

**Notice Inviting e-Tenders (E-NIT)  
for the Engagement of a  
Financial Consultant & Concurrent Auditor of Jammu & Kashmir  
Power Corporation Limited and its subsidiaries**

Namely Jammu & Kashmir Power Corporation Limited (erstwhile Jammu & Kashmir State Power Trading Company Limited); Holding Company and its subsidiaries Jammu Power Distribution Corporation Limited; Kashmir Power Distribution Corporation Limited; Jammu and Kashmir Power Transmission Corporation Limited, Jammu and Kashmir Power Development Corporation Limited

**Jammu & Kashmir Power Corporation Limited**  
(A Government of Jammu & Kashmir undertaking)  
Reg office: Gladni, Narwal, Jammu - 180006, Jammu and Kashmir, INDIA

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**Table A: - Important Information about the E-NIT no. CE/JKPCL/J/FCCA Dated 28.01.2026**

Item Description	Notice Inviting e-Tenders (E-NIT) for the Engagement of a Financial Consultant & Concurrent Auditor of Jammu & Kashmir Power Corporation Limited (erstwhile Jammu & Kashmir State Power Trading Company Limited); Holding Company and its subsidiaries Jammu Power Distribution Corporation Limited; Kashmir Power Distribution Corporation Limited; Jammu and Kashmir Power Transmission Corporation Limited, Jammu and Kashmir Power Development Corporation Limited.
Date of issue of E-Tender Document	28.01.2026
Availability of E-Tender Document	E-NIT is available at <a href="http://www.jktenders.gov.in">www.jktenders.gov.in</a> .
E-Tender system	The bids shall be uploaded in electronic format on the website <a href="http://www.jktenders.gov.in">www.jktenders.gov.in</a>
Bid validity	90 (Ninety) days from the date of opening of Bid proposal
Cost of Tender Document and Earnest Money Security (EMD/Bid security)	<b>Rs. 1000/-</b> for cost of tender document and <b>Rs. 2,40,000/-</b> (Rupees <b>Two Lakh Forty</b> thousand Only) for EMD in the form of demand draft/online payment mode in favour of CPAO, Jammu. Cost of Tenders document and EMD in the form of DDs shall reach the office of CPAO, Jammu's office by or before the last date of bid submission. However, scan copy of DD shall be attached with the technical bid and uploaded on JK tenders. <b>Bank Name: J&amp;K Bank, Account No: 0021 0405 1000 0009 , IFSC Code : JAKA0LUXURY</b>
Performance Security to be furnished by the selected firm	5% of the total value of the work (incl taxes) to be awarded, as performance security in the shape of <b>DD/ FDR/ Bank Guarantee</b> from commercial bank pledged to the <b>Managing Director, with the respective companies</b> and it shall remain valid for a period of 60 days beyond the date of completion of all contractual obligations.
Period of Completion of work	24 months from the effective date of the contract
Pre-Bid Queries and meeting	Pre-Bid meeting shall be held on 06-02-2026 at 2.00 PM through physical/video conferencing. Queries can be submitted online up to 3.00 PM of 04-02-2026 through email (caojkpcl@gmail.com)
Last date & Time for Tender submission	2.00 PM on 18.02.2026
Opening of Technical and financial bids	Technical bids on 19.02.2026 and date of opening of financial bids will be intimated separately to the eligible bidders.
Venue of E-Tender Opening	CPAO, J&K Power Corporation Limited, Registered Office Gladni, Narwal, Jammu - 180006, Jammu and Kashmir at 3.00 PM.

Contact officer for correspondence and clarifications	CPAO, Jammu J&K Power Corporation limited, Registered Office Gladni, Narwal, Jammu - 180006, Jammu and Kashmir Cell no: 9149666375; 7006124213 e-mail: caojkpcl@gmail.com
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## **1. Background: -**

**1.1.** The Jammu & Kashmir Power Corporation Limited (JKPCL); Jammu Power Distribution Corporation Limited (JPDCCL); Kashmir Power Distribution Corporation Limited (KPDCL); Jammu and Kashmir Power Transmission Corporation Limited (JKPTCL) and Jammu and Kashmir Power Development Corporation Limited (JKPDC) have been incorporated under the Companies Act.

1.2 The objects of the companies are as under: -

**JKPCL:** - To carry on the business of purchase and sale of power, to act as a holding company of distribution companies viz. JPDCCL, KPDCL and transmission company viz. JKPTCL with other allied objects.

**JPDCCL:** - To carry on the business of sale and distribution of Power in Jammu province with allied objects.

**KPDCL:** - To carry on the business of sale and distribution of Power in Kashmir province with allied objects.

**JKPTCL:** - To carry on the business of Transmission of Power in Jammu and Kashmir with allied objects.

**JKPDC:** - To carry on the business of generation of Power in Jammu and Kasmir with allied objects.

1.3 The Corporation invites online Bids at e-procurement portal <https://jktenders.gov.in> for the Engagement of a Financial Consultant & Concurrent Auditor of Jammu & Kashmir Power Corporation Limited (erstwhile Jammu & Kashmir State Power Trading Company Limited); Holding Company and its subsidiaries Jammu Power Distribution Corporation Limited; Kashmir Power Distribution Corporation Limited; Jammu and Kashmir Power Transmission Corporation Limited, Jammu and Kashmir Power Development Corporation Limited.

## **2. Expression of Interest and Objectives of Audit**

**2.1** The objective of the assignment is to provide the management timely Fiduciary' assurance that the financial management systems and internal control procedures as applicable to JKPCL, JPDCCL, KPDCL, JKPTCL and JKSPDC are being adhered to by the various units.

- 2.2** The firm shall ensure that unbundling of Jammu and Kashmir Power Development Department (JKPDD) is implemented strictly and translated into financial terms as envisaged in SO 109 dated 20th March 2020.
- 2.3** Further, firm shall examine the sale receivables of JKPDC, implications of water cess and suggest financial engineering considering Capex support/Grants received by JKPDC from Govt of J&K.
- 2.4** The Concurrent auditor/Consultants shall provide to the MD & CPAO/CAO with timely information and recommendations/solutions on the financial management and operational aspects of these companies to enable the management to take corrective measures, wherever necessary.

### **3. Scope of the Concurrent Audit in companies (JKPCL, JPDCL, KPDCL, JKPTCL and JKPDC) and Outputs**

- 3.1.** The audit will be conducted on real time basis. Specific areas of coverage of the audit will include the following as per requirement and new areas can also be added by the Authorities.
- 3.2.** Audit of all vouchers related to each, and every object undertaken by company of turnover, other income, salaries, purchases, expenses, assets and liabilities.
- 3.3.** Audit of Bank reconciliation.
- 3.4.** Balance confirmation of parties.
- 3.5.** Effective Internal financial controls.
- 3.6.** Adherence to accounting principles and Accounting Standards.
- 3.7.** Evaluation of Contracts, Bank Guarantees.
- 3.8.** Audit of transactions pertaining to all taxes, duties, levies, cesses, charges, rates assessment fines, penalties and filing of periodic returns as per relevant statutory laws in force.
- 3.9.** Compliances of direct and indirect taxes
- 3.10.** Implementation of SO 109 translating the decisions in financial terms to make the corporations work independently and as per company law provisions/accounting standards ensuring Annual accounts are prepared accordingly.

#### **3.11. Consultancy and Financial Engineering of JKPDC**

- a)** Examine financial performance of JKPDC including water cess dues implications, sale receivables and financial engineering considering Capex support/Grants received by JKPDC from Govt of J&K.
- b)** To suggest JKPDD about the capex grants released in favor of JKPDC vis a vis investment in Chenab Valley Power Project Private Ltd and in Ratle Hydro Electric Power Corporation Limited and about the power purchase Debt of the JKPDD.

### **4. Selection Criteria**

- 4.1.** JKPCL intends to engage a reputed Chartered Accountant firms for the proposed engagements of these five companies having proven track record of audits for not less than 30 years. The firm or any Partner of the firm should not be in blacklisted

state / status by any PSU, Government, Board or any other organization of similar nature.

**4.2.** The offers shall be evaluated on the following parameters on a scale of 100 marks.

The applicants will be awarded marks for each of the parameters as per following details. The 80 marks shall be awarded for technical qualification and 20 marks for financial offers.

**4.3.** The Financial Bids of top three firms who score highest marks in the technical offers (out of 80 marks) shall be opened to determine the best offers after taking into consideration the financial offers.

<b>S.NO.</b>	<b>Parameters</b>	<b>Basis of Marks</b>	<b>Maximum Marks</b>
I	<b>Techno- Weightage (80%)</b>		
1.	Year of establishment of firm(s) since date of registration	<b>0.5 marks</b> per year	20 marks
2.	Number of Partners at Head Office	1 mark for each associate member (partner) and 2 marks for each fellow member	20 marks
3.	The firm having the experience of audit of CPSE/ PSU/ Boards/Authorities/ SCAs of PSB	1 marks for each year	20 marks
4.	The firm having DISA (ICAI) qualified Partners	2 marks for each Partner	10 marks
5.	The firm has Head Office in J&K	0.5 mark for each year	10 marks
<b>Sub-Total (I)</b>			<b>80 marks</b>
II	Financial Weightage (20%)		
1.	Indicative fee (excluding taxes) in Rs. ....Per month	As defined under Financial Evaluation below	20 Marks
<b>Total (I &amp; II)</b>			<b>100 Marks</b>

#### **4.4. Financial Evaluation**

The lowest financial Bid (Fm) shall be given a financial score of 20 points. The financial score of a Bidder shall be computed as follows:

Financial Score=  $20 \times Fm/F$

(where F is the amount quoted by the bidder) and Fm is the lowest financial bid.

**4.5.** Bidder who will score highest marks (H1) will be awarded the assignment.

However, in case of tie in marks, bidder have more no. of years since establishment (registration) will be awarded the assignment.

#### **5. Audit Reporting and Opinion**

- 5.1.** The concurrent auditor should review and assess the analysis drawn from the internal audit evidence obtained as the basis for their conclusion on the efficiency and effectiveness of systems, processes and controls.
- 5.2.** The report should be discussed with MD/CPAO and should be structured in a manner giving the observations, the implications of the observations, the suggested recommendation/solutions and the management comments/ agreed actions. This will be in the form of a monthly audit report and will be submitted through e-mail to MD and other authorized authority.
- 5.3.** Further, Firm shall give periodic/one time report on financial implementation in accordance with SO 109.

## **6. Timelines and submission of reports**

The auditor will commence their audit from the date of allotment and submit their audit report on monthly basis.

## **7. Payment of Professional fee**

- 7.1.** It is mandatory for the audit team to perform audit at the premises of the JKPCl/respective subsidiary companies. The audit team must manage accommodation and all other logistics on its own within the quoted cost. No out-of-pocket expenses shall be provided to the team. The payment of audit fees will be on a monthly basis by respective companies to the selected firm, and the amount will be fixed as per the final minimum bid selected in tendering process. The Government accommodation may be provided to visiting Auditor.
- 7.2.** The firm would deploy a suitable team for undertaking the work, after a thorough perusal of the requirements of the appointment letter, terms & conditions contained ensuring that the size of the team is commensurate the volume of work involved.
- 7.3.** It should be ensured that the team is headed at all times by a Partner/Qualified Assistant.
- 7.4.** All taxes, fees to be deducted or charged will be applicable as per relevant law in force and the audit fees will be exclusive of such taxes by the consultant firm raising the invoice.

## **8. Tendering Process**

The technical bid and the financial bid should be uploaded on the E-tender website as per the format given at Annexure -A (Technical details) and Annexure -B (Financial bid).

## **9. Bid Price and Validity of Bids**

The minimum professional fee would be starting at **Rs. 2,40,000/- (Rupees Two Lakh Forty Thousand only)** per month per Company for a period of 24 months plus GST as applicable. No accommodation (except for Government accommodation to visiting Auditor coming either from Jammu or Kashmir), conveyance allowance and out of pocket expenses will be provided to the representative of the firm conducting the concurrent audit. Bids shall remain valid for **90** days after date of opening.

## **10. Opening of financial bids**

The bidders, who are technically qualified will be intimated about the date of opening of financial bid.

### **Important dates**

1.	Date of issue of notice for E-NIT	28.01.2026
2.	Date of start of downloading	28.01.2026
3.	Last date for receipt of request for clarifications	04.02.2026 upto 3.00 PM
4.	Pre-Bid meeting date (VC)	06.02.2026 at 2.00 PM
5.	Date and time for issuance and uploading of corrigendum and clarifications, if any	07.02.2026 upto 2.00 PM
6.	Bid submission start date	07.02.2026 at 3.00 PM
7.	Bid submission end time and date	2.00 PM 18.02.2026
8.	Date and time of opening of technical bids	3.00 PM 19.02.2026

## **11. Contract Agreement**

After successful selection of firm, JKPCl/subsidiary companies shall sign separate and independent agreement with the selected firm within 21 days from the date of issue of LOA on a non-judicial stamp paper. The stamp duty is to be borne by the bidder.

## **12. Effective date**

The work shall be commenced within 7 days from the date of issuance of Letter of award (LOA) and the same shall be considered as effective date of contract.

## **13. Performance Standards**

**13.1.** The firm shall undertake to perform the assignment with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional expert opinion. The firm shall ensure completion of the assignment with utmost efficiency, discipline and punctuality.

**13.2.** The firm shall require to submit a performance guarantee equal to **5% of the total value of the work** (incl taxes) to be awarded, as performance security in the shape of DD/FDR/BG from commercial bank pledged to the Managing Director of the respective Companies and it shall remain valid for a period of **60 days** beyond the date of completion of all contractual obligations, which shall be returned after successful completion of assignment.

#### **14. Confidentiality**

The firm shall not, during the term of this Contract and after its expiration disclose any proprietary or confidential information relating to the services of this Contract or the JKSPDC business or operations without the prior written consent of the respective corporation. The successful firm shall have to sign the CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT as attached at **Annexure-D**.

#### **15. Ownership of Material**

Any studies, reports or other material prepared by the firm for the respective Corporation under the Contract shall belong to and remain the property of the respective corporation.

#### **16. Termination**

JKPCL may, in their discretion, terminate the Contract in the event of the firm failing to meet the contractual obligations or any material breach of Contract. Prior to that JKPCL will give in writing the reasons for terminating the contract.

#### **17. Dispute Resolution**

No dispute or difference arising between the firm and the respective Corporation under or relating to the contract shall be referred to adjudication, unless an attempt has first been made to settle the same amicably. Amicable settlement will be deemed to have failed if either party notifies the other, in writing, of the same. Any dispute, in respect of which the respective Corporation and the firm have failed to reach at an amicable settlement, shall be settled by reference to adjudicator.

#### **18. Adjudication**

**18.1.** If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the adjudicator, with a copy to the other party. The adjudicator shall be appointed by the Appointing Authority (Owner-Managing Director, respective Corporation). Within 28 days after receiving such reference, the Adjudicator shall give its decision which shall be reasoned and shall be binding on both the parties, who shall promptly give effect to it unless and until it is revised in an amicable settlement.

**18.2.** The Adjudicator shall be bound by following terms while adjudicating the dispute:-

- a) The Adjudicator shall pass an award strictly as per the terms and conditions of the Contract. Any award contrary to the terms and conditions of contract shall be void and not enforceable.
- b) The Adjudicator shall not award pre-reference, pendent lite or future interest on any claim awarded in favour of any party.
- c) The Adjudicator shall pass a speaking award with reference to each item of claim/dispute.
- d) The venue of adjudication shall be in the UT of Jammu and Kashmir.
- e) The Adjudicator shall be paid fee plus reasonable expenditure incurred in the execution of its duties as Adjudicator under the contract. This cost shall be divided equally between the JKPCL and the firm.
- f) Neither party shall be entitled to suspend such work to which dispute relates and payments if any shall be continued to be made in terms of the Contract during the pendency of the Adjudication proceedings.
- g) The language of the Adjudication proceedings and of all documents and communications between the Parties shall be English.

**18.3.** If either party is dissatisfied with the Adjudicator's decision, then either party, may within 28 days after receiving the decision, give notice to other party of its dissatisfaction. If the Adjudicator fails to give its decision within the period of 28 days after receiving such reference, then either party, may within 28 days after the period has expired, give notice to other party of its dissatisfaction.

**18.4.** If the Adjudicator has given its decision and no notice of dissatisfaction has been given by either party within 28 days after it received the decision of the Adjudicator, then the decision of the Adjudicator shall become final and binding upon both the parties.

**18.5.** Where notice of dissatisfaction has been given, both the parties shall attempt to settle the dispute amicably. In case of failure, there shall be no arbitration proceedings. However, the parties can challenge the award of the Adjudicator in the competent Courts within the UT of Jammu & Kashmir only. Courts of UT of Jammu & Kashmir shall have exclusive jurisdiction on the matter.

**18.6.** Should the Adjudicator resign or die, or should the respective Corporation and the firm agree that the Adjudicator is not fulfilling its functions in accordance with the provisions of the Contract; another adjudicator shall be jointly appointed by the JKPCl and the firm as Adjudicator under the Contract. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed as the Adjudicator under the Contract at the request of either party by the Appointing Authority.

## **19. Law Governing Contract and Language**

The Contract agreement shall be construed and interpreted in accordance with and governed by Laws of India as are in force for the time being and applicable in the UT of Jammu & Kashmir including rules and regulations made there under. In case of any dispute between the parties, the courts in the UT of Jammu & Kashmir shall have jurisdiction in the matter. In respect of any matter for which no provision has been made in this contract, the provisions contained in the Standard Guidelines of the respective Corporation on the subject of hiring of consultants shall apply.

## **20. Other terms & conditions: -**

**20.1.** Original copy of the Cost of tender document and EMD shall be submitted in the office of CPAO, JKPCl, Gladni, Narwal, Jammu - 180006, Jammu and Kashmir by or before the last date of bid submission super scribed "Notice Inviting e-Tenders (E-NIT) for Engagement of a Financial Consultant & Concurrent Auditor of Jammu & Kashmir Power Corporation Limited (erstwhile Jammu & Kashmir State Power Trading Company Limited); Holding Company and its subsidiaries Jammu Power Distribution Corporation Limited; Kashmir Power Distribution Corporation Limited; Jammu and Kashmir Power Transmission Corporation Limited, Jammu and Kashmir Power Development Corporation Limited"

**20.2.** Interested firms are advised to go through the contents of the E-NIT document carefully and submit documents in proper sequence as described in annexure-A.

**21.** In case of unsuccessful bidder, EMD shall be refunded after determination of successful bidder. While in case of successful bidder, it shall be refunded on acceptance of Performance Guarantee.

**22.** The selected bidder shall not sublet or assign the awarded job or any part thereof.

**23.** The Bidder shall bear all costs associated with the preparation and submission of its bid and JKPCL will in no case be responsible or liable for those costs regardless of the outcome of bidding process.

**24.** JKPCL reserves the right to accept or reject any bid, and to annul the process and reject all bids, at any time prior to the award of contract, without thereby incurring any liability to the affected bidder or bidders.

**Sd/-**

Chief Pay and Accounts Officer  
JKPCL, Corporate Office, Jammu

**TECHNICAL BID****(Annexure -A)**

<b>S.No</b>	<b>Particulars</b>	<b>Reply by bidder</b>
	(SUPPORTING Documents required to be submitted along with the Form)	Document attached
1	Name of the firm	YES/NO
2	Address of the firm	YES/NO
3	Phone No. Email:	YES/NO
4	Year of establishment of Firm	YES/NO
5	PAN No. (Attach copy of PAN Card)	YES/NO
6	Firm GSTIN (attach copy of Registration)	YES/NO
7	Registration No. with ICAI (Attach latest certificate issued by ICAI)	YES/NO
8	Number of Partners in the firm (Attach latest certificate issued by ICAI)	YES/NO
9	Number of DISA (ICAI) qualified Partners	YES/NO
10	Experience of Audit in Central/ State PSUs/ Board/ Authority (copy attach)	YES/NO
11	The firm having Head office in J&K (Attach latest certificate issued by ICAI)	YES/NO
12	Bank details as per Annexure-C	Yes/No
13	Copy of complete E-NIT document duly signed as a token of acceptance of all terms and conditions and along with seal of the firm	Yes/No

It is confirmed that all the requirements of the E-NIT documents have been complied with. We hereby confirm that all terms & conditions as specified in the E-NIT and annexures thereto have been accepted by us.

This is to certify that all the information given above are accurate and any misstatement will be liable for rejection of our participation in E-NIT and blacklisting by JKPCl as per Company's procedures.

**Signature of Partner with  
Name & Seal of the Audit Firm**

Note: All the documents submitted should be signed by a Partner with his / her name and under the seal of the firm.

## **FINANCIAL BID**

**(to be submitted in e-bid form at e-BoQ of the e-tender uploaded on the JK tender website only)**

**ANNEXURE-B**

### **1. CONCURRENT AUDIT FEES AND CONSULTANCY**

<b>Item of Activity</b>	<b>Quoted Monthly rate per corporation (in Rupees excluding GST)</b>	<b>Total amount per corporation (in Rupees excluding GST) for 2 years</b>
Preparation of monthly concurrent audit report based on scope of audit.		

Name

Place:

Designation

**BANK DETAILS**

(To be given on Company Letter Head)

We hereby authorize **Jammu and Kashmir Power Corporation Limited (JKPCL Ltd)** to disburse all our payments through electronic fund transfer system/RTGS/NEFT. The details for facilitating the payments are given below: -

1	Name of the Beneficiary, address with Telephone No.	
2	Bank Name, address with Telephone No	
3	Branch Name & Code	
4	Bank Account number with style of account (savings/current)	
5	IFSC no. of the Bank Account	
6	PAN no. of the Beneficiary	
7	E-mail no. & Mobile no. of the beneficiary for intimation of release of payment	

I/We hereby, declare that particulars given above are correct and complete and if the transaction is delayed or credit is not affected due to incorrect information, I/we will not hold the Jammu and Kashmir Power Corporation Limited (JKPCL Ltd) responsible.

Authorized Signatory

Name:

Official stamp with Date

ANNEXURE -D

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ at :

BETWEEN:

\_\_\_\_\_ at \_\_\_\_\_, hereinafter referred to as the "Company" which expression shall unless repugnant to the context or meaning thereof shall include its successors-in-interest and permitted assigns of the FIRST PART

AND

\_\_\_\_\_ having its registered office at \_\_\_\_\_ hereinafter referred to as "Concurrent Auditor" which expression shall unless repugnant to the context or meaning thereof shall include its successors-in-interest and permitted assigns of the SECOND PART

For the purposes of this Agreement, the party that discloses confidential information to the other party shall be referred to as the "Disclosing Party", and the party that receives such confidential information from the other party shall be referred to as the "Recipient and/or "Receiving Party".

The Company and Concurrent Auditor are hereinafter individually referred to as a "Party" and collectively as the "Parties".

AND WHEREAS, the Company is evaluating the possibility of \_\_\_\_\_ and in connection with such \_\_\_\_\_ and during any consequent engagement pursuant to such \_\_\_\_\_ it may be desirable or necessary for Disclosing party to disclose to Receiving Party certain information or provide access to documents or give copies of documents, which are proprietary and/or confidential to Disclosing Party and /or its clients. Hence the Disclosing party is desirous of protecting such proprietary and confidential information upon the terms and conditions herein set forth and is desirous of preventing the disclosure, dissemination or publication of such information by Receiving Party and the Receiving Party is willing to maintain the confidentiality of such information disclosed to it by Disclosing Party in accordance with the terms and conditions hereof. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Definition of Confidential Information.**

(a) For purposes of this Agreement, "Confidential Information" means any data or information that is proprietary and/or Confidential information to the Disclosing Party and not generally known to the public, whether intangible or in a tangible form, whenever and however disclosed, including, but not limited to: (i) any, plans, financial information, or projections, operations, sales estimates, and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated Units; (ii) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, information;

"Confidential Information" includes any information:

- specifically indicated by the Disclosing Party, either verbally or in writing, as confidential.
- under the circumstances of the disclosure, that are to be treated as confidential; or
- the Recipient creates or produces while performing its obligations under this Agreement, regardless of the media that contains the information.

b. Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (b) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (c) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (d) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

## **2. Disclosure of Confidential Information.**

From time to time, during the subsistence of this Agreement, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential information strictly confidential by using a high degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein). Each party shall be jointly and severally responsible for any breach of this Agreement by any of their respective Representatives.

## **3. Use of Confidential Information.**

The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party.

## **4. Compelled Disclosure of Confidential Information.**

Notwithstanding anything foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to

make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, such request the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order, the Disclosing and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

## **5. Term.**

This Agreement shall remain in effect for a period of 2 year(s). Notwithstanding the foregoing, the parties' duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect for a total period of 5 years from disclosure of such Confidential Information.

## **6. Remedies.**

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

## **7. Return of Confidential Information.**

Receiving Party shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or foregoing, including or materials ("Notes") (and all copies of any of the "copies media in the form of manually or that have been converted to computerized image, data or word processing files either by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (1) the completion or termination of the dealings between the parties contemplated hereunder; (i) the termination of this Agreement; or (ii) at such time as the Disclosing Party may so request, provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

## **8. Notice of Breach.**

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

**9. No Binding Agreement for Transaction.**

The parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a transaction by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

**10. Warranty.**

Each party warrants that it has the right to make the disclosures under this Agreement. No warranties are made by either party under this agreement whatsoever. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by either party as the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither Party hereto shall have any liability to the other party nor to the other party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

**11. Indemnity.**

Receiving Party hereby agrees to indemnify and hold Disclosing Party and its employees, directors, officers and agents harmless from and against any and all claims, demands, liabilities, losses, costs, damages, and expenses of any nature whatsoever (including, without limitation, the cost of investigation and defending any lawsuit or other legal proceeding and reasonable attorney's fees and expenses incurred in connection therewith) claimed from or asserted against Disclosing Party by a third party, upon or arising out of the use by Receiving Party of the information provided by Disclosing Party hereunder.

**12. Miscellaneous.**

- a. This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.
- b. The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of India, without giving effect to any conflict of law provisions thereof. The courts situated in Bangalore, Karnataka,

shall alone have jurisdiction to decide any dispute(s) arising out of or in relation to this Agreement.

- c. Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
- d. Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten, or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- e. Any notice or communication to be given under this Agreement shall be given if sent by registered post with acknowledgement due to the intended recipient at the address given above or to such address as may be notified from time to time by the party concerned. No e-mail communication will be accepted as a valid notice given in terms of this Agreement.
- f. This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors-in-interest and permitted assigns.
- g. Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

Authorized Signatory,  
Signatory,  
Authorized

For \_\_\_\_\_

For ABC

Witnesses:

- 1.
- 2.