

PFCL that on or before the Closing Date, the Selected Bidder has furnished the Performance Bank Guarantee to Central Transmission Utility of India Limited and is in a position to comply with all other requirements of Clause 2.15.2 of the RFP.

3.3 The Selected Bidder shall immediately upon receiving the Sale Share Certificates and the Share Transfer Forms, duly execute the Share Transfer Forms and duly lodge the Share Transfer Forms and the Sale Share Certificates with the Company. The Selected Bidder may also propose the names of its nominees to be appointed on the Board of the Company and the address within the jurisdiction of the Registrar of Delhi and Haryana, which would be the new registered office of the Company. The Company shall, upon receipt of the said documents from the Selected Bidder, do the following:

- (i) Immediately on the Closing Date convene a meeting of the Board, wherein the Board shall pass the following necessary resolutions:
  - (a) approving the transfer of the Shares constituting the Sale Shares from the Shares Seller and the Nominees to the name of the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder];**
  - (b) approving the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** as a member of the Company and entering the name of the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** and its **nominees** in the register of members.
  - (c) changing the address of the registered office of the Company to the new address, within the jurisdiction of the Registrar of Delhi and Haryana, as may be provided by the Selected Bidder.
  - (d) appointing the nominees of the Selected Bidder on the Board and accepting the resignations of the other existing Directors on the Board and the Chair of the meeting which was taken by one of the existing Directors shall be vacated and appointment of a new Chairman who shall be one of the newly appointed Director, for the rest of the meeting.

Immediately pursuant to the acceptance of resignation of the existing Directors and appointment of new Chairman, the newly constituted Board of Directors shall continue with the meeting and pass the following resolution:

- (e) terminating all the authorizations granted regarding the business and/or operations of the Company or the operations of the bank accounts of the Company, with prospective effect; and
- (f) acknowledging and accepting the terms and conditions as contained in the executed copies of the RFP Project Documents and to abide by the provisions contained therein.

- (ii) Enter the name of the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** and its nominees as the legal and beneficial owner of the Sale Shares, free of all Encumbrances, in the register of members of the Company;
  - (iii) Make the necessary endorsements on the Sale Share Certificates, indicating the name of the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** and its nominees as the legal and beneficial owner of the Sale Shares evidenced there under;
  - (iv) Return the original Sale Share Certificates, duly endorsed in the name of the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** and its nominees, to the \_\_\_\_\_ **[Insert Name of the Selected Bidder/respective member companies of the Selected Bidder]** and its nominees, as the case may be or its authorised representative;
  - (v) Handover all the statutory registers and records, if any, of the Company to the Selected Bidder.
  - (vi) Handover certified true copies of the Board resolution passed by the Company as per (i)(a) to (i)(e) of Clause 3.3 (i) to Central Transmission Utility of India Limited.
- 3.4 The Parties to this Agreement agree to take all measures that may be required to ensure that all the events contemplated in the **Clauses 3.1 to 3.3** above on the Closing Date are completed on the same day.
- Notwithstanding the provisions of **Clause 3.3** hereto, all proceedings to be taken and all documents to be executed and delivered by the Parties at the Closing Date shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.
- 3.5 The Selected Bidder hereby acknowledges and agrees that after the date of acquisition of one hundred percent (100%) of the equity shareholding of the Company, by the Selected Bidder as per Clause 3.3, (a) the authority, rights and obligations of the PFCCL/Company in respect of the Bid Process shall forthwith cease and any actions to be taken thereafter regarding the Bid Process will be undertaken by Central Transmission Utility of India Limited themselves or through their any other authorized representative(s), (b) all rights and obligations of the PFCCL/Company shall be of the Selected Bidder and (c) any decisions taken by the PFCCL/Company prior to the date of its acquisition by the Selected Bidder shall continue to be binding on the Selected Bidder. The Parties hereby agree that this provision shall survive the termination of this Agreement.
- 3.6 This agreement shall be effective from the date of its signing by the Parties and shall remain in force until all the obligations of the respective Parties under Clause 3.3 hereto are fulfilled.

#### **4. REPRESENTATIONS AND WARRANTIES**

##### **4.1 The Selected Bidder hereby represents and warrants to the Shares Seller that:**

- 4.1.1 The Selected Bidder has full legal right, power and authority to enter into, execute and deliver this Agreement and to perform the obligations, undertakings and transactions set forth herein, and this Agreement has been duly and validly executed and delivered by the Selected Bidder and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- 4.1.2 The execution, delivery and performance of this Agreement by the Selected Bidder will not violate or contravene any provision of the Memorandum of Association or Articles of the Selected Bidder, (ii) will not violate or contravene any law, statute, rule, regulation, licensing requirement, order, writ, injunction or decree of any court, governmental instrumentality or other regulatory, governmental or public body, agency or authority by which the Selected Bidder are bound or by which any of its and/or their properties or assets are bound, and (iii) except to the extent that the same have been duly and properly completed or obtained, will not require any filing with, or permit, consent or approval of or license from, or the giving of any notice to, any court, governmental instrumentality or other regulatory, governmental or public body, agency or authority, joint venture party, or any other entity or person whatsoever; and
- 4.1.3 The Selected Bidder is not restricted in any manner whatsoever, including without limitation, on account of any judicial or governmental order, action or proceeding, or any contractual obligation assumed by the Selected Bidder, from purchasing the Sale Shares from the Shares Seller in the manner provided for in this Agreement.

##### **4.2 The Shares Seller hereby represents and warrants to the Selected Bidder that:**

- 4.2.1 The Shares Seller and the Nominees are the legal and beneficial owners of the Sale Shares, free and clear of any Encumbrance and the delivery to the Selected Bidder of the Sale Shares pursuant to the provisions of this Agreement will transfer to the Selected Bidder a good title to the Sale Shares.
- 4.2.2 The Shares Seller has full legal right, power and authority to enter into, execute and deliver this Agreement and to perform the obligations, undertakings and transactions set forth herein. The execution, delivery and performance of this Agreement will not violate the Memorandum and Articles of Association of the Shares Seller or contravene any contract by which it is bound.
- 4.2.3 The Shares Seller has obtained requisite authorizations to sell and transfer the Sale Shares to the Selected Bidder. The Shares Seller also represent that it is not prevented from transferring and selling the Sale Shares. Also, to the best of its knowledge, the Sale Shares are not the subject matter of any claim or pending proceeding or threatened by any legal proceeding made by any third party.