

## ANNEXURE A

- (i) A Bidder shall submit only 1 (one) bid. No Affiliate of such Bidder shall submit a bid where such Bidder has submitted a bid. In case a Bidder submits more than 1 (one) bid, or an Affiliate of the Bidder submits a bid where such Bidder has submitted a bid, the bids submitted by the Bidder and its Affiliate shall be rejected. For the purpose of this RFQ:
- (a) “**Affiliate**” with respect to a Bidder shall mean a person who: (a) controls such Bidder, (b) is controlled by such Bidder, (c) is under common control with such Bidder, (d) is an associate company of the Bidder, or (e) is a subsidiary company of such Bidder.
  - (b) the terms “**associate company**”, “**control**” and “**subsidiary company**” shall have the same meanings as assigned to them in the Companies Act, 2013 (18 of 2013).
- (ii) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the bidding process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the bidding process, if:
- (a) the Bidder, or its Affiliate (or any constituent thereof) and any other Bidder or any Affiliate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:  
  
Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder or an Affiliate thereof (or any shareholder thereof having a shareholding of more than 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder or Affiliate, in the other Bidder or an Affiliate is less than 20% (twenty percent) of the aggregate issued, subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;  
  
For the purposes of this Clause, indirect shareholding held through 1 (one) or more intermediate persons shall be computed as follows: (A) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (B) subject always to sub-clause (A) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the aggregate issued, subscribed and paid up equity shareholding of such intermediary; or
  - (b) a constituent of such Bidder is also a constituent of another Bidder; or
  - (c) such Bidder or any Affiliate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, or subordinated debt from any other Bidder, or any Affiliate thereof or has provided or has entered into an agreement to provide any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Affiliate thereof; or

- (d) such Bidder has the same legal representative for purposes of a Bid as any other Bidder; or
- (e) such Bidder or any Affiliate thereof, has a relationship with another Bidder or any Affiliate thereof, directly or indirectly or through a common third party/ parties, that puts either or both of them in a position to have access to each other's information, or to influence the Bid of either or each other; or
- (f) such Bidder or any Affiliate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

*Explanation:*

For purposes of this RFQ, the term “**Affiliate**” means, in relation to any Bidder, a person who controls, is controlled by, or is under the common control with such Bidder. As used in this definition, the expression “**control**” means: (a) with respect to a company, corporation or limited liability partnership the ownership, directly or indirectly, of more than 50% (fifty percent) of the economic or voting rights of such person, or (b) with respect to a person which is not a company, corporation or limited liability partnership, the power to direct the management and policies of such person.

- (iii) To the extent that the Bidder is not the Successful Bidder pursuant to the bidding process, it shall not acquire any interest in the Successful Bidder at any time during the currency of the Contract.
- (iv) A Bidder should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, nor has been expelled from any project or contract by any public entity for breach of contract by such Bidder nor have had any contract terminated by any public entity for breach by such Bidder:

Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause is such that it does not reflect:

- (a) any malfeasance on its part in relation to such cause or event;
- (b) any willful default or patent breach of the material terms of the relevant contract;
- (c) any fraud, deceit or misrepresentation in relation to such contract; or
- (d) any rescinding or abandoning of such contract,

it may make a representation to this effect to the Purchaser for seeking a waiver from the disqualification hereunder and the Purchaser may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the bidding process or on the implementation of the project.