

## **FORMAT- 6.3 B**

### **Format for Performance Bank Guarantee for Solar Power Project**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Solar Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of ..... MW, at .....[Insert name of the place] for purchase of power from 500 MW Grid Connected Solar Power Projects through competitive bidding process (followed by reverse e-auction), in response to the RfS dated..... issued by Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as MSEDCL) and MSEDCL considering such response to the RfS of .....[insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Intent No. ----- to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected bidders resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s ----- ----. As per the terms of the RfS, the [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to MSEDCL at [Insert Name of the Place from the address of the MSEDCL] forthwith on demand in writing from MSEDCL or any Officer authorised by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s\_\_\_[Insert name of the selected Solar Power Developer / Project Company].

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

Our liability under this Guarantee is restricted to INR\_\_ only.

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

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

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

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

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

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to INR\_\_\_\_\_ (INR \_\_\_\_\_ only) and it shall remain in force until .....

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

Signature

Name

Power of Attorney No. \_\_\_\_\_

For

\_\_\_\_\_[Insert Name of the Bank]

E-mail ID of the bank:

Banker's Stamp and Full Address. Dated this \_\_ day of \_\_, 20 \_\_\_\_\_

Witness:

1. .... Signature

Name and Address

2. .... Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks mentioned in this RfS.

## FORMAT-6.4

### **Format for Board Resolutions**

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

1. **RESOLVED THAT** Mr./Ms....., be and is hereby **authorized** to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to RfS vide **RfS No. MSEDCL/RE/2021/500 MW Solar/Ph-VI/T-30 Dated 06.05.2021** for purchase of power from ----- MW Grid connected solar power projects through competitive bidding process (followed by reverse e-auction) including signing and submission of all documents and providing information / response to RfS to Maharashtra State Electricity Distribution Company Limited(MSEDCL), representing us in all matters before MSEDCL, and generally dealing with MSEDCL in all matters in connection with our bid for the said Project. **(To be provided by the Bidding Company or the Lead Member of the Consortium)**
2. **FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 or Companies Act, 2013, as applicable and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest total equity in the Project. **(To be provided by the Bidding Company)**

**[Note: In the event the Bidder is a Bidding Consortium, in place of the above resolution at Sr. No. 2, the following resolutions are to be provided]**

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

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

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

..... executed by the Consortium as per the provisions of the RfS. **[To be passed by the Lead Member of the Bidding Consortium]**

**Certified true copy**

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**(Signature, Name and stamp of Company Secretary)**

**Notes:**

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

## **FORMAT- 6.5**

### **Format for Consortium Agreement**

(to be submitted separately for each Project)

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

THIS Consortium Agreement (“Agreement”) executed on this \_\_\_\_ day of Two thousand \_\_\_\_ between M/s.\_\_\_\_\_[insert name of Lead Member] a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “Member-1”, which expression shall include its successors, executors and permitted assigns) and M/s. \_\_\_\_\_ a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “Member-2”, which expression shall include its successors, executors and permitted assigns), M/s.\_\_\_\_\_[insert name of Member-n] a Company incorporated under the laws of \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the “Member-n”, which expression shall include its successors, executors and permitted assigns), [The Bidding Consortium should list the details of all the Consortium Members] for the purpose of submitting response to RfS execution of Power Purchase Agreement (in case of award), against RfS No. \_\_\_\_\_ issued by MSEDCL a Company incorporated under the Companies Act, 1956 or Companies Act, 2013 as applicable, and having its Registered Office at \_\_\_\_\_ or constituted under \_\_\_\_\_.

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

WHEREAS MSEDCL desires to purchase power from 500 MW Grid connected solar power projects through competitive bidding process (followed by reverse e-auction) WHEREAS, MSEDCL had invited response to RfS vide its Request for Selection (RfS) dated----- --.

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

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

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

- 1) We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s.\_\_\_\_\_), shall act as the Lead Member as defined in the RfS for self and agent for and on behalf of Member-2, -----, Member- n and to submit the response to the RfS.

- 2) The Lead Member is hereby authorized by the Members of the Consortium and Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.
- 3) Notwithstanding anything contrary contained in this Agreement, the Lead Member shall always be liable for the equity investment obligations of all the Consortium Members i.e. for both its own liability as well as the liability of other Members.
- 4) The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective equity obligations. Each Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
- 5) Subject to the terms of this Agreement, the share of each Member of the Consortium in the issued equity share capital of the Project Company is/shall be in the following proportion:

| Name     | Percentage |
|----------|------------|
| Member 1 | ---        |
| Member 2 | ---        |
| Member n | ---        |
| Total    | 100%       |

We acknowledge that after the execution of PPA, the controlling shareholding (having not less than 51% of the voting rights and paid up share capital) in the Project Company developing the Project shall be maintained for a period of (1) one year after commencement of supply of power.

- 6) The Lead Member, on behalf of the Consortium, shall inter alia undertake full responsibility for liaising with Lenders or through internal accruals and mobilizing debt resources for the Project, and ensuring that the Power Producer achieves Financial Closure in terms of the PPA.
- 7) In case of any breach of any equity investment commitment by any of the consortium Members, the Lead Member shall be liable for the consequences thereof.
- 8) Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
- 9) It is further specifically agreed that the financial liability for equity contribution of the Lead Member shall not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of its scope of work or financial commitments.
- 10) This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at [ ---- ] alone shall have the exclusive jurisdiction in all matters

relating thereto and arising there under.

- 11) It is hereby further agreed that in case of being selected as the Successful Bidder, the Members do hereby agree that they shall furnish the Performance Guarantee in favour of MSEDCL in terms of the RfS.
- 12) It is further expressly agreed that the Agreement shall be irrevocable and shall form an integral part of the Power Purchase Agreement (PPA) and shall remain valid until the expiration or early termination of the PPA in terms thereof, unless expressly agreed to the contrary by MSEDCL.
- 13) The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the response to RfS.
- 14) It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under the PPA except with prior written consent of MSEDCL.
- 15) This Agreement
  - a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
  - b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and
  - c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of MSEDCL
- 16) All the terms used in capitals in this Agreement but not defined herein shall have the meaning as per the RfS and PPA.

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

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

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

1) Signature-----

Name:

Address: