

Annexure XVII
Format of Consortium Agreement to be entered amongst all Members of a Bidding Consortium

[To be on non-judicial stamp paper of Rupees One Hundred Only (INR 100/-) or appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country.]

FORM OF CONSORTIUM AGREEMENT BETWEEN

M/s..... M/s., M/s.
....., AND M/s. for bidding for Tender No.
[Tender Details] (The “RFP”) dated [Date] as per its Clause 2 of Section 1.

1. **THIS Consortium Agreement** (hereinafter referred to as “Agreement”) executed on this..... [Date] day of..... [Month],..... [year] between
2. M/s., a company incorporated under the laws of..... and having its Registered Office at, [CIN No. _____] (hereinafter called “**Party 1,**” or “**Lead Consortium Member**” which expression shall include its successors, executors and permitted assigns);
3. M/s., a company incorporated under the laws of..... and having its Registered Office at, [CIN No. _____] (hereinafter called “**Party 2,**” which expression shall include its successors, executors and permitted assigns);
4. M/s., a company incorporated under the laws of..... and having its Registered Office at, [CIN No. _____] (hereinafter called “**Party 3,**” which expression shall include its successors, executors and permitted assigns);
5. M/s., a company incorporated under the laws of..... and having its Registered Office at, [CIN No. _____] (hereinafter called “**Party n,**” which expression shall include its successors, executors and permitted assigns);

[The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members above.]

WHEREAS the Parties above named are entering into this Consortium Agreement for the purpose of submitting the Bid in response to the RFP and in the event of selection as Selected Bidder to comply with the requirements as specified in the RFP and ensure execution of the AMISP Contract as may be required to be entered into with BRPL.

Party 1, Party 2, Party 3 ... and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party.”

WHEREAS the RFP stipulates that the Bidders applying as a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby each

Consortium Member undertakes to be liable for its Roles and Responsibilities, provide necessary guarantees and pay required fees as required as per the provisions of the RFP, as specified herein.

WHEREAS any capitalized term in this Agreement shall have the meaning ascribed to such term in the RFP document.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreement all the Parties in this Consortium do hereby mutually agree as follows:

1. In consideration of the selection of the Consortium as the Bidding Consortium by BRPL, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... *[Insert name of the Lead Member]*, shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of M/s., M/s., M/s., and M/s. *[The names of all the other Members of the Consortium to be filled in here]*.

2. The Lead Consortium Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members. The Roles and Responsibilities of all other members shall be as per the **Annexure** to this Agreement. In the event the Consortium is selected pursuant to the Bidding Process, the shareholding of all each of the Consortium Members in the AMISP shall be as under:

| S. No | Name of the Bidding Company/Member in case of a Bidding Consortium | Name of the Company investing in the equity of the BIDDER | Relationship with Sole Bidder/ Member of the Bidding Consortium | % of equity participation in the BIDDER |
|-------|--|---|---|---|
| 1. | Lead Consortium Members | | | (Not Less than 51%) |
| 2. | Consortium Member 1 | | | (Not Less than 10%) |
| 3. | Consortium Member 2 | | | (Not Less than 10%) |
| 4. | Consortium Member 3 | | | (Not Less than 10%) |
| 5. | Consortium Member 4 | | | (Not Less than 10%) |

* In case the Bidder proposes to invest through its Affiliate(s) / Parent Company / Ultimate Parent Company, the Bidder shall take prior permission from BRPL and declare shareholding pattern of such Affiliate(s) / Parent Company / Ultimate Parent Company and provide documentary evidence to demonstrate relationship between the Bidder and the

Affiliate(s) / Parent Company / Ultimate Parent Company. These documentary evidence could be, but not limited to, demat account statement(s) / Registrar of Companies' (ROC) certification / share registry book, etc. duly certified by Company Secretary.

3. Each Consortium Member undertakes to be individually liable for the performance of its part of the Roles and Responsibilities without in any way limiting the scope of collective liability envisaged in this Agreement in order to meet the requirements and obligations of the RFP. The Lead Consortium Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective Roles and Responsibilities.
4. In case of any breach of any of the commitment as specified under this Agreement by any of the Consortium Members, the Lead Consortium Member of the Consortium shall be liable to meet the obligations as defined under the RFP.
5. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and obligations thereto shall not in any way be a limitation of responsibility of the Lead Member or any other consortium member under these presents.
6. The Members expressly agree to adhere to all the terms and conditions of the RFP and confirm that they don't have any Conflict of Interest (as defined in the RFP).
7. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and Courts at [Place] shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
8. It is hereby agreed that the Lead Consortium Member shall furnish the Bid Security, as stipulated in the RFP, on behalf of the Bidding Consortium.
9. It is hereby agreed that in case of selection of Bidding Consortium as the AMISP, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Performance Security and other commitments to BRPL as stipulated in the RFP and AMISP Contract. The Lead Member shall be responsible for ensuring the submission of the Performance Security and other commitments on behalf of all the Consortium Members.
10. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, shall remain valid over the term of the Project//work awarded by BRPL, unless expressly agreed to the contrary by BRPL.
11. The Lead Consortium Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid. The representation by the Lead Member shall be deemed to be on behalf of and binding on all members of the Consortium.
12. It is expressly understood and agreed between the Members of the Consortium and Parties that the responsibilities and obligations of each of the Members shall be as

delineated as annexed hereto as Annexure-A forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of responsibilities and liabilities of the Members, with regards to all matters relating to the execution of the Bid and implementation of the Project envisaged in the RFP Documents.

13. It is clearly agreed that the Lead Consortium Member shall ensure performance indicated in the RFP. In the event one or more Consortium Members fail to perform its/ their respective obligations, the same shall be deemed to be a default by all the Consortium Members.

14. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate or subcontract its rights, duties or obligations under this Agreement to any person or entity except with prior written consent of BRPL.

15. Notwithstanding anything stated herein, it is agreed that all the members of consortium including lead member shall jointly and severally be liable to comply the terms of contract/tender terms. That all the members of consortium including lead member shall jointly and severally be liable for any breach to terms of contract and shall liable to compensate BRPL, in full, including the cost/expenses incurred for getting the work done through third party vendor. That all the members of consortium including lead member shall jointly and severally be liable to indemnify BRPL from all losses/penalties/compensation/liabilities arising/relating to the award/execution of work under contract by consortium.

16. This Consortium Agreement:

- a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party;
- b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof; and
- c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of BRPL.

| | |
|---|--|
| Common Seal of has been affixed in my/ our presence pursuant to Board Resolution dated..... | For M/s. (Party 1) <i>[Signature of Authorized Representative]</i> <i>[Name of the Authorized Representative]</i> <i>[Designation of the Authorized Representative]</i> |
|---|--|

Witness 1

[Signature of Witness 1]

.....

Name:

| | |
|---|--|
| Designation Witness 2 [Signature of Witness 2] Name: Designation: | |
| .. | |
| N. Common Seal of has been affixed in my/ our presence pursuant to Board Resolution dated..... | For M/s. (Party N) <i>[Signature of Authorized Representative]</i> <i>[Name of the Authorized Representative]</i> <i>[Designation of the Authorized Representative]</i> |
| N.1. Witness 1 [Signature of Witness 1] Name: Designation: | N.2. Witness 2 [Signature of Witness 1] Name: Designation: |

Annexure-A

Role and Responsibility of each Member of the Consortium:

1. Roles and Responsibilities of the Party 1 (Lead Consortium Member):
2. Roles and Responsibilities of the Party 2
3. Roles and Responsibilities of the Party 3
- .
- .
- N. Roles and Responsibilities of the Party N

Format of Power of Attorney by Consortium Member in favour of Lead Consortium Member

[To be provided by each Consortium Member (other than the Lead Consortium Member) in favor of the Lead Consortium Member]

WHEREAS [BRPL] has issued for Tender No. [Tender Details] (the “RFP”) dated [Date] for inviting Bids in respect of Appointment of AMISP for Smart Prepaid Metering solution (the “Project”) on the terms contained in the RFP;

WHEREAS M/s....., M/s., M/s. and M/s. [Insert names of all Members of Consortium] the Members of the Consortium are desirous of submitting a Bid in response to the RFP, and if selected, undertaking the responsibility of implementing the Project as per the terms of the RFP;

WHEREAS all the Members of the Consortium have agreed under the Consortium Agreement dated (The “Consortium Agreement”), entered into between all the Members and submitted along with the Bid to appoint [Insert the name and address of the Lead Consortium Member] as Lead Consortium Member to represent all the Members of the Consortium for all matters regarding the RFP and the Bid;

AND WHEREAS pursuant to the terms of the RFP and the Consortium Agreement, we, the Members of the Consortium hereby designate M/s [Insert name of the Lead Member] as the Lead Consortium Member to represent us in all matters regarding the Bid and the RFP, in the manner stated below:-

Know all men by these presents, we [Insert name and address of the registered office of the Member 1], [Insert name and address of the registered office of the Member 2],....., [Insert name and address of the registered office of the Member n] do hereby constitute, appoint, nominate and authorize [Insert name and registered office address of the Lead Consortium Member], which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium’s Bid in response to the RFP issued by BRPL including signing and submission of the Bid and all documents related to the Bid as specified in the RFP, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document, which BRPL may require us to submit. The aforesaid attorney is further authorized for making representations to BRPL named in the RFP, and providing information / responses to BRPL, representing us and the Consortium in all matters before BRPL named in the RFP, and generally dealing with BRPL named in the RFP in all matters in connection with our Bid, till completion of the bidding process as well as implementation of the Project, if applicable, in accordance with the RFP.

We, as Members of the Consortium, hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

We, as Members of the Consortium, hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

Signed by the within named *[Insert the name of the executants Consortium Member]* **through the hand of Mr./ Ms./ Dr.** **duly authorized by the Board to issue such Power of Attorney dated this** **day of**

Accepted

.....
(Signature of Attorney)
[Insert Name, designation and address of the Attorney]

Attested

.....
(Signature of the executant)
(Name, designation and address of the executant)
.....
Signature and stamp of Notary of the place of execution

Common seal of **has been affixed in my/our presence pursuant to Board of Director’s Resolution dated**.....

- 1. **WITNESS1.** **(Signature)**
Name
 - 2. **WITNESS2.**..... **(Signature)**
Name
- Designation**.....__

Notes

- a. *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s).*
- b. *In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.*

- c. Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favor of the person executing this power of attorney for delegation of power here under on behalf of the executant(s).
-

Format of Power of Attorney by Lead Consortium Member / Sole Bidder authorizing an Individual Designated Representative for the Consortium

[To be on non-judicial stamp paper of Rupees One Hundred Only (INR 100/-) or appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bids are required to follow the applicable law in their country.]

Know all men by these presents, we*[Insert name and address of the registered office of the Lead Consortium Member of the Bidding Consortium/ Sole Bidder]* do hereby constitute, appoint, nominate and authorize Mr./Ms. *[Insert name and residential address]*, who is presently employed with us and holding the position of as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid in response to Tender No. [Tender Details] for Appointment of AMISP for Smart Prepaid Metering Solution (the "Project") issued by [BRPL], including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which BRPL may require us to submit. The aforesaid attorney is further authorized for making representations to BRPL, and providing information / responses to BRPL, representing us in all matters before BRPL, and generally dealing with BRPL in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.

We hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

Signed by the within named..... *[Insert the name of the executant company]* through the hand of Mr./ Mrs.duly authorized by the Board to issue such Power of Attorney dated this day of

Accepted

..... (Signature of Attorney)
[Insert Name, designation and address of the Attorney]

Attested

.....
(Signature of the executant)
(Name, designation and address of the executant)

.....
Signature and stamp of Notary of the place of execution

Common seal of has been affixed in my/our presence pursuant to Board of Director’s Resolution dated.....

1. **WITNESS 1.** (Signature)
Name
Designation.....
2. **WITNESS 2.** (Signature)
Name
Designation....._

Notes:

- a. *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s).*
 - b. *In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.*
 - c. *Also, wherever required, the executant(s) should submit for verification the extract of the charter documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).*
-

Format of Letter of Consent by Sole Bidder/ Consortium Member reviewing each element of the Bid

[On the letter head of Sole Bidder/ each Member of the Consortium including Lead Member]

[Reference No.]

From:

[Address of the Lead Consortium Member/ Sole Bidder]

[Telephone No., Fax No., Email]

[Date]

To:

[BRPL]

[Address]

Sub: Engagement of Service Provider for Implementation and Operation for Advanced Metering Infrastructure (AMI) System in BSES Rajdhani Power Ltd, Delhi

Ref: [Tender Details]

Dear Sir/ Madam,

We, [Insert name of the undersigned Sole Bidder/ Consortium Member] Sole Bidder/ Member of Consortium and Lead by [Insert name of the Lead Consortium Member] have read, examined and understood the RFP and RFP Documents for Appointment of AMISP for Smart Prepaid Metering Solution.

We hereby confirm our concurrence with the RFP including in particular the Bid / and Consortium Agreement submitted by [Insert name of the Sole Bidder/ Lead Consortium Member], in response to the RFP. We confirm that the Bid has been reviewed and each element of the Bid is agreed to including but not limited to the commitment and obligations of our Company.

We hereby confirm that in accordance with Clause 2 of Section 1 of the RFP, we are enclosing legally binding undertaking supported by a board resolution from the [insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be] that all the equity investment obligations of [insert name of the Member] shall be deemed to be equity investment obligations of the [insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be] and in the event of any default..... [Insert name of the Member], the same shall be met by..... [Insert name of Technically Evaluated Entity and / or Financially Evaluated Entity or its Ultimate Parent Company, as the case may be]. *[Insert if applicable]*

Please note further that notwithstanding anything stated in tender document/contract and/or other document, it is clarified that all the members of consortium including lead member shall jointly and severally be liable to comply the terms of contract/tender terms. That all the members of consortium including lead member shall jointly and severally be liable for any breach to terms of contract and shall liable to compensate BRPL, in full, including the cost/expenses incurred for getting the work done through third party vendor. That all the members of consortium including lead member shall jointly and severally be liable to indemnify BRPL from all losses/penalties/compensation/liabilities arising/relating to the award/execution of work under contract by consortium.

The details of contact person are furnished as under:

Name :
Designation :
Name of the Company :
Address :
PhoneNos. :
Fax Nos. :
E-mail address :

Dated the day of of 20.....

Thanking you,
Yours faithfully,

.....
[Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal]

Business Address:
[Name and address of principal officer]