

Corrigendum - 1

**Tender Notification for**

**"PROVIDING SERVICES FOR DATA CENTRE OPERATIONS  
IN BYPL"**

**NIT No.: CMC/BY/18-19/RB/AK/003**

**Due Date & Time of Submission: 02.05.2018, 12:00 HRS**

**BSES YAMUNA POWER LIMITED**

Shakti kiran building, Karkardooma, New Delhi – 110032

Corporate Identification Number: U40109DL2001PLC111525

Telephone Number: +91 011 39997191/39999388

**BSES YAMUNA POWER LTD (BYPL)**

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**SECTION- I**

**REQUEST FOR QUOTATION**

**1.1 GENERAL**

BSES Yamuna Power Limited invites sealed tenders in 2 envelopes for “Providing services in data centre operations in BYPL” The bidder must qualify the requirements as specified in clause 1.3 stated below. The sealed envelopes shall be duly superscribed as-

**“Providing services in data centre operations in BYPL”**

**“NIT NO CMC/BY/18-19/RB/AK/003”**

- 1.1.1 BYPL invites sealed tenders from eligible Bidders for the above-mentioned Contract
- |                                            |                                                                  |
|--------------------------------------------|------------------------------------------------------------------|
| Estimated cost of Contract:                | Rs. 1.87 Crores                                                  |
| Earnest money Deposit:                     | Rs. 3.74 Lacs                                                    |
| Cost of Tender (Non-Refundable):           | Rs. 1180/-                                                       |
| Completion period of the Contract:         | One year or as defined in the contract                           |
| <b>Date &amp; time of Pre Bid Meeting:</b> | <b>18.04.2018 at 04:00 PM at Shakti Kiran Bldg, Karkardooma.</b> |
| Date & time of Submission of Tender:       | 02.05.2018 till 12:00 HRS                                        |
| Date & time of opening of Tender:          | 02.05.2018 at 16:00 HRS (Opening of technical bid)               |

The tender document can be obtained from address given below against submission of non-refundable demand draft of Rs. 1180/- drawn in favour of BSES YAMUNA Power Ltd, payable at Delhi:

**Head of Department  
Contracts & Material Deptt.  
BSES YAMUNA Power Limited  
Illrd Floor, ‘A’ Block  
Shakti Kiran Building  
Karkardooma  
Delhi-110032**

The tender document will be issued on all working days upto the date mentioned as above. The tender documents & detail terms and conditions can also be downloaded from the website [www.bsesdelhi.com](http://www.bsesdelhi.com). In case tender papers are downloaded from the above website, then the bidder has to deposit a separate demand draft covering the cost of bid documents.

**1.2 POINTS TO BE NOTED**

- 1.2.1 Contracts envisaged under this Tender are required to be executed in all respects up to the period of completion mentioned above.
- 1.2.2 Only those agencies, who fulfil the qualifying criteria as mentioned in clause 1.3 should submit the tender documents.
- 1.2.3 Tender document consists of the following:
- A. Request for quotation/ Notice Inviting Tender
  - B. Instructions to Bidders
  - C. General Terms & conditions
  - D. Scope of Work & specifications
  - E. Bill of Quantities/ Price Format

F. Formats and Annexures

1.2.4 The Contract shall be governed by the details listed in para 1.2.3 above.

1.2.5 BSES YAMUNA Power Ltd reserves the right to accept/reject any or all Tenders without assigning any reason thereof and alter the amount and quantity mentioned in the Tender documents at the time of placing purchase/Work orders. Tender will be summarily rejected if:

- Earnest Money Deposit (EMD) of value INR (Rs.) 3,74,000/- is not deposited in shape of FDR/BG drawn in favour of BSES Yamuna Power Ltd. Payable at Delhi.
- Tender document is downloaded from website and tender fees is not submitted.
- The offer does not contain "FOR NEW DELHI" price indicating break-up towards all taxes, duties & freight.
- Complete Techno-commercial details supported by relevant documents are not enclosed.
- If pre-bid meeting is not attended by the bidder
- Tender received after due date and time.

**1.3 Qualification Criteria:**

The prospective bidder must qualify all of the following requirements to be eligible to participate in the bidding.

1. The bidder must be a contractor for providing manpower services in the same or similar area of work or in the SLAs of similar nature having its office in NCT of Delhi or adjoining towns of NCR. The office should have fully fledged statutory compliance team. The Head/ incharge of this office should be competent enough to take all decision related to the contract. The agency should have requisite skills, knowledge, expertise, experience and system as per the requirement of the company and capability to act as data centre operations agency with trained and experienced person with requisite skill and knowledge to perform the function.
2. Bidder must have extensive experience of carrying out similar type of Contracts and must have executed/ running a single contract order of minimum value of Rs. 1.50 Crores or two contracts of Rs. 75 Lacs each in same or similar area in the last three years. Bidder should have average annual turnover of Rs. 5 Crores in last three financial Years. A certificate of chartered accountant along with Final accounts to be attached with the Bid.
3. Bidder should have valid Registration No. of GSTIN. Bidder should have PAN No & should fulfil all statutory compliances like PF, ESI registration.
4. An undertaking that the bidder has not been blacklisted/debarred by any central/state government or by any other institution including electricity boards.
5. The bidder should also confirm and an undertaking is to be submitted that there is no pending litigation with government/other institution on account of executing any work order.
6. Company reserves the right to carry out capability assessment of the Bidders and company's decision shall be final in this regard without assigning the reasons thereof and preference will be given to the Bidders who have provided services in same or

similar SLAs in BYPL or any other utility companies. In case agency is rendering services to BYPL or any sister concern, a performance certificate for all the works is to be submitted along with the technical bid.

The bidder shall submit all necessary documentary evidence to establish that the Bidder meets all the above qualifying requirements

**Please Note:**

- 1) Firms who are debarred/ blacklisted in other utilities in India will not be considered.
- 2) Company reserves the right to carry out technical/ commercial capability/ infrastructure assessment of the firms by inspection or by any other means and company's decision shall be final in this regard.

Also, the Firm shall furnish the following commercial & technical documents along with the Tender:

- a) Covering letter on Letter Head.
- b) Notarized Power of attorney for signing of application
- c) Agency's Profile
- d) Financial capabilities of the firm:
  - Latest balance sheet
  - Detail of Banker & Cash Credit limit
  - Turnover certificate issued by C.A for the last three Financial Years.
- e) Details of constitution of the company (Proprietary/ Limited/ Pvt. Ltd.)
- f) Memorandum & Articles of Association of the Company/Partnership deed.
- g) Organization Chart of the company
- h) Details of manpower engagement capability
- i) Experience with credentials and performance certificates
- j) Copy of ESI/PF Registration certificate
- k) Copy of PAN/Service tax no.
- l) Premises Detail.

**1.4 Pre-Bid Meeting:**

Pre-bid meeting shall be conducted by BYPL at the date and specified in this tender document at Head Office of BYPL. All the queries related to this tender must reach to C&M BYPL at least one day before the date of pre- bid. All the queries shall be replied in the pre bid, in case any change is required in the tender document the same shall be effected in the form of corrigendum to this tender. The bidder or their representative who intends to bid and who have either purchased tender documents or will pay tender fees for down loaded documents are invited to attend the pre-bid meeting. Corrigendum, if any, to the tender document shall be hosted on the website subsequent to pre-bid meeting. Bidders are requested to submit their offer strictly in line with this tender document. No deviation is acceptable.

**1.4.1 BID SUBMISSION:**

The bidders are required to submit the bid in 2(two) parts and submit in original + one copy to the following address

**Head of Department  
Contracts & Material Deptt.  
BSES Yamuna Power Ltd  
III Floor, "A" Block, Shakti Kiran Building,  
Karkardooma,**

### New Delhi-110032

#### **PART A: TECHNICAL BID** comprising of following:

- EMD of requisite amount
- General information about bidder
- Documentary evidence in support of all the qualifying criteria
- Technical Literature if any.
- Tender document.
- Details of experience of works of same or similar nature. Copy of work orders and performance certificates.
- Power of attorney
- An undertaking that salary of deployed manpower shall be as per applicable minimum wages in NCT of Delhi and all other statutory compliances. Also the salary shall be credited through ECS in the account of manpower deployed.
- Deviations if any.
- Copy of all statutory Registration certificates like, ESI, PF etc.
- Any other relevant document

#### **PART B: FINANCIAL BID** comprising of Prices strictly in the Format enclosed in **SECTION V**

#### **TIME SCHEDULE**

The bidders should complete the following within the dates specified as under:

S. No.	Steps	Comprising of	Due date
1	Technical Queries, if any	All Queries related to RFQ	18.04.2018 04:00 PM
2	PART A Technical and Commercial Bid	Technical bid along with all documents as mentioned in this tender	02.05.2018, 12:00 PM
3	PART B Financial Bid	Price strictly in the Format enclosed (Section V)	Successful bidders will be intimated through website

This is a two part bid process. Bidders are to submit the bids in 2(two) parts

Both these parts should be furnished in separate sealed covers super scribing **NIT no. DUE DATE OF SUBMISSION**, with particulars as **PART-A TECHNICAL BID & COMMERCIAL TERMS & CONDITIONS** and **PART-B FINANCIAL BID** and these sealed envelopes should again be placed in another sealed envelope which should be super scribed with —“**Tender Notice No.& Due date of opening**”. The same shall be submitted before the due date & time specified.

**Part – A:** Technical Bid should not contain any cost information whatsoever and shall be submitted within the due date. After technical evaluation, the list of qualified bidders will be posted immediately on BSES website.

**PART B:** This envelope will be opened after technical evaluation and only of the qualified bidders and the date of opening of the same shall be intimated in due course of time.

Notwithstanding anything stated above, the Company reserves the right to assess bidders' capability to perform the contract, should the circumstances warrant such assessment in the overall interest of the Company. In this regard the decision of the Company is final.

#### **1.4.2 Award Decision**

- a) Company intends to award the business on a lowest bid basis but should cover the cost of resources required to execute the work along with reasonable profit, so contractors are encouraged to submit the bid competitively. The decision to place order/LOI solely depends on Company on the cost competitiveness across multiple lots, quality, delivery and bidder's capacity in addition to other factors that Company may deem relevant.
- b) The Company reserves all the rights to award the contract to one or more bidders so as to meet the execution requirement or nullify the award decision without assigning any reason thereof.
- c) In case any contractor is found unsatisfactory during the execution process, the award will be cancelled and BYPL reserves the right to award the work to other contractor(s) who will be found eligible/fit.

#### **1.4.3 Market Integrity**

We have a fair and competitive marketplace. The rules for bidders are outlined in the Terms & Conditions. Bidders must agree to these rules prior to participating. In addition to other remedies available, we reserves the right to exclude a bidder from participating in future markets due to the bidder's violation of any of the rules or obligations contained in the Terms & Conditions. Bidder(s) who violate the marketplace rules or engage in behaviour that disrupts the fair execution of the marketplace restricts a bidder to length of time, depending upon the seriousness of the and conditions violation. Examples of violations include, but are not limited to:

- Failure to honour prices submitted to the market place.
- Breach of the terms published in Request for Quotation/NIT

#### **1.4.4 Confidentiality**

All information contained in this RFQ is confidential and may not be disclosed, published or advertised in any manner without written authorization from BYPL. This includes all bidding information submitted.

All RFQ documents remain the property of BYPL and all bidders are required to return these documents to BYPL upon request. Bidder(s) who do not honour these confidentiality provisions will be excluded from participating in future bidding events.



## 1.5 Contact Information

Technical clarification, if any, as regards this RFQ shall be sought in writing and sent by post/courier to following address:

Technical		Commercial
Contact Person	Head (RCM)	Head (C & M)
Address	BSES Yamuna Power Ltd Head RCM CBD-III, Corporate Annex Ground Floor, Opp Aggarwal Fun City Mall Karkarddoma, Delhi – 110032	BSES Yamuna Power Ltd C & M Deptt 3rd Floor, A Block, Shakti kiran Bldg, Karkarddoma, Delhi - 110032

## **SECTION-II**

### **INSTRUCTIONS TO BIDDERS**

#### **1.0 GENERAL**

BSES YAMUNA Power Ltd, hereinafter referred to as “The Company” is desirous for “Providing Services for data centre operations in BYPL” and it has now floated tender as notified earlier in this bid document

#### **2.0 SCOPE OF WORK**

The scope includes Services for data centre operations in BYPL. Detailed scope of work shall be as enumerated in Section IV

#### **3.0 DISCLAIMER**

3.01 This Document includes statements, which reflect various assumptions, which may or may not be correct. Each Bidder/Bidding Consortium (to the extent allowed) should conduct its own estimation and analysis and should check the accuracy, reliability and completeness of the information in this Document and obtain independent advice from appropriate sources in their own interest.

3.02 Neither Company nor its employees will have any liability whatsoever to any Bidder or any other person under the law or contract, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage whatsoever which may arise from or be incurred or suffered in connection with anything contained in this Document, any matter deemed to form part of this Document, provision of Services and any other information supplied by or on behalf of Purchaser or its employees, or otherwise arising in any way from the selection process for the Supply.

3.03 Though adequate care has been taken while issuing the Bid document, the Bidder should satisfy itself that Documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately.

3.04 This Document and the information contained herein are Strictly Confidential and are for the use of only the person(s) to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisors).

#### **4 COST OF BIDDING**

The Bidder shall bear all cost associated with the preparation, submission and processing of its Bid and the company will in no case be responsible or liable for the costs.

#### **5. BIDDING DOCUMENTS**

5.01 The Scope of Contract, Bidding Procedures and Contract Terms are described in the Bidding Documents. In addition to the covering letter accompanying Bidding Documents, the Bidding Documents include:

SECTION – I:	REQUEST FOR QUOTATION
SECTION – II:	INSTRUCTIONS TO BIDDER
SECTION – III:	GENERAL TERMS AND CONDITIONS
SECTION – IV:	SCOPE OF WORK
SECTION – V:	BILL OF QUANTITY/PRICE FORMAT

SECTION – VI: BID FORM  
ANNEXURES: FORMATS FOR EMD AND BANK GUARANTEE ETC.

- 5.02 The bidder is expected to examine the bidding documents, including all Instructions, Forms, Terms and Specifications. Failure to furnish all information required by the bidding Documents or submission of a bid not substantially responsive to the bidding Documents in every respect may result in the rejection of the Bid.

**6.0 AMENDMENT OF BIDDING DOCUMENTS**

- 6.01 At any time prior to the deadline for submission of Bids, the Company may for any reason(s), whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by Amendment.
- 6.02 The Amendment shall be part of the Bidding Documents, pursuant to Clause 5.01, and it will be notified in writing by Fax/e-mail to the Bidders or by way of uploading the corrigendum on BSES website, and will be a binding.
- 6.03 In order to afford prospective Bidders a reasonable time in which to take the Amendment into account in preparing their Bids, the Company may, at its discretion, extend the deadline for the submission of Bids.

**7.0 PREPARATION OF BIDS**

**LANGUAGE OF BID**

The Bid prepared by the Bidder, and all correspondence, documents etc. relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the English Language. Any printed literature furnished by the Bidder may be written in another Language, provided that this literature is accompanied by a Hindi/English translation, in which case, for purposes of interpretation of the Bid, the Hindi/English translation shall govern.

**8.0 DOCUMENTS COMPRISING THE BID**

The Bid prepared and submitted by the Bidder shall comprise the following components:

- (a) Bid Form, Price & other Schedules (STRICTLY AS PER FORMAT) and Technical Data completed in accordance with Technical Specification.
- (b) All the Bids must be accompanied with the required EMD and Tender Fees against each tender.

**9.0 BID FORM**

- 9.01 The Bidder shall complete “Original” Bid Form and submit it along with details mentioned in Technical bid (without filling price).

**9.02 EMD**

Pursuant to Clause 8.0(b) above, the bidder shall furnish, as part of its bid, an EMD of requisite amount as already specified in the Section-I. The EMD is required to protect the Company against the risk of Bidder’s conduct which would warrant forfeiture. The EMD shall be denominated in any of the following form:

- (a) Fixed Deposit Receipts (FDR)/ DD/ Pay Order/ Banker’s Cheque from a nationalized

or scheduled bank in favor of BSES YAMUNA Power Limited valid for 3 (three) months after the last date of receipt of tenders

- (b) BG from a nationalized or scheduled bank in favour of BSES Yamuna Power Limited valid for 3 (three) months after last date of receipt of tender

Earnest money deposit given by all the bidders except the successful bidder(s) shall be refunded within 4 (Four) weeks from the date of opening of price bid. The amount of EMD by the lowest bidder shall be adjustable in the security bank guarantee

The EMD may be forfeited in case of:

- (a) If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form or
- (b) In the case of a successful Bidder, if the Bidder does not
  - (i) Accept the Purchase Order, or
  - (ii) Furnish the required performance security BG.

## **10.0 BID PRICES**

- 10.01 Bidders shall quote for the entire Scope of Contract with prices for individual items. The tenderer is required, at his expense, to obtain all the information he may require to enable him to submit his tender.

Prices quoted by the Bidder shall be "Firm" and not subject to any price adjustment during the performance of the Contract. A Bid submitted with an adjustable price/PVC will be treated as non -responsive and rejected.

## **11.0 BID CURRENCIES**

Prices shall be quoted in Indian Rupees Only.

## **12.0 PERIOD OF VALIDITY OF BIDS**

- 12.01 Bids shall remain valid & open for acceptance for a period of 90 days from the date of opening of the Bid.
- 12.02 Notwithstanding Clause 12.01 above, the Company may solicit the Bidder's consent to an extension of the Period of Bid Validity. The request and the responses thereto shall be made in writing and sent by Fax/post/courier

## **13.0 ALTERNATIVE BIDS**

Bidders shall submit Bids, which comply with the Bidding Documents. Alternative Bids will not be considered. The attention of Bidders is drawn to the provisions regarding the rejection of Bids in the terms and conditions, which are not substantially responsive to the requirements of the Bidding Documents.

## **14.0 FORMAT AND SIGNING OF BID**

- 14.01 The original Bid Form and accompanying documents (as specified in Clause 9.0), clearly marked "Original Bid", must be received by the Company at the date, time and place specified pursuant to Clauses 15.0 and 16.0.

- 14.02 The original copy of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to sign on behalf of the Bidder. Such authorization shall be indicated by written Power-of-Attorney accompanying the Bid. All pages of the bid shall be initialled by the signatory accompanied with seal of the Agency.
- 14.03 The Bid shall contain no interlineations, erasures or overwriting except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

**D. SUBMISSION OF BIDS**

**15.0 SEALING AND MARKING OF BIDS**

- 15.01 Bid submission: One original (hard copies) of all the Bid Documents shall be sealed and submitted to the Company before the closing time for submission of the bid.
- 15.02 The Technical Documents and the EMD shall be enclosed in a sealed envelope and the said envelope shall be superscribed with – “Technical Bid & Commercial Terms & Conditions”. The price bid shall be inside another sealed envelope with superscribed – “Financial Bid” Both these envelopes shall be sealed inside another big envelope. All the envelopes should bear the Name and Address of the Bidder and marking for the Original. The envelopes should be superscribed – “Tender Notice No. & Due Date of opening”
- 15.03 The Bidder has the option of sending the Bids in person. Bids submitted by Email/Telex/Telegram /Fax will be rejected. No request from any Bidder to the Company to collect the proposals from Courier/Airlines/Cargo Agents etc shall be entertained by the Company.

**16.0 DEADLINE FOR SUBMISSION OF BIDS**

- 16.01 The Original bid must be timely received by the company at the address specified in section –I
- 16.02 The Company may, at its discretion extend the deadline for the submission on of bids by amending the Bidding Documents in accordance with Clause 6.0, in which case all rights and obligations of the Company and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended

**17.0 ONE BID PER BIDDER**

Each Bidder shall submit only one Bid by itself. A Bidder who submits or participates in more than one Bid will cause all those Bids to be rejected.

**18. LATE BIDS**

Any Bid received by the Company after the deadline for submission of Bids prescribed by the Company, pursuant to Clause 16.0, will be declared "Late" and rejected and returned unopened to the Bidder.

**19. MODIFICATIONS AND WITHDRAWAL OF BIDS**

The Bidder is not allowed to modify or withdraw its Bid after the Bid's submission.

**20. EVALUATION OF BID**

The bids will be evaluated technically on the compliance to tender terms and Conditions.

BYPL reserves the right to ask the bidders to provide breakup of the prices as quoted by them against line items. In case it is observed that the bidders have under quoted the prices against these line items in view of applicable minimum requirement of resources, BYPL reserves the right to out –rightly reject these bid(s).

**20.1 PROCESS TO BE CONFIDENTIAL**

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Company's processing of Bids or award decisions may result in the rejection of the Bidder's Bid.

**21.0 CLARIFICATION OF BIDS**

To assist in the examination, evaluation and comparison of Bids, the Company may, at its discretion, ask the Bidder for a clarification of its Bid. All responses to requests for clarification shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted

**22.0 PRELIMINARY EXAMINATION OF BIDS / RESPONSIVENESS**

- 22.01 Company will examine the Bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.
- 22.02 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected.
- 22.03 Prior to the detailed evaluation, Company will determine the substantial responsiveness of each Bid to the Bidding Documents including execution capability and acceptable quality of the services offered. A substantially responsive Bid is one, which conforms to all the terms and conditions of the Bidding Documents without deviation.
- 22.04 Bid determined as not substantially responsive will be rejected by the Company and may not subsequently be made responsive by the Bidder by correction of the non conformity.

### **23.0 EVALUATION AND COMPARISON OF BIDS**

- 23.01 The evaluation of Bids shall be done based on the delivered cost competitiveness basis.
- 23.02 The evaluation of the Bids shall be a stage-wise procedure. The following stages are identified for evaluation purposes: In the first stage, the Bids would be subjected to a responsiveness check later on the Technical Proposals and the Conditional ties of the Bidders would be evaluated.
- 23.03 The Company's evaluation of a Bid will take into account, in addition to the Bid price, the following factors, in the manner and to the extent indicated in this Clause:
- (a) Contract completion schedule
  - (b) Conformance to Qualifying Criteria
  - (c) Deviations from Bidding Documents
  - (d) Conformity and compliance to the conditions/details provided in pre-bid meeting
  - (e) Change in the quantity from mentioned in the tender

The cost of all quantifiable deviations and omissions from the specification, terms and conditions specified in Bidding Documents shall be evaluated.

- 23.04 Any adjustments in price, which result from the above procedures, shall be added for the purposes of comparative evaluation only to arrive at an "Evaluated Bid Price". Bid Prices quoted by Bidders shall remain unaltered.

### **24.0 AWARD OF CONTRACT CONTACTING THE COMPANY**

- 24.01 From the time of Bid opening to the time of contract award, if any Bidder wishes to contact the Company on any matter related to the Bid, it should do so in writing.
- 24.02 Any effort by a Bidder to influence the Company and/or in the Company's decisions in respect of Bid evaluation, Bid comparison or Contract Award, will result in the rejection of the Bidder's Bid.

### **25.0 THE COMPANY 'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS**

The Company reserves the right to accept or reject any Bid and to annul the Bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Company's action.

### **26.0 AWARD OF CONTRACT**

The Company will award the Contract to the successful Bidder whose Bid has been Determined to be the lowest-evaluated responsive Bid, provided further that the Bidder has been determined to be qualified to satisfactorily perform the Contract. Company reserves the right to award order to other bidders in the tender, provided it is required for progress of project & provided he agrees to come to the lowest rate. The full or part of the contract may be awarded to other bidder(s) on differential rates.



## **27.0 THE COMPANY'S RIGHT TO VARY QUANTITIES**

The Company reserves the right to vary the quantity i.e. increase or decrease the Numbers/ quantities without any change in terms and conditions during the execution of the Order. BYPL may increase or reduce the area/ scale of operations after starting of execution of the contract and the size of contract may be adjusted accordingly. BYPL also reserves the right to implement optimisation plan for resources required by way of improving productivity. Accordingly the contract size may be adjusted proportionately. No resource addition/replacement shall be allowed without prior written approval of BYPL's concerned department.

## **28.0 LETTER OF INTENT/ NOTIFICATION OF AWARD**

The letter of intent/ Notification of Award shall be issued to the successful Bidder whose bids have been considered successful for award of work/order. The successful Bidder shall be required to furnish a letter of acceptance within 7 days of issue of the letter of intent /Notification of Award by Company.

## **29.0 CORRUPT OR FRAUDULENT PRACTICES**

29.01 The Company requires that the Bidders observe the highest standard of ethics during the procurement and execution of the Project. In pursuance of this policy, the Company:

- (a) Defines, for the purposes of this provision, the terms set forth below as follows:  
"Corrupt practice" means behaviour on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; and "Fraudulent practice" means a misrepresentation of facts in order to influence a award process or the execution of a contract to the detriment of the Company, and includes collusive practice among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non competitive levels and to deprive the Company of the benefits of free and open competition.
- (b) Will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question ;
- (c) Will declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

29.02 Furthermore, Bidders shall be aware of the provision stated in the Terms and Conditions of Contract.



**SECTION – III:**

**GENERAL TERMS AND CONDITIONS**

**General Instructions:**

- a) All the Bids shall be prepared and submitted in accordance with these instructions.
- b) Bidder shall bear all costs associated with the preparation and delivery of its Bid, and the Company will in no case shall be responsible or liable for these costs.
- c) The Bid should be submitted by the Bidder in whose name the bid document has been issued and under no circumstances it shall be transferred/ sold to the other party.
- d) The Company reserves the right to request for any additional information and also reserves the right to reject the proposal of any Bidder, if in the opinion of the Company, the data in support of RFQ requirement is incomplete.
- e) The Bidder is expected to examine all instructions, forms, terms & conditions and specifications in the Bid Documents. Failure to furnish all information required in the Bid Documents or submission of a Bid not substantially responsive to the Bid Documents in every respect may result in rejection of the Bid. However, the Company's decision in regard to the responsiveness and rejection of bids shall be final and binding without any obligation, financial or otherwise, on the Company.

**2.0 COMMERCIAL TERMS & CONDITIONS:**

**1. Definition:**

The following terms & expressions as used in this Tender Document shall have the meaning defined and interpreted here under:

**1.1. Company:**

The terms "Company" shall mean BSES YAMUNA Power Limited having its office at Shakti Kiran Building, Karkardooma and Delhi-110032 and shall include its authorized representatives, agents, successors and assignees.

**1.2 Contractor:**

Contractor shall mean the successful Tenderer / vendor to whom the contract has been awarded

**1.3 Rate:**

The unit rates for the Contract to be carried out at site shall be as per finalized unit rates through tender. The Invoice of the Contractor will be processed as per the actual Contract done and the quantities of each item performed by the Contractor as per the site requirement to be certified by Officer In-charge.

The finalized rates shall be firm for the entire duration of Contract to be carried out by the Contractor under the Contract order and are not subject to escalation for any reason whatsoever.

**1.4 Contract Order Specification:**

The terms "Contract order Specification" shall mean the Technical specification of the Contract by you and all such particulars mentioned directly/referred to or implied as such in the Contract order.

**1.5 Site:**

The terms "Site" shall mean the Contracting location mentioned in the Contract order.

**2. OFFICER-IN-CHARGE:**

The term "Officer In-Charge" shall mean the Company's nominated representative for the purpose of carrying out the Contract. The same shall be mentioned in the Contract.

**3. EXAMINATION OF SITE AND LOCAL CONDITIONS:**

The contractor is deemed to have visited all the sites comes under BYPL licensed area under the Contract order and ascertained therefore all site conditions and information pertaining to his Contract. The company shall not accept any claim whatsoever arising out of the difficulties at site/terrain/local conditions, if any.

**4. LANGUAGE AND MEASUREMENT:**

The Contract order issued to the contractor by the company and all correspondence and documents relating to the Contract order placed on the Contractor shall be written in English language. Metric System shall be followed for all dimension, units etc.

**5.0 VALUE OF THE CONTRACT ORDER:**

Value of Contract order will be contracted out on the basis of finalized rates. The rates shall remain firm and fixed for the period of contract. They shall not be subject to escalation and any increase in amount

**6.0 TAX & DUTIES:**

Prices will be inclusive of all taxes and duties, cess etc.(Except GST). However, as per applicable rate will be deducted from your bills as Tax Deduction at Source (TDS). Your letter head stating that you have deposited/or will deposit the Tax as per the applicable GST laws. The total order value shall not be adjusted on account of any upward variations in statutory taxes, duties & levies imposed by competent authorities by way of fresh notification(s) within the stipulated completion period or any change in interpretation of law except for GST. However, in case of reduction in taxes, duties & levies, the benefits of the same shall be passed on to BYPL.

**7.0 PERFORMANCE SECURITY BANK GUARANTEE:**

- 7.1 CONTRACTOR shall furnish the Security Performance Bank Guarantee in the prescribed format (Appendix I) within 15 days from the date of issue of Order for due performance of the provisions of Contract Order.
- 7.2 The Security Performance Bank Guarantee shall be of 5% of the total value of order and shall be valid till completion, plus three (3) months towards claim period
- 7.3 The Security Performance Bank Guarantee shall be issued from any nationalized bank as per company format.
- 7.4 The Company shall reserve the right to invoke the bank guarantee unconditionally and without recourse to the Contractor, if there is failure to perform any part of the Contract for whatsoever reason. This clause is pertaining to performance of contractual obligations and the decision of Company shall be final in this regard.
- 7.5 In the event, in Company's sole judgment, the Contractor has fulfilled all its obligations under this Contract, Company shall release the security performance bank guarantee without interest, within seven (7) days from the last date up to which

the performance bank guarantee is to be kept valid or if it is assessed by the Company that Contractor has not fulfilled its obligation then the performance bank guarantee shall be extended by the Contractor till that period as requested by the Company.

**8.0) TERMS OF PAYMENT:**

- 8.1 Service Provider shall submit correct monthly running bills to the concerned Officer-in-Charge, completed during the month.
- 8.2 Company shall make payments on the bills within 30 days from the date of submission of the bills duly verified and certified by Officer-in-Charge by quoting all the applicable clauses of agreement along with documentation in support of verification, at Vendor Support Cell, Shakti Kiran Building, Karkardooma, after deduction of taxes required by applicable laws to be deducted at source.

The Service Provider shall submit to the Company true copies of receipts of all such taxes paid within 30 days of making such payments. Invoices raised for work carried out under this order, in the manner indicated above, will be returned to the Service Provider by Engineer-in-charge within 3 days of its receipt, duly certified by Engineer-in-charge as under:

"Certified that work and the quantity for which this invoices (with No & Date) has been raised, has been duly verified and certify with reference to relevant documents and found to be correct, the terms and condition shall be satisfactorily completed by the Service Provider. Payment may be made as per Agreement rates".

- 8.3 In case of first bill, the billing period shall be till the end of the immediately following calendar month. The bills shall be made in favor of BSES Yamuna Power Ltd, Shakti Kiran Building, Karkardooma, Delhi.

The bill shall consist of the prescribed documents on standard stationary designed by the Company. Service Provider shall collect the details of such documents and formats from the Company.

- 8.4 Notwithstanding anything with the release/ payment of bills by the Company to the Service Provider, the Service Provider shall at all times ensure the due and timely payment of wages to all persons, including workmen, employed by the Service Provider pursuant to this Agreement and compliance with other applicable statutory requirements within time limits. Nothing contained herein shall establish any link between release / payment of the bill by the Company to the Service Provider and the payment of any salary, wages or any other dues whatsoever by the Service Provider to its employees, workmen and laborers.
- 8.5 Service Provider shall, at no point of time, claim or have the right to claim any additional fees, expenses or charges of any nature whatsoever, other than the Rates set out in clause no 5.
- 8.6 100% payment shall be released on submission of bill and certification of Contract completion by Officer In-charge. The bill shall be paid within 30 days on receipt of such bills at our office.

- 8.7 The contractor shall submit the invoice along with the checklist duly filled in. Invoice shall be processed and payment shall be made to contractor on certification of Officer In Charge for compliance to check points given in check list. The check list shall be provided by Officer In Charge.
- 8.8 Contractor shall keep a record of attendance of all his employees on a daily basis preferably through a biometric system and submit the same along with the bill.
- 8.9 Contractor shall provide attendance of staff deployed in a hard copy and a soft copy in an Excel file along with the copy of his bill.
- 8.10 The company may modify procedure for submission of bills. The vendor shall be obliged to submit its bill as per the procedure stipulated by the company time to time.

**9. STATUTORY OBLIGATIONS:**

- 9.1 The Service Provider shall take all steps, necessary or otherwise, to comply with the various applicable laws/rules/regulations/ notifications, including, but not limited to, the provisions of Contract Labour (Regulation & Abolition Act) 1970 as amended, Minimum wages Act, 1948, Workman Compensation Act, ESI Act, PF Act, Bonus Act and all other applicable laws and rules framed there under including any statutory approval required from the Central/State Governments, Ministry of Labor. Service Provider has to comply with all latest amendments/revisions made during the period of the Agreement in any of above laws/rules/regulations/notifications as stated above.
- 9.2 The Service Provider shall, prior to commencement of the jobs under this Agreement, furnish to the Company the permanent Provident Fund Code numbers and ESI of its employees.
- 9.3 Service Provider shall bear the entire responsibility, liability and risk relating to coverage of its workforce under different statutory regulations including Workman's Compensation Act, ESI Act, Factories Act, 1948, the Contract Labor (Regulation and Abolition) Act 1970, as amended from time to time, and any other relevant laws/regulations as the case may be. Service Provider shall also be solely responsible for the payment of all benefits such as Provident Fund, Bonus, Retrenchment Compensation, Leave etc. applicable as per the various statutory laws/regulations and shall keep the Company indemnified in this regard against any claim. The Company shall entitled to deduct from any money due to or to become due to Service Provider any money paid or payable by way of compensation as aforesaid or cost or expenses in connection with any claims thereto and Service Provider shall abide by the decision of the Company to the sum payable by Service Provider under the provisions of this clause.

**9.4 STATUTORY REQUIREMENTS:**

The Contractor should obtain and must submit the following to Company before commencement of Contract and these shall renewed from time to time as and when required:

- a) PF Code No. and all employees to have PF A/c No. under PF every Act, 1952.
- b) All employees to have a temporary or permanent ESI Card as per ESI Act.
- c) ESI Registration No.

- d) GST registration number..
- e) PAN No.
- f) Contract Tax Registration Number/ VAT Registration if applicable.

The Contractor must follow:

- a) To follow Minimum Wages Act prevailing in the state.
- b) The Salary/wages to all deployed manpower is to be distributed through ECS only into the bank accounts of all individuals and not later than 7th of succeeding month. In case of unavoidable circumstances the payment may be made through crossed cheques in the name of the individual and information of all such cases need to be submitted to HR(CMC).
- c) To maintain Wage-cum -Attendance Register
- d) The manpower which is not covered under ESI should be covered by a suitable mediclaim policy including family floater of Minimum Value of Rs 2.00 lacs.
- e) To maintain First Aid Box at Site. e) Latest P.F. and E.S.I. challans pertaining to the period in which Contract was undertaken along with a certificate mentioning that P.F. and E.S.I. applicable to all the employees has been deducted and deposited with the Authorities within the time limits specified under the respective Acts.
- f) **INSURANCE POLICY FOR LIFE COVER:**

Contractor must take a Life Insurance Policy for staff deployed in BYPL for this work to insure against any loss of life which may occur during the contract period for the work of the BYPL. The Policy shall have coverage of Rs. 7 Lacs (Death + Permanent Total Disability + Partial Permanent Disability due to external accidents).

## **10. Penalty/Incentive**

### **10.1 Score Card: Incentive/Penalty**

#### **KEY PERFORMANCE INDICATORS (KPI)**

Performance of the contractor shall be measured on a scale of 10 on the basis of the following KPIs.

(Score Card Parameters)

A Weighted Average Score shall be computed using the aforesaid weight age and score every month.

BSES reserves the right to add/change/delete to the list of existing KPI, modify weight age for any parameter and change the basis for assigning scores, at any point of time during the execution of the contract. This will be communicated in writing to the contractor by the Company.

**Incentive / Deduction on the basis of Performance Measurement:**

Incentive or deduction as specified below shall be made from the monthly payment of contractor on the basis of his performance on Key performance indicator.

Monthly Score out of 10 - Incentive / Deduction

More than or equal to 9 - Incentive of 3% on billed amount excluding levies and taxes.

More than or equal to 8 but less than 9 - Incentive of 1.5% on billed amount excluding levies and taxes.

More than or equal to 6 but less than 8 - No incentive or deduction.

More than or equal to 5 but less than 6 - Deduction of 1.5% on billed amount excluding levies and taxes.

Less than 5 - Deduction of 3% on billed amount excluding levies and taxes.

Note:

The score card based penalty will be applicable from second quarter of the contract period.

In the mean time, score card will be prepared and shared with vendors on regular basis and needful communication based on score card results will be done.

A committee will be formed for review of score card parameters along with quantum of penalty to be imposed based on score card.

Committee will give it's suggestions for amendment/improvement, if required.

#### PERFORMANCE REVIEW PROCEDURE:

The scorecards of the contractor shall be computed/released and monitored by BET/Head (Business) or his nominated official on a monthly basis. The procedure for reviewing the performance shall be as follows:

A high-level committee comprising of senior level officers of the user department, C&M and/or CEO Cell shall review performance of all those contractors monthly, whose scores are falling in penalty/incentive zone. In-Charge of the concerned division/work area will also be invited to the meeting. The proceedings will be coordinated and convened by the official responsible for computing/releasing and monitoring of the score card. The Score card may be modified retrospectively or prospectively as per discretion of BYPL during the tenure of contract. In exception circumstances BYPL reserves the right to impose the penalty beyond the score card.

First review of the performance shall be held a month after the start of the contact on receipt of the scorecard for the first month.

Key Performance Indicators and Scores for the preceding month shall be deliberated in every review meeting and the contractor will be guided and enquired about the ways to improve its performance scorecard.

Subsequently, as and when deemed appropriate, the company will initiate the following corrective action if the Weighted Average Score of the contractor is below the stipulated performance standards:



First instance of the Weighted Average Score falling in the Penalty zone (below 6 points) during the contract period: Contractor shall be verbally warned and this fact will be recorded in the Minutes of the Meeting.

Second instance of the Weighted Average Score falling in the Penalty zone (below 6 points) during the contract period: Contractor shall be issued first Warning Letter indicating that the company may terminate the contractor if the performance of the contractor does not improve beyond the stipulated benchmark.

Third instance of the Weighted Average Score falling in the Penalty zone (below 6 points) during the contract period: Contractor shall be issued second warning letter indicating that the company will initiate proceedings to terminate the contractor if the performance of the contractor falls below the stipulated benchmark once again.

Fourth instance of the Weighted Average Score falling in the Penalty zone (below 6 points) during the contract period: A Notice for Termination of Contract shall be issued to the contractor while giving the stipulated notice period as mention in contract. After suitable notice period, the contract shall be treated as terminated and it shall be binding to the contractor and the Contract Performance bank guarantee submitted by contractor shall be forfeited.

It implies that if a contractor falls in a penalty zone for more than 3times in a year, his contract shall get terminated. In case the duration of the contract is for a period of more than one year the process specified in previous para will be applied for a period of one year There after, it will be repeated for the subsequent years.

Adherence to Service Level Agreement

For non-adherence to SLA and matter referred to DERC, double the amount payable by DISCOM shall be charged from Contractor

Format of score card is attached as Annexure - 'A'

## **11.0 Penalty Clause on statutory:**

In the event of any non-compliance of statutory requirement under the various labour laws as stipulated in this work order/contract, by Agency and if the same is demanded from BYPL by the Statutory Authorities to pay any such amount, Agency is liable to pay back the said amount along with a penalty of 20% within 10 (ten) days of the written communication from BYPL. The imposition of the penalty is without prejudice to the BYPL's right to terminate the Contract."

The closure of the work and final settlement of the contract/work order shall be effected only after receiving NOC from BSES".

## **12.0 Termination:**

Either party may terminate this agreement in the case the other party has committed a breach of any of the terms of this agreement and has not cured such breach within in a period of Thirty (30) days from the date of receipt of the notice from the aggrieved. Party requesting it to cure breach, provided that if and to the extent that the failure to perform its obligation under this agreement shall be caused by or arise from force Majeure, defined herein below, such failure shall not constitute a breach of

this agreement. Either party may immediately terminate this Agreement by giving written notice, in the following circumstances:

1. The other party makes an assignment for the benefit of its creditors: or
2. The other party goes into liquidation, or a winding up order is made against it, or it suffers the appointment of a receiver, trustee or similar officer of the whole or parts of its business or assets, or it files a petition seeking reorganization, composition or a similar relief, or it takes any action under any law regarding insolvency;
3. The representation and warranties made by the other party are false or misleading;
4. Either party shall be entitled (without prejudice to any right of action accruing or already accrued to either party) to terminate this Agreement by giving to the other party not less than 30(THIRTY) days notice in writing to the same effect. However, Agency shall be entitled to receive payment against all its dues till the date of notice of termination so served by either side, within 7 (seven) days from the date of receiving such notice after deducting the amount authorized under this agreement which is accepted by Agency

### **13.0 INDEMNITY:**

Contractor shall indemnify and save harmless COMPANY against and from any and all liabilities, claims, damages, losses or expenses arising due to or resulting from:

- a) Any breach non-observance or non-performance by contractor or its employees or agents of any of the provisions of the Contract.
- b) Any act or omission of contractor or its employees or agents.
- c) Any negligence or breach of duty on the part of contractor, its employees or agents including any wrongful use by it or them of any property or goods belonging to or by COMPANY.

Contractor shall at all times indemnify COMPANY against all liabilities to other persons, including the employees or agents of COMPANY or contractor for bodily injury, damage to property or other loss which may arise out of or in consequence of the execution or completion of Contracts and against all costs charges and expenses that may be occasioned to COMPANY by the claims of such person.

### **14.0 EVENTS OF DEFAULTS:**

COMPANY may, without prejudice to any of its other rights or remedies under the Contract Order or in law, terminate the whole or any part of this Contract Order by giving written notice to the Contractor, if in the opinion of COMPANY, contractor has neglected to proceed with the Contracts with due diligence or commits a breach of any of the provisions of this Contract order including but not limited to any of the following cases:

- a) Failing to complete execution of Contract within the terms specified in the Contract order.
- b) Failing to complete Contracts in accordance with the approved schedule of Contract.
- c) Failing to comply with any reasonable instructions or orders issued by COMPANY in connection with the Contract.
- d) Failing to comply with any of the terms or conditions of this Contract order.

In the event COMPANY terminates this Contract order, in whole or in part, on the occurrence of any event of default, COMPANY reserves the right to engage any other subcontractor or agency to complete the Contract or any part thereof, and in addition to any other right COMPANY may have under the Contract order or in law including without limitation the right to penalize for delay under clause 14.0 of this Contract , the contractor shall be liable to COMPANY for any additional costs that may be incurred by COMPANY for the execution of the Contract.



#### **15.0 RISK & COST:**

If the Contractor fails to execute the Contract as per specification / as per the direction of Officer's In-charge within the scheduled period and even after the extended period, the contract shall get cancelled and company reserves the right to get the Contract executed from any other source at the Risk & Cost of the Contractor. The Extra Expenditure so incurred shall be debited to the Contractor.

#### **16.0 GOVERNING LAW AND ARBITRATION**

1. Governing Law: This Work Order shall be governed by the laws of India and each party submits to the exclusive jurisdiction of the courts in New Delhi.
2. Dispute Resolution Mechanism. All disputes and differences arising out of or in connection with this Agreement shall be resolved amicably by mutual discussion within 30 days. If the dispute cannot be resolved by mutual discussions and agreement the parties will take such dispute to an arbitral panel comprising three arbitrators. The parties shall be entitled to appoint one arbitrator each and the two arbitrators so appointed shall appoint the third arbitrator who shall act as presiding arbitrator. The party seeking to invoke arbitration shall appoint its arbitrator in its notice of arbitration. The other party shall appoint its arbitrator and intimate the same within thirty days of the receipt of the notice of arbitration. In the event that such party fails to appoint its arbitrator within the specified period the arbitrator named in the notice for arbitration shall decide the dispute as the sole arbitrator. The arbitration shall be conducted in New Delhi in accordance with the provisions of the Arbitration and Conciliation Act 1996. The award of the arbitral panel shall be final and binding on all parties. The arbitration proceedings shall be conducted in English.

#### **17.0 FORCE MAJEURE:**

##### **17.1 General**

An "Event of Force Majeure" shall mean any event or circumstance not within the reasonable control, of the Party affected, but only if and to the extent that:

- (i) Such event or circumstance, despite the exercise of reasonable diligence, could not have been prevented, avoided or reasonably foreseen by such Party;
- (ii) Such event or circumstance materially and adversely affects the ability of the affected Party to perform its obligations under this Contract, and the affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to prevent or avoid the effect of such event on the affected party's ability to perform its obligations under this Contract and to mitigate the consequences thereof. For the avoidance of doubt, if such event or circumstance would not have materially and adversely affected the performance of the affected party had such affected party followed good industry practice, such event or circumstance shall not constitute force majeure.
- (iii) Such event is not the direct or indirect result of the failure of such Party to perform any of its obligations under this Contract; and
- (iv) Such Party has given the other Party prompt notice describing such events, the effect thereof and the actions being taken in order to comply with Article 14.1

**(I) SPECIFIC EVENTS OF FORCE MAJEURE**

Subject to the provisions of Article 14.1, Events of Force Majeure shall include only the following to the extent that they or their consequences satisfy the above requirements:

1. The following events and circumstances:
  - a. Effect of any natural element or other acts of God, including but not limited to storm, flood, earthquake, lightning, cyclone, landslides or other natural disasters, and\
  - b. Explosions or fires or flood
2. Public disorder, insurrection, rebellion, sabotage, riots or violent demonstrations of a local character;
3. Declaration of the Site as war zone.
4. Any order, regulation, directive, requirement from any Governmental, legislative, executive or judicial authority.

**(II) NOTICE OF EVENTS OF FORCE MAJEURE**

If a force majeure event prevents a party from performing any obligations under the Contract in part or in full, that party shall:

1. Immediately notify the other party in writing of the force majeure events within 2 working days of the occurrence of the force majeure event
2. Be entitled to suspend performance of the obligation under the Contract which is affected by force majeure event for the duration of the force majeure event
3. Use all reasonable efforts to resume full performance of the obligation as soon as practicable
4. Keep the other party informed of all such efforts to resume full performance of the obligation on a regular basis
5. Provide prompt notice of the resumption of full performance or obligation to the other party.

**(II) MITIGATION OF EVENTS OF FORCE MAJEURE**

The Agency shall:

- (i) Make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by an Event of Force Majeure, including applying other ways in which to perform the Contract;
- (ii) Use its best efforts to ensure resumption of normal performance after the termination of any Event of Force Majeure and shall perform its obligations to the maximum extent practicable as agreed between the Parties; and
- (iii) Keep the Company informed at regular intervals of the circumstances concerning the event of Force Majeure, with best estimates as to its likely continuation and what measures or contingency planning it is taking to mitigate and or terminate the Event of Force Majeure.

**(III) BURDEN OF PROOF**

In the event that the Parties are unable in good faith to agree that a Force Majeure event has occurred to an affected party, the parties shall resolve their dispute in accordance with the provisions of this Contract. The burden of proof as to whether or not a force majeure event has occurred shall be upon the party claiming that the force majeure event has occurred and that it is the affected party.

**(IV) TERMINATION FOR CERTAIN EVENTS OF FORCE MAJEURE**

If any obligation of any Party under the Contract is or is reasonably expected to be delayed or prevented by a Force Majeure event for a continuous period of more than 1 (one) month during the Term of the Contract the Contract shall be terminated at the discretion of the Company and neither Party shall be liable to the other for any consequences arising on account of such termination.

**18.0 SECRECY CLAUSE:**

The technical information, drawing and other related documents forming part of order and the information obtained during the course of investigation under this order shall be the COMPANY's exclusive property and shall not be used for any other purpose except for the execution of the order. The technical information drawing, records and other document shall not be copied in any form, transferred, or divulged and/or disclosed to third party in full/part, not misused in any form whatsoever except to the extent for the execution of the order. These technical information, drawing and other related documents shall be returned to the COMPANY with all approved copies and duplicates including drawing/plans as are prepared by the Contactor during the executions of this order, if any, immediately after they have been used for agreed purpose.

In the event of any breach of this provision, the contractor shall indemnify the COMPANY against any loss, cost or damage or claim by any party in respect of such breach.

**19.0 SAFETY CODE:**

The Contractor shall ensure adequate safety precautions at site as required under the law of the land to facilitate safe working during the execution of work and shall be entirely responsible for the complete safety of their workmen as well as other workers at site and premises during execution of contract.

The contractor shall observe the safety requirements as laid down in the contract and in case of sub-contract (only after written approval of company), it shall be the responsibility of main contractor that all safety requirements are followed by the employees and staff of the sub-contractor.

The contractor employing two hundred employees or more, including contract workers, shall have a safety co-ordinator in order to ensure the implementation of safety requirements of the contract and a contractor with lesser number of employees, including contract workers, shall nominate one of his employees to act as safety co-ordinator who shall liaise with the safety officer on matters relating to safety and his name shall be displayed on the notice board at a prominent place at the work site.

The contractor shall be responsible for non-compliance of the safety measures, implications, injuries, fatalities and compensation arising out of such situations or incidents.

In case of any accident, the contractor shall immediately submit a statement of the same to the owner and the safety officer, containing the details of the accident, any injury or casualties, extent of properly damage and remedial action taken to prevent recurrence and in addition, the contractor shall submit a monthly statement of the accidents to the owner at the end of each month.

## **20.0 ACCEPTANCE:**

Vendor confirms to have gone through the Policy of BYPL on legal and ethical code required to be followed by vendors encapsulated in the #Vendor Code of Conduct# displayed on the official website of BYPL ([www.bsesdelhi.com](http://www.bsesdelhi.com)) also, which shall be treated as a part of the contract/PO/WO.

Vendor undertakes that he shall adhere to the Vendor code of Conduct and also agrees that any violation of the Vendor Code of Conduct shall be treated as breach of the contract/PO/WO.

In event of any such breach, irrespective of whether it causes any loss/damage, Purchaser (BYPL) shall have the right to recover loss/damage from Vendor.

The Contractor/Vendor hereby indemnifies and agrees to keep indemnified the Purchaser (BYPL) against any claim/litigation arising out of any violation of Vendor Code of Conduct by the Contractor/Vendor or its officers, agents & representatives etc.

Acceptance of the CONTRACT implies and includes acceptance of all terms and conditions enumerated in the CONTRACT in the technical specification and drawings made available to Contractor consisting of general conditions, detailed scope of work, detailed technical specification, detailed equipment drawing and complete scope of work.

Contractor and Company contractual obligation are strictly limited to the terms set out in the CONTRACT. No amendments to the concluded CONTRACT shall be binding unless agreed to in writing for such amendment by both the parties.

## **21.0 WORKMEN COMPENSATION:**

The Contractor shall take insurance policy under the Workman Compensation Act to cover such workers who are not covered under ESI and PF by the VENDER however engaged to undertake the jobs covered under this order and a copy of this insurance policy will be given to Company for reference and records. This insurance policy shall be kept valid at all times. In case there are no worker involve other than those who are covered under ESI and PF by the VENDER, the VENDER shall certify for the same.

The VENDER shall keep the COMPANY indemnified at all times, against all claims of compensation under the provisions of Workmen Compensation Act 1923 as amended from time to time or any compensation payable under any other law for the time being involving workmen engaged by the VENDER in carrying out the job involved and against costs and expenses, if any, incurred by the COMPANY in connection therewith and without prejudice to make any recovery.

The COMPANY shall be entitled to deduct from any money due to or to become due to the VENDER, moneys paid or payable by way of compensation as aforesaid or cost or expenses in connection with any claims thereto and the VENDER shall abide by the decision of the COMPANY as to the sum payable by the VENDER under the provisions of this clause.

## **22.0 THIRD PARTY INSURANCE:**

The Agency shall, prior to commencement of the jobs under this Contract, take out a

comprehensive insurance policy against any damage or loss or injury which may occur to any property or to any person or any employee or representative of any outside Agency/Company engaged or not engaged for the work of the Company, by or arising out the execution of the work or temporary work or in carrying out of jobs under this Work Order.

## **23.0 ENVIRONMENTAL, HEALTH and SAFETY PLAN:**

Agency will make ensure that the Environment, Health and Safety (EHS) requirements are clearly understood and faithfully implemented at all levels at site as per instruction of Company. Agencies must comply with these requirements:

- (i) Comply with all of the elements of the EHS Plan and any regulations applicable to the work
  - (ii) Comply with the procedures provided in the interests of Environment, Health and Safety
  - (iii) Ensure that all of their employees designated to work are properly trained and competent
  - (iii) Ensure that all plant and equipment they bring on to site has been inspected and serviced in accordance with legal requirement and manufacturer's or suppliers' instructions
  - (iv) Make arrangements to ensure that all employees designated to work on or visit the site present themselves for site induction prior to commencement of work
  - (v) Provide details of any hazardous substances to be brought onsite
  - (vi) Ensure that a responsible person accompanies any of their visitors to site
- All agencies' staff is accountable for the following:
- 1. Use the correct tools and equipment for the job and use safety equipment and protective clothing supplied, e.g. helmets, goggles, ear protection, etc. as instructed
  - 2. Keep tools in good condition
  - 3. Report to the Supervisor any unsafe or unhealthy condition or any defects in plant or equipment
  - 4. Develop a concern for safety for themselves and for others
  - 5. Prohibit horseplay
  - 6. Not to operate any item of plant unless they have been specifically trained and are authorized to do so.

## **24. NOTICE:**

Any notice or other formal communication to be given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be sent by registered post, A.D. to the addresses of Service Provider or BYPL as mentioned hereinabove or to any other addresses as agreed by the parties, in writing from time to time.

**SECTION IV**

**SCOPE OF WORK**

**1. SCOPE OF WORK**

Contractor's Scope of work: General

Service Provider shall provide the assigned services as per the desired performance level to the Company.

The manpower deployed by agency shall be on 26 days in a month basis as per Minimum Wages Act prevailing NCT of Delhi. All the resources shall be deployed after prior clearance from BYPL.

Agency will submit all relevant documents as stipulated in the contract to Engineer Incharge for verification before the commencement of the work and thereafter as and when required in addition to Compliance Cell / C&M / Finance / HR Cell

Attendance of staff may be required through biometric system.

The contractor will submit police verification report for all the workforce deployed before submission of the first running bill.

**1.0 Contractor's Scope of work: Execution**

The number of customers, for meter reading, for any cycle shall be defined through a Meter Reading Order (MRO), generated by the system. The details of the Meter-Reading shall be uploaded to the Meter-Reading Instrument. The Meter-Reader (MR) shall conduct meter-reading and capture all data in the PDS.

The vendor (DCA / DCL) has to ensure that all activities are carried out as a composite activity as per schedule and also assist the company in reducing overall cycle time i.e from meter reading to bill distribution.

**1.1 Process description and Responsibility of DCA (Data Centre Associate) and DCL (Data Centre Leader)**

- a. It is the prime responsibility of DCA and DCL to complete the meter reading cycle as per schedule.
- b. DCA will clear all DUMMY MRU cases on daily basis i.e. Pendency of DUMMY MRU to be maintained ZERO.
- c. Receipt and Downloading of extracted Form Y to be done by DCA at the beginning of every cycle.
- d. DCA will download the binder wise data into the respective PDS's (Server to PDS) on daily basis.
- e. DCA will make available / provide the downloaded PDS to the meter reader for meter downloading (Server to PDS) and collect PDS with downloaded meter reading on daily basis (PDS to Server ).
- f. The DCL shall ensure regular downloading / uploading of meter reading data through PDS to the BYPL Billing System on daily basis and overall supervision of Data Centre.

**1.2 Pre audit Checks - DCL will lead the pre audit process on daily basis.**



- a. Once data is downloaded onto system via PDS, certain system generated checks are carried out to out-sort cases with abnormalities. If no abnormalities are found, cases get uploaded to the server and the data is stored on the server till cycle packing.
  - b. If abnormalities are found, Data centre will complete the pre audit checks.
  - c. Cases which are out-sorted in pre audit checks are reviewed by the DCL.
  - d. In case the DCL feels there is an abnormality with the reading, a decision is taken on whether a site visit is required.
  - e. In case the DCL finds no abnormalities, the data is released and uploaded to server.
  - f. Cases which are out-sorted in pre-audit and are not released by the DCL are either considered for a site re-visit or are sent for provisional billing.
- 1.3 Completion of meter reading - Actual DL% Vs Target DL%
- a. Once the cycle is completed, DCL must check if the download percentage meets the pre-defined target for the division.
  - b. If cycle is below target threshold (to be decided by management), DCL is required to request the BM / AMPS for approval with reasons why the download percentage is below threshold.
  - c. AMPS is required to review and forward this request for the cycle packing with reasons why the download percentage was below target as well as corrective actions planned for the cycle OR If the scenario for cycle packing is rejected BM /AMPS directs the DCL to increase download percentage and then proceed for packing cycle.
  - d. Cycle download percentage is equal to or above target threshold (to be decided by management), DCL can go ahead and complete cycle packing procedure
  - e. The cycle is required to be packed from the AMPS's ID.
- 1.4. MR Performance Report / MIS
- a. On the completion of every cycle DCL will review the MR performance, note down under performers and key observations.
  - b. DCL shall conduct a session with MR's regarding key observations as well as provide feedback to them and finally submit the report to the AMPS.
- 1.5 Additional Information / Data
- a. Meter reader must ensure to mark / paste sticker of CA No. on meter / meter box and marking sequence of premises at the customer's premise as per requirement.
  - b. DCL to ensure that meter reader shall collect additional information as required. This additional information may include installation of ELCB, report of Earth leakage indicator ON, Unbilled meters, Correct route sequence , Details of new meter in the area, Details of consumer indulging in theft / violation of tariff / attempt to indulge in the offences etc related to electricity and all other information which cannot be punched in the Meter Reading Instrument .

- d. The above said collected data should be handed over to Data Centre/ DCA On manual basis by MR supervisor.  
(DCA DCL AMPS)
- 1.6 Execution Program and Co-ordination Procedure:
  - 1.6.1 Contractor shall deploy adequate number of skilled and efficient executives so as to ensure that the various jobs are completed in time, and in any case, as and when directed by the Company.
  - 1.6.2 Contractor shall submit to the Company written detailed execution plan, manpower deployment plan and details of the manpower at least 7 days prior to commencement of work under this contract order and have the same approved by the company.
  - 1.6.3 Immediately upon completion of any and all jobs under this contract order the Contractor shall submit to the Company's representative a report that sets out in detail the jobs carried out. The Company's representative shall, after being satisfied that the jobs under this contract order have been properly and successfully completed by the Contractor, certify the same. In case the Company's representative is of the view that further action/modifications/corrections need to be carried out, Contractor shall immediately carry out the said action/modifications/ corrections without being compensated for expenses incurred, if any, by Contractor for such action/modifications / corrections.
- 1.7 Performance Standards:
  - 1.7.1 The desired work shall be considered to be complete only when it meets desired performance level set by the Company. The performance level measurement includes the performance of all scope of work efficiently
  - 1.7.2 The Contractor will submit summary data after proper Checks, due diligence and duly corrected as specified by the Company. Any error detected afterwards will attract penalty.
  - 1.7.3 If the Cycles /data / reports is delayed, Company shall reserve the right to get the same job carried out by itself or through another Contractor and in such case, all expenses incurred/ deemed to be incurred towards carrying out the work along with overheads of 50% shall be recovered from the bills of the Contractor.
  - 1.7.4 In case of delay/wrong action; suggesting connivance between data centre executive and Customer, Contractor will have to assist Company in taking punitive legal action against that executive.
  - 1.7.5. In case of any event that any law enforcement forum or a court or similar body imposes penalty on Company for acts which are attributed to non performance/behavior/act by the Contractor or its employees intentionally or unintentionally, the same shall be recovered from the Contractor.
- 1.8 Additional Scope/ Work  
Any additional work beyond the scope enumerated in the Work Order above shall be carried out by the Contractor only after written confirmation from the signatory of the contract order. The Company shall not entertain any claim or increase in the order value due to execution of such additional work beyond the scope defined in the contract order. Any such claim shall stand automatically null and void unless accompanied with a formal amendment to the contract order.



1.9 Company's Scope of work:

1.9.1 Infrastructure to be provided to the Contractor:

- a. Suitable office space is to be provided, preferably in HO/division offices, for the smooth functioning of Data Centre operations.
- b. Basic amenities like electricity, drinking water, cooler, fan, tube light is to be provided.
- c. Computers shall be provided with LAN facility with UPS ( if centralized UPS is available) as per requirement.
- d. Separate E-mail ID shall be provided.
- e. Stationery like Paper, Envelopes shall be provided.

1.9.2 The Company shall authorize Photo Identity cards issued by Contractor to his representative, authorizing them for data centre function, at Contractor's cost. The employees of Contractor must carry the identity card every time.

**SECTION-V**

**Commercial Bid/Price Format**

**Sub:- Providing Services for data centre operations in BYPL**

S.No	Activity	Unit	QTY *	Rate (Rs.)	Amount (Rs.)
1	Uploading and Downloading of data from PDS as per direction of officer in charge	EACH	15,60,000.00		

\* GST will be extra

Name & Seal of Company

**SECTION-VI**

**BID FORM**

To  
Head of Department  
Contracts & Material Deptt.  
BSES YAMUNA Power Ltd  
IIIrd Floor, A Block  
Shakti Kiran Building, Karkardooma  
Delhi 110032

Sir,

- 1 We understand that BYPL is desirous of procuring of ..... in its licensed distribution network area in Delhi
  - 2 Having examined the Bidding Documents for the above named works, we the undersigned, offer to deliver the goods in full conformity with the Terms and Conditions and technical specifications for the sum of..... (figures.....) or such other sums as may be determined in accordance with the terms and conditions of the contract .The above amounts are in accordance with the Price Schedules attached herewith and are made part of this bid.
  - 3 If our Bid is accepted, we undertake to deliver the entire goods as per delivery schedule mentioned in Section IV from the date of award of purchase order/letter of intent.
  - 4 If our Bid is accepted, we will furnish a performance bank guarantee for an amount of 5% (Five)percent of the total contract value for due performance of the Contract in accordance with the Terms and Conditions.
  - 5 We agree to abide by this Bid for a period of 90 days from the due date of bid submission and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
  - 6 We declare that we have studied the provision of Indian Laws for supply of equipments/materials and the prices have been quoted accordingly.
  - 7 Unless and until Letter of Intent is issued, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
  - 8 We understand that you are not bound to accept the lowest, or any bid you may receive.
  - 9 There is provision for Resolution of Disputes under this Contract, in accordance with the Laws and Jurisdiction of Contract.
- Dated this..... day of..... 2018  
Signature..... In the capacity of .....  
.....duly authorized to sign for and on behalf of  
(IN BLOCK CAPITALS).....

**ANNEXURE -I**

**STATUTORY REQUIREMENTS:**

The Contractor should obtain and must submit the following to Company before commencement of Contract and these shall renewed from time to time as and when required:

- a) PF Code No. and all employees to have PF A/c No. under PF every Act, 1952.
- b) All employees to have a temporary or permanent ESI Card as per ESI Act.
- c) ESI Registration No.
- d) GST registration number.
- e) PAN No.
- f) Contract Tax Registration Number/ VAT Registration if applicable.

The Contractor must follow:

- a) To follow Minimum Wages Act prevailing in the state.
- b) Salary / Wages to be distributed through ECS to all the deployed work force or in presence of Company's representative not later than 7th of each month.
- c) To maintain Wage-cum -Attendance Register.
- d) The manpower which is not covered under ESI should be covered by a suitable mediclaim policy including family floater of Minimum Value of Rs 2.00 lacs
- e) To maintain First Aid Box at Site. e) Latest P.F. and E.S.I. challans pertaining to the period in which Contract was undertaken along with a certificate mentioning that P.F. and E.S.I. applicable to all the employees has been deducted and deposited with the Authorities within the time limits specified under the respective Acts.
- f) **INSURANCE POLICY FOR LIFE COVER:**  
Contractor must take a Life Insurance Policy for staff deployed in BYPL for this work to insure against any loss of life which may occur during the contract period for the work of the BYPL. The Policy shall have coverage of Rs. 7 Lacs (Death+ Permanent Total Disability + Partial Permanent Disability due to external accidents).

**ANNEXURE - II**

**FORMAT FOR EMD BANK GUARANTEE**

(To be issued in a Non Judicial Stamp Paper of Rs.100/- purchased in the name of the bank)  
Whereas [name of the Bidder] (herein after called the "Bidder") has submitted its bid dated [date of submission of bid] for the supply of [name and/or description of the goods] (here after called the "Bid"). KNOW ALL PEOPLE by these presents that WE [name of bank] at [Branch Name and address], having our registered office at [address of the registered office of the bank] (herein after called the "Bank"), are bound unto BSES YAMUNA Power Ltd., with its Corporate Office at SHAKTI KIRAN BUILDING, KARKARDOOMA, Delhi 110032, (herein after called —the "Purchaser") in the sum of ..... (Rupees ..... only) for which payment well and truly to be made to the said Purchaser, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 2018. The Conditions of this obligation are: If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Form; or

2. If the Bidder, having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity:

(a) Fails or refuses to execute the contract form, if required: or

(b) Fails or refuses to furnish the performance security, In accordance with the instructions to Bidders/Terms and Conditions.

We undertake to pay to the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that is its demand the purchaser will note that amount claimed by it is due to it, owing to the occurrence of one or both of the two condition(s), specifying the occurred condition or condition(s). This guarantee will remain in force up to and including 90 days after the due date of submission bid, and any demand in respect thereof should reach the Bank not later than the above date.

(Stamp & signature of the bank)

Signature of the witness(s)

**ANNEXURE –III**

**PROFORMA OF PERFORMANCE BANK GUARANTEE  
(TO BE ISSUED ON RS 100/- STAMP PAPER)**

**Bank Guarantee No.**

**Place:**

**Date:**

**To**

**BSES YAMUNA Power Limited**

Whereas BSES YAMUNA POWER LTD (hereinafter referred to as the "Purchaser", which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) has awarded to M/s..... with its Registered/ Head Office at (hereinafter referred to as the "Supplier" which expression shall unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns), a contract no. dated (the Contract);

And whereas the value of the Contract is Rs. (The Contract Value)

And whereas it is a condition of the Contract that the Supplier shall provide a Performance Bank Guarantee for the due and faithful performance of the entire Contract for a sum equivalent to - % of the Contract Value to the Purchaser on or before And whereas the Bank under instructions from the Supplier has agreed to guarantee due performance of the Contract.

**Now it is agreed as follows:**

1. we (Name of the Bank) having its Head Office at (hereinafter referred to as the Bank, which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) shall indemnify and keep indemnified the Purchaser for, and guarantee and undertake to pay to the Purchaser immediately on written demand, a sum equivalent to % of the Contract Value as aforesaid at any time upto (day/month/year) without any demur, reservation, contest, recourse or protest and/or without any reference to the Supplier, against all losses, damages, costs and expenses that may be caused to or suffered by the Purchaser by reason of any default on the part of the Supplier in performing and observing any and all the terms and conditions of the Contract or breach on the part of the Supplier of terms or conditions of the Contract.
2. The demand shall consist only of an original letter issued by Purchaser stating that the Supplier has failed to fulfill its obligations under the Contract. Such demand made by the Purchaser on the Bank shall be conclusive and binding notwithstanding any difference or dispute between the Purchaser and the Supplier or any difference or dispute pending before any Court, Tribunal, Arbitrator or any other authority.
3. The Bank undertakes not to revoke this guarantee during its currency without previous written consent of the Purchaser and further agrees that the guarantee herein contained shall continue to be enforceable during the period that would be taken for satisfactory performance and fulfillment in all respects of the Contract or in the event of any dispute between the Purchaser and Supplier until the dispute is settled (provided that the claim/ demand under this guarantee is lodged /referred during the currency of this guarantee) or till the Purchaser discharges this guarantee whichever is earlier.
4. The Purchaser shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extend the time for performance of the Contract by the Supplier. The Purchaser shall have the fullest liberty, without affecting the liability of the Bank under this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have

against the Supplier, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract. or any other course or remedy or security available to the Purchaser. The Bank shall not be released of its obligations under these presents by any exercise by the Purchaser of its liberty with reference: to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Purchaser or any other indulgence shown by the Purchaser of by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

5. The Bank agrees that the Purchaser and its option shall be entitled to enforce this guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Supplier and notwithstanding any security or other guarantee that the Purchaser may have in relation to the Supplier's liabilities.
6. Anything contained hereinabove the liability of the Bank under this guarantee is restricted to a sum equivalent to % of the Contract Value ie. Rs.(Rupees) and it shall remain in force upto and including .Unless a demand to enforce a claim under this guarantee is made against the Bank within 3months from the the above date of expiry i.e. up to all the rights of the Purchaser under the said guarantee shall be forfeited and the Bank shall be released and discharged from all liabilities thereafter.
7. This Performance Bank Guarantee shall be governed by the laws of India.

Dated this Witness day of 2018 at

1. For Bank

2. Signature

Name Power of Attorney No:

Banker's Seal

**ANNEXURE - IV**

**NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into at Delhi on the \_\_\_\_ day of \_\_\_\_\_, 2018

By And Between

\_\_\_\_\_, a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Disclosing Party" which expression shall unless repugnant to the meaning and context mean and include its successors and permitted assigns) of the FIRST PART  
And

\_\_\_\_\_, a company incorporated under the Companies Act, 1956 and having its registered office at \_\_\_\_\_, (hereinafter referred to as the "Receiving Party" which expression shall unless repugnant to the meaning and context mean and include its successors and permitted assigns) of the OTHER PART

Disclosing Party and Receiving Party are hereinafter individually referred to as the "Party" and collectively as the "Parties".

WHEREAS the Disclosing Party is in discussions with the Receiving Party for Security Management Services ("Project") and the Disclosing Party may in conjunction with the aforesaid disclose to the Receiving Party information relating to their businesses which is confidential and sensitive in nature and the Receiving Party is willing to undertake to restrict the use and further disclosure of the information in accordance with the terms and conditions set out herein:

1. The "Receiving Party" acknowledges and confirms the confidential and sensitive nature of all information, documents and material relating to the purpose and objectives of the Project or of the assets and operation of businesses, undertakings and establishments (i) that may be disclosed or made available to the Receiving Party by the Disclosing Party or its employees/ representatives/ advisors/ consultants; (ii) Receiving Party may gain or gather from any source; (iii) Receiving Party may process or arrive at during the course of the Project; (iv) Receiving Party may have come across during its discussions with any person in the course of the Project; and (v) all negotiations and discussions between the Parties relating to the Project (all the information referred to above is hereinafter referred to as the "Confidential Information").
2. Confidential Information is understood to include but is not limited to information made available in written, machine recognizable, graphic or sample form including, without limitation, drawings, photographs, models, design or performance specifications, its analysis, compilations, studies, notes and all other information and data disclosed orally or visually which has been developed / is exclusive to the Disclosing Party and includes information provided in various meetings.

Provided, however, that Confidential Information shall not include information which (a) is, or becomes, publicly known, otherwise than through a wrongful act of the Receiving Party or its representatives; (b) is in the possession of the Receiving Party prior to receipt from the Disclosing Party or its representatives without an obligation of confidentiality; (c) is independently developed by the Receiving Party, provided



that it was not derived from the Confidential Information; (d) is furnished to others by the Disclosing Party without restrictions, similar to those herein on the rights of such others to use or disclose; or (e) is approved in writing by the Disclosing Party for disclosure.

3. The Receiving Party shall not disclose the Confidential Information to any other person save and except with the express consent in writing given by the Disclosing Party. The Receiving Party, however, may disclose such part of the Confidential Information where (i) such disclosure is in response to a valid order of a court or any other governmental body having jurisdiction over this Agreement or (ii) such disclosure is otherwise required by law, provided that Receiving Party has given prior written notice to the Disclosing Party forthwith it came to learn about such disclosure requirement or the demand for such for disclosure and made all reasonable efforts to protect the Confidential Information in connection with such disclosure.
4. The Receiving Party shall with reference to the Confidential Information take all actions as may be necessary to (i) maintain the confidentiality thereof; (ii) limit its use of such Confidential Information solely for the purpose of the Project; (iii) avoid disclosure even to any of its employees that are not associated with the Project; (iv) avoid any dissemination or publication by any of its employees/ representatives associated with the Project; (v) avoid writing about sensitive information which is disclosed verbally and is sensitive to the operations; and (vi) safeguard the Confidential Information from being accessed by any unauthorized person. Such actions shall include but not be limited to obtaining appropriate non-disclosure undertakings from its employees directly or indirectly engaged in the Project.
5. The Receiving Party hereby agrees to indemnify and hold harmless the Disclosing Party and its directors and employees from and against any damage, loss, cost or liability (including all expenses and costs of enforcing rights under the Agreement) arising out of or resulting from (i) any use or disclosure by the Receiving Party of Confidential Information in violation of the Agreement; (ii) any leakage of the Confidential Information at the end of the Receiving Party or its employees/ representatives; and (iii) breach or violation of any of the other covenants herein.
6. The Receiving Party will, promptly upon the request of the Disclosing Party, deliver to the Disclosing Party, the documents comprising the Confidential Information or any part thereof and will destroy any copies, notes, or extracts thereof, without retaining any copy thereof, except that any portion of the Confidential Information that consists of analysis and any written Confidential Information not so requested and returned, shall be retained and kept subject to the terms of this Agreement, or upon the Disclosing Party's request destroyed (such destruction to be confirmed in writing).
7. The term of this Agreement is 5 years from the date of execution of this Agreement. However, the obligation to maintain confidentiality of the Disclosing Party's information shall survive the termination of this Agreement. Any violation of this agreement may lead to termination of all the relations with the Receiving party and black listing/ debarring of the Agency for future engagements.
8. This Agreement shall be governed by the laws of India. Any dispute, difference or claim related to or arising under, out of or in connection with this Agreement shall be resolved subject to the jurisdiction of Delhi Courts.

For the Disclosing Party

\_\_\_\_\_  
Authorized Signatory

Name:

Designation:

For the Receiving party

\_\_\_\_\_  
Authorized Signatory

Name:

Designation:

### Performance Evaluation Score Card for Data Centre Vendors

Sr.No.	Parameters	Evaluation Criteria	Information source	Score Weightage	SCORE ASSIGNMENT			Remarks
<b>A</b>	<b>Operational Performance</b>			<b>85</b>	<b>10</b>	<b>5</b>	<b>0</b>	
1	Downloading %	Total downloading % achieved as per AOP target	RCM	35	DL % = > 100	DL % >=99 & < 100	DL % < 99	
2	Ok % reading	Total OK readings % achieved as per monthly target (Monthly Target = AOP Target of downloading % + 0.25%)	RCM	0	OK % => 100.25	DL % >=99.25 & < 100.25	DL % < 99.25	
3	Reduction in >= 3 time provisionals	Total cases where reading not taken for >=3 times	RCM	20	0%	N/A	>0%	
4	Adherence to schedule	Total cycles delayed in comparison to predefined schedule for a month	RCM	10	0 Cycles	>=1 Cycle where delay is for 1 day only	In all other cases	
5	Clearance of Dummy MRU cases on monthly basis - SLCC	Number of pending cases in a month, having age more than 7 days (after meter installation)	BET	10	0 cases	N/A	>0 Cases	
6	First bill not generated - SLCC	Number of pending cases in a month (cases where first bill has not been generated and has crossed 40 days from the date of meter installation)	BET	10	0 cases	N/A	>0 Cases	
<b>B</b>	<b>Enablers for Contract performance</b>			<b>15</b>				
7	Reward and Recognition policy based on score card has to be on monthly basis	Agency has to implement reward and recognitions policy based on score card/performance of individual	Vendor	3	Done	N/A	Not done	

8	Display of I-cards by vendor workforce	Verification of I-cards by the AMPS on monthly basis of at least 5 employees	Divisional Head	3	No instance of vendor workforce without I-card	N/A	1 or more instances of workforce without I-card	
9	PF A/C opened for employees	Contractor shall open PF A/C for all employees	Vendor	3	Should cover 100% workers	N/A	If 100% not covered	
10	Timely submission of invoice	Date of receipt of invoice (within one week of completion of work)	Divisional Head	3	Submission of invoice by due date	N/A	Submission of invoice after due date	
11	Statutory compliance (Includes ESIC, Insurance)	Contractor shall take necessary steps for statutory compliances	HR	3	Should cover 100% workers	N/A	If 100% not covered	