



INVITATION FOR EXPRESSIONS OF INTEREST

FOR

ACQUISITION OF SHARES OF IL&FS TAMIL NADU POWER COMPANY LIMITED ("ITPCL") HELD BY THE IL&FS GROUP

This refers to the advertisement issued in the Economic Times (all editions), Maharashtra Times (Mumbai edition), and Navbharat Times (Delhi and NCR editions) each dated November 24, 2023 regarding the proposed acquisition of (i) 92.42% (ninety two point four two per cent) of the issued, subscribed and paid up share capital of ITPCL on an as is where is basis held collectively by Infrastructure Leasing & Financial Services Limited ("**IL&FS**"), and IL&FS Energy Development Company Limited ("**IEDCL**"); and (ii) 2,40,000 (two lakhs forty thousand) fully and compulsorily converted debentures ("**FCCDs**") of ITPCL held by IEDCL ("**Proposed Transaction**")¹.

Pursuant to the *Report on Progress and Way Forward* dated October 30, 2018, the resolution framework set out in the *Third Report on Progress and Way Forward* dated December 17, 2018 submitted by the Ministry of Corporate Affairs ("**MCA**") with the National Company Law Appellate Tribunal, New Delhi ("**NCLAT**") on January 25, 2019 and as amended by: (a) the *Addendum to the Third Report on Progress and Way Forward* dated January 15, 2019, filed by the MCA with the NCLAT on January 25, 2019; and (b) the *Second Addendum to the Third Report on Progress and Way Forward* dated December 05, 2019 filed by the MCA with the NCLAT on January 09, 2020 (and the terms of which were resubmitted to the NCLAT by the MCA on February 07, 2020) (collectively "**Reports**") and the order dated March 12, 2020 issued by the NCLAT, in order to monetize the IL&FS group's investments in ITPCL, expression of interest ("**EOI**") are invited from interested applicants ("**Applicants**") to participate in the public sale process ("**Process**") and submit bids for the Proposed Transaction. The consummation of the Proposed Transaction shall be subject to necessary approvals, including, the approval of the board of directors of IL&FS ("**New Board**"), the boards of directors of IEDCL, approvals required under applicable laws, approval from statutory authorities, the approval of Justice (Retd.) D.K. Jain, and the approval of the National Company Law Tribunal ("**NCLT**").

The Proposed Transaction and the Process are an integral part of the steps outlined in the Reports, and are expected to assist the New Board, in part, in evolving the resolution plan outlined in the Reports. The New Board has engaged Kroll as the financial and transaction advisors for the Process.

A. Background

ITPCL was incorporated to set up an integrated 3,180 MW (three thousand one hundred and eighty Mega Watt) thermal power plant with captive jetty and coal mines licensed by itself and through its subsidiaries. Currently, under Phase 1, ITPCL is operating a 1,200 MW (one thousand two hundred

■ _____
¹ **Note:** Subject to the outcome of certain legal proceedings filed by IL&FS, the Proposed Transaction may entail offer to acquire the aforesaid shares as constituting and representing the entire share capital of ITPCL validly issued and standing, or fresh issuance and ownership of the entire share capital of ITPCL.



Mega Watt) imported coal-based power plant and has further expansion potential of 1,980 MW in Phase 2 with common infrastructure already in place at Cuddalore, Tamil Nadu.

Unit I (600 MW (six hundred Mega Watt)) of Phase 1 capacity has been tied to Tamil Nadu Generation and Distribution Corporation under long term power purchase agreements (“PPAs”). Power generated from Unit II (600 MW (six hundred Mega Watt)) of Phase I capacity are being sold under short term PPAs and through power exchanges. Unit I (600 MW (six hundred Mega Watt)) was commissioned in September 2015 and Unit II (600 MW (six hundred Mega Watt)) was commissioned in April 2016.

In Phase 2, ITPCL has the expansion potential of 1,980 MW (one thousand nine hundred and eighty Mega Watt) 3 (three) X 660 MW (six hundred and sixty Mega Watt) power project wherein land of 1350 (one thousand three hundred and fifty) acres has been acquired and certain common infrastructure facilities are already in place and major approvals have been obtained.

Imported coal for Phase 1 (2 (two) X 600 MW (six hundred Mega Watt)) is sourced from Indonesia. ITPCL has long term contract with Kariakal port for unloading coal in Tamil Nadu. Further, ITPCL has an arrangement with the Indian Railways for transporting the coal from the Karaikal port to the power plant. The plant has constructed a railway siding of around 5.5 km (five point five kilo meters) to transport coal from the nearest railway station Puduchetram to the plant. The coal is unloaded through BOBRN (Bottom Open) rakes to the track hopper, which is located underground, and the track hopper transports the coal to the coal yard.

Furthermore, for avoidance of any delay in transportation of coal from the port to the plant and considering inherent commercial benefits, ITPCL has initiated the development of captive jetty with a capacity to handle 5 (five) million metric ton per annum. The coal from this jetty will be transported to the plant with the help of conveyers. The plant has a storage capacity of 9,00,000 (nine lakhs) tonnes of coal.

For long term fuel availability ITPCL owns a coal mining license in Indonesia through its overseas subsidiaries in Singapore and Indonesia.

92.42% (ninety two point four two per cent) of the issued, subscribed and paid up share capital of ITPCL is held as follows: (a) IL&FS holds 12.11% (twelve point one one per cent) of the issued, subscribed and paid up share capital of ITPCL; and (b) IEDCL holds 80.31% (eighty point three one per cent) of the issued, subscribed and paid up share capital of ITPCL. The remaining 7.58% (seven point five eight per cent) of the issued, subscribed and paid up share capital of ITPCL are held by A. S. Coal Resources Pte Ltd.

Further, IEDCL holds 2,40,000 (two lakhs forty thousand) FCCDs in ITPCL. As part of the Proposed Transaction, the FCCDs shall also be transferred from IEDCL to the successful bidder upon closing of the Proposed Transaction (along with any equity shares arising from conversion of the FCCDs prior to closing of the Proposed Transaction). IL&FS Maritime Offshore Pte Limited (“**IMOPL**”) is a wholly owned subsidiary of ITPCL in Singapore. IL&FS Offshore Natural Resources Pte Limited (“**IONR**”) is a wholly owned subsidiary of IMOPL in Singapore and Se7en Factor Corporation is a wholly owned subsidiary of IMOPL in Seychelles. PT Bangun Asia Persada, (“**PBAB**”) is a subsidiary of IMOPL in Indonesia wherein IMOPL holds 99% (ninety nine per cent) share capital of PBAB and IONR holds 1% (one per cent) share capital of PBAB. PT Mantimin Coal Mining, is a subsidiary of PBAB in Indonesia wherein PBAB holds 95% (ninety five) of the share capital of PT Mantimin Coal Mining.



B. Financial and related Eligibility Criteria

To be eligible to participate in the Process being undertaken for the Proposed Transaction, the Applicants must comply with the following financial criteria:

(a) Financial Criteria

(i) For Bodies Corporate, individuals, partnerships, LLPs and trusts:

For bodies corporate, partnerships, LLPs and trusts, domestic or international (other than those covered specifically in (ii) below): minimum net worth (“NW”) of INR 500,00,00,000/- (Indian Rupees Five Hundred Crores only) as per the latest audited balance sheet as of December 31, 2022 or later.

For individuals, newly incorporated special purpose vehicles/ entities for which latest audited balance sheet is not available: minimum NW of INR 500,00,00,000/- (Indian Rupees Five Hundred Crores only) which shall be evidenced by a chartered accountant’s certificate as of December 31, 2022 or later confirming the availability of sufficient funds meeting the minimum net worth criteria and sources thereof.

(ii) For Investment Funds, including Private Equity Funds:

For investment funds, including private equity funds: (A) minimum assets under management of INR 1,000,00,00,000/- (Indian Rupees One Thousand Crores only) as of December 31, 2022 or later; (B) committed funds available for investment/ deployment in companies incorporated in India of at least INR 1,000,00,00,000/- (Indian Rupees One Thousand Crore only) as of December 31, 2022 or later.

Note: The abovementioned NW criterion is not an indication of the reserve price for the Proposed Transaction.

Notes on NW:

- (i) NW shall be computed in the manner set out in Section 2(57) of the Companies Act, 2013, as amended. For non-Indian entities, NW shall be calculated in accordance with applicable law in the country of registration of the Applicant.
- (ii) NW requirement can be met either by: (A) the Applicant; or (B) if the Applicant is a subsidiary/ fund with at least 51% (fifty one per cent) equity shareholding (on a fully diluted basis) being held by the parent company or a promoter or an affiliate of the parent company or promoter, then by such parent company or promoter or affiliate of the parent company or promoter, as the case may be, in each case on a consolidated basis.
- (iii) For calculation of NW, any compulsorily convertible instrument can also be included.
- (iv) In case the Applicant is a Consortium (acting through a Consortium SPV or otherwise), then the NW requirement must be met based on a weighted average basis of the

consortium members' stake in the Consortium. Any entity may only be part of any 1 (one) Consortium under the Process. Further any Applicant can submit only 1 (one) bid either directly or through a Consortium. It is hereby clarified that the bid can be submitted by an entity as well as its subsidiary company and holding company.

- (v) If the Applicant is not domiciled in India, the Applicant should convert all monetary amounts into Indian Rupees at the foreign exchange rate stipulated by RBI (as on a date 1 (one) day prior to the date of submission of the EOI).
- (vi) NW has to be computed as per the latest audited balance sheet, which balance sheet date shall be for a financial year ending December 31, 2022 or later.

(b) Exemption to Indian Public Sector Enterprise

The criteria prescribed in this paragraph B(a) (*Financial Criteria*) shall not apply to an Applicant which is an Indian Public Sector Enterprise, if such Indian Public Sector Enterprise submits a letter of support from the Central Government or any State Government (as the case may be) at the time of submission of its binding bid.

For the purpose of this clause, "Indian Public Sector Enterprise" shall mean any government company as defined under the Companies Act, 2013 or a body corporate constituted or established under any act or parliament or any state legislature.

(c) Other Eligibility Criteria for all Applicants

- (i) The Applicant has not been debarred or restrained by any regulatory authority from making investments in India and in its jurisdiction of incorporation and operations;
- (ii) The Applicant has not been blacklisted by the Central or any State Government ministry/ agency for bidding in any Central or State Government projects/ contract in India and in its jurisdiction of incorporation and operations; and
- (iii) Neither the Applicant nor its Connected Person are not ineligible under the provisions of Section 29A of the Insolvency & Bankruptcy Code, 2016 to participate in the Proposed Transaction.

C. Guidelines for the Submission of EOI

Applicants must submit:

- (a) duly executed EOIs in the format set out in **Annexure A**;
- (b) a profile of the Applicant along with computation of NW (as per the prescribed format attached herein as **Annexure B**), signed and sealed by the Applicant/ authorized representative of the Applicant;
- (c) an executed non-disclosure undertaking in the format set out in **Annexure C**;



- (d) proof of authorization for the execution of the EOI and the non-disclosure undertaking (such as resolution of the board of directors or similar authorizing body in the format set out in **Annexure D**);
- (e) latest audited financial information or chartered accountant's certificate/ bank certified bank account statement, as applicable;
- (f) In the case of companies/ partnerships/ LLPs/ trust/ consortium, copy of:
 - (i) certificate of incorporation issued by the Registrar of Companies;
 - (ii) articles of association/ memorandum of association/ partnership deed/ other incorporation/ constitutional documents, as may be applicable;
 - (iii) proof of registered office address (in the case of Company) (electricity bill/ telephone bill/ certificate of incorporation/ lease or rent agreement); and
 - (iv) Copy of PAN/ TAN.

Such submission shall be made by e-mail to ilfs.thermal@ilfsindia.com and ilfs.itpcl@kroll.com.

Emails should clearly set out the subject as “*Expression of Interest for Acquisition of Shares of IL&FS Tamil Nadu Power Company Limited held by the IL&FS Group*” and should be submitted no later than **5 PM Indian Standard Time on December 18, 2023**.

D. Other information

- (a) Unless any changes or modifications to this invitation for EOI are uploaded on <https://www.ilfsindia.com/asset-divestment.aspx>, the terms of this invitation for EOI shall be final and binding on all Applicants.
- (b) If, at any time during the Process, IL&FS determines (at its sole discretion) that any Applicant does not fulfill any of the above conditions, then IL&FS shall have the right to immediately cease to engage with such Applicant without providing any reasons or incurring any liability whatsoever.
- (c) IL&FS reserves the right, at its sole discretion, to reject all or any of the EOIs, without providing any reasons or incurring any liability whatsoever.
- (d) IL&FS reserves the right to suspend, terminate or modify the Process, without providing any reasons or incurring any liability whatsoever.
- (e) The Applicant shall maintain confidentiality of the information received as part of the Process and shall not use such information to cause any undue gain or undue loss to itself or any other person.
- (f) Upon submission of the documents set out in paragraph C (*Guidelines for Submission of EOI*) the eligible Applicants shall be provided an information memorandum containing details of the



opportunity, the proposed transaction structure, the request for proposal and other information in relation to the Proposed Transaction in the virtual data room. IL&FS shall, at its sole discretion, determine the eligibility of an Applicant.

- (g) This invitation for expression of interest is governed by the laws of India and the courts at Mumbai shall have exclusive jurisdiction.



Annexure A

Format of Expression of Interest

[On the letter head of the Applicant]

Date: [●], 2023

To

The Board of Directors,

Infrastructure Leasing & Financial Services Limited,
9th Floor, The IL&FS Financial Centre,
Plot No. C-22, G-Block, Bandra – Kurla Complex,
Bandra (East), Mumbai – 400 051.

Subject: INVITATION FOR EXPRESSIONS OF INTEREST FOR THE ACQUISITION OF SHARES OF IL&FS TAMIL NADU POWER COMPANY LIMITED (“ITPCL”) HELD BY THE IL&FS GROUP

Respected Directors,

We refer to the advertisement issued in the Economic Times (all editions), Maharashtra Times (Mumbai edition), and Navbharat Times (Delhi and NCR editions) each dated November 24, 2023 and the invitation for Expression of Interest available at <https://www.ilfsindia.com/asset-divestment.aspx>, regarding the proposed acquisition of (i) 92.42% (ninety two point four two per cent) of the issued, subscribed and paid up share capital of ITPCL on an as is where is basis held collectively by: (a) Infrastructure Leasing & Financial Services Limited (“**IL&FS**”) (which holds 12.11% (twelve point one one per cent) of the issued, subscribed and paid up share capital of ITPCL); and (b) IL&FS Energy Development Company Limited (“**IEDCL**”) (which holds 80.31% (eighty point three one per cent) of the issued, subscribed and paid up share capital of the ITPCL); and (ii) 2,40,000 (two lakhs forty thousand) fully and compulsorily converted debentures of ITPCL held by IEDCL (“**Proposed Transaction**”)².

We hereby confirm that we are desirous of participating in the Proposed Transaction and would like to submit this expression of interest (“**EOI**”).

We confirm that we fulfil each of the ‘eligibility criteria’ mentioned in the invitation for EOI for the Proposed Transaction. Please find attached our profile along with the documents (and details of the eligible consortium, if any) in support of our submission.

■ _____

² **Note:** Subject to the outcome of certain legal proceedings filed by IL&FS, the Proposed Transaction may entail offer to acquire the aforesaid shares as constituting and representing the entire share capital of ITPCL validly issued and standing, or fresh issuance and ownership of the entire share capital of ITPCL.



[Our net worth as per the last audited balance sheet dated [●] is [●].] OR [Our minimum assets under management in India as of [●] is [●]] OR [Our committed funds available for investment/ deployment in companies incorporated in India as of [●] is [●]]³.

We confirm that we have understood the terms and conditions applicable to the submission of EOI. We confirm and undertake that the information furnished by us in this EOI and supporting documents is true, correct, complete, and accurate.

We agree, acknowledge and declare that:

- (a) the person signing this EOI and other supporting documents is an authorized signatory who is supported by necessary board resolutions/ resolution passed by the relevant authorizing body (*as enclosed*);
- (b) we have not been debarred or restrained by any regulatory authority from making investments in India and in our jurisdiction of incorporation and operations;
- (c) we have not been blacklisted by the Central or any State Government ministry/ agency for bidding in any Central or State Government projects/ contracts in India and in our jurisdiction of incorporation and operations;
- (d) we are not ineligible and are our Connected Persons are also not ineligible under the provisions of Section 29A of the Insolvency & Bankruptcy Code, 2016, as amended from time to time, to participate in the Process (*as defined below*) initiated for the Proposed Transaction; and
- (e) we shall maintain confidentiality of the information received as part of the process relating to the Proposed Transaction (“**Process**”) and shall not use such information to cause any undue gain or undue loss to itself or any other person.

With respect to the Proposed Transaction, we agree and confirm to IL&FS that:

- (a) we are aware that the consummation of the Proposed Transaction initiated pursuant to the Process will be subject to necessary approvals, including, the approval of the board of directors of IL&FS, the board of directors of IEDCL, approvals required under applicable law, approvals required from statutory authorities, the approval of Justice D.K. Jain (Retd.) and the approval of the National Company Law Tribunal (“**NCLT**”);
- (b) if we do not meet any of the eligibility criteria throughout the Process, then IL&FS shall have the right, exercisable at its sole discretion, to forthwith terminate our involvement in the Process and the Proposed Transaction. We will promptly intimate IL&FS of any material adverse change or any ineligibility in respect of the conditions set out in this invitation for EOI issued by IL&FS, including any developments that impact our ability to complete the transaction envisaged in the Proposed Transaction, as envisaged pursuant to the Process;
- (c) IL&FS reserves the right to request for additional information or clarification(s) from us for the purposes of the EOI and we shall promptly comply with such requirements;

■ _____
³ **Note to Applicant:** Retain as relevant.



- (d) IL&FS reserves the right to determine at its sole discretion, whether or not we are eligible for the Proposed Transaction and may reject the EOI submitted by us without assigning any reason or without incurring any liability whatsoever;
- (e) we have provided, and will provide, all information and data during the Process, in a manner that is true, correct, accurate and complete and no such information, data or statement provided by us is (nor, when provided, will it be) inaccurate or misleading in any manner; and
- (f) IL&FS reserves the right to suspend, terminate or modify the Process initiated under this EOI or subsequent steps at any time, without providing any reasons or incurring any liability whatsoever.

Yours sincerely,

On behalf of [*insert name of Applicant*]

Signature:

Name of Signatory: [*insert details*]

Designation: [*insert details*]

Contact No.: [*insert details*]

E-mail ID: [*insert details*]

Address: [*insert details*]

Enclosures:

1. profile of the Applicant along with computation of the net worth;
2. board resolution or resolution passed by appropriate authorizing body of the Applicant;
3. latest audited financial information or chartered accountant's certificate/ bank certified bank account statement, as applicable; and
4. non-disclosure undertaking.

Annexure B
Profile of the Applicant

Sl. No.	Required Details	Particulars
1.	Name of the Applicant	
2.	Details of the Applicant	<u>Address:</u> <u>Telephone No:</u> <u>Fax:</u> <u>Email:</u> <u>Website:</u>
3.	Category	<i>Please tick below</i> Individual (_____)) Partnership Firm (_____)) Corporate (_____)) Consortium (_____)) Private Equity (_____))
4.	Country/ State of incorporation	
5.	Date of Establishment/ Incorporation	
6.	Area of Expertise	
7.	Details of authorized representative/ individual(s) who will serve as the point of contact/ communication on behalf of the applicant	<u>Name</u> <u>Designation</u> <u>Address</u> <u>Landline / Mobile</u> <u>Email</u>
8.	PAN No. (if applicable) <i>(Please enclose a photocopy of PAN Card of applicant and Joint holder)</i>	
9.	Net Worth of the Applicant [<i>Note to Applicant: Please fill in case the Applicant is a Company/ Fund/ Individual.</i>]	



Sl. No.	Required Details	Particulars
10.	Experience of the Applicant in the relevant sector	

NET WORTH CALCULATION: (For an Unincorporated Consortium/ Consortium SPV)

Description	Lead Consortium Member	Consortium Member 1	Consortium Member 2	Total Net Worth
Total Net worth				
% Holding				
Effective Net worth				

Note to Applicant: this Annexure is to be signed by the authorized representative of the Applicant and the rubber stamp of the Applicant to be affixed.



Annexure C

Non-Disclosure Undertaking

[ON THE LETTERHEAD OF THE APPLICANT]

[●], 2023

To,

Infrastructure Leasing & Financial Services Limited
The IL&FS Financial Centre,
Plot C-22, G Block,
Bandra Kurla Complex,
Bandra East,
Mumbai 400051

Sub: Acknowledgements, Confidentiality and Non-Disclosure (“Undertaking”)

Dear Sir/ Madam,

1. Vide this Undertaking, we, [insert name of Applicant] [**Note to Applicant:** please insert name of the Applicant. In case of an unincorporated consortium, please state that the Receiving Party is an unincorporated consortium and state name of members of such consortium and the lead partner. Further, in case the receiving party is an unincorporated consortium, then this NDU would have to be executed on the letter head of the lead partner with each member of the consortium signing the NDU.] (the “**Receiving Party**”), hereby agree, undertake, acknowledge and confirm that:
 - (a) The Receiving Party would be receiving Confidential Information (*as defined below*) in relation to:
 - (i) IL&FS Tamil Nadu Power Company Limited (“**ITPCL**”); (ii) IL&FS Maritime Offshore Pte Limited; (iii) IL&FS Offshore Natural Resources Pte Limited; (iv) Se7en Factor Corporation; (v) PT Bangun Asia Persada; (vi) PT Mantimin Coal Mining; and (vii) Cuddalore Solar Power Private Limited (collectively referred to as “**Identified Assets**”) in relation to the proposed acquisition of (i) 92.42% (ninety two point four two per cent) of the issued, subscribed and paid up share capital of ITPCL collectively held by IL&FS (which holds 12.11% (twelve point one one per cent) of the issued, subscribed and paid up share capital of ITPCL); and IEDCL (which holds 80.31% (eighty point three one per cent) of the issued, subscribed and paid up share capital of the ITPCL); and (ii) 2,40,000 (two lakhs forty thousand) fully and compulsorily converted debentures of ITPCL held by IEDCL (“**Proposed Transaction**”)⁴ subject to a public bid process (“**Process**”), from IL&FS, ITPCL and IEDCL and their respective shareholders, affiliates, directors, officers, employees, agents and/ or advisors (individually referred to as “**Disclosing Party**”, and collectively referred to as “**Disclosing Parties**”);

■ _____
⁴ **Note:** Subject to the outcome of certain legal proceedings filed by IL&FS, the Proposed Transaction may entail offer to acquire the aforesaid shares as constituting and representing the entire share capital of ITPCL validly issued and standing, or fresh issuance and ownership of the entire share capital of ITPCL.

- (b) “**Confidential Information**” includes: (i) all information, discussions, progress and status with respect to the Process and the Proposed Transaction; (ii) all information, data, reports, analyses, advices, interpretations, studies, forecasts, records, documents and/ or materials, whether made available in writing or electronically to the Receiving Party by the Disclosing Parties in relation to the Identified Assets, the Process or the Proposed Transaction or the intended parties to the Proposed Transaction or becoming available to the Representatives (*as defined below*) of the Receiving Party; (iii) any financial, technical, business, operational, assets and liabilities related information, any analysis that integrally incorporates and/ or discloses any Confidential Information; and (iv) any information exchanged between parties to the Proposed Transaction, in respect of any Disclosing Party(ies), or documents reflecting or generated from such information, and any information or document that the Disclosing Party considers confidential, but excluding information that:
- (i) at the time of supply to the Receiving Party is in the public domain or otherwise lawfully known to the Receiving Party;
 - (ii) becomes lawfully available to the Receiving Party or its Representatives from a third party who to the best of the Receiving Party’s knowledge does not owe any party an obligation of confidence in relation to such information;
 - (iii) is independently developed by the Receiving Party or its Representatives without any reference to the Confidential Information, and without violating any obligations hereunder; or
 - (iv) is approved for disclosure in writing by the Disclosing Parties or a Disclosing Party;
- (c) The Confidential Information shall be shared only with Affiliates or partners of the Receiving Party who shall be potentially participating in equity or debt funding and the directors, shareholders, partners, officers, agents, employees or advisors (such as financial advisors, attorneys, bankers, consultants and accountants) of the Receiving Party/ their Affiliates/ partners who need to know such information for the purpose of evaluating the Proposed Transactions (collectively referred to as the “**Representatives**”), on a strictly “need to know” basis; provided, such Representatives are also similarly restricted by the confidential obligations and conditions set forth in this Undertaking. The Receiving Party agrees that the Receiving Party will be responsible for any breach of the confidentiality and other terms of this Undertaking by any of the Receiving Party’s Representatives.
- (d) The term “**Affiliate**” with respect to any Person, means any other Person which, directly or indirectly: (i) Controls such Person; (ii) is Controlled by such Person; or (iii) is Controlled by the same Person who, directly or indirectly, Controls such Person. In case where any of the share capital of the Receiving Party is held, directly or indirectly, by an investment entity, in addition to the above, the term Affiliate shall also include: (A) any alternative investment or co-investment fund, entity or company (including without limitation, any investment trust, limited partnership or general partnership) Controlled or managed by such investing entity; (B) any successor investment fund, vehicle or company of the investing entity; and (C) any Person that, directly or indirectly Controls, is Controlled by or is under the common Control with any Person referred in (A) and (B) above. For the purposes of this definition, an investing entity shall include a foreign venture capital investor, alternate investment fund, non-banking financial company, a core investment company or any entity engaged solely in holding investments in other companies/ entities. It is clarified that where the Receiving Party is directly owned by an alternate investment fund, registered with the



Securities Exchange Board of India (an “AIF”), then in such a case any other funds or Persons managed by or advised by the manager to such AIF shall not be considered as an Affiliate of the Receiving Party.

- (e) The term “**Control**” shall have the meaning given in Companies Act, 2013 and terms “**Controlled**” or “**Controlling**” shall have the meaning accordingly.
- (f) The term “**Person**” includes any individual, firm (registered or otherwise), company, corporation, body corporate, government, state or agency of a state or any association, trust, joint venture, consortium, partnership (including limited liability partnership) or other entity (whether or not having separate legal personality).

2. The Receiving Party agrees and undertakes that it shall, and it shall ensure that its Representatives shall:

- (a) keep confidential all Confidential Information provided to the Receiving Party, unless disclosure is required to satisfy the requirements of any law, legal process, court of competent jurisdiction or any governmental or regulatory agency having the authority to regulate any aspect of the Receiving Party’s business. Provided that the Receiving Party may disclose only such Confidential Information that is required to be disclosed to comply with a regulatory requirement, and to the extent legally permissible, the Receiving Party shall notify the Disclosing Parties of such requirements promptly, in advance of the disclosure, so that the Disclosing Parties may seek protective order(s) or other appropriate remedy to protect the secrecy of the Confidential Information at the cost of the Disclosing Parties;
- (b) use Confidential Information solely for the purpose of evaluating, negotiating or, if selected as the preferred applicant, carrying out the Proposed Transaction;
- (c) not use the Confidential Information to cause an undue gain or undue loss to itself or any other person and comply with the principles stipulated under Section 29(2) of the Insolvency and Bankruptcy Code, 2016 (as amended from time to time);
- (d) not engage with or solicit or attempt to solicit, in any manner whatsoever, any client or customer of the Identified Assets; and
- (e) not, directly or indirectly:
 - (i) induce for employment, employ or engage as a consultant or independent contractor any employee of the Disclosing Party(ies) to leave his or her employment and/ or terms of service with the applicable Disclosing Party, or in any way interfere with the relationship between the Disclosing Party and any such employee thereof;
 - (ii) induce or hire any person engaged by the Disclosing Party(ies), with whom the Receiving Party or any of its Representatives have been directly or indirectly introduced or otherwise had contact with in connection with the Proposed Transaction, so long as such persons are employed or engaged by the applicable Disclosing Party, or upon cessation of such employment or engagement with the applicable Disclosing Party, for a period of 6 (six) months after such cessation, unless otherwise agreed by the applicable Disclosing Party in writing,



Provided that the aforesaid conditions do not prevent the Receiving Party from offering employment: (A) pursuant to a general solicitation or advertisement not specifically directed towards employees of the Disclosing Party(ies), in the news media of general circulation; (B) through a recruitment agency or other similar entities who have not been specifically instructed by the Receiving Party to solicit such employees of the Disclosing Party(ies); or (C) to persons who approach the Receiving Party on their own volition, without any solicitation by the Receiving Party or its Representatives.

3. Further, the Receiving Party acknowledges and agrees that:
 - (a) the Confidential Information disclosed under this Undertaking is delivered “as is” and the Disclosing Parties do not make any representation or warranty as to the accuracy, timeliness or completeness of the Confidential Information or its suitability for any particular purpose. The Disclosing Party shall not have any liability to the Receiving Party or its Representatives relating to or resulting from the use of the Confidential Information or any omissions or errors therein; and
 - (b) the opportunity to participate in the Process or grant of access to Confidential Information cannot be construed:
 - (i) to grant any rights over the Identified Asset(s) to the Receiving Party or any Person;
 - (ii) to be a commitment or agreement by the Disclosing Parties to undertake or consummate the Proposed Transaction with the Receiving Party or any other party; or
 - (iii) to refrain the Disclosing Party from consummating the Proposed Transaction or any transaction pertaining thereto with any other party.
4. The Receiving Party acknowledges and confirms that:
 - (a) the Confidential Information is the property of the relevant Disclosing Party;
 - (b) in case of any actual or suspected loss, theft, unauthorized disclosure, use or access of Confidential Information in breach hereof or other non-compliance with this Undertaking, it shall notify the Disclosing Party in writing (including electronically) (along with relevant details), and shall provide all reasonable assistance to the Disclosing Party in connection with any proceedings which the Disclosing Party may institute to protect such Confidential Information; and
 - (c) in the event the Disclosing Parties decide not to proceed with the Proposed Transaction either with the Receiving Party or at all, the Receiving Party shall promptly return (if requested by the Disclosing Party) or destroy (if no such request is made) all physical copies of Confidential Information (and delete or make inaccessible all electronic copies thereof). Provided, that the Receiving Party may retain Confidential Information that is required to be retained by: (i) law, regulation, legal or judicial process or any governmental or regulatory authority or document retention policy; and/ or (ii) tax, audit or compliance purposes with a prior intimation to the Disclosing Party.
5. The Receiving Party understands and agrees that monetary damages would not be sufficient remedy for any actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives and that, in addition to all other remedies available at law and/or in equity, the Disclosing Parties shall be entitled to seek equitable relief, including both preliminary and permanent



injunctions and specific performance, as a remedy for any such actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives.

6. This Undertaking is governed by, and construed in accordance with, the laws of India and shall be subject to the exclusive jurisdiction of the courts of Mumbai, India.
7. This Undertaking comes into effect upon execution and the obligations set forth herein shall remain irrevocable and binding upon the Receiving Party until the earlier of:
 - (a) the date on which the definitive agreement(s), if any, are executed in respect of the Proposed Transaction; or
 - (b) 12 (twelve) months from the date of execution of this Undertaking.

For *[insert name of Applicant]*

Signature:

Name of Signatory: *[insert details]*

Designation: *[insert details]*

Contact No.: *[insert details]*

E-mail ID: *[insert details]*

Address: *[insert details]*



Annexure D

Board Resolution (in case of Company)

CERTIFIED TRUE COPY OF THE EXTRACT OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF [●] (“Board”) IN ITS MEETING HELD ON
AT.....

“**RESOLVED THAT** pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the memorandum and articles of association of the company, approval of the Board be and is hereby granted to the company to submit expression of interest (“**EOI**”) pursuant to the advertisement issued in Economic Times (all editions), Maharashtra Times (Mumbai edition), and Navbharat Times (Delhi and NCR editions) each dated November 24, 2023 regarding the proposed acquisition of (i) 92.42% (ninety two point four two per cent) of the issued, subscribed and paid up share capital of IL&FS Tamil Nadu Power Company Limited (“**ITPCL**”) on an as is where is basis held collectively by: (a) Infrastructure Leasing & Financial Services Limited (“**IL&FS**”) (which holds 12.11% (twelve point one one per cent) of the issued, subscribed and paid up share capital of ITPCL); and (b) IL&FS Energy Development Company Limited (“**IEDCL**”) (which holds 80.31% (eighty point three one per cent) of the issued, subscribed and paid up share capital of the ITPCL); and (ii) 2,40,000 (two lakhs forty thousand) fully and compulsorily converted debentures of ITPCL held by IEDCL (“**Proposed Transaction**”); subject to a public bid process (“**Process**”), wherein subject to the outcome of certain legal proceedings filed by IL&FS, the Proposed Transaction may entail offer to acquire the aforesaid shares as constituting and representing the entire share capital of ITPCL validly issued and standing, or fresh issuance and ownership of the entire share capital of ITPCL;

“**RESOLVED FURTHER THAT** [name] [designation] and [name] [designation], be and are hereby jointly and/ or severally authorized to act as our authorized bidder representative for all purposes of the Process in relation to the Proposed Transaction, including the following:

- (a) to submit the EOI and the non-disclosure undertaking;
- (b) to provide clarification in relation to the EOI as may be required by IL&FS;
- (c) to undertake due diligence in relation to the Proposed Transaction, including legal, technical and financial, and for that purpose to appoint suitable consultants;
- (d) to participate in the process related to the Proposed Transaction;
- (e) to participate in further negotiations in relation to the Proposed Transaction;
- (f) to comply with all terms and conditions during and after the process for the Proposed Transaction;
- (g) if selected as an eligible applicant by IL&FS, then it shall comply and execute all such document as may be required IL&FS in relation to the Proposed Transaction.”

“**RESOLVED FURTHER THAT** [name] [designation] and [name] [designation], be and are hereby jointly and/ or severally authorized to finalize and execute all such documents, declarations, letters,



agreements and writings and take such actions as may be further necessary in relation to the Proposed Transaction.”

RESOLVED FURTHER THAT the common seal of the company be affixed on all the deeds or instruments in respect of the Proposed Transaction to which the seal of the company is required to be affixed in accordance with its memorandum and articles of association, in the presence of **[insert name], [insert designation]** and **[insert name], [insert designation]**, of the company, who shall also sign the same:

Certified true copy

For

.....

Director

Notes:

- 1) This certified true copy should be submitted on the letterhead of the company, signed by the company secretary/ Director.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act, 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true, valid and legally binding on the company making the bid.
- 4) In case of the board resolution being provided by a company incorporated in India, the board resolution needs to be notarized by a notified notary. In the event the board resolution is from a company incorporated outside India, the same needs to be duly notarized and apostilled/ consularized (wherever required) in its jurisdiction.