



**INDRAPRASTHA POWER GENERATION CO.LTD.**

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**PRAGATI POWER CORPORATION LIMITED**

(Govt. of NCT of Delhi Undertakings)

Corporate Identity No.(CIN)-IPGCL- U40103DL20001SGC111530

Corporate Identity No.(CIN)-PPCL- U74899DL20001SGC109135

G.M.(C&M), Pragati Power Station-I, I.P.Estate,

Ring Road, New Delhi – 110002

Tel. 011-23370541, FAX No.011 23379164

Ref.: GM (C&M)/22-23/EOI/1

Dt. 02/05/2022

**EXPRESSION OF INTEREST (EOI)**

**SELECTION OF INSURANCE BROKER**

Pragati Power Corporation Ltd. (PPCL) / Indraprastha Power Generation Corporation Ltd.(IPGCL) are power generation companies of Govt. of NCT of Delhi having its plants in Delhi. PPCL / IPGCL intend to engage IRDA registered Insurance Broker for renewal of Industrial Insurance policies and settlement of previous pending and subsequent claims.

Interested applicants may download the detailed EOI notice / Bid documents including Scope of Work, eligibility / assessment criteria from <http://www.ipgcl-ppcl.gov.in> free of cost.

Bid documents along with supporting documents/credentials/certificates etc. must reach the office of General Manager(C&M), 220 KV Sub-Station Building, Pragati Power Station-I, I.P. Estate, Ring Road, New Delhi - 110002 on or before **26 May 2022 till 02:00 PM**. The Bidder has the option of sending the bid by Speed/Registered Post or in person preferably be dropped in tender box kept in C&M Department.

**General Manager (C&M)**

PPCL /IPGCL

+91-9717079333

+91-9717694934

e-mail: amitahuja9@yahoo.com

GST No. :07AABCI0243H1Z0-IPGCL  
GST No. :07AACCP8035F1ZI- PPCL

## CONTRACT DEPARTMENT



## INDRAPRASTHA POWER GENERATION CO. LTD.

(A GOVT. OF NCT DELHI UNDERTAKING)

&

## PRAGATI POWER CORPORATION LTD

(A GOVT. OF NCT DELHI UNDERTAKING)

220 KV SUB-STATION BUILDING, PRAGATI POWER STATION-I,

I.P. ESTATE, RING ROAD, NEW DELHI-110002.

GM(C&M)  
AGM (C&M-II)  
Manager (CS-II)

+919717079333  
+919717694934  
+919871862686

amitahuja27@gmail.com  
pgupta@ipgcl-ppcl.nic.in  
managercs22@gmail.com

# DOCUMENT

TENDER NO. : \_\_\_\_\_

**Ref: EOI published in NIT dated \_\_\_\_**

**Sub: Hiring of IRDA Registered Insurance Broker**

Ref.No. \_\_\_\_\_

Dated: \_\_\_\_\_

**EXPRESSION OF INTEREST (EOI)**

1. Pragati Power Corporation Ltd. (PPCL) owns two combined cycle gas-based plants, namely PPS-I and PPS-III. PPS-III is located at Bawana, New Delhi and comprises of two modules. Each Module consists of 02 Gas Turbines of 216 MW capacity and 01 Steam Turbine of 253.6 MW capacity; thus, making capacity of one module as 685.6 MW and total installed capacity of 1371.2 MW. The plant has GE (USA) Make 9 FA advanced class gas turbines and BHEL make steam turbines.

PPS-I is a 330 MW plant having 02 Frame 9E, GE Make gas turbines of 104 MW capacity each and 01 BHEL make Steam Turbine of 122 MW capacity, located at I.P Estate, Ring Road, New Delhi.

IPGCL owns Gas Turbine Power Station (GTPS) & Rajghat Power Station. GTPS consists of six gas turbines of 30 MW each of M/s Alstom and 3 steam turbines of 30 MW each of M/s BHEL. Total capacity of the plant is 270 MW. The plant completed its 25 years of life on 31.03.2021. Thereafter, DERC has given the mandate to operate only one module i.e. 90 MW capacity.

Rajghat Power Station having a capacity of 135 MW has been decommissioned in the year 2015 and is under disposal.

2. IPGCL/PPCL through this Expression of Interest intends to engage/ hire broker for Insurance policies and previous pending and subsequent claims, with the following requirements:

S.No.	Description	Detail
1	The details of present policies of IPGCL/PPCL	i. IAR policy for PPS-III (Fire, EQ, MBD, Debris Removal, FLOP and MLOP coverage) ii. IAR policy for PPS-I (Fire, EQ, MBD, Debris Removal and FLOP coverage) iii. IAR policy for GTPS (Fire, STFI, EQ, MBD, Debris Removal, FLOP and Terrorism) iv. Combined Stand-Alone Terrorism policies for PPS-III and PPS-I (Terrorism/Fire including RSMD and STFI, FLOP coverage) v. Fire and Allied Peril Silent insurance policy for Rajghat Power House.
2	Scope of work	As per Annexure I
2	Eligibility Criteria	As per Annexure II
3	Assessment Criteria	As per Annexure. III
4	Bid Evaluation	The bidders qualifying the eligibility criteria will be assessed w.r.t assessment criteria and the successful bidder will be selected based on

		the scoring.
5	Remuneration of the Broker	The payment to the broker shall be as per IRDA regulations. IPGCL/PPCL shall not pay any fee/expenses/remuneration to the broker for any activity carried out by them in connection with insurance work before, during or after the period of engagement. Thus, there shall be no cost to IPGCL/PPCL.
6	Co-Broking	PPCL reserves the right to appoint exclusive broker or more brokers under a co-broking arrangement wherein the duties, responsibilities will be clearly defined through an agreement. The lead broker and the co-broker(s) will jointly work towards providing the services mentioned in this tender.
7	Sub Contracting	The broker(s) cannot assign or sub contract any portion of this contract to any other person/ agency, other than specialized risk inspection activities or any other specialized activity which may be required from time to time, with prior permission from IPGCL/PPCL. Any cost involved in engaging such agencies will be solely borne by the broker(s).
8	Duration of Contract	The engagement of broker(s) will be initially for a period of 24 months. During the period of engagement, the performance of the brokers will be evaluated on the basis of their ability to optimize premium outgo, improvement in Claim settlement, carrying out Risk inspection & training of employees. If the performance of the selected broker(s) is found to be satisfactory, then the above engagement may be extended for another 24 months on the same terms & conditions.
9	Validity of Offer	120 Days from date of Bid Opening
10	Non-Disclosure of Information	The Broker(s) will not disclose any information related to IPGCL/PPCL without the prior consent of the IPGCL/PPCL officials and shall sign non disclosure agreement for the same as per Annexure A.
11	Quality of service	PPCL/IPGCL may reject, without the necessity of prior legal proceedings, the service or any part thereof , which in its opinion does not possess the quality required under the contract and to obtain it elsewhere, at any price, and on broker's account, should the latter fail to execute the service required by IPGCL/PPCL If the broker for any cause what so ever , becomes unable or fail to carry on the services with efficiency, or refuse or neglect to comply with the directions given to them by IPGCL/PPCL , or in any other respect act contrary to the terms of the contract, then IPGCL/PPCL shall have the power to terminate the contract.
12	Bid preparation & submission	Tender Documents may be downloaded from IPGCL/PPCL website <a href="https://ipgcl-ppcl.gov.in">https://ipgcl-ppcl.gov.in</a> Bid Documents along with supporting documents/credentials/certificates etc. shall be signed by the authorized signatory of the bidder who shall initial on each page. The bidder shall provide all the information required

		<p>as per Annexure II and III.</p> <p>The bids shall be submitted in One Main sealed envelope consisting of 2 separate envelopes,</p> <ol style="list-style-type: none"> <li>1. Envelope 1 consisting of documents pertaining to eligibility criteria i.e. Annexure II</li> <li>2. Envelope 2 consisting of documents pertaining to assessment criteria i.e. Annexure III</li> </ol> <p>The Main sealed envelope and envelope No 1 and No 2 should mention validity of the offer, Tender No., Name of Work and Bidder's Name on its face. Also, Envelope no. 1 (eligibility criteria) and Envelope no. 2 (assessment criteria) shall be superscripted on the outside of the envelopes.</p>
13	Deviation	The bidder is not permitted to take any deviation to the terms and condition stipulated in the tender. In case, any bidder takes any deviation, their offer shall be liable for rejection.
14	Last date for submission and Bid Opening	<p>Bid document along with supporting documents/credentials/certificates etc. must reach the office of GM(C&amp;M), 220 KV Sub-Station Building, Pragati Power Station, I.P. Estate, Ring Road, New Delhi - 110002 on or before 26 May 2022 till 02:00 PM. The Bidder has the option of sending the bid by Speed/Registered Post or in person preferably be dropped in tender box kept in C&amp;M Department.</p> <p>Envelope 1 will be opened on 27 May 2022 at 11:00 AM in the office of GM (C&amp;M) in the presence of authorized representatives of the bidders.</p> <p>Date of opening of Envelope 2 shall be informed separately to qualified bidders. IPGCL/PPCL reserves the right to accept or reject any offer either in full or part without assigning any reason whatsoever.</p>
15	Tender Fee, Earnest Money Deposit (EMD), Security Deposit (SD) / Performance Bank Guarantee (PBG) and Liquidated Damages (LD)	Not Applicable

**Important Dates:**

Last Date of Submission of Bids	26 May 2022 till 02:00 PM
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Bid Opening Date	27 May 2022 at 11:00 AM
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### **General Terms and Condition and Instructions to Bidder(s)**

1. Tempering with NIT documents is not allowed. In case of tempering made by the vendor, their offer is liable to be rejected.
2. Bidder may note that the due date and time of opening of tenders will be strictly adhered to and accordingly if they wish to present themselves in the tender opening, they should bring necessary authorization letter from the company. However, due to declaration of unexpected holiday or any unforeseen circumstances the tenders are not opened on the due date, the same will be opened on the next working day.
3. In case, any clause is not acceptable to the bidder(s), the same should be specifically brought out in the bid with a categorical confirmation for particular clause not acceptable and that all other clauses are acceptable to the bidder. If no mention is made in this regard it shall be presumed that all the clauses, terms & conditions of NIT are acceptable to bidder.
4. **Arbitration**
  - i) In the event of any question dispute or difference whatsoever arising under this contract or in connection therewith including any question relating to existence, meaning and interpretation of this contract or any alleged breach thereof, the same shall be referred to the Sole Arbitrator, the MD of the IPGCL/PPCL or to a person appointed by him for the purpose. The arbitration shall be conducted in accordance with the provision of the Indian Arbitration and Conciliation Act, 1996.
  - ii) It will be no objection that the Arbitrator is interested persons and/or that he had to deal with the matter to which the contract relates and/ or in the course of his duties he has expressed any view on any matter in dispute or difference. The award of arbitrator shall be final and binding.
  - iii) In the event of Arbitrator dying, neglecting, resigning or being unable to act for any reason or his award being set aside by the court for any reason, it will be lawful for the MD of IPGCL/PPCL to appoint another Arbitrator in place of outgoing Arbitrator.
  - iv) It is further terms of this agreement that no person other than a person shall act as an Arbitrator and that, if for any reason that is not possible, the matter should not be referred to Arbitration at all.
  - v) The Arbitrator may from the time to time, with the consent of all parties extend the time in making the award.
  - vi) The cost incidental to the arbitration shall be at the discretion of the Arbitrator. The arbitration shall be conducted at New Delhi.

- vii) Notwithstanding any dispute between the parties Supplier shall not be entitled to withhold, delay or defer his obligation under the contract and same shall be carried out strictly in accordance with the terms & conditions of the contract.
- viii) In the event of disputes or differences arising between the Public Sector Enterprises and a Government, the provisions of BPE office memorandum No. BPE /GL - 001/76/MAN/2110-75-BPE (GML-1) dt. 1st Jan. 1976 shall be applicable.
- ix) The arbitrator shall give his speaking or reasoned award with respect to the disputes referred to him by either of the parties.
5. **Jurisdiction:** The court at Delhi shall have exclusive jurisdiction to entertain and try all matters arising out of this contract.
6. **Banning/Blacklisting/Debar**

IPGCL/PPCL may, as its sole discretion, blacklist/debar any broker(s) from participating in any tendering process with IPGCL/PPCL, who indulges or is suspected to be indulged in unethical practices while dealing with IPGCL/PPCL.

**Ref. EOI published in NIT dated \_\_\_\_\_**

**Sub: Hiring of IRDA Registered Insurance Broker**

Annexure - I

**A. Scope of Work:**

**The scope of work of the insurance broker, apart from that as specified in relevant IRDA regulations, for IPGCL/PPCL is detailed as under:**

**A. Pre-placement and placement services regarding Insurance policies**

1. Review of all Existing insurance policies
2. Carrying out Risk inspection to understand end to end insurance requirements & suggesting any improvement required to improve the Risk Identification.
3. Critical Examination of the existing policies which are due for renewal in terms of
  - a. Risk Coverage
  - b. Fixation of sum assured
  - c. Premium Analysis
  - d. Policy Wordings, Clauses, Warranties, Conditions, Excess, etc.
4. Suggesting improvement thereon and executing the same during renewal of insurance policies
5. Valuation by a certified valuer to finalize the sum insured value, at no cost to IPGCL/PPCL before the renewal of insurance policy each year.
6. Assistance in preparing insurance tendering documents, preparing qualifying requirement and finalizing the terms & conditions thereof including but not limited to
  - a. Coverage, including add on cover wherever required
  - b. Excess/Deductible (Monetary for Property/Time for FLOP / MLOP)
  - c. Period of indemnity
  - d. Policy wordings
  - e. Policy clauses and warranties



This should be in line with laid down procedures of IPGCL/PPCL including applicable CVC/IRDA guidelines.

7. Broker will help in organizing a pre-bid meeting with Insurance companies.
8. Broker will help in inviting bids from reputed insurance companies licensed to operate in India and evaluation of bid.
9. Liaisoning with Reinsurance Market so as to ensure that competitive bids are received.
10. Assistance in preparing comparative statement of bids both Technical and Commercial
11. Assistance in negotiating and finalizing the Terms & Conditions of insurance optimizing cost, cover, securities and quality of service in accordance with laid down procedure of IPGCL/PPCL.
12. Scrutinizing the wording of the final policy documents to capture the details, coverage, sum Insured as mentioned in the bid documents, to protect **IPGCL/PPCL** interest. However, in case of any discrepancy, a corrective action / endorsements to be notified to the insurer with a copy to IPGCL/PPCL.
13. Assisting IPGCL/PPCL in placement of insurance Policies with optimized premium and desired cover.
14. To provide the servicing support and design the Service level agreement to be signed between the Broker, Insurance company and IPGCL/PPCL highlighting the scope of services and timelines & suggesting the Panel of Surveyor's to be agreed with Insurance company & IPGCL/PPCL.

## **B. Claim Management**

1. Coordinating and ensuring realization of any claims arising during the policy period as well as all previous pending claims, in line with the provisions and guidelines by IRDA.
2. Reviewing surveyor's reports of any claim including previous pending claims and suggest regarding settlement / acceptability of the same.
3. Coordinating with insurers for immediate intimation about any accident which may result into a claim under the policies placed.
4. Coordinating with insurance companies, surveyors etc for prompt settlement of claim including **On Account Payment** against the claim.
5. Documentation of claims: The broker would assist to arrange all documentation from IPGCL/PPCL offices for lodging claims.
6. Addressing / Resolving various queries of insurers/surveyors as regard to interpretation of policy wordings/conditions, warranties, deductibles etc. during claims processing

7. Submission of quarterly report on claims settlement position and pending issues from insurer.

### **C. Miscellaneous Services:**

1. Assisting IPGCL/PPCL in taking any new insurance policies/ seamless integration of existing project policies to operational policies.
2. Technical assistance in any insurance Policies in addition to the plant policies as and when required.
3. Keeping **IPGCL/PPCL** informed of the latest IRDA regulations, guidelines, latest trends and updates in insurance sector through workshops/seminars on regular basis.
4. Advising **IPGCL/PPCL** from time to time, on developments in the insurance industry, new coverage's, changes in rules and regulation having impact on the company.
5. Any other Advisory services related to the Insurance Portfolio of **IPGCL/PPCL** in India
6. Broker should deploy its team at IPGCL/PPCL site for discussing the issues pertaining to insurance policies/Claims on monthly basis and as and when required.
7. Assisting in other insurance related services like issuance of policy wordings endorsement, addition/deletion of Sum Insured, speedy realization of premium refunds etc.

**Note :** The above scope is indicative and not exhaustive in nature. Any other work required for successful performance under this contract shall be undertaken by the bidder(s)

**B. Eligibility Criteria**

- a. The bidder must be an insurance broker, registered with IRDA and holding a valid license issued by IRDA with experience of operating as composite licensed insurance broker for 3 consecutive years as on 31.03.2022. (Proof needed to be attached)
- b. The bidder must not have undergone any suspension or cancellation of license by IRDA (declaration on companies' letter head signed by authorized signatory)
- c. The bidder shall submit a declaration certified by CEO/Principal Officer of the Company/their authorized signatory, that there is no event of blacklisting, cancellation and discontinuation of running mandate given to them by any PSU/Govt./State entities/IRDA within the preceding three (03) years reckoned as on the last date of submission of documents.
- d. Net worth of the bidder must be positive consecutively for the last 3 completed financial years upto 31.03.2022, and the bidder must have a minimum turnover of Rs.15 Crores in each FY (only from insurance broking activities) consecutively for the last 3 completed FYs i.e. **2019-20, 2020-21 and 2021-22** as per financial statements attested by CEO/Principal Officer of the company to be submitted along with the bid.
- e. The bidder must have experience in serving insurance policies of Industrial/Corporate Insurance as direct broker having sum insured value each of Rs 2500 Crore or more in a single location. For this purpose Insurance policy shall be solicited during last 5 completed FYs i.e. **2017-18, 2018-19, 2019-20, 2020-21 and 2021-22** (Proof needed to be attached)

- f.** The bidder must have handled the insurance of minimum 3 PSUs(State/Central) (for industrial/ Corporate Insurance) during the last 5 completed financial years i.e. **2017-18, 2018-19, 2019-20, 2020-21 and 2021-22** as direct broker. (Proof needed to be attached)
- g.** The bidder should have handled at least Rs.50 Crores of premium during each of the last 3 financial years upto 31.03.22, from industrial/Corporate insurance Business as direct broker. Proof of premium handled certified by CEO/Principal Officer of the Company/their authorized signatory shall be submitted.
- h.** The bidder should have settled at least one claim of more than INR 100crs or 2 claims of more than INR 75 crs or 3 claims of more than INR 50 crs of industrial / Corporate Insurance as direct broker during the last 5 Financial Years ending 31.03.2022. Proof of the claims settled certified by CEO/Principal Officer of the Company/their authorized signatory shall be submitted.

**NOTE:**

1. False certification/document submission, if found by IPGCL/PPCL, is liable for rejection & suitable action as per IPGCL/PPCL's policy.
2. Here Industrial/Corporate Insurance does not include Employee Benefit, Motor Insurance, and Health Insurance
3. Bidders should submit documents in support of their claim with regard to eligibility criteria.
4. Claim Value means total claim admitted by Insurance company.

**C. Assessment Criteria**

**Annexure III**

<b>S.No.</b>	<b>PARAMETERS</b>	<b>DOCUMENTS REQUIRED</b>	<b>MAXIMUM SCORE</b>	<b>SCORES</b>
1	The bidder should be holding a composite broking license granted by IRDA for a period of 3 consecutive financial years upto 31/03/2022  3 years to less than 5 years 5 years to less than 10 years More than 10 years	Proof of accreditation with IRDA, duly attested by CEO/Principal Officer of the company/their authorized signatory.	10	5 points 8 points 10 points
2	Average Turnover only from Insurance broking activities of the last 3 Financial Years i.e. <b>2019-20, 2020-21 and 2021-22.</b>  15 Cr. To 50 Cr >50 Cr. To 150 Cr More than 150 Cr.	Copies of Audited Balance sheets & Profit & Loss A/c statements for the year <b>2019-20, 2020-21 and 2021-22</b>  Attested by CEO/Principal Officer of the company/their Authorized Signatory	10	5 points 8 points 10 points
3	Number of Clients handled in India for insurance policies of Industrial / Corporate Insurance as direct broker with Sum Insured more than INR 2500 crs during the last 5	Mandate letter/mail issued by the insurance company/ client attested by CEO/Principal Officer of the company/their	10	

	Financial Years ending 31.03.2022  1 2-10 More than 10	authorized signatory		5 points 8 points 10 points
4	Number of Clients handled in Power Sector Business (as direct broker) in India during the last 5 Financial Years upto 31.03.2022 for policies of sum insured of Rs 1000 Crore or above  1-3 4-7 More than 7	Mandate letter/mail issued by the insurance company/ client attested by CEO/Principal Officer of the company/their authorized signatory	10	5 points 8 points 10 points
5	Total Premium handled during each of the last 3 financial Years <b>2019-20, 2020-21 and 2021-22</b> sourced from industrial / Corporate Insurance Business only as direct broker.  Rs 50 Crs to 300 Crs. >Rs 300 Crs. To 700 Crs. More than Rs 700 Crs.	Proof of premium handled certified by CEO/ Principal Officer of the Company/their authorized signatory	10	5 points 8 points 10 points
6	Experience in Lodging and Settling claims as direct broker in industrial / Corporate Insurance business in India in the last 5 completed financial years upto 31.3.22  No of Claims: As per eligibility criteria (one claim of more than INR 100crs or 2	Proof of the claims settled for last 5 years certified by CEO/Principal Officer of the company/ their authorized signatory	10	5 points

	claims of more than INR 75 crs or 3 claims of more than INR 50 crs)  Additional 1 point for each settled claims valuing more than 50 Cr subject to max 10 Points.			Max 10 Points
7	Total No of claims settled as direct broker in industrial / Corporate Insurance business within 18 months from the date of lodging of initial claim of value 2 Cr and above during last 5 financial years ending 31.03.2022  No of Claims: 1-5 6-10 More than 10	Copy of payment vouchers issued by the clients towards proof of settlement of claim and claim form / Intimation indicating the date of lodging the claim shall be furnished. A consolidated statement attested by CEO/Principal Officer of the company/their authorized signatory shall be furnished	10	5 points 8 points 10 points
8	No of business Interruption claims settled as direct broker in industrial / Corporate Insurance business during last 5 completed financial years ending 31.03.22 of value Rs 10 Cr and above.  No of Claims: 1 2-5 More than 5	Proof of the claims settled for last 5 years certified by CEO/Principal Officer of the company/ their authorized signatory	10	5 points 8 points 10 points
9	The broker should have registered	Proof of registered office	10	

	office in Delhi / NCR region.	attested by CEO/Principal Officer of the company/ their authorized signatory		10 points 5 points
	Yes No			
	<b>Total Maximum Score</b>		<b>90</b>	

**Note:**

1. A job Executed by a bidder for its own Group Company/ plant(s)/Project(s) cannot be considered as experience for the purpose of meeting requirement of this tender.
2. Documentary evidence in support of the above-mentioned selection criteria is to be submitted with the bid documents, duly attested by the CEO/ Principal Officer of the company/ their Authorized Signatory , failing which the offer shall be liable for rejection.
3. In cases, where audited results for the last financial year (FY 2021-22) are not available as on the last date for submission of documents, the financial results certified by a practicing Chartered Accountant shall be considered acceptable.
4. False certification/ document submission, if found by IPGCL/PPCL, is liable for rejection & suitable action as per IPGCL/PPCL's policy.
5. In case of tie in the marks, the preference will be given on the basis of Number of Clients handled in Power Sector Business (as direct broker) in India during the last 5 Financial Years ending 31.03.2022 for policies of sum insured of Rs 1000 Crore or above.



**Annexure A**

**Non-Disclosure Agreement**

**(The following agreement is to be executed on Rupees One Hundred Non-Judicial Stamp paper.)**

This Agreement made on this.....day of.....(the 'Effective Date')

BETWEEN:

(1) Pragati Power Corporation Limited / Indraprastha Power Generation Company Limited

AND

(2).....

(hereinafter referred to, individually, as the "Party" and collectively, as the "Parties")

**Background:**

- i) The Parties are, or will be, evaluating, discussing and negotiating a potential contractual relationship concerning the .....
- ii) The Parties may, in these evaluations, discussions and negotiations, disclose to each other information that is technically and /or commercially confidential.
- iii) The Parties have agreed that disclosure and use of such technical and/or commercial confidential information shall be made and on the terms and conditions of this Agreement.

Now it is agreed as follows:

**1.0 Definitions:**

In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:

1.1 'Disclosing Party' means the Party disclosing Confidential Information to the other Party under this Agreement.

1.2 'Receiving Party' means the Party receiving Confidential Information from the other Party under this Agreement.

1.3 'Confidential Information' means any information, which shall include but is not limited to, design, fabrication & assembly drawings, know-how, processes, product specifications, raw materials, trade secrets, market opportunities, or business or financial affairs of the Parties or their customers, product samples, inventions, concepts and any other technical and/or commercial information, disclosed directly or indirectly and in any form whatsoever (including, but not limited to, disclosure made in writing, oral or in the form of samples, models, computer programs, drawings or other instruments) furnished by the Disclosing Party to the Receiving Party under this Agreement.

1.3.1 Such Confidential Information shall also include but shall not be limited to:

1.3.1.1 information disclosed by the Disclosing Party in writing marked as confidential at the time of disclosure;

1.3.1.2 information disclosed by the Disclosing Party orally which is slated to be confidential at the time of disclosure;

1.3.1.3 information disclosed in any other manner is designated in writing as Confidential Information at the time of disclosure;

or

1.3.1.4 notwithstanding sub-clauses 1.3.1.1, 1.3.1.2 and 1.3.1.3 of this definition, any information whose nature makes it obvious that it is confidential.

1.3.2 Such. Confidential Information shall not include any information which:

1.3.2.1 is, at the time of disclosure, publicly known;

or

1.3.2.2 becomes at a later date, publicly available otherwise than a wrongful act or negligence or breach of this Agreement of or by the Receiving Party;

or

1.3.2.3 the Receiving Party can demonstrate by, its written records was in its possession, or known to the Receiving Party, before receipt under this Agreement, and which was not previously acquired under an obligation of confidentiality;

or

1.3.2.4 is legitimately obtained at any time by the Receiving Party from a third party without restrictions in respect of disclosure or use;

or

1.3.2.5 the Receiving Party can demonstrate to the satisfaction of the Disclosing Party, has been developed independently of its obligations under this Agreement and without access to the Confidential Information.

1.4 'Purpose' means the evaluations, discussions, negotiations and execution regarding a contractual relationship between the Parties in respect of the Project defined in paragraph (1) of the Background section.

1.5 'Affiliate' means any legal entity which, at the time of disclosure to it on any Confidential Information, is directly or indirectly controlling, controlled by or under common control with any of the Parties.

1.6 'Contemplated Agreement' means any future legally binding Agreement between the Parties in respect of the Project envisaged under this Agreement.

## **2.0 Non-Disclosure of Confidential Information:**

2.1 In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party solely for the Purpose, the Receiving Party undertakes whether by itself, its successors and heirs, not to disclose Confidential Information to any third party, unless in accordance with Clause 4.

2.2 In addition to the undertaking in Clause 2.1, the Receiving Party shall be liable for:

2.2.1 any loss, theft or other inadvertent disclosure of Confidential Information, and

2.2.2 any unauthorized disclosure of Confidential Information by persons (including, but not limited to, present and former employees) or entities to whom the Receiving Party under this Agreement has the right to disclose Confidential Information, except where, the Receiving Party has used the same degree of care in safeguarding such Confidential Information as it uses for its own Confidential Information of like importance and in no event less than a reasonable degree of care; and upon becoming aware of such inadvertent or unauthorized disclosure the Receiving Party has promptly notified the Disclosing Party thereof and taken all reasonable measures to mitigate the effects of such disclosure and to prevent further disclosure.

2.3 The Receiving Party understands and agrees that:

2.3.1 any information known only to a few people to whom it might be of commercial interest and not generally known to the public is not public knowledge;

2.3.2 a combination of two or more parts of the Confidential Information is not public knowledge merely because each part is separately available to the public.

2.4 The Receiving Party acknowledges the technical, commercial and strategic value of the Confidential Information to the Disclosing Party and understands that unauthorized disclosure of such Confidential Information will be injurious to the Disclosing Party.

### **3.0 Use of Confidential Information:**

3.1 The Receiving Party is entitled to use the Confidential Information but only for the Purpose.

#### **3.2 Permitted Disclosure of Confidential Information:**

3.2.1 The Receiving Party may disclose in confidence Confidential Information to any of its Affiliates and employees, in which event the Affiliate and employee shall be entitled to use the Confidential Information but only to the same extent the Receiving Party is permitted to do so under this Agreement. The Receiving Party agrees that such Affiliates or employees are subject to confidentiality obligations no less restrictive than those of this Agreement.

3.2.2 The Receiving Party shall limit the dissemination of Confidential Information of its Affiliates and employees having a need to receive such information to carry out the Purpose.

3.2.3 The Receiving Party may disclose Confidential Information to its consultants, contractors, sub-contractors, agents or similar persons and entities having a need to receive such information to carry out the Purpose on the prior written consent of the Disclosing Party. In the event that the Disclosing Party gives such consents, the Receiving Party agrees that such individuals are subject to confidentiality obligations no less restrictive than those of this Agreement.

3.2.4 Notwithstanding Clause 2.1, the Receiving Party shall not be prevented from disclosing 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 the Receiving Party, to the extent possible, has first given prior written notice to the

Disclosing Party and made reasonable efforts to protect the Confidential Information in connection with such disclosure.

#### **4.0 Copying and Return of Furnished Instruments:**

- 4.1 The Receiving Party shall not be entitled to copy samples, models, computer programs, drawings, documents or other instruments furnished by the Disclosing Party hereunder and containing Confidential Information, unless and to the extent it is necessary for the Purpose.
- 4.2 All samples, models, computer programs, drawings, documents and other instruments furnished hereunder and containing Confidential Information shall remain the Disclosing Party's property.
- 4.3 At any time upon request from the Disclosing Party or upon the conclusion of the Purpose or expiry of this Agreement, the Receiving Party, at its own cost, will return or procure the return, promptly and in any event within 14 days of receipt of such request, of each and every copy of Confidential Information given by the Disclosing Party, and satisfy the Disclosing Party that it no longer holds any further Confidential Information.

#### **5.0 Non-Disclosure of Negotiations:**

Except as provided in Clause 4, each Party agrees that it will not, without the &her Party's prior written approval, disclose to any third party the fact that the Parties are discussing the Project. The Parties acknowledge that the provisions of this Agreement shall apply in respect of the content of any such discussions. The undertaking set forth in this Clause 7 shall survive the termination of this Agreement.

#### **6.0 Term and Termination:**

- 6.1 This Agreement shall become effective on the Effective Date. The provisions of this Agreement shall however apply retroactively to any Confidential Information, which may have been disclosed in connection with discussions and negotiations regarding the Project prior to the Effective Date.
- 6.2 This Agreement shall remain in force for five (5) years from the Effective Date, except to the extent this Agreement is superseded by stipulations of the Contemplated Agreement.
- 6.3 The rights and obligations of each Party with respect to all Confidential Information of the other Party that is received under this Agreement shall remain in effect for a period of five (5) years from the date of disclosure of Confidential Information.

#### **7.0 Intellectual Property Rights:**

All Confidential Information disclosed herein shall remain the sole property of the Disclosing, Party and the Receiving Party shall obtain no right thereto of any kind by reason of this Agreement.

**8.0 Future Agreements:**

Nothing in this Agreement shall obligate either Party to enter into any further Agreements.

**9.0 Amendments:**

Any amendment to this Agreement shall be agreed in writing by both Parties and shall refer to this Agreement.

**10.0 Severance:**

If any term or provision in this Agreement is held to be either illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the validity and enforceability of the remainder of this Agreement shall not be affected.

**10.1 Compensation :**

The Receiving Party agrees that monetary damages would be inadequate compensation to the Disclosing Party in the event the Receiving Party breaches any provision of this Agreement. Therefore the parties agree that in the event of a breach or threatened breach of confidentiality, the Disclosing Party in addition to compensation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach.

**10.2 Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of India and in any dispute arising out of or relating to this agreement, the Parties submit to the exclusive jurisdiction of the Courts situated at Delhi, India.

**11.0 Nodal Officers:**

The Parties agree that the following persons shall be the nodal officers of respective parties for the purposes communication between the parties and for notification of any disputes for resolution by arbitration between the parties as under:

Nodal Officer for IPGCL: Mr. \_\_\_\_\_, Designation

Nodal Officer for.....: Mr.

**11.1 Entire Agreement:**

This Agreement constitutes the entire agreement between the parties regarding the Confidential Information and supersedes all prior understandings, oral or written between them in respect of the Confidential Information. This Agreement can only be amended by writing signed by both parties.

**11.2 Assignment:**

Neither party shall have the right to assign or otherwise transfer, in whole or in part, any of its rights or obligations under this Agreement without

obtaining prior written consent from the other party.

**11.3 Validity:**

If any provision hereof is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

**11.4 Attorney's fees:**

In the event of a dispute regarding this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party, a reasonable attorney's fees and costs.

**11.5 Counterparts:**

This Agreement may be executed in several counterparts that together shall constitute one and the same instrument.

**11.6 Identical Copies :**

Two identical copies of this agreement has been prepared with each party retaining one copy duly signed by both the parties.

## 12.0 General:

- 12.1 Upon 45 days written notice, the Disclosing Party may audit the use of the programs, materials, marketing materials, services, and such additional disclosed resources. The Receiving Party agrees to co-operate with the Disclosing Party's audit and to provide reasonable assistance and access to information.
- 12.2 The Receiving Party shall disclose of any similar agreements explicit or otherwise, for similar purpose/application with in its own organization, or any other third party.
- 12.3 In the event of a breach or threatened breach by the Receiving Party of any provisions of this Agreement, the Disclosing Party, in addition to and not in limitation of any other rights, remedies or damages available to the Disclosing Party at law or in equity, shall be entitled to a temporary restraining order / preliminary injunction / or any such action permissible under extant laws, in order to prevent or to restrain any such breach by the Receiving Party, or by any or all persons directly or indirectly acting for, on behalf of, or with the Receiving Party.

IN WITNESS WHEREOF, this Agreement was duly executed on behalf of the Parties on the day and year first above written.



(Name, Designation and address of the authorised signatory)

Signed for and on behalf of the Receiving Party in the presence of

Witness:

1.

2.

(Name, Designation and address of the authorised signatory)

Signed for and on behalf of the Disclosing Party in the presence of:

Witness:

1.

2.