLOSURE

Ref.No. _____

Date: _____

From: _____ *(Insert name and address of Bidding Company Lead Member of Consortium)*

Tel. #:

Fax#:

E-mail address#

To

(Enter Address of NIWE)

Sub: Response to RfS No. _____ dated _____ for _____.

Dear Sir/ Madam,

We hereby declare and confirm that only we are participating in the RfS Selection process for the RfS No. _____ and that our Parent, Affiliate or Ultimate Parent or any Group Company with which we have direct or indirect relationship are not separately participating in this selection process.

We further declare and confirm that in terms of the definitions of the RfS, M/s ___ (enter name of the Promoter/Promoters) is/are our Promoter(s), and has/have a direct/indirect Control in the bidding company as per the Companies Act 2013. No other entity has a direct/indirect control in the bidding company except the entity(ies) mentioned above.

We further declare that the above statement is true & correct. We undertake that if at any stage it is found to be incorrect, in addition to actions applicable under the RfS but not limited to cancellation of our response to this RfS and LoA as applicable, we, i.e. M/s ___(enter name of the bidding company/member in a consortium), including our Parent, Ultimate Parent, and our Affiliates shall be suspended/debarred from participating in any of the upcoming tenders issued by NIWE for a period of 2 years from the date of default as notified by NIWE.

We also understand that the above is in addition to the penal consequences that may follow from the relevant laws for the time being in force.

We further declare that we have read the provisions of the RfS, and are complying with the requirements as per the referred OM dated 23.07.2020 except SI. 11 of the OM, including subsequent amendments and clarifications thereto. Accordingly, we are also enclosing necessary certificates (Annexure to this format) in support of the above compliance under the RfS. We understand that in case of us being selected under this RfS, any of the above certificates is found false, NIWE shall take appropriate action as deemed necessary.

Dated the _____ day of _____, 20__.

Thanking you,

We remain,
Yours faithfully,
Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board
Resolution/Declaration.

Format 7.8A

FORMAT FOR DISCLOSURE

(To be submitted on the letterhead of the bidding company/Each Member of Consortium)

(To be submitted by all such bidders in which a common Company/companies directly/in directly own(s) more than 10% but less than 26%> shareholding)

DISCLOSURE

Ref.No. _____

Date: _____

From: _____ *(Insert name and address of Bidding Company Lead Member of Consortium)*

Tel. #:

Fax#:

E-mail address#

To

Solar Energy Corporation of India Limited
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi - 110 023

Sub: Response to RfS No. _____ dated _____ for _____.

Dear Sir/ Madam,

We hereby declare and confirm that in terms of the definitions of the RfS, M/s ___(enter name of the common shareholder) is our Group Company, and has a direct/indirect shareholding of less than 26% in the bidding company. M/s _____(enter name of the common shareholder) also holds directly/indirectly less than 26% shareholding in other Companies which may participate in this RfS, i.e.RfS No. _.

We undertake that M/s _____(enter name of the above common shareholder) is not a party to the decision-making process for submission of response to this RfS by M/s _____ (enter name of the bidding company/member in the consortium). We further undertake that while undertaking any action as part of our response to RfS, we are not complicit with other such bidders participating in this RfS, in which M/s _____ (enter name of the common shareholder) has less than 26% direct/indirect shareholding, if any.

We further declare and confirm that in terms of the definitions of the RfS, M/s ___(enter name of the Promoter/Promoters) is/are our Promoter(s), and has/have a direct/indirect Control in the bidding company as per the Companies Act 2013. No other entity has a direct/indirect control in the bidding company except the entity(ies) mentioned above.

We further declare that the above statement is true & correct. We undertake that if at any stage it is found to be incorrect, in addition to actions applicable under the RfS but not limited to cancellation of our response to this RfS and LoA as applicable, we, i.e. M/s ___(enter name of the bidding company/member in a consortium), including our Parent, Ultimate Parent, and our Affiliates shall be suspended/debarred from participating in any of the upcoming tenders issued by NIWE for a period of 2 years from the date of default

as notified by NIWE.

We also understand that the above is in addition to the penal consequences that may follow from the relevant laws for the time being in force.

We further declare that we have read the provisions of the RfS, and are complying with the requirements as per the referred OM dated 23.07.2020 except SI. 11 of the OM, including subsequent amendments and clarifications thereto. Accordingly, we are also enclosing necessary certificates (Annexure to this format) in support of the above compliance under the RfS. We understand that in case of us being selected under this RfS, any of the above certificates is found false, NIWE shall take appropriate action as deemed necessary.

Dated the _____ day of _____, 20__.

Thanking you,

We remain,

Yours faithfully,

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution /Declaration.

DECLARATION

**RESTRICTION ON PROCUREMENT FROM CERTAIN COUNTRIES:
MoF OM No 6/18/2019-PPD dated 23.07.2020**

(To be submitted on the Letter Head of the Bidding Company Each Member of Consortium)

Ref. No. _____ Date: _____

From: _____ *(Insert name and address of Bidding Company Member of Consortium)* _____

Tel#:

Fax#:

E-mail address#

To

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

Sub: Response to RfS No..... datedfor the tender for.....

Dear Sir/ Madam,

This is with reference to attached order No. OM no. 6/18/2019-PPD dated 23rd July 2020 issued by Department of Expenditure, MoF, Govt of India.

We are hereby submitting the following declaration in this regard:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. Where applicable, evidence of valid registration by the Competent Authority shall be attached]."

We further declare that the above statement is true & correct. We are aware that if at any stage it is found to be incorrect, our response to the tender will be rejected.

Dated the _____ day of _____, 20....

Thanking you,

We remain,

Yours faithfully,

Encl: OM dated 23.07.2020, as referred above.

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration.

FORMAT FOR TECHNICAL CRITERIA

(This should be submitted on the Letter Head of the Bidding Company/ Lead Member of Consortium) (To be Submitted Separately for each Project)

Ref. No. _____ Date: __

From: _____ *(Insert name and address of Bidding Company Lead Member of Consortium)*

Tel.#:

Fax#:

E-mail address#

To

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

Sub: Response to RfS No. _____ dated _____ for _____.

Dear Sir/ Madam,

1.0 Evidence of achieving complete-tie-up of the Project Cost through internal accruals or through a Financing Agency.

Failure or delay on our part in achieving the above conditions shall constitute sufficient grounds for actions as per the provisions of the RfS.

Dated the _____ day of _____, 20__.

Thanking you,

We remain,

Yours faithfully,

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution / Declaration

FORMAT FOR SUBMISSION OF FINANCIAL BID

(The Covering Letter should be submitted on the Letter Head of the Bidding Company/ Lead Member of Consortium)

Ref. No. _____

Date: _____

From: _____ *(Insert name and address of Bidding Company Lead Member of Consortium)*

Tel.#:

Fax#:

E-mail address#

To

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

Sub: Response to RfS No. _____ dated _____ for _____.

Dear Sir/ Madam,

I/We, _____ *(Insert Name of the Bidder)* enclose herewith the Financial Proposal for selection of my/ our firm for _____ number of Project(s) for a cumulative capacity of _____ MW in India as Bidder for the above.

I/We agree that this offer shall remain valid for a period of 180 (One Hundred and Eighty) days from the due date of submission of the response to RfS such further period as may be mutually agreed upon.

Dated the _____ day of _____, 20__.

Thanking you,

We remain,

Yours faithfully,

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration

ANTI-BRIBERY

We hereby provide this undertaking to National Institute of Wind Energy in respect to our response to RfS vide RfS No. _____ dated _____, that M/s _____ (insert name of the Bidder), its Affiliates, and our/ their directors, officers, employees, agents, and anyone acting on its/ their behalf:

- (i) will comply with the Indian Prevention of Corruption Act, 1988*, and other laws in India applicable to offences relating to or resulting in corruption and bribery and resolutions available in case of occurrence of corruption or bribery (e.g., Indian Penal Code, 1860, Prevention of Money Laundering, 2002, Central Vigilance Commission Act, 2003, and the Lok Ayukta Acts of various states);
- (ii) have not corruptly offered, paid, promised to pay, or authorized the payment, and will not corruptly offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to a public official, to any political party or official thereof or any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, to any political party or official thereof, or to any candidate for political office, for the purpose of:
 - (a) influencing any act or decision or inaction of the public official, political party, party official, or candidate for political office or securing any improper advantage; or
 - (b) inducing such public official, party, party official, or candidate to use his, her, or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality; or
 - (c) to assist in obtaining or retaining business for or with or directing business to, any person.
- (iii) have not made and will not make any facilitating or “grease” payments;
- (iv) have not offered, promised, or paid, and will not offer, promise, or pay, any bribe or kickback to any employee or other member of a commercial enterprise to induce or reward improper performance;
- (v) will instruct and adequately train its directors, officers, employees, agents, and anyone acting on its behalf to adhere to these requirements regarding illegal, improper, or facilitating payments in connection with all services provided.

* Include reference, as applicable, to the US Foreign Corrupt Practices Act and/ or the UK Bribery Act.

(Name and Signature of the Authorized Signatory)

ANTI-FRAUD

We hereby provide this undertaking to National Institute of Wind Energy in respect to our response to RfS vide RfS No. _____ dated _____, that M/s _____ (insert name of the Bidder):

- (i) is not bankrupt or being wound up, having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning the foregoing matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (ii) is solvent and, in a position, to continue doing business for the period stipulated in the contract after contract signature, if selected as the successful Bidder;
- (iii) or persons having powers of representation, decision making or control over the Bidder have not been convicted of an offence concerning their professional conduct by a final judgment;
- (iv) or persons having powers of representation, decision making or control over the Bidder have not been the subject of a final judgment or of a final administrative decision for fraud, corruption, involvement in a criminal organization, money laundering, terrorist-related offences, child labour, human trafficking or any other illegal activity;
- (v) is in compliance with all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the national legislation or regulations of the country in which the Bidder is established;
- (vi) is not subject to an administrative penalty for misrepresenting any information required as a condition of participation in a procurement procedure or failing to supply such information;
- (vii) has declared to National Institute of Wind Energy any circumstances that could give rise to a conflict of interest or potential conflict of interest in relation to the current procurement action;
- (viii) has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any direct or indirect undue or illegal benefit (financial or otherwise) arising from a procurement contract or the award thereof (other than reflected in the contract amount);
- (ix) has zero tolerance for sexual exploitation and abuse and has appropriate procedures in place to prevent and respond to sexual exploitation and abuse; and
- (x) understands that a false statement or failure to disclose any relevant information which may impact upon the National Institute of Wind Energy's decision to award a contract may result in the disqualification of the Bidder from the bidding exercise and/ or the withdrawal of any offer of a contract. Furthermore, in case any contract has already been entered into, the contract may be rescinded with immediate effect, in addition to any other remedies which may be available under contract or by law.

(Name and Signature of the Authorized Signatory)

ANTI-SLAVERY

We hereby provide this undertaking to National Institute of Wind Energy in respect to our response to RfS vide RfS No. _____ dated _____, that M/s _____ (insert name of the Bidder):

- (i) is committed to safeguarding the principles set out in the Immoral Traffic (Prevention) Act, 1956 against modern slavery and human trafficking.
- (ii) is committed to maintain the transparency in its business practices and working conditions in a bid to prevent people being treated as commodities and maintaining human dignity;
- (iii) shall ensure that its hiring and remunerative practices are continually compliant with the relevant legislative requirements;
- (iv) has zero tolerance towards slavery and human trafficking and shall communicate its modern slavery and human trafficking policy to all suppliers, contractors and business partners;
- (v) shall not support, deal with or partner with any such business knowingly involved in slavery or human trafficking;
- (vi) shall terminate its relationship with any employee or business found in breach of this statement;
- (vii) shall provide sufficient resources, internal training and make investments to ascertain that slavery or human trafficking is not taking place within the organization itself or any of its supply chains.

(Name and Signature of the Authorized Signatory)

ANTI-COLLUSION

In respect to our response to RfS vide RfS No. _____ dated _____, M/s _____ (insert name of the Bidder) hereby certifies and confirms that:

- (i) in the preparation and submission of our Bid, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive; and
- (ii) we have not proposed nor will proposal any illegal gratification in cash or kind to any person or agency in connection with the instant Bid.

(Name and Signature of the Authorized Signatory)

This format is for reference purpose only. The scanned version of the format, duly signed by NIWE's authorized signatory, is available on the ETS portal as addendum to the RfS. Bidders are required to submit signed and scanned copy of the document available on ETS portal)

INTEGRITY PACT

Between

National Institute of Wind Energy, having its Registered Office at 657, 1A2, Velachery - Tambaram Main Rd, Pallikaranai Marshland, Pallikaranai, Chennai, Tamil Nadu, 600100, India hereinafter referred to as "NIWE"

And

_____ (*Insert the name of the Sole Bidder/all members of the of Joint Venture/Consortium*) having its Registered Office at (*Insert full Address/Lead member address in case of Joint Venture/Consortium*)

and

_____ (*Insert the name of all members of the Joint Venture/Consortium, as applicable*) having its Registered Office at _____ (*Insert full address/ Lead member address*) hereinafter referred to as "**The Bidder/Contractor**"

Preamble

NIWE intends to award, under laid-down organizational procedures, contract(s) for _____ (*Insert the name of the tender/package*) _____ Package and NIT Number _____

NIWE values full compliance with all (*Insert Specification Number of the package*) relevant laws and regulations, and the principles of economical use of resources, and of fairness and transparency in its relations with its Bidders/ Contractors.

In order to achieve these goals, NIWE and the above-named Bidder/Contractor enter into this agreement called '**Integrity Pact**' which will form an integral part of the bid.

It is hereby agreed by and between the parties as under:

Section I - Commitments of NIWE

- (1) NIWE commits itself to take all measures necessary to prevent corruption and to observe the following principles:
 - a) No employee of NIWE, personally or through family members, will in connection with the tender, or the execution of the contract, demand, take a promise for or accept, for him/herself or third person, any material or other benefit which he/she is not legally entitled to.

- b) NIWE will, during the tender process treat all Bidder(s) with equity and fairness. NIWE will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c) NIWE will exclude from evaluation of Bids its such employee(s) who has any personal interest in the Companies/ Agencies participating in the Bidding/ Tendering process
- (2) If Managing Director obtains information on the conduct of any employee of NIWE which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, he will inform its Chief Vigilance Officer and in addition can initiate disciplinary actions under its Rules.

Section II - Commitments of the Bidder/Contractor

- (1) The Bidder/ Contractor commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution:
- a) The Bidder/ Contractor will not, directly or through any other person or firm, offer, promise or give to NIWE, or to any of NIWE's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange an advantage during the tender process or the execution of the contract.
 - b) The Bidder/Contractor shall not enter into any agreement/ arrangement/ understanding/ action in concert, whether or not the same is formal or in writing with other Bidders/ Contractors. This applies in particular to agreements pertaining to prices, territorial or geographical allocations of market, specifications, certifications, subsidiary contracts, submission or non-submission of bids, bid rigging or other actions restricting competitiveness or leading to cartelization in the bidding process or amounting to any other violation under the Competition Laws for the time being in force.
 - c) The Bidder/ Contractor will not commit any criminal offence under the relevant Anti-corruption Laws of India; further, the Bidder/ Contractor will not use for illegitimate purposes or for purposes of restrictive competition or personal gain, or pass on to others, any information provided by NIWE as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d) Bidders will not pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act.
 - e) The Bidder/ Contractor of foreign origin shall disclose the name and address of the Agents/ representatives in India, if any, involved directly or indirectly in the Bidding. Similarly, the Bidder/ Contractor of Indian Nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the Bidding.
 - f) The Bidder/ Contractor will, when presenting his bid, disclose any and all payments he has

made, or committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and/or with the execution of the contract.

- g) The Bidder/ Contractor will not misrepresent facts or furnish false/ forged documents/information in order to influence the bidding process or the execution of the contract to the detriment of NIWE.
- (2) The Bidder/ Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section III- Disqualification from tender process and exclusion from future contracts

- (1) If the Bidder, before contract award, has committed a serious transgression through a violation of Section II or in any other form such as to put his reliability or credibility as Bidder into question, NIWE may disqualify the Bidder from the tender process or terminate the contract, if already signed, for such reason.
- (2) If the Bidder/ Contractor has committed a serious transgression through a violation of Section II such as to put his reliability or credibility into question, NIWE may after following due procedures also exclude the Bidder/ Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder/Contractor and the amount of the damage. The exclusion will be imposed for a minimum of 12 (twelve) months and maximum of 36 (thirty six) months.
- (3) If the Bidder/ Contractor can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system, NIWE may revoke the exclusion prematurely. However, decision of NIWE in this regard shall be final and binding on the bidder/Contractor.

Section IV - Liability for violation of Integrity Pact

- (1) If NIWE has disqualified the Bidder from the tender process prior to the award under Section III, NIWE may forfeit the applicable Bid Security/ Earnest Money Deposit under the Bid.
- (2) If NIWE has terminated the contract under Section III, NIWE may forfeit the Contract Performance Security of this contract besides resorting to other remedies under the contract.

Section V- Previous Transgression

- (1) The Bidder shall declare in his Bid that no previous transgressions occurred in the last 3 (three) years with any other Public Sector Undertaking or Government Department that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section VI - Equal treatment to all Bidders / Contractors

- (1) NIWE will enter into agreements with identical conditions as this one with all Bidders.
- (2) NIWE will disqualify from the tender process any bidder who does not sign this Pact or violate its provisions.

Section VII - Punitive Action against violating Bidders / Contractors

If NIWE obtains knowledge of conduct of a Bidder or a Contractor or his subcontractor or of an employee or a representative or an associate of a Bidder or Contractor or his Subcontractor which constitutes corruption, or if NIWE has substantive suspicion in this regard, NIWE will inform the Chief Vigilance Officer (CVO).

Nothing mentioned hereinabove may deem to restrict the right of NIWE, in case of a suspected violation of Section II, Clause (1) (b) by the Bidders/ contractors to initiate necessary action under the Competition Laws for the time being in force.

(* Section VIII - Independent External Monitor/Monitors

- (1) NIWE has appointed a panel of Independent External Monitors (IEMs) for this Pact with the approval of Central Vigilance Commission (CVC), Government of India, details of which has been indicated in the tender document.
- (2) The IEM is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement. He has right of access to all project documentation. The IEM may examine any complaint received by him and submit a report to Managing Director, NIWE, at the earliest. He may also submit a report directly to the CVO and the CVC, in case of suspicion of serious irregularities attracting the provisions of the PC Act. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter shall be referred to the full panel of IEMs, who would examine the records, conduct the investigations and submit report to Managing Director, NIWE, giving joint findings.
- (3) The IEM is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Managing Director, NIWE.
- (4) The Bidder(s)/ Contractor(s) accepts that the IEM has the right to access without restriction to all documentation of NIWE related to this contract including that provided by the Contractor/ Bidder. The Bidder/ Contractor will also grant the IEM, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his documentation. The same is applicable to Subcontractors. The IEM is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
- (5) NIWE will provide to the IEM information as sought by him which could have an impact on the contractual relations between NIWE and the Bidder/Contractor related to this contract.
- (6) As soon as the IEM notices, or believes to notice, a violation of this agreement, he will so inform the Managing Director, NIWE and request the Managing Director, NIWE to discontinue or take

corrective action, or to take other relevant action. The IEM can in this regard submit non-binding recommendations. Beyond this, the IEM has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action. However, the IEM shall give an opportunity to NIWE and the Bidder/Contractor, as deemed fit, to present its case before making its recommendations to NIWE.

- (7) The IEM will submit a written report to the Managing Director, NIWE within 8 to 10 weeks from the date of reference or intimation to him by NIWE and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the IEM has reported to the Managing Director, NIWE, a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the Managing Director, NIWE has not, within the reasonable time taken visible action to proceed against such offence or reported it to the CVO, the Monitor may also transmit this information directly to the CVC, Government of India.
- (9) The word 'IEM' would include both singular and plural.
- (*) *This Section shall be applicable for only those packages wherein the IEMs have been identified in Section – I: Invitation for Bids and/or Clause ITB ... in Section – III: Bid Data Sheets of Conditions of Contract, Section-3 of the RfS.*
- (10) A bidder/ Contractor signing the IP shall not approach the Courts while representing the matters to IEMs and he will await till their decision in the matter.

Section IX - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor after the closure of the contract and for all other Bidder's 6 (six) month after the contract has been awarded.

Section X - Other Provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the establishment of NIWE.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) If the Contractor is a partnership firm or a consortium or Joint Venture, this agreement must be signed by all partners, consortium members and Joint Venture partners.
- (4) Nothing in this agreement shall affect the rights of the parties available under the General Conditions of Contract (GCC) and Special Conditions of Contract (SCC) which are part of the Bidding Document.
- (5) Views expressed or suggestions/submissions made by the parties and the recommendations of the CVO/ IEM[#] in respect of the violation of this agreement, shall not be relied on or introduced as evidence in the arbitral or judicial proceedings (arising out of the arbitral proceedings) by the parties in connection with the disputes/differences arising out of the subject contract.

CVO shall be applicable for packages wherein IEM are not identified in the bidding document IEM shall be applicable for packages wherein IEM are identified in the bidding document.

(6) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(Signature)

(Signature)

(For & On behalf of NIWE)

(For & On behalf of Bidder/ Partner(s) of Joint Venture/Consortium/ Contractor)

(Office Seal)

(Office Seal)

Name:

Name:

Designation:

Designation:

Witness 1 :

Witness 1 :

(Name & Address)

(Name & Address)

Performa 'A-I'

For cases where funding will be from a Company other than Project Company

Board Resolution from _____(Name of the Company from where the required funding will be raised)

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE COMPANY AT THEIR MEETING HELD ON _____, AT THE REGISTERED OFFICE OF THE COMPANY

RESOLVED that approval of the Board be and is hereby accorded to the company extending unconditional and full financial support whether by way of equity, debt, or a combination thereof, towards meeting the full project cost of Rs. _____(in words and figures) to M/s _____(Name of Project Company), a company within the meaning of The Companies Act, 1956 and/or The Companies Act, 2013, and having its registered office at _____ which was selected by Name of NIWE(NIWE) to develop the _____ MW Wind Power Project (Project ID), for generation and sale of wind power under the RfS No. _____ in respect of which Power Purchase Agreement (PPA) was signed between NIWE and _____(Name of Project Company). Funds will be released for the project as per the request of _____(Name of Project Company) to meet the financial requirement for the said Project.

Board Resolution from _____(Project Company)

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE COMPANY AT THEIR MEETING HELD ON _____, AT THE REGISTERED OFFICE OF THE COMPANY

RESOLVED that approval of the Board be and is hereby accorded to the Company which was selected by Name of NIWE(NIWE) to develop the MW Wind Power Project (Project ID _____), for generation and sale of wind power under the RfS No. _____ in respect of which Power Purchase Agreement (PPA) was signed between NIWE and the Company, to request and undertake to accept unconditional and full financial support and getting release of funds for project as per requirement from the Company i.e. _____, a Company within the meaning of The Companies Act, 1956 and/or The Companies Act, 2013, and having its registered office at _____ whether by way of equity, debt, or a combination thereof for meeting the financial requirements of the project being developed by the Project Company.

Further Resolved that in the event the Company i.e. _____, agrees to extend full financial support as sought above, Sh. _____, Director, Sh _____, Director.... be and are hereby severally or collectively authorized to accept any terms and conditions that may be imposed by _____(Name of the Company), for extending such support and that they are also severally or collectively authorized to sign such documents, writings as may be necessary in this connection.

Annexure A

Model Agreement to lease

Annexure B

Model Survey Lease Deed

Annexure C

Model C&O Lease Deed

Annexure D

Model Concessionaire Agreement

AGREEMENT TO LEASE FOR SURVEY

BY AND BETWEEN

MINISTRY OF NEW AND RENEWABLE ENERGY, GOVERNMENT OF INDIA

(“MNRE”)

AND

[insert name of the Selected Bidder]

(The “Selected Bidder”)

DATED: _____

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AGREEMENT TO LEASE FOR SURVEY

This agreement to lease (the “**Agreement**”) is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **The President of India**, represented by _____¹, Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as “**MNRE**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of one part;

AND

2. **M/s _____**, a _____² [incorporated/ registered]³ under the provisions of the _____⁴ and having its registered office at _____, (hereinafter referred to as the “**Selected Bidder**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part.

MNRE and the Selected Bidder are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. _____⁵ had invited proposals by its request for proposals dated _____ for the survey, construction, operation and maintenance of an offshore wind power project (the “**Project**”) at the seabed more particularly detailed and described in **Schedule I** hereto (the “**Seabed**”), on design, build, finance, operate and own basis;
- B. After evaluation of the proposals received, _____⁶ had accepted the Selected Bidder’s proposal, and _____⁷ had issued a letter of award dated _____ bearing ref. no. _____ to the Selected Bidder;
- C. The Selected Bidder has furnished a refundable security deposit for an amount of INR _____ (Rupees _____) pursuant to the letter of award dated _____ (the “**AtL Security Deposit**”), which AtL Security Deposit is required to be valid until the date of furnishing, pursuant to these presents, the security deposit in respect of conducting the Survey (*as defined hereinafter*) of the Seabed;
- D. The Parties are now entering into this Agreement to set out certain preconditions that are required to be fulfilled by the Selected Bidder in order for MNRE to grant a lease in favour of the Selected Bidder for the purpose of carrying out a Survey (*as defined hereinafter*) of the Seabed.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

¹ Insert designation of authorised officer.

² Insert nature of contracting party.

³ Retain as appropriate.

⁴ Insert relevant legislation.

⁵ Insert name of entity issuing the request for proposals.

⁶ Insert name of entity issuing the request for proposals.

⁷ Insert name of entity issuing the request for proposals.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless repugnant to the context, the following terms shall have the following meanings:

“**AtL Security Deposit**” shall have the meaning ascribed to it in Recital C;

“**Applicable Laws**” shall mean all laws, brought into force and effect by the Government of India or any State Government, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with undertaking the Survey of the Seabed (including, without limitation, the Stage-I clearance set forth in Annexure A of the National Offshore Wind Energy Policy, 2015 and ‘Letter of Consent’ under the Guidelines for Offshore Wind Power Assessment Studies and Surveys issued by NIWE);

“**Government Instrumentality**” shall mean any department, division or sub-division of the Government of India or any State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or any State Government, as the case may be, and having jurisdiction over performance of all or any of the obligations of the Selected Bidder under or pursuant to this Agreement;

“**Project**” shall have the meaning ascribed to it in Recital A;

“**Seabed**” shall have the meaning ascribed to it in Recital A;

“**Survey**” shall mean geophysical survey (geophysical examination of the water column, seabed and subsoil, for spatial studies and preparation of geological maps and geological sections defining the seabed condition of different zones to help in designing the foundations structures for such offshore wind turbine generators (wind turbines) for electrical power generations), geotechnical survey (drilling of bore-holes to source scientific information and other data relating to soil and sub-soil condition including assessment of its load bearing capacity with an immediate objective to setup the offshore wind projects), oceanographic survey, environmental survey, wind resource assessment, investigation and exploration;

“**Survey Lease Deed**” shall have the meaning ascribed to it in Clause 2.3.1(b).

*Definitions will remain same as per the referred documents

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

- (b) references to laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- (j) the words importing singular shall include plural and *vice versa*;
- (k) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (m) the schedules and recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (n) references to recitals, clauses, sub-clauses or schedules in this Agreement shall, except where the context otherwise requires, mean references to recitals, clauses, sub-clauses and schedules of or to this Agreement;
- (o) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

- 1.2.2 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

ARTICLE 2
PRECONDITIONS FOR GRANT OF LEASE FOR SURVEY

2.1 Applicable Permits

- 2.1.1 The Selected Bidder shall, no later than 6 (six) months from the date of this Agreement, or such extended period as may be permitted by MNRE at its sole discretion, procure all Applicable Permits in connection with the Survey of the Seabed unconditionally or, if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such permits are in full force and effect.
- 2.1.2 The National Institute of Wind Energy shall facilitate the Selected Bidder in obtaining Applicable Permits from the concerned Government Instrumentalities, viz., accepting applications for the said Applicable Permits from the Selected Bidder and coordinating with the concerned Government Instrumentalities for the Applicable Permits. It is expressly clarified, acknowledged and agreed by the Parties that the National Institute of Wind Energy shall only act as a facilitator for obtaining the Applicable Permits, that the preparation and obtainment of requisite applications (and associated documentation) shall be the sole responsibility of the Selected Bidder.
- 2.1.3 The Selected Bidder shall make all reasonable endeavours to procure the Applicable Permits within the time stipulated, and shall, no later than 1 (one) month from the date of this Agreement, make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits.
- 2.1.4 The Selected Bidder shall notify MNRE in writing at least once a month on the progress made in procuring the Applicable Permits. The Selected Bidder shall promptly inform MNRE when any Applicable Permit has been procured.
- 2.1.5 It is clarified that, subject to the terms of this Agreement, the entitlement to obtain the Applicable Permits with respect to the Seabed shall vest exclusively with the Selected Bidder.
- 2.1.6 The selected bidder shall notify MNRE after procurement of all the applicable permits as per mentioned in 2.1.1 and shall get into Survey lease deed agreement with MNRE.
- 2.1.7 Subject to completion of the survey and submission and finalization of the detailed project report, MNRE shall enter into a construction and operation lease deed (“C&O Lease Deed”). This lease deed shall grant a lease of the seabed to the OWPD to undertake the construction and operation of the Project of specified capacity;
- 2.1.8 Along with C&O Lease deed, NIWE shall enter into a concession agreement (the “Concession Agreement”) with the lessee to grant a concession for designing, building, financing, constructing, commissioning, operating, maintaining and decommissioning the offshore wind energy Project of specified capacity.

2.2 Delay in Procurement of Applicable Permits

- 2.2.1 In the event that the Selected Bidder does not procure the Applicable Permits within the period stipulated therefor, and the delay is not the result of force majeure (as defined in the Offshore Wind Energy Lease Rules, 2022), the Selected Bidder shall pay to MNRE damages in an amount calculated at the rate of 1% (one percent) of the AtL Security Deposit for each day’s

delay until the procurement of the Applicable Permits.

- 2.2.2 The Parties expressly agree that in the event the Applicable Permits are not procured, for any reason whatsoever, within 8 (eight) months of the signing of this Agreement, or such extended period as may be approved by MNRE in its sole discretion, all rights, privileges, claims and entitlements of the Selected Bidder under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Selected Bidder, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties, and the AtL Security Deposit shall be refunded forthwith to the Selected Bidder by MNRE:

Provided, however, that in the event the Applicable Permits are not procured within the aforementioned timeframe for reasons attributable to the Selected Bidder, the AtL Security Deposit shall be encashed and appropriated by MNRE.

MNRE will examine the delay caused due to reasons beyond the control of the lessee and in such cases, neither the security deposit be forfeited nor the delay be counted.

- 2.2.3 The Selected Bidder may, at any time and at its sole discretion, terminate this Agreement, subject to the condition that, upon such termination, the AtL Security Deposit shall be encashed and appropriated by MNRE.
- 2.2.4 In case of any kind of extension required from the lessee side, the lessee must submit a detailed justification for delay to MNRE. MNRE will examine delay request and provide extension if required.

2.3 Security Deposit and Survey Lease Deed

- 2.3.1 Within a period of 1 (one) month from the date on which all the Applicable Permits have been procured (or such other period as may be mutually agreed to by the Parties):

- (a) The Selected Bidder shall furnish in favour of MNRE a refundable security deposit for an amount of INR _____ (Rupees _____) in form of an irrevocable and unconditional guarantee from a bank incorporated in India and having a minimum net worth of INR 1,000,00,00,000 (Rupees One Thousand Crore) in the form set forth in **Schedule II**; and
- (b) The Parties shall enter into a lease deed in respect of the Seabed for the purpose of undertaking the Survey on an exclusive basis (the “**Survey Lease Deed**”).

- 2.3.2 Upon execution of the Survey Lease Deed, this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

- 2.3.3 Upon fulfilment of the stipulations in the Survey Lease Deed, the Lessor shall grant a lease for undertaking development of the Project on an exclusive basis

2.4 Delay in Signing the Survey lease deed

- 2.4.1 The selected bidder shall notify MNRE within a maximum period of seven working days after procuring the applicable permits.
- 2.4.2 In case the selected bidder after procuring the applicable permits have intentionally delayed signing the Survey lease deed and the delay is not justifiable then the Selected Bidder shall be liable for damages in an amount calculated at the rate of 1% (one percent) of the AtL Security Deposit for each day’s delay until signing of the Survey lease deed.

**ARTICLE 3
MISCELLANEOUS**

3.1 Dispute Resolution, Governing Law and Jurisdiction

- 3.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified by either Party shall, in the first instance, be attempted to be resolved amicably, failing which the same shall be resolved in accordance with the Offshore Wind Energy Lease Rules, 2022.
- 3.1.2 Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to the outcome of the dispute.
- 3.1.3 This Agreement shall be construed and interpreted in accordance with and governed by the law of India, and the courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

3.2 Representations and Warranties

Each Party hereby represents and warrants that:

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

3.3 Waiver of Immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by party of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

3.4 Waiver

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

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

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

3.5 Exclusion of implied warranties etc.

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

3.6 Entire Agreement

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

3.7 Severability

If for any reason whatever, any provisions of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as nearly as is practicable to such invalid, illegal or unenforceable provision. In the event that the Parties are unable to reach an agreement as aforesaid, the dispute shall be resolved in the manner set forth in Clause 3.1.

3.8 No partnership

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

3.9 Third parties

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

3.10 Successors and assigns

3.10.1 The Selected Bidder shall not assign this Agreement to any person, save and except with the prior consent in writing of MNRE, which consent MNRE shall be entitled to decline without assigning any reason.

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

3.11 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set out below:

(a) If to MNRE:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

(b) If to Selected Bidder:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

3.12 Language

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

3.13 Counterparts

This Agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

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

For and on behalf of MNRE by

For and on behalf of Selected Bidder by

(Signature) _____
Name: _____
Designation: _____

(Signature) _____
Name: _____
Designation: _____

IN PRESENCE OF _____

IN PRESENCE OF _____

(Signature) _____
Name: _____
Address: _____

(Signature) _____
Name: _____
Address: _____

**SCHEDULE I:
DESCRIPTION OF THE SEABED⁸**

⁸ **Note:** To include plan of development site and co-ordinates of development site

**SCHEDULE II:
FORMAT OF BANK GUARANTEE**

This deed of guarantee (the “**Bank Guarantee**”) is executed on this the _____ day of _____ at _____ by _____ having its head/ registered office at _____ (hereinafter referred to as the “**Bank**”), which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

The President of India, represented by _____⁹, Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as “**MNRE**”), which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A.** MNRE and _____, a _____¹⁰ [incorporated/ registered]¹¹ under the provisions of the _____¹² and having its registered office at _____ (the “**Selected Bidder**”), have entered into an agreement to lease dated _____ setting out certain preconditions to be fulfilled for the grant of a lease (the “**Survey Lease Deed**”) by MNRE in favour of the Selected Bidder for the purpose of carrying out a survey;
- B.** In terms of the aforementioned agreement to lease, the Selected Bidder is required to furnish to MNRE, an unconditional and irrevocable bank guarantee for an amount Rs. _____ (the “**Guarantee Amount**”) as refundable security deposit; and
- C.** At the request of the Selected Bidder, the Bank has agreed to provide guarantee, being these presents by way of security in terms of the aforementioned agreement to lease.

NOW, THEREFORE, the Bank hereby affirms as follows:

1. The Bank hereby unconditionally and irrevocably agrees and undertakes to pay to MNRE, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Selected Bidder, such sum or sums up to an aggregate sum of the Guarantee Amount as MNRE shall claim, without MNRE being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein;
2. A letter from MNRE, under the hand of an officer not below the rank of _____, that the Selected Bidder has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Survey Lease Deed shall be conclusive, final and binding on the Bank. The Bank further agrees that MNRE shall be the sole judge as to whether the Selected Bidder is in default in due and faithful performance of its obligations under the Survey Lease Deed and its decision that the Selected Bidder is in default shall be final, and binding on the Bank, notwithstanding any differences between MNRE and the Selected Bidder, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Selected Bidder for any reason whatsoever.
3. In order to give effect to this Bank Guarantee, MNRE shall be entitled to act as if the Bank was the principal debtor and any change in the constitution of the Selected Bidder and/or the Bank,

⁹ Insert designation of authorised officer.

¹⁰ Insert nature of contracting party.

¹¹ Retain as appropriate.

¹² Insert relevant legislation.

whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for MNRE to proceed against the Selected Bidder before presenting to the Bank its demand under this Bank Guarantee.
5. MNRE shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the Survey Lease Deed or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Selected Bidder contained in the Survey Lease Deed or to postpone for any time, and from time to time, any of the rights and powers exercisable by MNRE against the Selected Bidder, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Survey Lease Deed and/or the securities available to MNRE, and the Bank shall not be released from its liability and obligation under these presents by any exercise by MNRE of the liberty with reference to the matters aforesaid or by reason of time being given to the Selected Bidder or any other forbearance, indulgence, act or omission on the part of MNRE or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by MNRE in respect of or relating to the Survey Lease Deed or for the fulfilment, compliance and/or performance of all or any of the obligations of the Selected Bidder under the Survey Lease Deed.
7. The Bank undertakes not to revoke this Bank Guarantee during its currency, except with the previous express consent of MNRE in writing, and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.
8. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at the _____ office of the Bank, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of MNRE that the envelope was so posted shall be conclusive.
9. This Bank Guarantee shall come into force with immediate effect and shall remain in force and effect for the period set forth in the Survey Lease Deed.

Signed and sealed this _____ day of _____, 20_____ at _____.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

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

SURVEY LEASE DEED

BY AND BETWEEN

MINISTRY OF NEW AND RENEWABLE ENERGY, GOVERNMENT OF INDIA

(the “Lessor”)

AND

[insert name of the Selected Bidder]

(the “Lessee”)

DATED: _____

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SURVEY LEASE DEED

This lease deed (the “**Survey Lease Deed**”) is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **The President of India**, represented by _____¹, Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as the “**Lessor**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of one part;

AND

2. M/s _____, a _____² [incorporated/ registered]³ under the provisions of the _____⁴ and having its registered office at _____, (hereinafter referred to as the “**Lessee**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part.

The Lessor and the Lessee are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. _____⁵ had invited proposals by its request for proposals dated _____ for the survey, construction, operation and maintenance of an offshore wind power project at the seabed more particularly detailed and described in **Schedule I** hereto (the “**Seabed**”), on design, build, finance, operate and own basis (the “**Project**”);
- B. After evaluation of the proposals received, _____⁶ had accepted the Lessee’s proposal, and _____⁷ had issued a letter of award dated _____ bearing ref. no. _____ to the Lessor;
- C. The Lessor and the Lessee had thereafter entered into an agreement to lease dated _____ wherein certain preconditions for grant of a lease in respect of the Seabed were set forth, including, *inter alia*, the obligation on the part of the Lessee to: (i) obtain requisite clearances from the concerned Governmental Authorities (*as defined hereinafter*), and (ii) furnish a refundable security deposit (the “**Survey Security Deposit**”) in favour of the Lessor;
- D. Pursuant to the said preconditions having been fulfilled, the Lessor has agreed to grant the Lessee an exclusive lease to the Seabed, for undertaking the Survey (*as defined hereinafter*); and
- E. The Parties are now entering into this Survey Lease Deed for the purpose of recording the terms of lease of the Seabed by the Lessor to the Lessee.

¹ Insert designation of authorised officer.

² Insert nature of contracting party.

³ Retain as appropriate.

⁴ Insert relevant legislation.

⁵ Insert name of entity issuing the request for proposals.

⁶ Insert name of entity issuing the request for proposals.

⁷ Insert name of entity issuing the request for proposals.

F. The objective under this lease is to carry out required studies and surveys towards subsequent development of offshore wind energy project of tentative capacity [to be inserted]MW as per the provisions of RfS No.[] Dated [].

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Survey Lease Deed and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**ARTICLE 1:
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Survey Lease Deed, unless repugnant to the context and already defined in the referred documents, the following terms shall have the following meanings:

“Applicable Laws” shall mean all laws, brought into force and effect by the Government of India or any State Government, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Survey Lease Deed and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Survey Lease Deed;

“Applicable Permits” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the undertaking the Survey of the Seabed; (including, without limitation, the Stage-I clearance set forth in Annexure A of the National Offshore Wind Energy Policy, 2015 and ‘Letter of Consent’ under the Guidelines for Offshore Wind Power Assessment Studies and Surveys issued by NIWE);

“Authority” means Ministry of New and Renewable Energy for the purpose of offshore wind energy project and offshore wind transmission project

“C&O Lease Deed” shall have the meaning ascribed in Clause 3.2.2;

“Committee” shall have the meaning ascribed in Clause 5.4.2;

“Concession Agreement” shall have the meaning ascribed in Clause 5.4.8(b);

“Concessionaire” shall have the meaning ascribed in Clause 5.4.7(a);

“Data” shall mean survey or investigation data such as meteorological, bathymetric, current, side scan sonar data, physical oceanographic data, surface geological maps and sections, magnetic and gravity measurements and anomaly maps, seismic profiles, sections and structure contour maps, electrical and telluric current survey data, and other information which has a direct or indirect bearing on the offshore wind energy possibilities in the Seabed and collected by the Lessee or its agents or contractors;

“Detailed Project Report” shall have the meaning ascribed in Clause 5.4.1;

“Encumbrance” shall mean, in relation to the Seabed, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Seabed;

“Government Instrumentality” shall mean any department, division or sub-division of the Government of India or any State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or any State Government, as the case may be, and having jurisdiction over all or any part of the Project, Seabed and/ or the performance of all or any of the services or obligations of the Lessee under or pursuant to this Survey Lease Deed;

“**INR**” or “**Rupees**” or “**Rs.**” shall mean Indian Rupees, the lawful currency of the Republic of India;

“**Lease Commencement Date**” shall mean the date of execution of the Survey Lease Deed;

“**Lease**” shall mean the lease in respect of the Seabed granted by the Lessor to the Lessee pursuant to this Survey Lease Deed;

“**Permitted Activities**” shall have the meaning ascribed to it in Clause 2.1;

“**Project**” shall have the meaning ascribed to it in Recital A;

“**Survey Security Deposit**” shall have the meaning ascribed to it in Recital C;

“**Seabed**” shall have the meaning ascribed to it in Recital A;

“**Term**” shall have the meaning ascribed to it in Clause 3.1.

1.2 Interpretation

1.2.1 In this Survey Lease Deed, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Survey Lease Deed are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Survey Lease Deed;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date or period shall mean and include such date or period as may be

extended pursuant to this Survey Lease Deed;

- (j) the words importing singular shall include plural and *vice versa*;
- (k) save and except as otherwise provided in this Survey Lease Deed, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Lessor hereunder or pursuant hereto in any manner whatsoever;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Survey Lease Deed from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (m) the schedules and recitals to this Survey Lease Deed form an integral part of this Survey Lease Deed and will be in full force and effect as though they were expressly set out in the body of this Survey Lease Deed;
- (n) references to recitals, clauses, sub-clauses or schedules in this Survey Lease Deed shall, except where the context otherwise requires, mean references to recitals, articles, clauses, sub-clauses and schedules of or to this Survey Lease Deed, and references to a paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this Survey Lease Deed or of the schedule in which such reference appears;
- (o) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

**ARTICLE 2:
GRANT OF LEASE**

2.1 Grant of Lease and Permitted Activities

2.1.1 Subject to and in accordance with the terms and conditions set forth in this Survey Lease Deed, the Lessor hereby grants and authorizes the Lessee to have access to Seabed during the Term, for the sole and limited purpose (the “**Permitted Activities**”) of conducting, at its own cost and risk, geophysical survey (geophysical examination of the water column, seabed and subsoil, for spatial studies and preparation of geological maps and geological sections defining the seabed condition of different zones to help in designing the foundations structures for such offshore wind turbine generators (wind turbines) for electrical power generations), geotechnical survey (drilling of bore-holes to source scientific information and other data relating to soil and sub-soil condition including assessment of its load bearing capacity with an immediate objective to setup the offshore wind projects), oceanographic survey, environmental survey, wind resource assessment, investigation and exploration of the Seabed (the “**Survey**”) on the terms and conditions stated in this Survey Lease Deed and/ or under Applicable Laws.

2.1.2 The Lessee shall not undertake any activities outside the Permitted Activities. In particular, the Lessee shall not engage in:

- (i) the exploration, development or production of oil and gas;
- (ii) the exploration and extraction of minerals, materials and other resources from the seabed, sub soil and super adjacent waters; and
- (iii) installation, testing, commissioning, operation and maintenance of the Project. It is clarified, however, that the Lessee shall be permitted to construct offshore met masts/ towers and/ or deploy measurement buoys including LiDAR (light detection and ranging) and metocean.

2.1.3 It is expressly agreed that geological or archaeological rights do not form part of the lease rights granted to the Lessee under this Survey Lease Deed and the Lessee hereby acknowledges that it shall not have any rights or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Seabed shall vest in and belong to the Lessor or the concerned Government Instrumentality. The Lessee shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Lessor forthwith of the discovery thereof and take all necessary step object in the same condition in which it was found and comply with such instructions Government Instrumentality may reasonably give for the removal of such property.

2.2 Handover of Seabed

2.2.1 The Lessor, from the Lease Commencement Date, shall deliver the vacant and peaceful physical possession of the Seabed to the Lessee together with all rights and easements, existing appurtenances and rights and privileges belonging to the said property for full enjoyment thereof with ingress and egress completely free of any Encumbrances, or occupations, obstructions of whatsoever nature.

2.2.2 It is clarified that existing rights of way, easements, privileges, liberties and appurtenances to the Seabed shall not be deemed to be Encumbrances for the purpose of this Clause 2.2. It is further agreed that the Lessee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Seabed.

2.3 No Proprietary Interest

- 2.3.1 Nothing contained herein shall vest or create any proprietary interest in the Seabed or any part thereof in favour of the Lessee or any part thereof or any other person claiming through or under the Lessee. All rights in the Seabed not expressly granted to the Lessee shall continue to be reserved to the Lessor.
- 2.3.2 The Lessee acknowledges, accepts and confirms that the covenant contained herein is an essence of this Survey Lease Deed and shall duly bind any person to whom the Lessee gives any authorization for use of the Seabed.

**ARTICLE 3:
TERM**

3.1 Term of the Lease

The Lease granted in pursuance of this Survey Lease Deed shall be for a term (the "Term") of 5 (five) years and extendable up to 2 more years from the Lease Commencement Date.

3.2 Extension of Term

3.2.1 Upon receipt of an application in this regard from the Lessee, the Lessor may, at its sole discretion, extend the Term for such further period as the Lessor may, at its sole discretion, determine.

3.2.2 Notwithstanding anything contained in this Survey Lease Deed, this Survey Lease Deed shall stand automatically terminated upon the execution of the lease deed for grant of a lease for undertaking the installation, testing, commissioning, operation, maintenance and decommissioning of the Project (the "**Development Lease Deed**").

**ARTICLE 4:
LEASE RENTALS**

The Lessee shall pay to the Lessor a monthly lease rental of INR _____ (Rupees _____)⁸ in accordance with and subject to the terms and conditions set forth in the Offshore Wind Energy Lease Rules, 2022.

⁸ Insert total lease rental amount for the area under lease herein (calculated by reference to the per Km rate quoted by the Selected Bidder).

**ARTICLE 5:
LESSEE'S RIGHTS & OBLIGATIONS**

5.1 Lessee's Obligations

- 5.1.1 The Lessee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Survey Lease Deed:
- (a) not sublet whole or any part of the Seabed;
 - (b) protect the Seabed from any and all occupations, encroachments or Encumbrances nor place or create nor permit any contractor or other person claiming through or under the Lessee to place or create any Encumbrance or security interest over all or any part of the Seabed, or on any rights of the Lessee therein or under this Survey Lease Deed;
 - (c) provide unfettered access into the Seabed at all times to the Lessor and any Government Instrumentality who has the right to inspect the Seabed in accordance with Applicable Laws and their employees and agents for inspection, viewing and exercise of their rights;
 - (d) publish, in not less than 3 (three) local newspapers and 3 (three) national newspapers, the particulars of the Seabed in respect of which a lease has been granted hereunder;
 - (e) comply with Applicable Law, including environmental laws. In particular, the Lessee shall ensure that no activities undertaken by the Lessee shall:
 - (i) Cause undue harm or damage to the environment (including irreparable environmental damage to flora and fauna);
 - (ii) Create hazardous or unsafe conditions;
 - (iii) Adversely affect sites, structure or objects of historical, cultural or archaeological significance;
 - (iv) Result in marine trash and debris;
 - (v) Cause any entanglement of any structures or devices attached to seafloor with any marine animals;
 - (vi) Cause any vessels operated by the Lessee to strike any protected species;
 - (vii) Damage or interfere with undersea supply cables and conduits.
 - (f) within 3 (three) three months of the Lease Commencement Date, display notices or floaters or signage or indicators at all conspicuous points on the Seabed so as to indicate its boundaries and maintain such notices or floaters or signage or indicators to the satisfaction of the concerned Government Instrumentalities;
 - (g) act in a manner consistent with the provisions of this Survey Lease Deed and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Survey Lease Deed;
 - (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Survey Lease Deed;

- (i) not undertake any activity which has the potential to harm or cause to harm the national security of the country and the environment (both living and non-living);
- (j) not be involved in any unsolicited or unauthorised activity which may be deemed illegal or against national interest, both within the Seabed and in adjoining areas of land and water around the Seabed;
- (k) use reasonable endeavours to prevent all encroachments and unlawful acts on the Seabed which may prejudice the Lessor's title to them and if any claim is made to the Seabed or to any right profit or easement in or out of or affecting them, to give notice of it to the Lessor and not to admit or acknowledge it in any manner whatsoever;
- (l) not dig, extract or remove any sandstone beach shingle or other minerals or mineral substances from the Seabed except in so far as is reasonably necessary for undertaking the Permitted Activities;
- (m) not to cause waste spoil or destruction on the Seabed except in so far as is reasonably necessary for undertaking the Permitted Activities;
- (n) as soon as reasonably practicable following any disturbance of the seabed within the Seabed in undertaking the Permitted Activities, restore the same to a safe and proper condition and in accordance with Applicable Law (including, but not limited to, the Offshore Wind Energy Lease Rules, 2022);
- (o) share requisite real time surveillance information with Coast Guard, Navy and other identified Government Instrumentalities. The Coast Guard, Navy and other identified Governmental Instrumentalities will be permitted to fix additional security surveillance system as deemed required by these authorities.
- (p) ensure that all movements of the personnel or material take place from designated port and same are to be cleared by Central Industrial Security Force, local police and Customs. Documents are to be produced for inspection by Indian Coast Guard units on patrol in the area.
- (q) maintain a public relations unit to interface with and attend to suggestions from the users, Government Instrumentalities, media and other agencies;
- (r) execute the Permitted Activities with proper workmanship in accordance with methods and practices as per international standards and abide by all instructions, directions and orders that may be given pursuant to Applicable Laws;
- (s) not dump any material in the Maritime Zones, Continental Shelf, Territorial Water and Exclusive Economic Zone of India (with the exception of rock dumped on cables and around turbine foundations to protect from scour);
- (t) ensure that no civil vital areas or vital points get affected during the course of undertaking the Permitted Activities;
- (u) ensure necessary precautions or measures to ensure navigational safety including providing data for issue of amendments in charts, obstruction lights and the like, in accordance with Applicable Laws;
- (v) abide by all the instructions and directions that may be given by the Government Instrumentalities pursuant to Applicable Law or in conformity with international standards;

- (w) designate a lease manager who shall be responsible for complying with all terms of this Survey Lease Deed;
- (x) not share, or permit to be shared, the Data with any third party without prior permission of the Lessor and Integrated Head Quarter (Navy), Ministry of Defence. Provided, however, that this restriction will not apply to sharing the Data with the Lessee's contractors, personnel and agents;
- (y) discharge its obligations (and effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent) in accordance with practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced person engaged in the same type of undertaking as envisaged under this Survey Lease Deed and which would be expected to result in the performance of its obligations by the Lessee in accordance with this Survey Lease Deed, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner.

5.1.2 The Lessee shall be solely responsible for carrying out the Survey in accordance with Applicable Law and Applicable Permits. The Lessor shall not be responsible in any manner whatsoever to either the Lessee or its contractors or agents for any default or failure by the Lessee to comply with Applicable Laws and/ or Applicable Permits.

5.2 Lessee's Rights

5.2.1 The Lessee shall, to the extent that the same obstructs or interferes with the smooth operations in the Seabed, have the right to restrict:

- (a) the entry to the Seabed of such notified period and in accordance with such norms as may be notified by Government Instrumentalities under Applicable Law (including, but not limited to, the Offshore Wind Energy Lease Rules, 2022);
- (b) the navigation of boats, ferries, ships through the Seabed;
- (c) the anchoring or use of fixed fishing gears;
- (d) the activities such as scuba diving, wind surfing, kiting and the like.

5.2.2 Provided, however, that, in the interest of common public, the Lessee shall permit activities such as fishing for the purpose of livelihood and other activities that may co-exist with the Permitted Activities and not affect the normal working of the Permitted Activities. The Lessee shall organise its activities such that they do not affect commercial fishing more than necessary.

5.3 Conduct of Survey

5.3.1 The Lessee shall undertake the Survey in accordance with Applicable Law (including, but not limited to the Offshore Wind Energy Lease Rules, 2022, the National Offshore Wind Energy Policy, 2015 and the Guidelines for Offshore Wind Power Assessment Studies and Surveys issued by MNRE), the Applicable Permits, and this Survey Lease Deed.

5.3.2 In conducting the Survey, the Lessee shall comply with the following milestones within such timeframe as may be notified by the Lessee to the Lessor within 1 (one) month from the Lease Commencement Date, failing which the Lessee shall pay damages to the Lessor in a sum calculated at the rate of 0.1% (zero point one percent) of the Survey Security Deposit for delay of each day until the respective milestone is achieved:

- (a) Commencement of Survey (as evidenced by issuance of requisite purchase orders, copies of which are to be furnished to the Lessor);
 - (b) Commencement and completion of environmental and social impact assessment in accordance with Applicable Law, and furnishing of assessment report(s) to the Lessor;
 - (c) Completion of Survey and furnishing Survey report to the Lessor.
- 5.3.3 The Lessee shall, no later than 7 (seven) days after the close of each month, furnish to the Lessor a monthly report on physical and financial progress of the Survey (including any health and safety incidents that may have occurred) and shall promptly give such other relevant information as may be required by the Lessor. For the purpose of this Clause, ‘health and safety incidents’ shall mean any incident which involves personal injury, threat to life, harm or damage to the environment or property including but not limited to vessel collisions, structural collapses, explosions or fires, releases of flammable liquids and gases, hazardous escapes of substances.
- 5.3.4 The Lessor shall have the right to inspect the Seabed at any time as the Lessor may deem fit, and make a report of such inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the obligations of the Lessee hereunder. It shall send a copy of the report to the Lessee and the Lessee shall, within 7 (seven) days of such inspection and upon receipt thereof, rectify and remedy the defects or deficiencies, if any, stated in the report. Such inspection or submission of a report by the Lessor shall not relieve or absolve the Lessee of its obligations and liabilities hereunder in any manner whatsoever.

5.4 Detailed Project Report

- 5.4.1 Upon completion of the Survey, and the analysis of the Data collected thereby, the Lessee shall prepare and submit to the Lessor a report setting out the results of the Survey, and a detailed project report (the “**Detailed Project Report**”) setting out:
- (a) The actual area proposed to be utilised by the Lessee within the Seabed (if at variance with the particulars of the Seabed as set out in this Lease Deed);
 - (b) The actual capacity proposed to be developed as part of the Project (if at variance with the bidding documents), subject to a downward revision within a margin of 10% (ten percent);
 - (c) The timeframe for commissioning the Project, as also the various development milestones comprised therein (if at variance with the bidding documents); and
 - (d) The anticipated cost of construction (including for special foundations, special ships, etc.).
- 5.4.2 The Lessor shall accept the DPR within a period of 21 (twenty one) days, failing which the Committee shall be deemed to have no comments thereon. For the avoidance of doubt, it is expressly agreed that comments of the Committee hereunder shall be limited to national security and public interest perspective. Subject to Clause 5.4.6 below, it is agreed that the Lessor or National Institute of Wind Energy (in its capacity as the concessioning authority) shall not be liable in any manner on account of the furnishing of comments or otherwise, and that such comments (or lack thereof) shall not in any manner absolve the Lessee from any liability or obligation under Applicable Laws or the Concession Agreement.

5.4.3 Once the Detailed Project Report is finalized pursuant to the acceptance by an expert committee (the “**Committee**”) constituted by the Lessor, which committee shall comprise experts with requisite technical, economic, financial, and commercial expertise and experience. The Lessee shall not be held liable for reducing the installed capacity indicated in the bid documents, or a variation in the Seabed with the particulars of the Seabed as set out in this Lease Deed.

5.4.4 Within 1 (one) month from the date of finalisation of the Detailed Project Report :

- (a) the Lessee shall incorporate a special purpose company under the (Indian) Companies Act, 2013 if not already established in India. (the “**Concessionaire**”);
- (b) the Lessee shall cause the Concessionaire to furnish in favour of the Lessor a refundable security deposit for an amount of INR _____ (Rupees _____) in form of an irrevocable and unconditional guarantee from a bank incorporated in India and having a minimum net worth of INR 1,000,00,00,000 (Rupees One Thousand Crore) in the form set forth in **Schedule II**;
- (c) the Lessee shall cause the Concessionaire to furnish to the Lessor [and the National Institute of Wind Energy] a decommissioning and site restoration programme setting out an account of how the installations shall be removed and a proposed time schedule for doing so;
- (d) the Lessee shall cause the Concessionaire to procure all applicable permits unconditionally or, if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such permits are in full force and effect;

For the purpose of this sub-clause ‘applicable permits’ shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws (including, without limitation, the National Offshore Wind Energy Policy, 2015) in connection with the Project;

5.4.8 Within 7 (seven) days from the date of fulfilment of the last of the obligations in Clause 5.4.7:

- (a) the Lessee shall cause the Concessionaire to enter into the Development Lease Deed with the Lessor for the purpose grant of an exclusive lease in respect of the Project over that portion of the Seabed as has been identified in the Detailed Project Report; and
- (b) the Lessee shall cause the Concessionaire to enter into a concession agreement (the “**Concession Agreement**”) with the National Institute of Wind Energy setting out the terms and conditions for implementing the Project.

ARTICLE 6
SURVEY SECURITY DEPOSIT

6.1 Appropriation of Survey Security Deposit

- 6.1.1 Upon occurrence of a default on the part of the Lessee, the Lessor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Survey Security Deposit as damages for such default. Upon such encashment and appropriation from the Survey Security Deposit, the Lessee shall, within 30 (thirty) days thereof, replenish the Survey Security Deposit, in case of partial appropriation, to its original level, and in case of appropriation of the entire Survey Security Deposit, provide a fresh Security Deposit. In case the damages are higher than the Survey Security Deposit, the Lessee shall be also liable to pay the same.
- 6.1.2 In the event of termination of this Survey Lease Deed on account of an event of default on the part of the Lessee, the Lessor shall be entitled to forfeit and appropriate the Survey Security Deposit.

6.2 Validity of Security Deposit

The Survey Security Deposit shall remain in force and effect for the entire duration of the Term (as may be extended in terms of this Survey Lease Deed).

**ARTICLE 7:
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties

Each Party hereby represents and warrants that:

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

7.2 Lessor's Representations and Warranties

The Lessor represents and warrants that:

- (a) the Lessor has good and valid right to the Seabed, and has power and authority to grant a lease in respect thereto to the Lessee;
- (b) the Lessor has full powers to hold, dispose of and deal with the Seabed consistent and interlaid with the provisions of this Survey Lease Deed; and
- (c) the Lessee shall, subject to complying with the terms and conditions of this Survey Lease Deed, remain in peaceful possession and enjoyment of the whole Seabed during the Term.

**ARTICLE 8:
EVENTS OF DEFAULT AND TERMINATION**

8.1 Events of Default

8.1.1 The following events and circumstances shall be events of default on the part of the Lessee:

- (a) The Survey Security Deposit has been encashed and appropriated and the Lessee fails to replenish or provide fresh Survey Security Deposit within 30 (thirty) days;
- (b) The Lessee fails to make any payment to the Lessor within the period specified in this Survey Lease Deed;
- (c) The Lessee fails to use the Seabed for purposes, for which it has been granted, within the stipulated time period, or uses the Seabed for purposes other than that for which the lease has been granted;
- (d) The Lessee repudiates this Survey Lease Deed or otherwise takes any action or evidences or conveys an intention not to be bound by this Survey Lease Deed;
- (e) Any representation or warranty of the Lessee is, as of the date of the Survey Lease Deed, found to be materially false, incorrect or misleading or the Lessee is at any time thereafter found to be in breach thereof;
- (f) The Lessee violates terms and conditions of this Survey Lease Deed or fails to fulfill or contravenes any of the terms or covenants or conditions contained herein;
- (g) The Lessee fails to furnish requisite documents pertaining the Survey to the concerned Government Instrumentalities.

8.1.2 The following events or circumstances shall be events of default of the Lessor:

- (a) The Lessor commits a material default in complying with any of the provisions of this Survey Lease Deed and such default has a material adverse effect on the Lessee;
- (b) The Lessor repudiates this Survey Lease Deed or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Survey Lease Deed.

8.2 Termination of Survey Lease Deed

8.2.1 If the event of default is considered to be of remediable nature, the non-defaulting Party may give notice to the defaulting Party, requiring them to ensure remedy of the same within a specified period of time granted for the purpose from the date of receipt of the notice (and, in the event that the non-defaulting Party is the Lessor, informing the defaulting Party that whole or part of the Survey Security Deposit may be forfeited and appropriated as penalty if such remedial work is not done within the timeframe stipulated). If the default is not remedied within the stipulated timeframe, the non-defaulting Party shall be entitled to terminate this Survey Lease Deed by issuing a termination notice to the defaulting Party.

8.2.2 If the non-defaulting Party is satisfied that the default cannot be remedied, the non-defaulting Party may, on giving 60 (sixty) days' notice to the defaulting Party and after considering representation, if any, made by them, terminate this Survey Lease Deed.

8.2.3 It is clarified that, notwithstanding anything to the contrary, the Lessor shall have the right to

terminate this Survey Lease Deed at any time, without any liability to the Lessor, if the Lessee determines to its sole satisfaction that the development of the Project is rendered non-feasible owing to low wind resource, high waves/ currents, complex seabed geology, or any other reason that would render the Project non-feasible.

8.3 Consequences of Termination

8.3.1 On expiry or earlier termination of this Survey Lease Deed:

- (a) the Lessee shall forthwith comply with and conform to the following requirements:
 - (i) deliver the actual or constructive possession of the Seabed, free and clear of all Encumbrances;
 - (ii) execute such deeds of conveyance, documents and other writings as the Lessor may reasonably require for conveying, delivering, divesting and assigning all the rights, title and interest of the Lessee in the Seabed in favour of the Lessor;
 - (iii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Lessee in the Seabed, free from all Encumbrances, absolutely unto the Lessor or to its nominee;
 - (iv) furnish to the Lessor complete records of all the Data (but excluding the information which are under intellectual property rights of the Lessee or his agents or contractors). It is clarified that the Lessee shall not be permitted to use the Data for any purpose whatsoever upon termination of expiry or termination of this Survey Lease Deed (save in relation to the Project);

It is clarified that, for the purpose of discharging its obligations under this sub-clause, the Lessee shall be deemed to be a licensee to the Seabed, and shall have no obligation to make payment of lease rentals to the Lessor.

- (b) the Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Seabed in accordance with the provisions of this Survey Lease Deed.

8.3.2 The Lessee hereby irrevocably appoints the Lessor (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Lessor a transfer or surrender of the Lease granted hereunder at any time after the expiry or earlier termination of this Survey Lease Deed, a sufficient proof of which will be the declaration of any duly authorised officer of the Lessor, and the Lessee consents to it being registered for this purpose.

8.3.3 The Lessee shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Seabed in favour of the Lessor upon expiry or termination of the Survey Lease Deed, save and except that all stamp duties payable on any deeds or documents executed by the Lessee in connection with such divestment shall be borne by the Lessor.

**ARTICLE 9:
INDEMNITY**

9.1 Indemnification

- 9.1.1 The Lessee shall indemnify, defend and hold harmless the Lessor from and against, and reimburse them for, all claims, obligations, damages and all third party obligations incurred by the Lessor as a result of an act or omission of the Lessee, other than any claims arising out of the gross negligence, willful misconduct or breach hereof by the Lessor.
- 9.1.2 For the purpose of this indemnification, claims shall mean and include all obligations, penalties/compensation paid, actual damages and direct costs reasonably incurred in the defense of any claim, including, reasonable accountants', attorneys' and expert witness' fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. The Lessor shall have the right to defend any such claim against it.
- 9.1.3 In no event shall the Lessee indemnify the Lessor, whether in contract, tort (including negligence) or otherwise, for any exemplary, indirect, incidental, special, remote, punitive, or consequential damages (including loss of use, loss of data, cost of cover, business interruption, or loss of profits arising out of or pertaining to this Survey Lease Deed).

9.2 No Waiver

No failure or delay by the Lessor in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.

**ARTICLE 10:
MISCELLANEOUS**

10.1 Dispute Resolution, Governing Law and Jurisdiction

- 10.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Survey Lease Deed (including its interpretation) between the Parties, and so notified by either Party shall, in the first instance, be attempted to be resolved amicably, failing which the same shall be resolved in accordance with the Offshore Wind Energy Lease Rules, 2022.
- 10.1.2 Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this Survey Lease Deed without prejudice to the outcome of the dispute.
- 10.1.3 This Survey Lease Deed shall be construed and interpreted in accordance with and governed by the law of India, and the courts at New Delhi, India shall have exclusive jurisdiction over matters arising out of or relating to this Survey Lease Deed.

10.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

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

10.3 Delayed Payments

The Parties hereto agree that payments due from the lessee to the lessor under the provisions of this Survey Lease Deed shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the lessee shall pay interest for the period of delay calculated at a rate equal to 5% (five percent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Survey Lease Deed including termination thereof.

10.4 Waiver

- 10.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Survey Lease

Deed:

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

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

10.5 Exclusion of implied warranties etc.

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

10.6 Survival

Termination shall:

- (a) not relieve the lessee of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Survey Lease Deed expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7 Entire Agreement

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

10.8 Severability

If for any reason whatever, any provisions of this Survey Lease Deed is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as nearly as is practicable to such invalid, illegal or unenforceable provision. In the event that the Parties are unable to reach an agreement as aforesaid, the dispute shall be resolved in the manner set forth in Clause 10.1.

10.9 No partnership

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

10.10 Third parties

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

10.11 Successors and assigns

10.11.1 The Lessee shall not assign this Survey Lease Deed to any person, save and except with the prior consent in writing of the Lessor, which consent the Lessor shall be entitled to decline without assigning any reason.

10.11.2 This Survey Lease Deed shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.12 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Survey Lease Deed shall be in writing and shall be given by hand delivery, recognized international courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set out below:

(a) If to the Lessor:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

(b) If to Lessee:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

10.13 Language

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

10.14 Counterparts

This Survey Lease Deed may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Survey Lease Deed.

IN WITNESS WHEREOF the Parties have executed and delivered this Survey Lease Deed as of the date first above written.

For and on behalf of Lessor by

For and on behalf of Lessee by

(Signature) _____
Name: _____
Designation: _____

(Signature) _____
Name: _____
Designation: _____

IN PRESENCE OF _____

IN PRESENCE OF _____

(Signature) _____
Name: _____
Address: _____

(Signature) _____
Name: _____
Address: _____

SCHEDULE I
DESCRIPTION OF THE SEABED⁹

⁹ **Note:** To include plan of development site and co-ordinates of development site

**SCHEDULE II:
FORMAT OF BANK GUARANTEE**

This deed of guarantee (the “**Bank Guarantee**”) is executed on this the _____ day of _____ at _____ by _____ having its head/ registered office at _____ (hereinafter referred to as the “**Bank**”), which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

The President of India, represented by _____¹⁰, Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as the “**Lessor**”), which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. MNRE and _____, a _____¹¹ [incorporated/ registered]¹² under the provisions of the _____¹³ and having its registered office at _____ (the “**Lessee**”), have entered into a lease deed dated _____ setting out certain stipulations for grant of a lease (the “**C&O Lease Deed**”) by MNRE in favour the Lessee for the purpose of undertaking construction, operation and maintenance of an offshore wind power project;
- B. In terms of the aforementioned lease deed dated _____, the Lessee is required to furnish to the Lessor, an unconditional and irrevocable bank guarantee for an amount Rs. _____ (the “**Guarantee Amount**”) as a refundable security deposit; and
- C. At the request of the Lessee, the Bank has agreed to provide guarantee, being these presents by way of security in terms of the aforementioned lease deed dated _____.

NOW, THEREFORE, the Bank hereby affirms as follows:

1. The Bank hereby unconditionally and irrevocably agrees and undertakes to pay to the Lessor, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Lessee, such sum or sums up to an aggregate sum of the Guarantee Amount as the Lessor shall claim, without the Lessor being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein;
2. A letter from the Lessor, under the hand of an officer not below the rank of _____, that the Lessee has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the C&O Lease Deed shall be conclusive, final and binding on the Bank. The Bank further agrees that the Lessor shall be the sole judge as to whether the Lessee is in default in due and faithful performance of its obligations under the C&O Lease Deed and its decision that the Lessee is in default shall be final, and binding on the Bank, notwithstanding any differences between the Lessor and the Lessee, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Lessee for any reason whatsoever.
3. In order to give effect to this Bank Guarantee, the Lessor shall be entitled to act as if the Bank was the principal debtor and any change in the constitution of the Lessee and/or the Bank,

¹⁰ Insert designation of authorised officer.

¹¹ Insert nature of contracting party.

¹² Retain as appropriate.

¹³ Insert relevant legislation.

whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Lessor to proceed against the Lessee before presenting to the Bank its demand under this Bank Guarantee.
5. The Lessor shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the C&O Lease Deed or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Lessee contained in the C&O Lease Deed or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Lessor against the Lessee, and either to enforce or forbear from enforcing any of the terms and conditions contained in the C&O Lease Deed and/or the securities available to the Lessor, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Lessor of the liberty with reference to the matters aforesaid or by reason of time being given to the Lessee or any other forbearance, indulgence, act or omission on the part of the Lessor or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Lessor in respect of or relating to the C&O Lease Deed or for the fulfilment, compliance and/or performance of all or any of the obligations of the Lessee under the C&O Lease Deed.
7. The Bank undertakes not to revoke this Bank Guarantee during its currency, except with the previous express consent of the Lessor in writing, and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.
8. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at the _____ office of the Bank, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Lessor that the envelope was so posted shall be conclusive.
9. This Bank Guarantee shall come into force with immediate effect and shall remain in force and effect for the period set forth in the C&O Lease Deed.

Signed and sealed this _____ day of _____, 20_____ at _____.

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

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

C&O LEASE DEED

BY AND BETWEEN

MINISTRY OF NEW AND RENEWABLE ENERGY, GOVERNMENT OF INDIA

(the “Lessor”)

AND

[insert name of the Selected Bidder]

(the “Lessee”)

DATED: _____

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C&O LEASE DEED

This construction and operation lease deed (the "C&O Lease Deed") is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **The President of India**, represented by _____¹, Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as the "**Lessor**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of one part;

AND

2. **M/s _____**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the "**Lessee**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part.

The Lessor and the Lessee are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

- A. _____² had invited proposals by its request for proposals dated _____ for the survey, construction, operation and maintenance of an offshore wind power project at the seabed more particularly detailed and described in **Schedule I** hereto (the "**Seabed**"), on design, build, finance, operate and own basis (the "**Project**");
- B. After evaluation of the proposals received, _____³ had accepted the proposal of _____ (the "**Selected Bidder**"), and _____⁴ had issued a letter of award dated _____ bearing ref. no. _____ to the Selected Bidder;
- C. The Lessor and the Selected Bidder had thereafter entered into an agreement to lease dated _____ and subsequently a lease deed dated _____ wherein certain stipulations for grant of a lease in respect of undertaking development of the Project on the Seabed on an exclusive basis were set forth, including, *inter alia*, (i) the preparation and approval of a detailed project report, (ii) the incorporation of the Lessee as a special purpose vehicle, and (iii) furnishing by the Lessee of a refundable security deposit (the "C&O Security Deposit") in favour of the Lessor;
- D. Pursuant to the said stipulations having been complied with, the Lessor has agreed to grant the Lessee an exclusive lease to the Seabed, for undertaking the installation, testing, commissioning, operation, maintenance and decommissioning of the Project; and
- E. The Parties are now entering into this C&O Lease Deed for the purpose of recording the terms of lease of the Seabed by the Lessor to the Lessee.
- F. The objective under this lease is to carry out construction and operation of an offshore wind energy project of capacity [to be inserted]MW as per the provisions of RfS No.[] Dated [].

¹ Insert designation of authorised officer.

² Insert name of entity issuing the request for proposals.

³ Insert name of entity issuing the request for proposals.

⁴ Insert name of entity issuing the request for proposals.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this C&O Lease Deed and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**ARTICLE 1:
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this C&O Lease Deed, unless repugnant to the context and already defined in the refereed documents, the following terms shall have the following meanings:

“**Applicable Laws**” shall mean all laws, brought into force and effect by the Government of India or any State Government, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this C&O Lease Deed and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this C&O Lease Deed;

“**Authority**” means the Ministry of New and Renewable Energy for the purpose offshore wind energy project and offshore wind transmission project.

“**Concession Agreement**” shall mean the concession agreement dated _____ entered into between the Lessee and National Institute of Wind Energy;

“**Data**” shall mean survey or investigation data such as meteorological, bathymetric, current, side scan sonar data, physical oceanographic data, surface geological maps and sections, magnetic and gravity measurements and anomaly maps, seismic profiles, sections and structure contour maps, electrical and telluric current survey data, and other information which has a direct or indirect bearing on the offshore wind energy possibilities in the Seabed and collected by the Lessee or its agents or contractors;

“**C&O Security Deposit**” shall have the meaning ascribed to it in Recital C;

“**Encumbrance**” shall mean, in relation to the Seabed, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Seabed;

“**Government Instrumentality**” shall mean any department, division or sub-division of the Government of India or any State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or any State Government, as the case may be, and having jurisdiction over all or any part of the Project, Seabed and/ or the performance of all or any of the services or obligations of the Lessee under or pursuant to this C&O Lease Deed;

“**INR**” or “**Rupees**” or “**Rs.**” shall mean Indian Rupees, the lawful currency of the Republic of India;

“**Lease Commencement Date**” shall mean the date of execution of the C&O Lease Deed;

“**Lease**” shall mean the lease in respect of the Seabed granted by the Lessor to the Lessee pursuant to this C&O Lease Deed;

“**Permitted Activities**” shall have the meaning ascribed to it in Clause 2.1;

“**Project**” shall have the meaning ascribed to it in Recital A;

“**Seabed**” shall have the meaning ascribed to it in Recital A;

“**Term**” shall have the meaning ascribed to it in Clause 3.1.

1.2 Interpretation

1.2.1 In this C&O Lease Deed, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this C&O Lease Deed are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this C&O Lease Deed;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date or period shall mean and include such date or period as may be extended pursuant to this C&O Lease Deed;
- (j) the words importing singular shall include plural and *vice versa*;
- (k) save and except as otherwise provided in this C&O Lease Deed, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Lessor hereunder or pursuant hereto in any manner whatsoever;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this C&O Lease Deed from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised

representative of such Party in this behalf and not otherwise;

- (m) the schedules and recitals to this C&O Lease Deed form an integral part of this C&O Lease Deed and will be in full force and effect as though they were expressly set out in the body of this C&O Lease Deed;
- (n) references to recitals, clauses, sub-clauses or schedules in this C&O Lease Deed shall, except where the context otherwise requires, mean references to recitals, articles, clauses, sub-clauses and schedules of or to this C&O Lease Deed, and references to a paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this C&O Lease Deed or of the schedule in which such reference appears;
- (o) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

**ARTICLE 2:
GRANT OF LEASE**

2.1 Grant of Lease and Permitted Activities

- 2.1.1 Subject to and in accordance with the terms and conditions set forth in this C&O Lease Deed, the Lessor hereby grants and authorizes the Lessee to have access to Seabed during the Term, for the sole and limited purpose (the “**Permitted Activities**”) of installation, testing, commissioning, operation, maintenance and decommissioning of the Project on the terms and conditions stated in this C&O Lease Deed, the Concession Agreement and/ or under Applicable Laws. In particular, these rights shall extend to construction of foundation, including piling work, erection of wind turbines, evacuation infrastructure (cables), offshore substations, telephone lines, trenching for cables, underwater electric cables, construction of offshore control room, plants, waterways, and any other incidental structures, equipment and works.
- 2.1.2 The Lessee shall not undertake any activities outside the Permitted Activities. In particular, the Lessee shall not engage in:
- (i) the exploration, development or production of oil and gas; and
 - (ii) the exploration and extraction of minerals, materials and other resources from the seabed, sub soil and super adjacent waters;
- 2.1.3 It is expressly agreed that geological or archaeological rights do not form part of the lease rights granted to the Lessee under this C&O Lease Deed and the Lessee hereby acknowledges that it shall not have any rights or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Seabed shall vest in and belong to the Lessor or the concerned Government Instrumentality. The Lessee shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Lessor forthwith of the discovery thereof and take all necessary step object in the same condition in which it was found and comply with such instructions Government Instrumentality may reasonably give for the removal of such property.

2.2 Handover of Seabed

- 2.2.1 The Lessor, from the Lease Commencement Date, shall deliver the vacant and peaceful physical possession of the Seabed to the Lessee together with all rights and easements, existing appurtenances and rights and privileges belonging to the said property for full enjoyment thereof with ingress and egress completely free of any Encumbrances, or occupations, obstructions of whatsoever nature.
- 2.2.2 It is clarified that existing rights of way, easements, privileges, liberties and appurtenances to the Seabed shall not be deemed to be Encumbrances for the purpose of this Clause 2.2. It is further agreed that the Lessee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Seabed.

2.3 No Proprietary Interest

- 2.3.1 Nothing contained herein shall vest or create any proprietary interest in the Seabed or any part thereof in favour of the Lessee or any part thereof or any other person claiming through or under the Lessee. All rights in the Seabed not expressly granted to the Lessee shall continue to be reserved to the Lessor.
- 2.3.2 The Lessee acknowledges, accepts and confirms that the covenant contained herein is an

essence of this C&O Lease Deed and shall duly bind any person to whom the Lessee gives any authorization for use of the Seabed.

**ARTICLE 3:
TERM**

3.1 Term of the Lease

The Lease granted in pursuance of this C&O Lease Deed shall be for a term (the “**Term**”) of 35 (Thirty-five) years from the Lease Commencement Date.

3.2 Extension of Term

Notwithstanding anything contained in this C&O Lease Deed, the Term shall be co-terminus with the term of the Concession Agreement, and this C&O Lease Deed shall stand automatically extended or terminated, as the case may be, with the extension or termination of the Concession Agreement.

**ARTICLE 4:
LEASE RENTALS**

The Lessee shall pay to the Lessor a monthly lease rental of INR _____ (Rupees _____)⁵ in accordance with and subject to the terms and conditions set forth in the Offshore Wind Energy Lease Rules, 2022.

⁵ Insert total lease rental amount for the area under lease herein (calculated by reference to the per Km rate set forth in the Offshore Wind Energy Lease Rules, 2022).

**ARTICLE 5:
LESSEE'S RIGHTS & OBLIGATIONS**

5.1 Lessee's Obligations

- 5.1.1 The Lessee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this C&O Lease Deed:
- (a) not sublet whole or any part of the Seabed;
 - (b) protect the Seabed from any and all occupations, encroachments or Encumbrances nor place or create nor permit any contractor or other person claiming through or under the Lessee to place or create any Encumbrance or security interest over all or any part of the Seabed, or on any rights of the Lessee therein or under this C&O Lease Deed;
 - (c) provide unfettered access into the Seabed at all times to the Lessor and any Government Instrumentality who has the right to inspect the Seabed in accordance with Applicable Laws and their employees and agents for inspection, viewing and exercise of their rights;
 - (d) publish, in not less than 3 (three) local newspapers and 3 (three) national newspapers, the particulars of the Seabed in respect of which a lease has been granted hereunder;
 - (e) comply with Applicable Law, including environmental laws. In particular, the Lessee shall ensure that no activities undertaken by the Lessee shall:
 - (i) Cause undue harm or damage to the environment (including irreparable environmental damage to flora and fauna);
 - (ii) Create hazardous or unsafe conditions;
 - (iii) Adversely affect sites, structure or objects of historical, cultural or archaeological significance;
 - (iv) Result in marine trash and debris;
 - (v) Cause any entanglement of any structures or devices attached to seafloor with any marine animals;
 - (vi) Cause any vessels operated by the Lessee to strike any protected species;
 - (vii) Damage or interfere with undersea supply cables and conduits.
 - (f) within 3 (three) three months of the Lease Commencement Date, display notices or floaters or signage or indicators at all conspicuous points on the Seabed so as to indicate its boundaries and maintain such notices or floaters or signage or indicators to the satisfaction of the concerned Government Instrumentalities;
 - (g) act in a manner consistent with the provisions of this C&O Lease Deed and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this C&O Lease Deed;
 - (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this C&O Lease Deed;

- (i) not undertake any activity which has the potential to harm or cause to harm the national security of the country and the environment (both living and non-living);
- (j) not be involved in any unsolicited or unauthorised activity which may be deemed illegal or against national interest, both within the Seabed and in adjoining areas of land and water around the Seabed;
- (k) use reasonable endeavours to prevent all encroachments and unlawful acts on the Seabed which may prejudice the Lessor's title to them and if any claim is made to the Seabed or to any right profit or easement in or out of or affecting them, to give notice of it to the Lessor and not to admit or acknowledge it in any manner whatsoever;
- (l) not dig, extract or remove any sandstone beach shingle or other minerals or mineral substances from the Seabed except in so far as is reasonably necessary for undertaking the Permitted Activities;
- (m) not to cause waste spoil or destruction on the Seabed except in so far as is reasonably necessary for undertaking the Permitted Activities;
- (n) as soon as reasonably practicable following any disturbance of the seabed within the Seabed in undertaking the Permitted Activities, restore the same to a safe and proper condition and in accordance with Applicable Law (including, but not limited to, the Offshore Wind Energy Lease Rules, 2022);
- (o) share requisite real time surveillance information with Coast Guard, Navy and other identified Government Instrumentalities. The Coast Guard, Navy and other identified Governmental Instrumentalities will be permitted to fix additional security surveillance system as deemed required by these authorities.
- (p) ensure that all movements of the personnel or material take place from designated port and same are to be cleared by Central Industrial Security Force, local police and Customs. Documents are to be produced for inspection by Indian Coast Guard units on patrol in the area.
- (q) maintain a public relations unit to interface with and attend to suggestions from the users, Government Instrumentalities, media and other agencies;
- (r) execute the Permitted Activities with proper workmanship in accordance with methods and practices as per international standards and abide by all instructions, directions and orders that may be given pursuant to Applicable Laws;
- (s) not dump any material in the Maritime Zones, Continental Shelf, Territorial Water and Exclusive Economic Zone of India (with the exception of rock dumped on cables and around turbine foundations to protect from scour);
- (t) ensure that no civil vital areas or vital points get affected during the course of undertaking the Permitted Activities;
- (u) ensure necessary precautions or measures to ensure navigational safety including providing data for issue of amendments in charts, obstruction lights and the like, in accordance with Applicable Laws;
- (v) abide by all the instructions and directions that may be given by the Government Instrumentalities pursuant to Applicable Law or in conformity with international standards;

- (w) designate a lease manager who shall be responsible for complying with all terms of this C&O Lease Deed;
- (x) not share, or permit to be shared, the Data with any third party without prior permission of the Lessor and Integrated Head Quarter (Navy), Ministry of Defence. Provided, however, that this restriction will not apply to sharing the Data with the Lessee's contractors, personnel and agents;
- (y) discharge its obligations (and effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent) in accordance with practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced person engaged in the same type of undertaking as envisaged under this C&O Lease Deed and which would be expected to result in the performance of its obligations by the Lessee in accordance with this C&O Lease Deed and the Concession Agreement.

5.1.2 The Lessee shall be solely responsible for implementing the Project in accordance with Applicable Law, for maintaining all equipment, machinery, infrastructure and wind turbines capable of producing power in good repair and condition, and for insuring all its equipment, personnel and operations, and to indemnifying the Lessor (and/ or its successors and assigns) against any liabilities arising out of default by the Lessor in complying with its obligations hereunder. The Lessor shall not be responsible in any manner whatsoever to either the Lessee or its contractors or agents for any default or failure by the Lessee to comply with Applicable Laws.

5.1.3 The Lessee shall, no later than 7 (seven) days after the close of each month, furnish to the Lessor a monthly report on physical and financial progress of the Survey (including any health and safety incidents that may have occurred) and shall promptly give such other relevant information as may be required by the Lessor.

For the purpose of this Clause, 'health and safety incidents' shall mean any incident which involves personal injury, threat to life, harm or damage to the environment or property including but not limited to vessel collisions, structural collapses, explosions or fires, releases of flammable liquids and gases, hazardous escapes of substances.

5.2 Lessee's Rights

5.2.1 The Lessee shall, to the extent that the same obstructs or interferes with the smooth operations in the Seabed, have the right to restrict:

- (a) the entry to the Seabed of such notified period and in accordance with such norms as may be notified by Government Instrumentalities under Applicable Law (including, but not limited to, the Offshore Wind Energy Lease Rules, 2022);
- (b) the navigation of boats, ferries, ships through the Seabed;
- (c) the anchoring or use of fixed fishing gears;
- (d) the activities such as scuba diving, wind surfing, kiting and the like;
- (e) movement within 50 m (fifty metres) distance from the wind turbine foundation (500 m (five hundred metres) during construction) and 500 m (five hundred metres) distance from the sub-station.

- 5.2.2 Provided, however, that, in the interest of common public, the Lessee shall permit activities such as fishing for the purpose of livelihood and other activities that may co-exist with the Permitted Activities and not affect the normal working of the Permitted Activities. The Lessee shall organise its activities such that they do not affect commercial fishing more than necessary.

5.3 Implementation of Project

- 5.3.1 The Lessee shall install, test, commission, operate, maintain and decommission the Project in accordance with the Concession Agreement, and comply with the monitoring/ reporting obligations specified thereunder.
- 5.3.2 The Lessee shall take all reasonable measure to ensure the safety and security of the Project, including all the equipment and other plant and machinery (and, in particular, ensure the security of the Project through employment of trained security personnel, at its own cost and expense, and ensure that the antecedents of all foreign nationals engaged by it are verified by requisite Governmental Instrumentalities). Security of the wind farm is to be ensured through physical and/ or electronic means. The security measures instituted will be intimated to Indian Navy through Integrated Head Quarters (Navy).
- 5.3.3 The Lessor shall have the right to inspect the Seabed at any time as the Lessor may deem fit, and make a report of such inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the obligations of the Lessee hereunder. It shall send a copy of the report to the Lessee and the Lessee shall, within 7 (seven) days of such inspection and upon receipt thereof, rectify and remedy the defects or deficiencies, if any, stated in the report. Such inspection or submission of a report by the Lessor shall not relieve or absolve the Lessee of its obligations and liabilities hereunder in any manner whatsoever.

ARTICLE 6
C&O SECURITY DEPOSIT

6.1 Appropriation of C&O Security Deposit

- 6.1.1 Upon occurrence of a default on the part of the Lessee, the Lessor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the C&O Security Deposit as damages for such default. Upon such encashment and appropriation from the C&O Security Deposit, the Lessee shall, within 30 (thirty) days thereof, replenish the C&O Security Deposit, in case of partial appropriation, to its original level, and in case of appropriation of the entire C&O Security Deposit, provide a fresh C&O Security Deposit. In case the damages are higher than the C&O Security Deposit, the Lessee shall be also liable to pay the same.
- 6.1.2 In the event of termination of this C&O Lease Deed on account of an event of default on the part of the Lessee, the Lessor shall be entitled to forfeit and appropriate the C&O Security Deposit.

6.2 Validity of C&O Security Deposit

The C&O Security Deposit shall remain in force and effect for the entire duration of the Term (as may be extended in terms of this C&O Lease Deed).

**ARTICLE 7:
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties

Each Party hereby represents and warrants that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this C&O Lease Deed and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this C&O Lease Deed, exercise its rights and perform its obligations, under this C&O Lease Deed;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this C&O Lease Deed;
- (c) this C&O Lease Deed constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this C&O Lease Deed;
- (e) it has complied with Applicable Laws in all material respects;

7.2 Lessor's Representations and Warranties

The Lessor represents and warrants that:

- (a) the Lessor has good and valid right to the Seabed, and has power and authority to grant a lease in respect thereto to the Lessee;
- (b) the Lessor has full powers to hold, dispose of and deal with the Seabed consistent and interlaid with the provisions of this C&O Lease Deed; and
- (c) the Lessee shall, subject to complying with the terms and conditions of this C&O Lease Deed, remain in peaceful possession and enjoyment of the whole Seabed during the Term.

**ARTICLE 8:
EVENTS OF DEFAULT AND TERMINATION**

8.1 Events of Default

8.1.1 The following events and circumstances shall be events of default on the part of the Lessee:

- (a) The C&O Security Deposit has been encashed and appropriated and the Lessee fails to replenish or provide fresh C&O Security Deposit within 30 (thirty) days;
- (b) The Lessee fails to make any payment to the Lessor within the period specified in this C&O Lease Deed;
- (c) The Lessee fails to use the Seabed for *bona fide* purposes, for which it has been granted, within the stipulated time period, or uses the Seabed for purposes other than that for which the Lease has been granted;
- (d) The Lessee repudiates this C&O Lease Deed or otherwise takes any action or evidences or conveys an intention not to be bound by this C&O Lease Deed;
- (e) Any representation or warranty of the Lessee is, as of the date of the C&O Lease Deed, found to be materially false, incorrect or misleading or the Lessee is at any time thereafter found to be in breach thereof;
- (f) The Lessee violates terms and conditions of this C&O Lease Deed or fails to fulfill or contravenes any of the terms or covenants or conditions contained herein;
- (g) The Lessee fails to furnish requisite documents pertaining the Project to the concerned Government Instrumentalities.

8.1.2 The following events or circumstances shall be events of default of the Lessor:

- (a) The Lessor commits a material default in complying with any of the provisions of this C&O Lease Deed and such default has a material adverse effect on the Lessee;
- (b) The Lessor repudiates this C&O Lease Deed or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this C&O Lease Deed.

8.2 Termination of C&O Lease Deed

8.2.1 If the event of default is considered to be of remediable nature, the non-defaulting Party may give notice to the defaulting Party, requiring them to ensure remedy of the same within a specified period of time granted for the purpose from the date of receipt of the notice (and, in the event that the non-defaulting Party is the Lessor, informing the defaulting Party that whole or part of the C&O Security Deposit may be forfeited and appropriated as penalty if such remedial work is not done within the timeframe stipulated). If the default is not remedied within the stipulated timeframe, the non-defaulting Party shall be entitled to terminate this C&O Lease Deed by issuing a termination notice to the defaulting Party.

8.2.2 If the non-defaulting Party is satisfied that the default cannot be remedied, the non-defaulting Party may, on giving 60 (sixty) days' notice to the defaulting Party and after considering representation, if any, made by them, terminate this C&O Lease Deed.

8.3 Consequences of Termination

8.3.1 On expiry or earlier termination of this C&O Lease Deed:

- (a) the Lessee shall forthwith comply with and conform to the following requirements:
- (i) deliver the actual or constructive possession of the Seabed, free and clear of all Encumbrances;
 - (ii) execute such deeds of conveyance, documents and other writings as the Lessor may reasonably require for conveying, delivering, divesting and assigning all the rights, title and interest of the Lessee in the Seabed in favour of the Lessor;
 - (iii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Lessee in the Seabed, free from all Encumbrances, absolutely unto the Lessor or to its nominee;
 - (iv) furnish to the Lessor complete records of all the Data (but excluding the information which are under intellectual property rights of the lessee or his agents or contractors). It is clarified that the Lessee shall not be permitted to use the Data for any purpose whatsoever upon termination of expiry or termination of this C&O Lease Deed;
 - (v) decommission the Project within a period of 5 (five) years in accordance with the decommissioning and site restoration programme furnished by the Lessee (and set out as **Schedule II**), Applicable law, including the Offshore Wind Energy Lease Rules, 2022, and such guidelines and norms as may be issued in this regard from time to time. In particular, this obligation shall include:
 - a. decommissioning the wind turbine generators (wind turbines);
 - b. clearing the seabed of all obstructions created by the Project;
 - c. removing equipment 15 (fifteen) feet (4.6 (four point six) meters) below the mudline, machinery, and used cables;
 - d. uprooting and demolishing the foundation structures;
 - e. removing the debris as per relevant marine environmental norms and returning the seabed to its original configuration;
 - f. removing or disposing of all offshore wind energy project components such as wind turbine or its parts, equipment, machinery, cables, electrical infrastructures and civil infrastructure, and either reusing, recycling or responsibly disposing of the same;
 - g. undertaking all activities required to return a Seabed to its predevelopment state or to render the Seabed compatible with its intended after-use after cessation of the Project-related operations in relation thereto (including, as appropriate, removal of equipment, structures and debris, replacement of topsoil, re-vegetation, slope stabilisation, in-filling of excavations or any other appropriate actions in the circumstances).

It is clarified that, for the purpose of discharging its obligations under this sub-clause, the Lessee shall be deemed to be a licensee to the Seabed, and shall have no obligation

to make payment of lease rentals to the Lessor.

- (b) the Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Seabed in accordance with the provisions of this C&O Lease Deed.

8.3.2 The Lessee hereby irrevocably appoints the Lessor (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Lessor a transfer or surrender of the Lease granted hereunder at any time after the expiry or earlier termination of this C&O Lease Deed, a sufficient proof of which will be the declaration of any duly authorised officer of the Lessor, and the Lessee consents to it being registered for this purpose.

8.3.3 The Lessee shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Seabed in favour of the Lessor upon expiry or termination of the C&O Lease Deed, save and except that all stamp duties payable on any deeds or documents executed by the Lessee in connection with such divestment shall be borne by the Lessor.

**ARTICLE 9:
INDEMNITY**

9.1 Indemnification

- 9.1.1 The Lessee shall indemnify, defend and hold harmless the Lessor from and against, and reimburse them for, all claims, obligations, damages and all third party obligations incurred by the Lessor as a result of an act or omission of the Lessee, other than any claims arising out of the gross negligence, willful misconduct or breach hereof by the Lessor.
- 9.1.2 For the purpose of this indemnification, claims shall mean and include all obligations, penalties/compensation paid, actual damages and direct costs reasonably incurred in the defense of any claim, including, reasonable accountants', attorneys' and expert witness' fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. The Lessor shall have the right to defend any such claim against it.
- 9.1.3 In no event shall the Lessee indemnify the Lessor, whether in contract, tort (including negligence) or otherwise, for any exemplary, indirect, incidental, special, remote, punitive, or consequential damages (including loss of use, loss of data, cost of cover, business interruption, or loss of profits arising out of or pertaining to this C&O Lease Deed).

9.2 No Waiver

No failure or delay by the Lessor in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.

**ARTICLE 10:
MISCELLANEOUS**

10.1 Dispute Resolution, Governing Law and Jurisdiction

- 10.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this C&O Lease Deed (including its interpretation) between the Parties, and so notified by either Party shall, in the first instance, be attempted to be resolved amicably, failing which the same shall be resolved in accordance with the Offshore Wind Energy Lease Rules, 2022.
- 10.1.2 Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this C&O Lease Deed without prejudice to the outcome of the dispute.
- 10.1.3 This C&O Lease Deed shall be construed and interpreted in accordance with and governed by the law of India, and the courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this C&O Lease Deed.

10.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

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

10.3 Delayed Payments

The Parties hereto agree that payments due from the lessee to the lessor under the provisions of this Survey Lease Deed shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the lessee shall pay interest for the period of delay calculated at a rate equal to 5% (five percent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this C&O Lease Deed including termination thereof.

10.4 Waiver

- 10.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this C&O Lease

Deed:

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

10.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this C&O Lease Deed or any obligation thereunder nor time or other indulgence granted by a Party to the other Party, shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.5 Exclusion of implied warranties etc.

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

10.6 Survival

Termination shall:

- (a) not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this C&O Lease Deed expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7 Entire Agreement

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

10.8 Severability

If for any reason whatever, any provisions of this C&O Lease Deed is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as nearly as is practicable to such invalid, illegal or unenforceable provision. In the event that the Parties are unable to reach an agreement as aforesaid, the dispute shall be resolved in the manner set forth in Clause 10.1.

10.9 No partnership

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

10.10 Third parties

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

10.11 Successors and assigns

10.11.1 The Lessee shall not assign this C&O Lease Deed to any person, save and except with the prior consent in writing of the Lessor, which consent the Lessor shall be entitled to decline without assigning any reason.

10.11.2 This C&O Lease Deed shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.12 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this C&O Lease Deed shall be in writing and shall be given by hand delivery, recognized international courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set out below:

(a) If to the Lessor:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

(b) If to Lessee:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

10.13 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this C&O Lease Deed shall be in writing and in English language.

10.14 Counterparts

This C&O Lease Deed may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this C&O Lease Deed.

IN WITNESS WHEREOF the Parties have executed and delivered this C&O Lease Deed as of the date first above written.

For and on behalf of Lessor by

For and on behalf of Lessee by

(Signature) _____

(Signature) _____

Name: _____

Name: _____

Designation: _____

Designation: _____

IN PRESENCE OF _____

IN PRESENCE OF _____

(Signature) _____

(Signature) _____

Name: _____

Name: _____

Address: _____

Address: _____

**SCHEDULE I
DESCRIPTION OF THE SEABED⁶**

⁶ **Note:** To include plan of development site and co-ordinates of development site

**SCHEDULE II:
DECOMMISSIONING PROGRAMME⁷**

⁷ Decommissioning programme submitted by Lessee to be set out here.

CONCESSION AGREEMENT

BY AND BETWEEN

NATIONAL INSTITUTE OF WIND ENERGY

(the “Concessionaire Authority”)

AND

[insert name of Concessionaire]

(the “Concessionaire”)

DATED: _____

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CONCESSION AGREEMENT

This agreement is entered into on this the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **National Institute of Wind Energy**, having its office at _____ (hereinafter referred to as the “**Concessionaire Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of one part;

AND

2. **M/s _____**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part.

The Concessionaire Authority and the Concessionaire are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. _____¹ had invited proposals by its request for proposals dated _____ for the survey, construction, operation and maintenance of an offshore wind power project at the seabed more particularly detailed and described in the Development Lease Deed (the “**Seabed**”), on design, build, finance, operate and own basis (the “**Project**”);
- B. After evaluation of the proposals received, _____² had accepted the proposal of _____³ (the “**Selected Bidder**”), and _____⁴ had issued a letter of award dated _____ bearing ref. no. _____ to the Selected Bidder;
- C. The Ministry of New and Renewable Energy, Government of India and the Selected Bidder had thereafter entered into (i) an agreement to lease dated _____, (ii) a lease deed dated _____ wherein certain stipulations for grant of a lease in respect of undertaking development of the Project on the Seabed were set forth;
- D. Pursuant to the said stipulations having been complied with, the Selected Bidder promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Concessionaire Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder, including the obligation to enter into this Concession Agreement pursuant for executing the Project;
- E. By its letter dated _____, the Concessionaire has also joined in the said request of the Selected Bidder to the Concessionaire Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder, including the obligation to enter into this Concession Agreement. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof;

¹ Insert name of entity issuing the request for proposals.

² Insert name of entity issuing the request for proposals.

³ Insert name of selected bidder.

⁴ Insert name of entity issuing the request for proposals.

- F. The Parties are now entering into this Concession Agreement for execution of the Project on subject to and on the terms and conditions set forth hereinafter.
- G. The objective of this agreement is to execute the development of offshore wind energy project of capacity [to be inserted]MW as per the provisions of RfS No.[] Dated [].

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**ARTICLE 1:
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

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

“**Accounting Year**” shall mean the financial year commencing from the 1st (first) day of April of any calendar year and ending on the 31st (thirty first) day of March of the next calendar year. It is clarified that first Accounting Year shall be the period commencing from the COD and ending on the 31st (thirty first) day of March of the next calendar year;

“**Additional Cost**” shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire incurs as a result of Change in Law for operation, management and implementation of the Project;

“**Agreement**” or “**Concession Agreement**” shall mean this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Applicable Laws**” shall mean all laws, brought into force and effect by the Government of India or any State Government, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” shall mean all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement;

“**Appointed Date**” shall mean the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“**Associate**” or “**Affiliate**” shall mean, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (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 percent) of the voting shares of such person or the power to direct the management and policies of such person by operation of law, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority**” means Ministry of New and Renewable Energy for the purpose of offshore wind energy project and offshore wind transmission project;

“**Authority Default**” shall have the meaning set forth in Clause 25.2.1;

“**Authority Indemnified Persons**” shall have the meaning as defined in Clause 28.1.1;

“**Authority Representative**” shall mean such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

“**Bank**” shall mean a bank incorporated in India and having a minimum net worth of Rs. 1,000,00,00,000 (Rupees One Thousand Crore);

“**Bank Rate**” shall mean the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Change in Ownership**” shall mean transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares that causes the aggregate holding of the Selected Bidder, together with (its/ their) Associates, in the total Equity to decline below 51% (fifty one percent) thereof from the date of signing of Concession Agreement till the Expiry Date;

“**Change in Law**” means the occurrence of any of the following events after the date of submission of this Agreement:

- (a) the enactment of any new Applicable Law; or
- (b) the repeal, modification or re-enactment of any existing Applicable Law; or
- (c) change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding. as compared to such interpretation or application by a court of record prior to the date of this Agreement; or
- (d) any changes in the rates of any of the Taxes that have a direct effect on the Project.

“**COD**” or “**Commercial Operation Date**” shall have the meaning ascribed to the said term in Clause 14.3;

“**Completion Certificate**” shall mean the certificate issued by the Authority certifying, that;

- (a) the Concessionaire has constructed the Project Facilities in accordance with the Construction Requirements; and
- (b) the Concessionaire has obtained all Applicable Permits necessary for commercial operations of the Project Facilities;

“**Concession**” shall have the meaning ascribed to the said term in Clause 3.1.1;

“**Concession Period**” shall have the meaning as set forth in Clause 3.2;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Concessionaire Authority**” means National Institute of Wind Energy for the purpose of offshore wind energy project.

“**Concessionaire Event of Default**” shall have the meaning set forth in Clause 25.1.1;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

“**Construction Period**” shall mean the period during which the Project Facilities will be constructed by the Concessionaire, beginning from the Appointed Date and ending on the COD;

“**Construction Requirements**” shall mean such specifications as set out in **Schedule 2**;

“**Construction Works**” shall mean all works and things required to be constructed by the Concessionaire as part of the Project Facilities in accordance with this Agreement;

“**Contractor**” shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/ or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Cure Period**” shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Concessionaire Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Concessionaire Authority to accord their approval;

“**Damages**” shall have the meaning as given in Clause 1.2.1 (w);

“**Debt Service**” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“**Deficiency**” shall have the meaning set forth in Clause 10.1.3 (iv);

“**Development Lease Deed**” shall have the meaning set forth in Clause 4.1.2;

“**Document**” or “**Documentation**” shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**Drawings**” shall mean the conceptual and detailed designs and drawings, backup technical information required for the Project and all calculations, samples, patterns, models, specifications, standards and other technical information submitted by the Concessionaire from time to time and reviewed in accordance with the provisions of this Agreement;

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, or which poses an immediate threat of material damage to

any of the Project Facilities;

“**Encumbrance**” shall mean, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

“**EPC Contract**” shall mean the engineering, procurement and construction contract or contracts entered into by the Concessionaire with Contractor for, *inter alia*, engineering and construction of the Project in accordance with the provisions of this Agreement;

“**Equity**” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Project cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any funds advanced by any shareholder of the Concessionaire for meeting such equity component;

“**Expiry Date**” shall mean the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Financing Agreements**” shall mean the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other Documents relating to the financing (including refinancing) of the Project cost, and includes amendments or modifications made in accordance with Clause 5.3.2;

“**Financial Close**” means the fulfillment of all Conditions Precedent for the initial availability of funds under the Financing Agreements;

“**Financial Package**” shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements;

“**Force Majeure**” shall have the meaning set forth in Rule 14 of the Offshore Wind Energy Lease Rules, 2022;

“**Good Industry Practice**” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any facilities similar to the Project Facilities;

“**Government Instrumentality**” shall mean any department, division or sub-division of the Government of India or any State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or any State Government, as the case may be, and having jurisdiction over all or any part of the Project, Seabed and/ or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement;

“**Indemnified Party**” shall have the meaning set forth in Clause 28.3;

“Indemnifying Party” shall mean the Party obligated to indemnify the other Party pursuant to Clause 28.3;

“Indian Rupees” or **“Rs.”** Or **“INR”** shall mean the lawful currency of India;

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 20, and includes all insurances required to be taken out by the Concessionaire but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Lenders’ Representative” shall mean the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes;

“Maintenance Programme” shall have the meaning set forth in Clause 15.2;

“Material Adverse Effect” shall mean a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Material Breach” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

“O&M” shall mean the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of facilities in accordance with the provisions of this Agreement, set forth in Article 15;

“O&M Contract” shall mean the operation and maintenance contract that may be entered into between the Concessionaire and the Contractor for performance of all or any of the O&M obligations;

“O&M Expenses” shall mean expenses incurred by or on behalf of the Concessionaire, as the case may be, for all O&M obligations including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in Connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning ascribed to the term in Clause 17.2;

“O&M Manual” shall have the meaning set forth in Clause 15.1.3;

“Operation Period” shall mean the period commencing from COD and ending on the Expiry

Date;

“**Performance Security**” shall have the meaning set forth in Clause 9.1.1;

“**Project**” shall have the meaning set forth in Recital A;

“**Project Agreements**” shall mean this Agreement, the Financing Agreements, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement;

“**Project Assets**” shall mean all physical and other assets relating to and forming part of the Seabed including (a) rights over the Seabed in the form of lease, right of way or otherwise; (b) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems and administrative offices; (c) Project Facilities situated on the Seabed; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; (g) Applicable Permits relating to or in respect of the Project; and (h) all design, operation and maintenance documents;

“**Project Facilities**” shall mean, as the context may require, either all or one or more of the individual facilities comprising the wind power plant and includes all plant, machinery and equipment forming part thereof (including, but not limited to, comprising the wind turbine generators capable of producing power, the offshore pooling substation and the internal collection grid that would connect the Project to the offshore transmission facilities for transmission of power onwards to the designated grid connection point);

“**Protected Documents**” shall have the meaning set forth in Clause 31.2.2;

“**Safety Consultant**” shall have the meaning set forth in Clause 16.1.2;

“**Safety Requirements**” shall have the meaning set forth in Clause 16.1.1;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 14.1.1;

“**Scope of the Project**” shall have the meaning as given in Clause 2.1.1;

“**Selected Bidder**” shall have the meaning set forth in Recital B;

“**Senior Lenders**” shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Project cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Seabed**” shall mean _____⁵;

“**Standards and Specifications**” shall mean the standards, specifications, terms and conditions which must be strictly adhered to by the Concessionaire in relation to the implementation of the Project and shall include the following: (i) Construction Requirements; and (ii) any other condition that may be specified by Concessionaire Authority necessary for the effective implementation of the Project;

“**State**” shall mean the State of _____ and “**State Government**” means the government

⁵ Insert site particulars.

of that State;

“**Statutory Auditors**” shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013;

“**Substitution Agreement**” shall have the meaning set forth in Clause 26.3.1;

“**Suspension**” shall have the meaning set forth in Clause 24.1.1;

“**Taxes**” shall mean any Indian taxes including goods and services tax (GST), excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” shall mean expiry or termination of this Agreement and the Concession hereunder, as the case maybe;

“**Termination Date**” shall mean the date specified in the Termination Notice as the date on which Termination occurs/ comes into effect;

“**Termination Notice**” shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Tests**” shall mean the tests to determine the completion of the Project in accordance with the provisions of this Agreement.

*Definitions will remain same as per the referred documents

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, Processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and develop shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Chennai are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa.
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;

provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Concessionaire Authority hereunder or pursuant hereto in any manner whatsoever;

- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Concessionaire Authority or any authorized representative of the Concessionaire Authority shall be provided free of cost and in 3 (three) copies, and if the Authority or any authorized representative of the Concessionaire Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

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

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

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4. Priority of agreement clauses and schedules

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

- (a) this Agreement; and

(b) Schedules forming part hereof or referred to herein;

i.e., the Agreement at (a) above shall prevail over the Schedules at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail; and

(d) between any value written in numerals and that in words, the later shall prevail.

Part II
The Concession

**ARTICLE 2:
SCOPE OF PROJECT**

2.1 Scope of the Project

2.1.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include the following, during the Concession Period:

- (a) design, build, finance, construct, commission, operate, maintain and decommission the Project on the Seabed and in accordance with the provisions of this Agreement;
- (b) O&M in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.1.2 The Scope of the Project shall also include any and all other activities that are ancillary to the above-mentioned Scope of the Project.

**ARTICLE 3:
GRANT OF CONCESSION**

3.1 Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Concessionaire Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right and authority to design, build, finance, construct, operate, and maintain the offshore wind Project (the “Concession”) for the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (b) design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project either itself or through such person as may be selected by it;
- (c) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (d) upon commissioning of the Project Facilities, to manage, operate and maintain the same either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;
- (e) exclusively hold, possess, and control the Seabed, in accordance with the terms of the Development Lease Deed, for the purposes of the due implementation of this Project in accordance with the terms of this Concession Agreement;
- (f) borrow or raise money or funding required for the due implementation of the Project and create Encumbrance on the whole or part of the Project Facilities except the Seabed;
- (g) neither assign, transfer or sublet or create any Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project or Seabed nor transfer, lease or part possession thereof; save and except as expressly permitted by this Agreement or the Substitution Agreement; and
- (h) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for the safety, security, development, management, operations or maintenance of the Project Facilities, subject only to the terms of this Agreement and in accordance with Applicable Laws and Good Industry Practice.

3.2 Concession Period

Subject to early Termination of this Agreement in accordance with its terms, the Concession is granted for a period of 35 (thirty-five) years which can be extended further on case-to-case basis subject to functional viability and safety of the project from the Appointed Date (“**Concession Period**”).

**ARTICLE 4:
CONDITIONS PRECEDENT**

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 4, Article 9, Article 10, Article 19, Article 22 and Article 30, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have entered into the lease deed (the “**C&O Lease Deed**”) with the Concessionaire for grant of a lease of the Seabed for undertaking the installation, testing, commissioning, operation, maintenance and decommissioning of the Project on the Seabed:

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2. For the avoidance of doubt, the Concessionaire may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (i) executed and procured execution of the Development Lease Deed;
- (ii) executed and procured execution of the connectivity agreement with the Central Transmission Utility;
- (iii) executed and procured execution of the Substitution Agreement if required and mutually agreed by the Concessionaire and the Senior Lenders;
- (iv) executed the Financing Agreements and delivered to the Concessionaire Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire;
- (v) delivered to the Concessionaire Authority from the Selected Bidder, confirmation in original, of the correctness of their representations and warranties set forth in Sub clauses (xi), (xii) and (xiii) of Clause 7.1.1 of this Agreement;
- (vi) delivered to the Concessionaire Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

Provided that upon request in writing by the Concessionaire, the Concessionaire Authority may, in its discretion waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Concessionaire Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be

required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party, in any event, not later than 5 (five) days, when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Concessionaire Authority

- 4.2.1 In the event that (i) the Concessionaire Authority does not procure fulfillment of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure.

- 4.2.2 Within 12 (twelve) months from the date of the Concession Agreement, the Concessionaire shall be entitled to terminate this Agreement by issuing a 15 (fifteen) days' notice to the Concessionaire Authority and in such case the Performance Security shall be returned to the Concessionaire after recovery of all amounts payable by the Concessionaire to the Concessionaire Authority.

4.3 Damages for delay by the Concessionaire

- 4.3.1 In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure of the Concessionaire Authority to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Concessionaire Authority, or due to Force Majeure, the Concessionaire shall pay to the Concessionaire Authority, Damages in an amount calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

- 4.3.2 Upon levy of Damages equivalent to 20% (twenty percent) of the Performance Security or non-fulfillment of Conditions Precedent by the Concessionaire within 12 (twelve) months from the date of Concession Agreement, whichever is earlier, the Concessionaire Authority shall be entitled to terminate this Agreement by issuing a 15 (fifteen) days' notice to the Concessionaire.

- 4.3.3 On such Termination, the Concessionaire Authority shall be entitled to forfeit the Performance Security of the Concessionaire in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Concessionaire Authority as a result of the Concessionaire's failure to fulfill the Conditions Precedent and implement the Project in accordance with the terms of this Agreement.

4.4 Non-Achievement of Conditions Precedent

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to be waived by the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

**ARTICLE 5:
OBLIGATIONS OF THE CONCESSIONAIRE**

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation, and maintenance of the Project Facilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (i) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (ii) procure, as required, the appropriate licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (iii) perform and fulfil its obligations under the Financing Agreements;
 - (iv) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (v) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (vi) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (vii) support, cooperate with and facilitate the Concessionaire Authority in the implementation and operation of the Project accordance with the provisions of this Agreement; and
 - (viii) transfer the Seabed to the Authority on the Expiry Date, in accordance with the provisions of the Development Lease Deed.

5.2 Obligation relating to compliance with Applicable Laws and Environment Laws

The Concessionaire shall construct, operate and maintain the Project in accordance with Applicable Laws, including all the Applicable Laws relating to protection and safeguard of the environment, laws for preventing and monitoring pollution of environment, laws relating to health and safety aspects, policies and guidelines related thereto, and obtain and maintain the Applicable Permits required for the same.

5.3 Obligation relating to Project Agreements

- 5.3.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements, and no default under any Project Agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.3.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Concessionaire Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessionaire Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Concessionaire Authority.

5.4 Obligations relating to Change in Ownership

- 5.4.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Concessionaire Authority.
- 5.4.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen percent) of the total Equity of the Concessionaire; or
 - (b) acquisition of any control directly or indirectly of the board of directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

shall constitute a Change in Ownership requiring prior approval of the Concessionaire Authority from national security and public interest perspective, the decision of the Concessionaire Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the board of directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessionaire Authority hereunder shall be limited to national security and public interest perspective, and the Concessionaire Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Concessionaire Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.4.2:

- (a) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control

over the shares or voting rights of shares of the Concessionaire; and

- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the board of directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen percent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the board of directors of the Concessionaire.

5.5 Employment of foreign nationals

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

5.6 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.7 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire shall not, except with the previous written consent of the Concessionaire Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.8 Branding of Project

The Project or any part thereof may be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire shall be entitled to use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders.

**ARTICLE 6:
OBLIGATIONS OF THE CONCESSIONAIRE AUTHORITY**

6.1 Obligations of the Concessionaire Authority

- 6.1.1 The Concessionaire Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Concessionaire Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (i) provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits;
 - (ii) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
 - (iii) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

**ARTICLE 7:
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessionaire Authority that:

- (i) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (v) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (vi) the information furnished in the Application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach or constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws, or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (x) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- (xi) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3;

- (xii) all its rights and interests in the Seabed shall pass to and vest in the Authority on the Expiry Date, free and clear of all claims and Encumbrances, without any further act or deed on its part or that of the Concessionaire Authority, and that none of the Project Assets including the Seabed shall be acquired by it, subject to any agreement under which a security interest or other Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (xiii) no representation or warranty by it contained herein or in any other Document furnished by it to the Authority, Concessionaire Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiv) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessionaire Authority in connection therewith;
- (xv) all information provided by the Selected Bidder for the purpose of its selection or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (xvi) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, Documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts; and
- (xvii) as of date, as regards it there is no applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally.

7.2 Representations and warranties of the Concessionaire Authority

The Concessionaire Authority represents and warrants to the Concessionaire that:

- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (ii) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Concessionaire Authority's ability to perform its obligations under this Agreement; and
- (v) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

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

**ARTICLE 8:
DISCLAIMER**

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Seabed, Standards and Specifications, local conditions, and all information provided by the Concessionaire Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Concessionaire Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessionaire Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Concessionaire Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Concessionaire Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Concessionaire Authority contained in Clause 8.1.1 and shall not in any manner shift to the Concessionaire Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessionaire Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Development and Operations

**ARTICLE 9:
PERFORMANCE SECURITY**

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Concessionaire Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. _____ (Rupees _____) in the form set forth in **Schedule 1** (the “**Performance Security**”).
- 9.1.2 The renewal of the Performance Security, as and when required, is to be done by the Concessionaire at least 1 (one) month before the date of expiry of the existing Performance Security, failing which the Concessionaire Authority shall be entitled to invoke the Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as on the Termination Date shall, subject to rights of the Concessionaire Authority to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to the Concessionaire within 30 (thirty) days from the Termination Date.
- 9.1.3 The Concessionaire shall keep the Performance Security valid until 1 (one) year after the expiry of the Concession Period. If there is no encashment and appropriation from the Performance Security, the Performance Security shall be renewed annually in accordance with this Agreement, at least 30 (thirty) days before the start of the Accounting Year, failing which, the Concessionaire Authority shall be entitled to invoke the Performance Security. The charges for providing the Performance Security shall be borne by the Concessionaire.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Event of Default or failure to meet any Condition Precedent, the Concessionaire Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Event of Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security the Concessionaire shall, within 30 (thirty) days thereof, replenish the Performance Security, in case of partial appropriation, to its original level, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Concessionaire Authority shall be entitled to terminate this Agreement in accordance with Article 25. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Event of Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Concessionaire Authority shall be entitled to encash and appropriate such Performance Security Damages, and to terminate this Agreement in accordance with Article 25.

9.3 Decision of the Concessionaire Authority

The decision of the Concessionaire Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Bank providing the Performance Security. The Concessionaire specifically confirms and agrees and shall ensure that the Bank providing the Performance Security agrees and confirms that no proof of any amount of liability accrued or loss or damages caused or suffered by the Concessionaire Authority under this Agreement is required to be provided in connection with any demand made by the Concessionaire Authority to recover such compensation through

encashment of the Performance Security under this Agreement and that no Document or any action shall be required other than the Concessionaire Authority's written demand in this behalf.

**ARTICLE 10:
SEABED**

10.1 Rights of the Concessionaire

- 10.1.1 Pursuant to grant of Concession and in consideration of grant of lease of the Seabed in accordance with the Development Lease Deed, the Concessionaire shall have the right to regulate the entry into and use of the Seabed in accordance with the Development Lease Deed.
- 10.1.2 The Concessionaire accepts the Seabed on an “as is where is” basis and undertakes to bear all risk arising out of the inadequacy or physical condition of the Seabed and confirms having inspected the Seabed and:
- (i) satisfied itself of the Seabed conditions and the nature of the design, work and material necessary for the performance of its obligations under this Agreement;
 - (ii) satisfied itself as to the means of communication with, access to and accommodation on the Seabed that it may require or as may otherwise be necessary for the performance of its obligations under this Agreement; and
 - (iii) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement;
 - (iv) after a complete and careful examination, made an independent evaluation of the Seabed as a whole and has determined the nature and extent of the difficulties, upgradations, inputs, costs, time and resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement. The Concessionaire further acknowledges that it shall have no recourse to the Concessionaire Authority if it is, at a later date, found that the Seabed is deficient in any manner that prevents the discharge of Concessionaire’s obligations under this Agreement (“**Deficiency**”). If a Deficiency is found, the Concessionaire hereby acknowledges that it shall, at its own cost and expense take all appropriate measures to remedy the same. It is hereby clarified that the Concessionaire Authority shall not bear any expenses in relation to any Deficiency.
- 10.1.3 The Concessionaire acknowledges that it shall have no recourse against the Concessionaire Authority in the event of any mistake made or misapprehension harboured by the Concessionaire in relation to any of the foregoing provisions in this Clause and the Concessionaire Authority hereby expressly disclaims any liability in respect thereof.
- 10.1.4 The Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant possession of the entire Seabed to the Concessionaire, and in the event Financial Close is delayed solely on account of delay in handing over such vacant possession of the Seabed, the Concessionaire Authority shall extend the Concession Period in accordance with the provisions of Clause 4.2.

**ARTICLE 11:
UTILITIES**

11.1 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Concessionaire Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Seabed if and only if such utility causes or shall cause a Material Adverse Effect on the construction and O&M of the Project. The cost of such shifting shall be borne by the Concessionaire, if the Concessionaire Authority so directs.

**ARTICLE 12:
DEVELOPMENT OF THE PROJECT**

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (i) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Construction Works of Project, to interact with the Concessionaire Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (ii) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (iii) make its own arrangements for procuring materials needed for the Construction Works in accordance with the Applicable Laws and Applicable Permits.

12.2 Construction of Project Facilities

12.2.1 The Concessionaire shall construct the Project Facilities in line with provisions of this Agreement, Applicable Law, Applicable Permits, Good Industry Practice, Construction Requirements, and the detailed project report finalised in terms of the lease deed dated _____.

12.2.2 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall be solely responsible to meet the Construction Requirements.

12.2.3 The Concessionaire shall complete the construction and achieve the COD in a manner that is safe and reliable for performance of the O&M during the Operation Period, subject to normal wear and tear and Force Majeure, and free from all defects in design and workmanship.

12.3 Tests

For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the Concessionaire Authority who either in person or through his representative may choose to be present during the conduct of such Tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and keep the Concessionaire Authority informed.

12.4 Suspension

The Concessionaire Authority, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements, in case the same is not rectified within 7 (seven) days of such notice.

**ARTICLE 13:
MONITORING OF CONSTRUCTION**

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Concessionaire Authority a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Concessionaire Authority.

13.2 Inspection

13.2.1 During the Construction Period, the Concessionaire Authority may inspect the Construction Works anytime in a month and make a report of such inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Standards and Specifications. It shall send a copy of the report to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the report. Such inspection or submission of the report by the Concessionaire Authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.2.2 The Construction Works shall be monitored by such autonomous organizations as may be appointed by the Ministry of New and Renewable Energy, Government of India.

13.3 Video-recording

During the Construction Period, the Concessionaire shall provide to the Concessionaire Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such recording shall be provided to the Concessionaire Authority within 7 (seven) days of Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

**ARTICLE 14:
ENTRY INTO COMMERCIAL SERVICE**

14.1 Delay in Construction

- 14.1.1 The _____⁶ day from the Appointed Date shall be the scheduled date for completion of construction of the Project Facilities (the “**Scheduled Completion Date**”).
- 14.1.2 In the event that the construction of the Project Facilities is not completed by the Scheduled Completion Date, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Concessionaire Authority, the Concessionaire shall pay Damages to the Concessionaire Authority in a sum calculated at the rate of 0.1% (zero point one percent) of the amount of Performance Security for delay of each day until the COD.
- 14.1.3 In the event that construction of the Project Facilities is not completed within 365 (three hundred and sixty five) days from the Scheduled Completion Date (or such longer period as the Concessionaire Authority at its sole discretion may grant), unless the delay is on account of reasons solely attributable to the Concessionaire Authority or due to Force Majeure, the Concessionaire Authority shall be entitled to forthwith terminate this Agreement and appropriate the Performance Security.

14.2 Tests

- 14.2.1 At least 30 (thirty) days prior to the likely commissioning of the Project Facilities, the Concessionaire shall notify the Concessionaire Authority of its intent to subject the Project Facilities to Tests. The date and time of each of the Tests shall be determined by the Concessionaire Authority in consultation with the Concessionaire. The Concessionaire shall provide such assistance as the Concessionaire Authority may reasonably require for conducting the Tests. In the event of the Concessionaire and the Concessionaire Authority failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days’ notice to the Concessionaire Authority.
- 14.2.2 All Tests shall be conducted in accordance with **Schedule 5**. The Concessionaire Authority shall observe, monitor and review the results of the Tests to determine compliance of the Project Facilities with Standards and Specifications and if it is reasonably anticipated or determined by the Concessionaire Authority during the course of any Test that the performance of the Project Facilities or any part thereof does not meet the Standards and Specifications, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Concessionaire Authority shall provide to the Concessionaire copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Concessionaire Authority may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Facilities with Standards and Specifications.

14.3 Commercial Operation Date

The Project Facilities shall be deemed to have been commissioned on the date of issuance of commissioning certificate (“**Commercial Operation Date**” or “**COD**”) by the Concessionaire Authority as per the National Offshore Wind Energy Policy, 2015. The Project Facilities shall enter into commercial service on COD whereupon the Concessionaire shall operate and maintain the Project Facilities in accordance with the provisions of this Agreement.

⁶ Insert scheduled completion date as per finalised detailed project report.

14.4 Part Commissioning

The part commissioning of the OSW Project shall be accepted by NIWE subject to the following conditions:

- i) The minimum capacity for acceptance of first part commissioning shall be 100 MW or 50% of the allocated OSW Project capacity, whichever is lower. Minimum capacity for acceptance of first part commissioning shall be 100 MW. A project capacity of up to 500 MW or less can be commissioned in maximum three parts and from 501MW to 1000 MW OSW project capacity can be commissioned in maximum five parts.
- ii) The OSW projects with capacity more than 500 MW can be commissioned in parts of at least 200 MW each, with last part being the balance capacity.

However, the Scheduled Commissioning Date will not get altered due to part commissioning. In case of part-commissioning of the OSW Project, sea-bed area corresponding to the part capacity being commissioned, shall be required to be demonstrated by the OWPD prior to declaration of commissioning of the said part capacity. Irrespective of dates of part commissioning, the Contract will remain in force for a period of 35 years from the Scheduled Commissioning Date or from the date of full commissioning of the projects, whichever is earlier.

**ARTICLE 15:
OPERATION AND MAINTENANCE**

15.1 O&M obligations of the Concessionaire

- 15.1.1 The Concessionaire may undertake O&M of the Project Facilities by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability, but in either case, the Concessionaire shall remain solely responsible to meet the requirements as per this Agreement.
- 15.1.2 The Concessionaire may, if required, modify, repair or otherwise make improvements to the Project Facilities to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Standards and Specifications and Good Industry Practice.
- 15.1.3 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall evolve an operation and maintenance manual (the “**O&M Manual**”) for the Safety Requirements, and shall provide 5 (five) copies thereof to the Concessionaire Authority. The O&M Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 15.1.3 shall apply, *mutatis mutandis*, to such revision.
- 15.1.4 Without prejudice to the provision of Clause 15.1.3, the O&M Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

15.2 Maintenance Programme

On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Concessionaire Authority its proposed annual programme of preventive and other scheduled maintenance (the “**Maintenance Programme**”). Such Maintenance Programme shall include:

- (i) preventive maintenance schedule;
- (ii) arrangements and procedures for carrying out urgent repairs;
- (iii) intervals and procedures for carrying out inspection of all elements of the Project Facilities;
- (iv) intervals at which the Concessionaire shall carry out periodic maintenance;
- (v) arrangements and procedures for carrying out safety related measures; and
- (vi) intervals for major maintenance works and the scope thereof.

15.3 Concessionaire Authority’s right to take remedial measures

- 15.3.1 In the event the Concessionaire does not maintain and/ or repair the Project Facilities or part thereof in conformity with the provisions of this Agreement, and fails to commence the

remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or notice on this behalf from the Concessionaire Authority, as the case may be, the Concessionaire Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. For avoidance of doubt, the right of the Concessionaire Authority under this Clause 15.3 shall be without prejudice to its rights and remedies provided under Clause 15.4.

15.3.2 The Authority shall have right, and the Concessionaire hereby expressly grants to the Concessionaire Authority the right, to appropriate and recover the costs and Damages specified in Clause 15.4.2, directly from the Performance Security.

15.4 Overriding powers of the Concessionaire Authority

15.4.1 If in the reasonable opinion of the Concessionaire Authority, the Concessionaire is in Material Breach of its obligations under this Agreement, and such breach is causing or likely to cause the Project to violate applicable environmental laws, the Concessionaire Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

15.4.2 If the Concessionaire fails to rectify or remove such hardship or danger, the Concessionaire Authority may, without prejudice to any other rights or remedy available to it under this Agreement, remove such hardship at the risk and costs of the Concessionaire. The cost incurred by the Authority in rectifying such default of the Concessionaire, as certified by the Concessionaire Authority, shall be reimbursed by the Concessionaire to the Concessionaire Authority within 7 (seven) days from the date of receipt of a claim in respect thereof from the Concessionaire Authority, failing which the Concessionaire Authority shall have right to appropriate and recover from the Performance Security.

**ARTICLE 16:
SAFETY REQUIREMENTS**

16.1 Safety Requirements

16.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety in and around the Seabed. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply, with the safety requirements set forth in **Schedule 3** (the “**Safety Requirements**”).

16.1.2 The Concessionaire Authority shall appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

16.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

**ARTICLE 17:
MONITORING OF OPERATION AND MAINTENANCE**

17.1 Reporting

17.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Concessionaire Authority a monthly report stating in reasonable detail the condition of the Project Facilities, including its compliance or otherwise with the Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Concessionaire Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

17.1.2 The Concessionaire shall deliver the following to the Concessionaire Authority within the time specified below:

- (i) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the welfare of the Project Facilities or the general public, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;
- (ii) reports relating to the action taken to mitigate any disruptions to the O&M as a result of the events or circumstances mentioned in Sub-clause (i) above, within 12 (twelve) hours of the occurrence of such event or circumstance;
- (iii) reports on any critical breakdowns or failures in the Project Facilities, within 12 (twelve) hours of such occurrence;
- (iv) reports on accidents or other incidents in relation to the personnel, any third party or the Project Facilities, together with statements on actions taken to minimize recurrence, within 2 (two) days of such occurrence;
- (v) copies of any reports, notices or responses submitted for the purposes of compliance with Applicable Laws or Applicable Permits, within 2 (two) days of making such submissions to the relevant Government Instrumentality; and
- (vi) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any court or Government Instrumentality that affects or is likely to affect the performance of the Project Facilities, as soon as reasonably possible after the occurrence of such events.

17.1.3 The Concessionaire shall, prior to the close of each day, send to the Concessionaire Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 17.1.3, accidents and unusual occurrences on the Project shall include:

- (i) death or injury to any Person;
- (ii) damaged or dislodged fixed equipment;
- (iii) disablement of any equipment during operation;

- (iv) communication failure affecting the operation of Project Facilities;
- (v) smoke or fire;
- (vi) flooding of Project Facilities; and
- (vii) such other relevant information as may be required by the Concessionaire Authority.

17.2 Inspection

The Concessionaire Authority may inspect the Project Facilities at any time. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Programme, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

17.3 Tests

For determining that the Project Facilities conform to the Maintenance Requirements, the Concessionaire Authority may require the Concessionaire to carry out, or cause to be carried out, Tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such Tests in accordance with the instructions of the Concessionaire Authority and furnish the results of such Tests forthwith to the Authority. One half of the costs incurred on such tests shall be reimbursed by the Concessionaire Authority to the Concessionaire.

17.4 Remedial measures

- 17.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 17.2 and furnish a report in respect thereof to the Concessionaire Authority within 15 (fifteen) days of receiving the O&M Inspection Report, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 17.4.2 The Concessionaire Authority shall require the Concessionaire to carry out or cause to be carried out Tests, at its own cost, to determine that such remedial measures have brought the Project Facilities into compliance with the Maintenance Requirements and the procedure set forth in this Clause 17.4 shall be repeated until the Project Facilities conform to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessionaire Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 15.3.
- 17.4.3 Notwithstanding anything to the contrary in this Agreement, the Parties may, with respect to the last [insert period] years of the Operation Period, mutually agree to reduce or revise the obligations of the Concessionaire hereunder to the extent that such reduction or revision is necessitated by the non-availability of requisite spare parts.

**ARTICLE 18:
EMERGENCY MEDICAL AID**

18.1 Medical Aid Posts

For providing emergency medical aid during the Operation Period, the Concessionaire shall set up and operate a medical aid post at the Seabed for victims of accidents on the Project.

Part IV
Financial Covenants

**ARTICLE 19:
FINANCIAL CLOSE**

19.1 Financial Close

19.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 6 (six) months, subject to payment of Damages to the Concessionaire Authority in a sum calculated at the rate of 0.05% (zero point zero five percent) of the Performance Security for each day of delay; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Concessionaire Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

The Concessionaire Authority may consider, at its discretion, to extend the period allowed to achieve Financial Close if it believes that the Concessionaire has performed all the necessary duties to achieve the same in the stipulated period as required by this Concession Agreement and the delay is solely on account of delay in getting Applicable Permits from the concerned authorities.

19.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessionaire Authority forthwith, and shall have provided to the Concessionaire Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package, duly attested by a director of the Concessionaire and accepted by the Senior Lenders.

19.2 Termination due to failure to achieve Financial Close

19.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 4.3 and Clause 22.4, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 19.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 19.2.1 shall not apply.

19.2.2 Upon Termination under Clause 19.2.1, the Concessionaire Authority shall be entitled to encash 10% (ten percent) of the Performance Security and appropriate the proceeds thereof as Damages.

ARTICLE 20: INSURANCE

20.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessionaire Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Concessionaire Authority shall be a co-insured. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

20.2 Notice to the Concessionaire Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Concessionaire Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Concessionaire Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, such dispute shall be resolved in accordance with this Agreement.

20.3 Remedy for failure to insure

If the Concessionaire fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Concessionaire Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire.

20.4 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Concessionaire Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.5 Concessionaire's waiver

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

20.6 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be applied by the Concessionaire for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

20.7 No Breach of Insurance Obligation

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/ re-instated in respect of such risk, the Concessionaire shall not be in breach of its obligations regarding insurance under this Agreement.

**ARTICLE 21:
ACCOUNTS AND AUDIT**

21.1 Audited Accounts

The Concessionaire shall maintain books of accounts recording all its receipts (including revenue derived by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement.

21.2 Certification of claims by Statutory Auditors

Any claim or Document provided by the Concessionaire to the Concessionaire Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

21.3 Set-off

In the event any amount is due and payable by the Concessionaire Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Auth Concessionaire Authority ority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

**ARTICLE 22:
FORCE MAJEURE**

22.1 Notice of Force Majeure event

As soon as practicable and in any case within 7 (seven) days of the date of occurrence of an event of Force Majeure or the date of knowledge thereof, the Party affected thereby shall notify the other Party of the same setting out, *inter alia*, the following in reasonable detail:

- (i) the nature and extent of the event of Force Majeure;
- (ii) the estimated period for which such Party will be affected by the event of Force Majeure;
- (iii) the nature of and the extent to which, performance or any of its obligations under this Agreement is affected by the event of Force Majeure;
- (iv) the measures which the Party affected thereby has taken or proposes to take to alleviate/mitigate the impact of the event of Force Majeure and to resume performance of such of its obligations affected thereby; and
- (v) any other relevant information concerning the event of Force Majeure, and/ or the rights and obligations of the Parties under this Concession Agreement.

22.2 Performance of Obligations

If a Party is rendered wholly or partially unable to perform any of its obligations under this Concession Agreement because of an event of Force Majeure, such Party shall be excused from performance of such obligation to the extent it is unable to perform the same on account of such Force Majeure event provided that:

- (i) due notice of the Force Majeure event has been given as required by the preceding Clause 22.1;
- (ii) the excuse from performance shall be of no greater scope or no longer duration than is necessitated by the event of Force Majeure;
- (iii) such Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project as a result of the event of Force Majeure and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Concession Agreement;
- (iv) when such Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- (v) such Party shall continue to perform such of its obligations which are not affected by the Force Majeure and which are capable of being performed in accordance with this Concession Agreement;
- (vi) any insurance proceeds received shall be, subject to the provisions of the Financing Agreements, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure or in accordance with Good Industry Practice; and

- (vii) neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expenses, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure.

22.3 Effect of Force Majeure event on the Concession

- 22.3.1 Upon the occurrence of any event of Force Majeure prior to the Appointed Date, the period set forth in Clause 19.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the event of Force Majeure.
- 22.3.2 At any time after the Appointed Date, if any event of Force Majeure occurs, the Concession Period shall be extended by a period equal in length to the duration for which such event of Force Majeure subsists.

22.4 Allocation of costs arising out of Force Majeure

Upon occurrence of any event of Force Majeure, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

22.5 Termination due to Force Majeure event

If an event of Force Majeure subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 22, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith:

Provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.6 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 22, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event.

22.7 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of an event of Force Majeure, such dispute shall be resolved in accordance with this Agreement; provided that the burden of proof as to the occurrence or existence of such event of Force Majeure shall be upon the Party claiming relief and/ or excuse on account of such Force Majeure.

**ARTICLE 23:
COMPENSATION FOR BREACH OF AGREEMENT**

23.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 22.3, in the event of the Concessionaire being in material default or breach of this Agreement, the Concessionaire Authority shall issue a notice to the Concessionaire to remedy the breach or the default in the Cure Period. Upon expiry of the Cure Period, if the Concessionaire has not remedied/ cured the default or breach and the period given to remedy/ cure the breach or the default has not been mutually extended, the Concessionaire shall pay to the Concessionaire Authority by way of compensation, all direct costs suffered or incurred by the Concessionaire Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 23.1 for any Material Breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessionaire Authority.

23.2 Remedy for default by the Concessionaire Authority

Subject to the provisions of Clause 22.3, in the event of the Concessionaire Authority being in material default or breach of this Agreement, the Concessionaire shall issue a notice to the Concessionaire Authority giving 90 (ninety) days to remedy the breach or the default. Upon expiry of the said 90 (ninety) days, if the Concessionaire Authority has not remedied/ cured the default or breach and the period given to remedy/ cure the breach or the default has not been mutually extended, the Concessionaire may terminate this Agreement under and in accordance with Article 25.

23.3 Extension of Concession Period

Subject to the provisions of Clause 22.3, in the event that a material default or breach of this Agreement by the Concessionaire Authority causes delay in achieving COD or leads to suspension of operation of Project Facilities, as the case may be, the Concessionaire Authority shall extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the operation of the Project Facilities remained suspended on account thereof, as the case may be.

23.4 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

**ARTICLE 24:
SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

24.1 Suspension

24.1.1 Upon occurrence of a Concessionaire Event of Default, the Concessionaire Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Concessionaire Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Concessionaire Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

24.1.2 The Concessionaire acknowledges that Suspension shall not entitle the Concessionaire to an extension of the Concession Period.

24.2 Concessionaire Authority to act on behalf of the Concessionaire

During the period of Suspension, the Concessionaire Authority shall be entitled to discharge the obligations of the Concessionaire, including remedying and rectifying the cause of Suspension. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Concessionaire Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Concessionaire Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Concessionaire Authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project Facilities and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

24.3 Revocation of Suspension

24.3.1 In the event that the Concessionaire Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Concessionaire Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

24.3.2 Upon the Concessionaire having cured the Concessionaire Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Concessionaire Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

24.4 Substitution

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the

Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Concessionaire Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 24.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

24.5 Termination

- 24.5.1 At any time during the period of Suspension under this Article 24, the Concessionaire may by notice require the Concessionaire Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 24.4, the Concessionaire Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 25.
- 24.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 24.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Concessionaire Authority upon occurrence of a Concessionaire Event of Default.

**ARTICLE 25:
EVENTS OF DEFAULT AND TERMINATION**

25.1 Termination for Concessionaire Event of Default

25.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Event of Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Concessionaire Authority or due to Force Majeure. The defaults referred to herein shall include:

- (i) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (ii) the Concessionaire abandons or manifests intention to abandon the construction or O&M of the Project Facilities without the prior written consent of the Concessionaire Authority;
- (iii) the COD does not occur within the period specified in Clause 14.1.3;
- (iv) upon occurrence of a financial default, the Lenders’ Representative has by notice required the Concessionaire Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (v) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (vi) the Concessionaire is non-compliant with the Standards and Specifications and has failed to remedy the same within 7 (seven) days;
- (vii) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (viii) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (ix) a Change in Ownership has occurred in breach of the provisions of Clause 5.4;
- (x) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (xi) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (xii) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material parts of its assets that has a material bearing on the Project;
- (xiii) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable

opinion of the Concessionaire Authority, a Material Adverse Effect;

- (xiv) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (a) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (c) each of the Project Agreements remains in full force and effect;
- (xv) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (xvi) the Concessionaire submits to the Concessionaire Authority any statement, notice or other Document, in written or electronic form, which has a material effect on the Concessionaire Authority's rights, obligations or interests and which is false in material particulars;
- (xvii) the Concessionaire fails to fulfil the Conditions Precedent as set out in Article 4 within the period specified therein;
- (xviii) the Concessionaire has failed to fulfil any obligation, for which Termination has been specified in this Agreement;
- (xix) the Concessionaire commits a default in complying with any other provision if such a default causes a Material Adverse Effect on the Concessionaire Authority;
- (xx) the Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 30 (thirty) days.

25.1.2 Without prejudice to any other rights or remedies which the Concessionaire Authority may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the Concessionaire Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessionaire Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 25.1.3.

25.1.3 The Concessionaire Authority shall, if there be Senior Lenders, send a copy of its notice of

intention to issue a Termination Notice referred to in Clause 25.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Concessionaire Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 90 (ninety) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

25.1.4 Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 90 (ninety) days, and upon such curing thereof, the Concessionaire Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

25.1.5 Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Concessionaire Authority may extend the aforesaid period of 90 (ninety) days by such further period not exceeding 45 (forty five) days, as the Concessionaire Authority may deem appropriate.

25.2 Termination for Concessionaire Authority Default

25.2.1 In the event that any of the defaults specified below shall have occurred, and the Concessionaire Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Concessionaire Authority shall be deemed to be in default of this Agreement (the "**Concessionaire Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (i) the Concessionaire Authority commits a Material Breach or default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (ii) the- Concessionaire Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (iii) the Concessionaire Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

25.3 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall, subject to the provisions of Financing Agreements and the rights of the Senior Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- (ii) the Seabed is handed back to the Authority by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to the Authority.

25.4 Withdrawal of Termination Notice

25.4.1 Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying event of default to the satisfaction of the other Party at any time before the actual Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

25.4.2 Provided that the Party in breach shall compensate the other Party for any direct costs suffered by the non-defaulting Party due to the event of default which led to the issue of Termination Notice or such costs as mutually agreed upon by both Parties.

25.5 Other rights and obligations of the Concessionaire Authority

25.5.1 Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessionaire Authority shall succeed upon election by the Concessionaire Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Concessionaire Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractor only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Concessionaire Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractor as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractor, and the Concessionaire Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessionaire Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessionaire Authority for this purpose shall be recovered from the Concessionaire.

25.5.2 Notwithstanding anything contained in this Agreement, the Concessionaire Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by Concessionaire in connection with the Project, and the handover of the Project Facilities by Concessionaire to the Concessionaire Authority shall be free from any such obligation.

25.6 Survival of rights

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

Part V
Other Provisions

**ARTICLE 26:
ASSIGNMENT AND CHARGES**

26.1 Restrictions on assignment and charges

- 26.1.1 Subject to Clauses 26.2 and 26.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessionaire Authority, which consent the Concessionaire Authority shall not be entitled to decline without assigning any reason.
- 26.1.2 Subject to the provisions of Clause 26.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Concessionaire Authority, which consent the Concessionaire Authority shall not be entitled to decline without assigning any reason.

26.2 Permitted assignment and charges

The restraints set forth in Clause 26.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/ pledges/ hypothecation of goods/ assets other than Seabed and their related Documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) Encumbrances required by any Applicable Law.

26.3 Substitution Agreement

- 26.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Concessionaire Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule 4**.
- 26.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the nominated company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

26.4 Assignment by the Concessionaire Authority

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire Authority may, after giving 15 (fifteen) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Concessionaire Authority, capable of fulfilling all of the Concessionaire Authority's then outstanding obligations under this Agreement.

**ARTICLE 27:
CHANGE IN LAW**

27.1 Increase in Cost

- 27.1.1 If as a result of Change in Law, the Concessionaire is obliged to incur Additional Costs in excess of Rs. [insert amount] (Rupees [insert amount]) the Concessionaire may so notify the Concessionaire Authority and upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 15 (fifteen) days from the date of notice and mutually agree on an arrangement that would restore the Concessionaire to the same economic position as if such Change in Law has not occurred. In case the Parties do not mutually agree on an arrangement, a committee of 3 (three) members will be found (1 (one) member from the Concessionaire Authority, 1 (one) member from Concessionaire, and 1 (one) member to be mutually agreed by the Parties) and the decision of this committee on this matter shall be final and binding on both the Parties.
- 27.1.2 For the avoidance of doubt, it is agreed that this Clause 27.1.1 shall be restricted to Changes in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

**ARTICLE 28:
LIABILITY AND INDEMNITY**

28.1 General indemnity

28.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Concessionaire Authority and its officers, servants, agents and Government Instrumentalities (the “**Concessionaire Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Concessionaire Authority Indemnified Persons.

28.1.2 The Concessionaire Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands’ and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Concessionaire Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

28.2 Indemnity by the Concessionaire

28.2.1 Without limiting the generality of Clause 28.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessionaire Authority and the Concessionaire Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

28.2.2 Without limiting the generality of the provisions of this Article 28, the Concessionaire shall fully indemnify, hold harmless and defend the Concessionaire Authority Indemnified Persons from and against any and all suits, proceeding , actions, claims, demands, liabilities and damages which the Concessionaire Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractor in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or of otherwise to secure the revocation or suspension of the injunction or restraint order if, in any such suit,

action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Concessionaire Authority a licence, at no cost to the Concessionaire Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Standards and Specifications, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

28.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 28 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

28.4 Defence of claims

28.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 28, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

28.4.2 If the Indemnifying Party has exercised its rights under Clause 28.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

28.4.3 If the Indemnifying Party exercises its rights under Clause 28.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (i) the employment of counsel by such Party has been authorised in writing by the Indemnifying Party; or
- (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

- (iii) the Indemnifying Party shall not in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 28.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

28.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

28.6 Survival on Termination

The provisions of this Article 28 shall survive Termination.

**ARTICLE 29:
UNFORESEEN EVENTS**

29.1 Relief for Unforeseen Events

29.1.1 Upon occurrence and continuance of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (“**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred and is continuing, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Article 29.

29.1.2 Upon determination of the occurrence and continuation of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise 1 (one) member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

29.1.3 The conciliation tribunal referred to in this Clause 29.1.2 shall conduct preliminary proceedings to satisfy itself that:

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 29.1.

29.1.4 Upon completion of the conciliation proceedings referred to in this Clause 29.1, the conciliation tribunal may by a reasoned order, make recommendations and setting out the terms of reference, which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

29.1.5 Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 29.1.4, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement, by way of entering into a settlement agreement setting forth the agreement reached hereunder. The terms of such settlement agreement shall have force and effect as if they form part of this Agreement, and would deem to have modified the concerned

terms of this Agreement, if any.

**ARTICLE 30:
DISPUTE RESOLUTION**

30.1 Dispute resolution

30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified by either Party shall, in the first instance, be attempted to be resolved amicably, failing which the same shall be resolved in accordance with the Offshore Wind Energy Lease Rules, 2022.

30.1.2 This Agreement shall be construed and interpreted in accordance with and governed by the law of India, and the courts at Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

30.2 Performance during the dispute

Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to the outcome of the dispute.

**ARTICLE 31:
DISCLOSURE**

31.1 Disclosure of specified Documents

The Concessionaire shall make available for inspection by any authorized person of the Concessionaire Authority, copies of this Concession Agreement, free of charge, during normal business hours on all working days at the Seabed and at the Concessionaire's registered office.

31.2 Disclosure of Documents relating to safety

31.2.1 The Concessionaire shall make available for inspection by any authorized person of the Concessionaire Authority, copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's registered office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

31.2.2 Notwithstanding the provisions of Clauses 31.1 and 31.2.1, the Concessionaire Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression "**Protected Documents**" shall mean such of the Documents referred to in Clauses 31.1 and 31.2, or portions thereof, the disclosure of which the Concessionaire Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

**ARTICLE 32:
MISCELLANEOUS**

32.1 Governing Law and Jurisdiction

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

32.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

32.3 Depreciation and Interest

32.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Concessionaire Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

32.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

32.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five percent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

32.5 Waiver

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

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

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

32.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Concessionaire Authority of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction and O&M of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Concessionaire Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

32.7 Exclusion of implied warranties etc.

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

32.8 Survival

Termination shall:

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

32.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or

modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

32.10 Severability

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

32.11 No partnership

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

32.12 Third parties

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

32.13 Successors and assigns

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

32.14 Notices

32.14.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set out below:

(a) If to the Concessionaire Authority:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

(b) If to the Concessionaire:

Kind Attention: _____
Address: _____
Telephone No.: _____

Fax: _____
Email: _____

Or such address, or facsimile number as may be duly notified by the respective Parties from time to time:

- 32.14.2 In the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out above or to such other person as the Concessionaire may from time to time designate by notice to the Concessionaire Authority; provided that notices or other communications to be given to an address outside Chennai may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Concessionaire Authority.
- 32.14.3 In the case of the Concessionaire Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [insert designation] of the Concessionaire Authority with a copy delivered to the Concessionaire Authority Representative or such other person as the Concessionaire Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chennai it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.
- 32.14.4 Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

32.15 Language

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

32.16 Counterparts

This Agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

IN WITNESS WHEREOF the Parties have executed and delivered this Concession Agreement as of the date first above written.

<p>Signed, sealed and delivered for and on behalf of Concessionaire Authority by</p> <p>(Signature) _____ Name: _____ Designation: _____</p> <p>IN PRESENCE OF _____</p> <p>(Signature) _____ Name: _____ Address: _____</p>	<p>Signed, sealed and delivered for and on behalf of Concessionaire by</p> <p>(Signature) _____ Name: _____ Designation: _____</p> <p>(Duly authorized by the resolution of the board of directors passed by its meeting held on [●])</p> <p>IN PRESENCE OF _____</p> <p>(Signature) _____ Name: _____ Address: _____</p>
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Part VI
Schedules

**SCHEDULE 1:
PERFORMANCE SECURITY**

This deed of guarantee (the “**Bank Guarantee**”) is executed on this the _____ day of _____, 20__ at _____ by _____ having its head/ registered office at _____ (hereinafter referred to as the “**Bank**”), which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

National Institute of Wind Energy, having its office at _____ (hereinafter referred to as the “**Concessionaire Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

WHEREAS

- A. The Concessionaire Authority and _____, a _____⁷ [incorporated/ registered]⁸ under the provisions of the _____⁹ and having its registered office at _____ (the “**Concessionaire**”), have entered into a concession agreement dated _____ (the “**Concession Agreement**”) setting out the rights and obligations in respect of undertaking construction, operation and maintenance of an offshore wind power project;
- B. In terms of the aforementioned Concession Agreement, the Concessionaire is required to furnish to the Concessionaire Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ (the “**Guarantee Amount**”); and
- C. At the request of the Concessionaire, the Bank has agreed to provide guarantee, being these presents by way of security in terms of the aforementioned Concession Agreement.

NOW, THEREFORE, the Bank hereby affirms as follows:

1. The Bank hereby unconditionally and irrevocably agrees and undertakes to pay to the Concessionaire Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Concessionaire Authority shall claim, without the Concessionaire Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein;
2. A letter from the Concessionaire Authority, under the hand of an officer not below the rank of _____, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Concession Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Concessionaire Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations under the Concession Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Concessionaire Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Bank Guarantee, the Concessionaire Authority shall be entitled to act as if the Bank was the principal debtor and any change in the constitution of the

⁷ Insert nature of contracting party.

⁸ Retain as appropriate.

⁹ Insert relevant legislation.

Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Concessionaire Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Bank Guarantee.
5. The Concessionaire Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the Concession Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Concession Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Concessionaire Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Concession Agreement and/or the securities available to the Concessionaire Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Concessionaire Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Concessionaire Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Concessionaire Authority in respect of or relating to the Concession Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Concession Agreement.
7. The Bank undertakes not to revoke this Bank Guarantee during its currency, except with the previous express consent of the Concessionaire Authority in writing, and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.
8. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at the _____ office of the Bank, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Concessionaire Authority that the envelope was so posted shall be conclusive.
9. This Bank Guarantee shall come into force with immediate effect and shall remain in force and effect for the period set forth in the Concession Agreement.

Signed and sealed this _____ day of _____, 20_____ at _____.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

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

**SCHEDULE 2:
CONSTRUCTION REQUIREMENTS**

**SCHEDULE 3:
SAFETY REQUIREMENTS**

**SCHEDULE 4:
SUBSTITUTION AGREEMENT**

This substitution agreement (the “**Substitution Agreement**”) is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **National Institute of Wind Energy**, having its office at _____ (hereinafter referred to as the “**Concessionaire Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);
2. **M/s _____**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes); and
3. _____¹⁰, having its registered office at _____, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes).

WHEREAS:

- A. The Concessionaire Authority has entered into a Concession Agreement dated _____ with the Concessionaire (the “**Concession Agreement**”) for the Project, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Concessionaire Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company (hereinafter defined) in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Concessionaire Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in _____

¹⁰ Insert name and particulars of Lenders’ Representative.

accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of any breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessionaire Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- (a) References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- (b) References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- (c) The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- (d) The rules of interpretation stated in the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT OF RIGHTS AND TITLE

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Concessionaire Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. For the avoidance of doubt, the Senior

Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution Upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessionaire Authority for its information and record. A Notice of Financial Default under this Clause 3.2.1 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessionaire Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 24 of the Concession Agreement, and upon receipt of such notice, the Concessionaire Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessionaire Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessionaire Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Concessionaire Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Event of Default

- 3.3.1 Upon occurrence of a Concessionaire Event of Default, the Concessionaire Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Concessionaire Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessionaire Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessionaire Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Concessionaire Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessionaire Authority under

Clause 3.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project Facilities including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessionaire Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Concessionaire Authority for shortlisting the bidders for award of the Concession provided that the Lenders' Representative may represent to the Concessionaire Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessionaire Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessionaire Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Concessionaire Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessionaire Authority, the Nominated Company shall be deemed to have been accepted. The Concessionaire Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessionaire Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Concessionaire Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessionaire Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessionaire Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessionaire Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessionaire Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessionaire Authority shall undertake Termination under and in, accordance with the provisions of Article 25 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Concessionaire Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3, the Concessionaire Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessionaire Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Concessionaire Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful

functions by the Concessionaire Authority, its officers, servants and agents.

- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under his Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

- 8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a panel of arbitrators comprising 1 (one) nominee each of the Concessionaire Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996.
- 8.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [New Delhi] and the language of arbitration shall be English.

9. MISCELLANEOUS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Concessionaire Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessionaire Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no, other person or entity shall have any rights hereunder.

9.7 Survival

Termination of this Agreement:

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

- (c) all obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 3 (three) years following the date of such Termination or expiry of this Agreement.

9.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5:30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereof shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of the Concessionaire Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the board of directors of the Concessionaire at its meeting held on the [•] day of [•], 20 [•] hereunto affixed in the presence of [•] Director, who has signed these presents in token thereof and [•] Company Secretary/ Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(Email address)

In the presence of

- 1.
- 2.

**SCHEDULE 5:
TESTS**