

**Ref. No. BD/Nokh/2021-22/3/Rev01****Date: 02.05.2021**

To,  
**The Bidders,**

**Sub:** Notification of Amendment/Corrigendum, additional documents for Technical Specifications & Issuance of New GCC & SCC to BID Document No. BD/NOKH/2021-22/03 dated 17-Apr-2021.

**Project :** Development of 190 MW (AC) / 285 MWp (DC) Grid Connected PV Solar Power Projects to be Installed at Village-Nokh, Tehsil-Pokaran, Jaisalmer, Rajasthan

**Reference : NIT No. : BD/NOKH/2021-22/03 dated 17-Apr-2021**

**Dear Sir,**

**A. The following Supplement / Modification to the Tender Document are notified for the bidders and these shall form part of the Bid Documents:-**

1. Issuance of “General Conditions of Contract, Rev-01, dated 02-May-2021”
2. Issuance of “Section II.I : Additional General Conditions of Contract for Operation & Maintenance Services”, dated 02-May-2021
3. Issuance of “Special Conditions of Contract, Rev-01, dated 02-May-2021”
4. Issuance of “Annexure-I” to Technical Specifications, Rev-01, dated 02-May-2021
5. The “General Conditions of Contract”, “Special Conditions of Contract” & “Annexure-I to Technical Specifications” dated 17-Apr-2021 issued earlier in respect of subject cited Tender stands withdrawn with immediate effect & shall bear no further reference.

**The above documents listed under Sl. No. 1 to 4 are enclosed with this Letter.**

In this regard following may please also be noted:

- (i) This Amendment shall be considered part of the bid documents for the above-mentioned project as though it had been issued at the same time and shall be incorporated integrally therewith. Where provisions of the following supplementary data differ from those of the original bid documents, this Amendment shall govern and take precedence. BIDDERS MUST SIGN THE AMENDMENT AND SUBMIT IT WITH THEIR BIDS
- (ii) Bidders are hereby notified that they shall make any necessary adjustments in their estimates as a result of this Amendment. It will be construed that each bidder's proposal is submitted with full knowledge of all modifications and supplemental data specified herein.

**RISING SUN ENERGY (K) PVT. LTD.**

**B. Further the following documents are also enclosed with this letter and shall be the part of Bid documents:**

1. Addendum/Corrigendum No.1 to Technical Specifications & its Annexure-I
2. Addendum/Corrigendum No. 1 to Instruction to Bidders(ITB)
3. Addendum/Corrigendum No. 1 to Bid Proposal Sheet (BPS) Book 1 of 2 and Book 2 of 2
4. Owner's Resolution to Pre-Bid Queries raised by Bidders

**C. The BID can be submitted through e-mail at [bidnokh190@risingsunenergy.in](mailto:bidnokh190@risingsunenergy.in). This e-mail ID is for the sole purpose of BID submission. All other correspondences related to this BID like Pre-bid queries, information regarding Bidding & any other enquiries should be done at e-mail [ashish.malik@risingsunenergy.in](mailto:ashish.malik@risingsunenergy.in).**

**D. Bids submitted through E-mail should be suitably digitally signed by the authorized signatory for whom the Power of Attorney is submitted by the Bidder.**

**E. The Bidders Should submit the Original Hard copies of the BIDS duly sealed & signed by the authorized signatory for whom the Power of Attorney is submitted on the latest possible opportunity available for records.**

**F. The Date and time of submission of BID under Sl. No. 2 of Clause 4.2 under ITB is extended till 2:30 pm on 12.05.2021.**

**You are advised to confirm the receipt of this letter alongwith the listed documents & enclosures.**

Thanking you.

Yours faithfully,

**Ashish Malik**

GM (Contracts & Commercial)

E-mail: [ashish.malik@risingsunenergy.in](mailto:ashish.malik@risingsunenergy.in)

Phone No: 011-4170 9222

Mobile No: 9871715725

**GENERAL CONDITIONS OF CONTRACT  
FOR  
PROJECT**

190 MW(AC) / 285 MWp(DC)

Grid Connected PV Solar Power Project at NOKH, RAJASTHAN

Date of Release	02-May-2021
Specification No.	BD/Nokh/2021-22/03 (Rev-01)

## **SECTION – II**

### **GENERAL CONDITIONS OF CONTRACTS (GCC)**

**BID DOCUMENT NO. BD/NOKH/2021-22/03**

## GENERAL CONDITIONS OF CONTRACT

Bid Document No. BD/Nokh/2021-22/3

### 1.0 SCOPE OF CONTRACT:

The scope of the Contract shall be as defined in Technical Specification which interalia includes design, engineering manufacturing, supply, packing & forwarding, transportation, loading, unloading, storage, construction, erection, insurance, testing and commissioning of work and putting into satisfactory operation and the successful completion of performance and guarantee tests of the Plant & Equipment at Site along with Solar Modules and the Operation & Maintenance Services and conclusion of the Contract in accordance with the Terms & Conditions included in the Contract Documents defined herein below. Solar Photovoltaic (SPV) modules shall be supplied by Owner on FOR Site basis as free issue goods. Erection, testing, commissioning of the Modules and achieving the performance and guarantee test along with the Facility shall be done by the Contractor.

These General Terms & Conditions shall form a part of the bid documents.

Scope shall also include all such items and services which may not have been specifically brought out in the Technical Specification and other Bid documents but which may be necessary for the successful fulfilment of Contractor's obligation under the Contract as per good Engineering practice and recognized principles for the successful completion, and Operation & Maintenance Services, of 190 MW(AC) / 285 MWp(DC) PV Solar Grid Connected Power Project at Nokh Solar Park, Pokharan, Jaisalmer, Rajasthan.

### 2.0 CONTRACT DOCUMENTS:

This Contract consists of the following Contract Documents:

Section I		Form of Contract / Instructions to Bidders ( <b>ITB</b> ) / Notice Inviting Tenders / Notification of Award
Section II		General Conditions of Contract, including Forms ( <b>GCC</b> )
Section II.I		Additional General Conditions of Contract for Operation &

		Maintenance Service, including Exhibits ( <b>AGCC</b> )
Section III		Special Conditions of Contract ( <b>SCC</b> )
Section IV		Technical Specifications including Annexure – I (Site specific Technical data)
Section V		The Bid Proposal and Price Schedules submitted by the Contractor

2.1 The term "Contract Documents" shall mean and include the following documents (including all amendments/addendums/ errata issued thereto) which shall be deemed to form an integral part of the Contract:

- (i) Commercial Documents including Special Conditions of Contract (SCC), General Conditions of Contract (GCC), Instruction to Bidders (ITB) and all other documents referred to therein, all of which shall be referred to as "Commercial Documents".
- (ii) Specifications of the Facilities, Site and Works to be furnished, erected and constructed under the Contract as brought out in accompanying Technical Specifications including but not limited to Drawings, technical data sheets, shall be referred to as "Technical Documents".
- (iii) Contractor's offer and the documents attached thereto including the letters of clarification(s) by the Owner if any and Minutes of the Meeting (MOM) between the Contractor and the Owner prior to the Award of Contract except to the extent of repugnancy with the above-mentioned Commercial Documents and the Technical Documents.
- (iv) All materials, literature, data and information of any sort given by the Contractor along with its offer, subject to the acceptance of the same by the Owner.
- (v) Agreed Variations, if any, to the provisions of the documents referred at Sub Clause i & ii of Clause 2.1 above.
- (vi) Notification of Award issued by the Owner to the Contractor.

2.2 The Contract Documents referred to in Clause 2.0 above, are meant to complement each other and shall be read as a whole and their provisions construed accordingly; However, in

the event of any conflict arising between the provisions of various Contract Documents including addendums, amendments & clarifications issued by Owner they shall take precedence in the order given below:

1. Form of Contract / Notification of Award /Letter of Award along with its Annexures, if any (NOA/LOA)
2. Special Conditions of Contract (SCC)
3. These General Conditions of Contract (GCC) and Additional General Condition of Contract (AGCC)
4. Technical Specifications including Annexure-I (Site specific Technical data)
5. All Appendices (Forms 1 to 12)
6. Instructions to Bidders (ITB)
7. The Bid proposal and the Price Schedule submitted by the Contractor

In the event it is not possible to resolve any conflict between the above-mentioned documents in the above manner, the matter shall be referred to Owner whose decision shall be final and binding upon the parties.

### **3.0 DEFINITION OF TERMS**

- 3.1 **"Affiliates"** means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is under common Control with, or is Controlled by such specified Person. **"Control"** in respect to an entity, means the ownership, directly or indirectly of more than 50% (fifty percent) of the voting shares of such entity or right to appoint majority of the directors of such entity. "Controlled" shall be construed accordingly.
- 3.2 **"Business Day"** means with respect to the Parties, a day other than Sunday or a statutory holiday, on which the Banks remain open for business in Delhi and Rajasthan.
- 3.3 **"Claim"** means any claim, liability, proceeding, cause of action, action, demand or suit, at law or in equity, in each case, brought against either Party (including by any third party).
- 3.4 **"Codes"** shall mean all the various IS, IEC and other codes. listed in the Technical Specifications including the latest amendments and/or replacements, if any.

- 3.5 **"Commercial Operation Date"** or **"COD"** shall mean the date where the conditions of operation of the Plant & Equipment covered under the Contract is officially declared by the Owner to be available for continuous operation at different loads up to and including rated capacity, as specified in the Contract Documents. Such declaration by the Owner, however, shall not relieve or prejudice any of the Contractor's obligations under the Contract.
- 3.6 **"Commissioning"** shall mean that all equipment's corresponding to the full capacity of the project have been installed and completed and corresponding energy has flown into the grid.
- 3.7 **"Completion"** means that the Facilities have been completed operationally and structurally and put in a tight, safe and clean condition and that all Work in respect of the Facilities has been completed, commissioned and successful completion of PG Test as per the Contract Documents.
- 3.8 **"Confidential Information"** means proprietary information concerning the business, operations and assets of the Parties (as the case may be) and their respective Affiliates (collectively, the **"Disclosing Party"**) provided to the other Party (the **"Receiving Party"**), as well as the terms and conditions of the Contract or any related contract, information or materials prepared in connection with the performance of the Contract or any related contract, designs, Drawings, specifications, techniques, models, data, documentation, manuals, source code, Raw Data, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or Personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets.
- 3.9 **"Contract"** shall mean the terms entered into between Rising Sun Energy K Pvt. Ltd. (RSEKPL) and the Contractor and includes the Contract Documents referred to in section 2.0 and 2.1 above, and as amended from time to time for the design, engineering, supply, installation and commissioning, and Operation and Maintenance Services of the Facility.
- 3.10 **"Contractor"** means the Party whose bid to perform the Work has been accepted by the Owner and is named as such in the Contract and includes the legal successors or permitted assigns of the Contractor.



- 3.11 **"Contractor Group"** means the Contractor, Affiliates, Subcontractors, and their contractors and subcontractors, participating companies in an enterprise established for the performance of the Work and O&M Services, and the employees of the aforementioned corporate entities and their respective directors, officers and agents.
- 3.12 **"Contract Period"** shall mean the term from the Effective Date until Completion of the Work, followed by three (3) years of O&M Services), or as extended in accordance with AGCC, and Defects Liability Period thereafter.
- 3.13 **"Contract Price"** shall mean the total sum payable to Contractor in accordance with the Letter of Award or Notification of Work for all the Work to be performed in the bidding document, including all such ancillary work required to complete the Facilities as per good engineering practice, and as increased or decreased in accordance with the provisions of the Contract.
- 3.14 **"Contractor's Worksite"**, shall mean the place of work used, by way of either owned, leased or otherwise contracted, by the Contractor or the manufacturer, Subcontractor, supplier, vendor and their production units.
- 3.15 **"Day"** unless herein otherwise expressly defined, shall mean calendar day or days of 24 hours each.
- 3.16 **"Defect"** means any defect in the performance of obligations, workmanship, material or damage in any item forming part of the Facility or any failure of an item of the Facility to comply the Technical Specifications, Laws, Facility Documents, the O&M Services, and/or the terms of the Contract and the term "Defective" shall be construed accordingly.
- 3.17 **"Drawings"** shall mean all:
- Drawings furnished by Owner as a basis for Bid.
  - Supplementary drawings furnished by Owner to clarify and to define in greater detail the intent of the Contract.
  - Drawings submitted by the Contractor with his offer, provided such drawings are acceptable to the Owner.
  - Drawings furnished by Owner to the Contractor during the progress of the work, and
  - Engineering data and drawings submitted by the Contractor during the progress of the Work provided such drawings are acceptable to the Owner.

- 3.18 **"Effective Date"** means the date of issue of Notification of Award/Letter of Award by the Owner to the selected Contractor.
- 3.19 **"Electricity Act 2003"** shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time.
- 3.20 **"Environmental Laws"** means all applicable Laws relating to air, water, land and the generation, storage, use, handling, transportation, treatment or disposal of hazardous substances any, and any applicable national, regional, state, municipal or other local law, statute, code, ordinance, rule, or regulation which relates to or deals with the environment in the jurisdiction in which the Facility is located.
- 3.21 **"Facilities" or "Facility"** means the Plant & Equipment & Goods to be supplied and installed, as well as all the Installation Services and associated permanent Works to be carried out by the Contractor under the Contract.
- 3.22 **"Final Acceptance"** shall mean the Owner's written acceptance of the Work performed under the Contract, after successful achievement of Commercial Operation Date (COD) and Completion of the Facilities.
- 3.23 **"Force Majeure"** shall have the meaning assigned to it under Clause 43.0.
- 3.24 **"Goods"** shall mean and include all goods, equipment, materials and mandatory spares, tools and tackles to be provided by the Contractor to the Owner under the Contract.
- 3.25 **"Government Authority"** means the Government of India, Government of state of Rajasthan, any ministry, department, board, authority, agency, corporation or commission under the direct or indirect control of Government of India or any of the above state government(s) or both, or any political sub-division of any of them including any court or appropriate commission(s) (as provided under Electricity Laws) or tribunal or judicial or quasi-judicial body in India.
- 3.26 **"Guarantee Period" or "Defect Liability Period"** shall mean the period during which the Contractor shall remain liable for repair or replacement of any Defective part, including latent Defects, in the Facility, Work or O&M Services performed under the Contract. .

- 3.27 **"Hazardous Material"** means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations, (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import or interpretation under any applicable Laws and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any applicable Laws.
- 3.28 **"HSE" means health, safety and environment.**
- 3.29 **"HSE Officer"** means the entity or individual appointed by the Owner to carry out Facility HSE audits.
- 3.30 **"Health, Safety and Environment Plan" or "HSE Plan"** means the health, safety and environment policy of the Facility to be adhered to by the Contractor, which shall be based on the General HSE Requirements set out in Exhibit G.
- 3.31 **"Installation Services"** means all those services ancillary to the supply of the Facilities to be provided by the Contractor under the Contract; e.g., transportation and provision of marine or other insurance, inspection, expediting, unloading, transit insurance, storage and handling at Site, Site preparation works (including the provision and use of Contractor's equipment and the supply of all structural and construction goods required), erection, civil & structural works and allied works etc. This shall also include storage and handling at Site, Site preparation works, erection, civil & structural work of Solar Modules issued FOR Site, testing, pre-commissioning, commissioning, operations, maintenance, insurance as per bidding documents, the provision of operations and maintenance manuals, training of Owner's Personnel etc.
- 3.32 **"Intellectual Property Rights"** means inter alia, any patent, copyright, database rights, software which is embedded in the Facility and or the O&M Documents; or standalone software, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial,

scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all applications, renewals, extensions and revivals of, and all rights to apply for, any of the foregoing and any other intellectual and industrial property rights subsisting or recognised under applicable Laws or by the laws of any other jurisdiction.

3.33 **"Laws"** mean all laws, ordinances, rules, regulations, by-laws, decrees, orders and the like, whether of Governmental or other authority or agency having jurisdiction over the parties or any of them or the Contract which are or may become applicable, including applicable anti-bribery and anti-corruption Laws, Electricity Laws and Environmental Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Authority and having force of law, as amended, consolidated, supplemented or replaced and includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law, and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the appropriate commissions under Electricity Laws and Environmental Laws.

3.34 **"Lenders"** means a person or a group of persons providing:

- (i) debt financing for the Facility; or
- (ii) funds for re-financing or takeout of any such financing.

3.35 **"Liens"** means any charges, security interests, liens, hypothecations, encumbrances or other restriction on title or property interest.

3.36 **"Losses"** means any and all damages, fines, losses, liabilities, interest, awards, penalties, costs and expenses, including remedial action, reasonable investigation costs, attorney fees, court costs and other reasonable costs of suit, arbitration, or other similar judicial or quasi-judicial proceeding.

3.37 **"Module"** means the solar photovoltaic modules, along with electrical and technical equipment, as further described in the Technical Specifications

3.38 **"Month"** shall mean the calendar month (Gregorian Calendar), unless the content requires otherwise.

- 3.39 **"Notice"** means a written communication between authorized representatives of the Parties required or permitted by the contract and conforming to the requirements of Section 52.0
- 3.40 **"Notification of Award"** or "Letter of Award" shall mean the official notice issued by the Owner notifying the Contractor that his offer has been accepted. Such a Letter of Award may be in the form of Letter or e-mail.
- 3.41 **"O&M Services"** means all the comprehensive operation and maintenance services to be provided by the Contractor as set out in AGCC, Exhibit B and other Exhibits, in respect of the Facility in compliance with applicable Laws, the PPA and Prudent Utility Practices and in accordance with the terms of the Contract.
- 3.42 **"Owner"** shall mean Rising Sun Energy K Pvt. Ltd (RSEKPL) and shall include their legal representatives, successors and permitted assigns.
- 3.43 **"Owner Group"** means the Owner, Affiliates, contractors and subcontractors (but shall not include Contractor), participating companies in an enterprise established for the performance of the Work and O&M Services, and the employees of the aforementioned corporate entities and their respective directors, officers and agents.
- 3.44 **"Part Commissioning of the Project"** shall mean that all equipment's corresponding to that part capacity have been installed and corresponding energy has flown into the grid. The first part commissioning and subsequent part commissioning shall be for minimum of 50 MW (AC) capacity.
- 3.45 **"Party" or "Parties"** shall mean the parties under this Contract either the Owner or the Contractor on an individual basis or collectively.
- 3.46 **"Performance and Guarantee Tests"** shall mean all operational checks and tests required to determine and demonstrate capacity, efficiency, and operating characteristics etc. as guaranteed by the Contractor and as specified in the Contract Documents and shall include inspection, testing and demonstration of required performance of the Facilities.
- 3.47 **"Performance Bank Guarantee"** shall mean the bank guarantee to be provided from a scheduled commercial bank in India by the selected Contractor to the Owner according to terms of the Contract in the proformas provided in accordance with Clause 26.0 and Forms 11.1 to 11.4 and

- 3.48 **"Permits"** shall mean all authorizations, licenses, approvals, consents, clearances, registrations, privileges, acknowledgements, agreements or concessions required to be obtained from or provided by any concerned authority for the purpose of installation of the Plant & Equipment.
- 3.49 **"Personnel"** means a Party's employee's, officers, directors, contractors and Subcontractors, agents and advisors involved in the performance of the Contract.
- 3.50 **"PG test"** means the Performance Guarantee Test in accordance with the Contract, Section IV - Technical Specifications including Annexure.
- 3.51 **"Plant"** shall mean 190 MW(AC) / 285 MWp(DC) Grid Connected Solar PV Project to be installed at Nokh Solar Park, Pokaran, Jaisalmer, Rajasthan.
- 3.52 **"Plant & Equipment"** means the permanent Plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in 190 MW(AC) / 285 MWp(DC) Grid Connected Solar Power Plant to be installed at Nokh Solar Park, Pokaran, Jaisalmer in Rajasthan by the Contractor under the Contract (including the spare parts to be supplied by the Contractor but does not include Contractor's equipment brought to Site for performance of the Contract.
- 3.53 **"Primary Beneficiary"** shall mean the Owner, Rising Sun Energy (K) Pvt. Ltd (RSEKPL)
- 3.54 **"PV"** shall mean photovoltaic.
- 3.55 **"Site"** shall mean and include the land and other places on, into or through which the Work or O&M Service envisaged under the Contract and the related facilities including the residential colony are to be carried out and any adjacent land, path, street or reservoir which may be allocated or used by the Owner or the Contractor in the performance of the Contract.
- 3.56 **"Spare Parts"** means any spare parts and other objects that replace or are intended to replace a pre-existing part of the Facility or the functionality thereof, however, which are not Consumables, at Contractor's sole cost and expense.
- 3.57 **"Start-up"** shall mean the time period required to bring the Facilities covered under the Contract from an inactive condition, when construction is essentially complete, to the state ready for the Trial Operation. The Start-Up period shall include preliminary inspection and checkout of the Facilities and supporting sub-systems, initial operation of the complete

Facilities covered under the Contract to obtain necessary pre-trial operation data, perform calibration and corrective action, shut down, inspection and adjustment prior to the Trial Operation period.

3.58 **"Step-In Right"** means the right of Owner, subject to the terms of Article 48.0 of this Contract, to:

- i) take over the Step-In Scope; and
- ii) use equipment, tools and any other material physical assets and intellectual property owned by Contractor, as the case requires, for the purpose of undertaking the Step-In Scope.

3.59 **"Step-Out"** means Owner ceasing to exercise its Step-In Right, subject to and in accordance with Section 48.0 in this Contract.

3.60 **"SPV"** shall mean Solar photovoltaic

3.61 **"Subcontractor"** shall mean the manufacturer/Person/firm/agency/party named in the Contract for any part of the Work or any Person/firm/agency/party to whom any part of the Contract has been subcontracted by the Contractor with the prior written consent by the Owner.

3.62 **"Subcontract"** means a contract entered into between the Contractor and a Subcontractor.

3.63 **"Tax"** or **"Taxes"** means any taxes, levies, interest, penalties, charges, withholdings, duties, social security contributions or other sum levied, imposed, collected, withheld or assessed by any Governmental Authority or/and any interest, additional taxation penalty, surcharge or fine in connection therewith made applicable pursuant to any applicable Laws, including but not limited to:

- (i) tax directly or indirectly relating to any transaction relating to goods and/or services envisaged in the contract including but not limited to import, manufacture, production, sale, transportation, storage, bringing the goods into local tax jurisdiction, procurement or provision of services;
- (ii) any other levies in nature of license and permit fee, stamp duty, registration fees, other regulatory charges; and

- (iii) any sum by whatever name so called including recoveries, interest, penalty, fine, or any sum payable to any person in relation to any act or omission to act as may be required under the contract.

3.64 **"Technical Specifications"** means all technical specifications, data sheets, plans and drawings, inspection and test plans, test procedures, results and other information and documents provided by the Building Contractors or otherwise relevant in relation to the Facility.

3.65 **"Trial Operation", "Reliability Test", "Trial Run", "Completion Test"** shall mean the extended period of time after the Start-Up period. During this Trial Operation period the unit shall be operated over the full load range. The duration of Trial Operation (Capacity Acceptance Test) shall be as determined by the Owner, unless otherwise specified elsewhere in the Contract.

3.66 **"Warranty"** means the warranty provided by the Contractor under the Contract or a warranty passed-through or pledged by a manufacturer or Subcontractor to the Owner.

3.67 **"Work"** shall mean and include the furnishing of Facilities , Contractor's equipment, labour and services, and all other activities to be performed by the Contractor for the complete design, engineering, erection, testing, commissioning and putting the Facilities into satisfactory operation, including all transportation, handling, unloading and storage at Site, administration, supervision, construction services and management, including, without limitation, hauling, to and from the Site or other place(s) where Work is performed and cleaning of the Site etc. as defined in the Contract Documents.

3.68 **"Writing"** shall include any manuscript, type-written or printed statement, under or over signature and/or seal as the case may be.

3.69 **Interpretations**

- (a) Articles, Sections and Exhibits: References to Recitals, Articles, Sections and Exhibits, unless otherwise indicated, are to Recitals of, Articles of, Sections of and Exhibits to the Contract. The Recitals and Exhibits form an integral part of the Contract. References to Exhibits contained in the Contract shall be deemed to be references to all similarly lettered Exhibits or sub-Exhibits, as applicable.



- (b) Headings: The headings to Articles, Sections and Exhibits of the Contract are for ease of reference only and shall not in any way affect its construction or interpretation.
- (c) Gender: The masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.
- (d) Joint Preparation: The Parties collectively have prepared the Contract, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of the contract or any part hereof. It is specifically recorded that the Parties hereto have negotiated and agreed the terms and conditions recorded in the Contract and as such the rule of construction that, in the event of ambiguity, a contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of the Contract.
- (e) Including, includes: The term "include," "includes," and "including" when in the Contract shall be deemed to be followed by the words "without limitation," and unless specified, shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term "or" is not exclusive.
- (f) Any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of the Contract.
- (g) Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- (h) Where any term is defined within the context of any particular clause in the Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, that term shall bear the meaning so ascribed to it for all purposes in terms of the Contract.
- (i) The expiration or termination of the Contract shall not affect the provisions of the Contract that expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

- (j) The word "including" means "including without limitation" and "include", "includes" and "in particular" must be construed similarly.
- (k) A reference to a third person or a third party is a reference to a person who is not a party to the Contract.
- (l) It is expressly agreed by the Parties that any approval given by the Owner under the Contract shall not relieve the Contractor from any responsibility under the Contract.
- (m) When the words "approved", "subject to approval", "satisfactory", "equal to", "proper", "requested", "as directed", "where directed", "when directed", "determined by", "accepted", "permitted", or words and phrases of like importance are used, the approval, judgment, direction etc. is understood to be a function of the Owner.
- (n) Words imparting "Person" shall include firms, companies, means any corporation, associations, partnership, limited liability company, other organizations, Governmental Authority or individual or bodies of individuals, whether incorporated or not.
- (o) Words imparting the singular only shall also include the plural and vice-versa where the context so requires.
- (p) If the Day on or by which a Party is required to complete an obligation is not a Business Day, the person must do the thing on or by the next Business Day;
- (q) If a period of time is specified from a given Day or from the Day of an act of event, it is to be calculated exclusive of that Day;
- (r) Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof if any.

#### **4.0 CONTRACTOR TO FULLY INFORM HIMSELF**

- 4.1** Contractor shall be deemed to have carefully examined the Bid Documents/ Contract Documents including documentation, Drawings and Technical Specifications for the Work and O&M Services and fully acquainted itself with Site conditions including climatic

conditions and all other conditions relevant to the Work and its surroundings and the O&M Services. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions, expenses, and difficulty of performing the Work and O&M Services, or negligence of the Owner, if any, fully complete the Work and O&M Services for the stated Contract Price and Service Fee without further recourse to the Owner. Information regarding the Site of the Work and O&M Services and local conditions at such Site furnished by the Owner in Technical Specifications, Drawings or otherwise is not guaranteed by the Owner and is furnished only for the convenience of Contractor.

**4.2** Without any prejudice to the provisions of clause 4.1 above, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have satisfied himself before submitting the offer, as to:

- (a) The means of access to the Site and the work areas
- (b) Rules and Regulations of India including but not limited to Federal, State govt, municipal bodies and other statutory Authorities.
- (c) Conditions imposed by State Electricity Board.
- (d) Site is appropriate for the performance of the obligations under the Contract. Work.

**4.3** Once the Site has been inspected by the Contractor all risks relating to the ground condition should be taken by the Contractor. All Site related studies, Drawings, reports such as Topographical Survey and Geotechnical Survey reports are for guidance of the Contractor. If required Contractor gets the same assessed themselves.

If the Contractor has any doubt as to the meaning of any portion of the Contract Documents, Contractor shall, before submitting the Bid, set forth the particulars thereof, and submit them to the Owner in writing prior to the date mentioned in the Cover Letter, in order that such doubt may be removed. The Owner will provide such clarifications as may be necessary, in writing, to the Contractor. Any information otherwise obtained from Owner shall not in any way relieve the Contractor of his responsibility to fulfil his obligations under the Contract.

**4.4** The specifications and drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Work or O&M Services. Should any conflict, error, or omission or discrepancy appear in the Drawings, Technical Specifications, instructions, in work done by others, or in Site conditions, Contractor shall

notify Owner in writing at once and Owner will issue written instructions to be followed. If Contractor proceeds with any of the works in question prior to receiving such instructions, then required corrections shall be at Contractor's expense.

## **5.0 REPRESENTATIONS**

**5.1** The Contractor represents and warrants as of the Effective Date the following:

- (a) Organization, Standing and Qualification: The Contractor is a duly formed, validly existing and in good standing under the Laws of India, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.
- (b) Due Approval; Enforceability: The Contract has been duly authorized, executed and delivered by or on behalf of the Contractor and is, upon execution and delivery, the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar Laws affecting creditors' rights generally and by general equitable principles.
- (c) No Conflict: The execution, delivery and performance by the Contractor of the Contract will not conflict with, contravene, violate or result in a breach of or default under: (a) its organizational documents; (b) any contract entered into by the Contractor; or (b) any applicable Laws; and will not subject the Facility or any component part thereof or the Facility or any portion thereof to any Liens.
- (d) Governmental Approvals: Other than with respect to the Governmental Approvals, neither the execution nor delivery by the Contractor of the Contract requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action.
- (e) Solvency: The Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under the Contract.

- (f) **No Suits, Proceedings:** There are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to the Contractor's knowledge, threatened against it at law before any court or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the Contractor's ability to perform its obligations under the Contract. The Contractor has no knowledge of any violation or default, or any basis of any violation or default, with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

**5.2** The Owner represents and warrants as of the Effective Date, as follows:

- (a) **Organization, Standing and Qualification:** The Owner is a duly formed, validly existing, and in good standing under the Laws of India, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business the Owner presently conducts and contemplates conducting.
- (b) **Due Authorization; Enforceability:** the Contract has been duly authorized, executed and delivered by or on behalf of the Owner and is, upon execution and delivery, the legal, valid, and binding obligation of the Owner, enforceable against the Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.
- (c) **No Conflict:** The execution, delivery and performance by the Owner of the Contract will not conflict with, contravene, violate or result in a breach or default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other contract or instrument to which it is a Party or by which it or its properties may be bound or affected; or (c) any applicable Laws.
- (d) **Solvency:** The Owner is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under the Contract.

- (e) No Suits, Proceedings: There are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to the Owner's knowledge, threatened against it at law before any court or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the Owner's ability to perform its obligations under the Contract. The Owner has no knowledge of any violation or default, or any basis of any violation or default, with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

## **6.0 CONSTRUCTION OF THE CONTRACT**

- 6.1** This Contract constitutes the entire understanding between parties hereto with respect to the subject matter hereof and supersedes all communication, negotiations and agreement (whether written or oral) of the parties with respect hereto made prior to the date of this Contract.
- 6.2** There are no understandings or agreements between the Owner and the Contractor which are not fully expressed herein including the detailed work programme and schedules referred to in the Contract.
- 6.3** No modifications of the Contract shall be valid unless the same is agreed in writing by the parties hereto and issued as an amendment to the Contract.
- 6.4** The Contract entered into between the Owner and Contractor shall be on "Single Responsibility basis" as under:
- (a) The Contractor shall be responsible for supply of the Facilities, Spare Parts & tools and tackles and providing all services i.e. loading, inland transportation for delivery at Site, inland transit insurance, unloading, storage, handling at Site, installation, insurance covers other than inland transit insurance, testing and Commissioning including carrying out PG tests and O&M Services in respect of the Facilities, and all other services specified in the Contract Documents.

- (b) The Contractor shall also be responsible for storage, handling at Site, installation, insurance covers other than inland transit insurance, testing and Commissioning including carrying out PG tests of the Solar Modules issued as free issue goods on FOR Site basis along with the Facilities based on the parameters defined in the Technical Documents and Commercial Documents.

**6.5** The governing language for the Contract shall be English. All documents pertaining to the Contract including Technical Specifications, schedules, notices, correspondence, operating and maintenance instructions, Drawings or any other writing shall be written in English language. The Metric system of measurement shall be used exclusively in the Contract.

## **7.0 HEALTH, SAFETY AND ENVIRONMENT**

### **7.1 GENERAL**

The Contractor undertakes, both on its own behalf and on behalf of its Personnel and any Subcontractors it may use, to:

- (a) Comply with Applicable Laws and Governmental Approvals in relation to health, safety and environment;
- (b) Prevent the risks of injury to persons and damage to property and the environment in connection with the performance of the Work and O&M Services;
- (c) Set up a health and safety management system for the Personnel assigned to perform the Work and O&M Services as defined hereinbelow.

### **7.2 FACILITY HSE POLICIES**

- (a) The Contractor agrees that it will ensure that its Personnel, employees, agents and Subcontractors, while on Facility, comply with the HSE Plan and general requirements as set out in the Contract.
- (b) The Parties shall mutually agree on a HSE Plan and general HSE requirements within 30 (thirty) days from the Letter of Award, which shall be deemed to be included in the Contract.

- (c) If, at any time, the Owner concludes that the Contractor is not in compliance with the HSE Plan, the Owner may in its sole discretion, refuse access to the Facility to (or to have removed from the Facility) the Contractor and any of its Personnel, employees, agents and Subcontractors, in which case all of the Contractor's obligations that require access to the Facility shall be suspended and the Owner shall be entitled to carry out such Work and/or O&M Services through a third party contractor at the risk and cost of the Contractor; provided, however, that such suspension shall not release the Contractor of any of its liability arising from its initial noncompliance with the HSE Plan including for the portion of the Work and/or the O&M Services provided by third parties during such suspension. The Contractor shall return to the Facility and resume any of its obligations that were suspended only upon Notice from the Owner that the violation of the HSE Plan has been resolved.
- (d) While being in full compliance of the HSE Plan, the Contractor shall:
- (i) Ensure compliance with the specific requirements of the HSE Plan including with respect to working conditions, health, hygiene, safety and the environment concerning specific training, medical certifications or required preventive measures, depending on the place where the Work and/or O&M Services are performed;
  - (ii) Ensure that its Personnel (including that of any Subcontractors) it may use are qualified and accredited to use all machinery, equipment and tools necessary to perform the Work and/or O&M Services;
  - (iii) Immediately and at its own expense, put a stop to any situation or activity that is dangerous or harmful to health, hygiene, safety or the environment;
  - (iv) Ensure that its Personnel (including that of any Subcontractors) it may use who are present on the Facility take part in scheduled fire and safety drills and do not evade this obligation.
- (e) The Contractor is allowed to take into the Facility and use only such machinery and equipment, which fulfil legal regulations and are inspected and calibrated regularly. The Contractor's machinery, equipment and materials must be marked so that their ownership and inspection status can easily and



unambiguously be recognised. The Contractor must keep inventory of their equipment and tools.

- (f) For sake of clarity and as an example, vegetation clearance shall also ensure the protection of the Facility against fires.
- (g) In the event of non-compliance with the HSE Plan, and without prejudice to the Owner's right to terminate the Contract in accordance with the requirements of the Contract, the Owner will have the right, in its sole discretion, to:
  - (i) immediately and without any prior formality, at the Contractor's expense, take or cause to have taken all appropriate measures if it deems that the Contractor has not taken such measures or implemented them with sufficient speed; and
  - (ii) reserve the right to refuse access to or expel the Contractor and/or any of its Personnel, employees, agents, Subcontractors it may use from the Facility.
- (h) The Contractor shall bear all consequences of non-compliance with any of these obligations, including measures taken by the Owner in the event of the Contractor's default or negligence or if it is refused access to or is expelled from the Facility.

The Contract Price and/or Service Fee shall be inclusive of all the necessary costs for the Contractor's obligation to fully comply with the HSE Plan including with respect to compliance with the prescribed safety, health and environmental standards provided in the HSE Plan.

### **7.3 HAZARDOUS MATERIAL**

- (a) The Contractor shall and shall require its Subcontractors to comply with all applicable Laws and all Governmental Approvals relating to supply, delivery, use, transport, storage and/or disposal of Hazardous Materials.

- (b) The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought onto the Facility by the Contractor or any Subcontractor or any of their respective agents or employees prior to bringing such Hazardous Materials onto the Facility. Any Hazardous Material brought onto the Facility by the Contractor or any Subcontractor or any of their representatives shall (i) not violate any applicable Laws by virtue of being brought onto the Facility , and (ii) is intended to be used in performance of the Work and O&M Services. The Contractor shall not, nor shall it permit any Subcontractor to, bring any Hazardous Material onto the Facility (other than the Hazardous Materials under the above list).
- (c) The Contractor shall be solely responsible for the management of and proper disposal of all Hazardous Materials brought onto or generated at the Facility by it or its Subcontractors, if any, including the requirement to obtain authorisations for generating such Hazardous Waste, except that the Contractor shall not be responsible for any Hazardous Material brought on Facility by the Owner or any of its agents, representatives, personnel, employees, other contractors or workmen.
- (d) The Contractor shall cause all such Hazardous Materials brought onto or generated at the Facility by it or its Subcontractors, if any, **(i)** to be transported only by carriers maintaining valid permits and operating in compliance with such permits and Laws regarding Hazardous Materials pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and **(ii)** to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid Permits operating in compliance with such Governmental Approvals and applicable Laws regarding Hazardous Materials.
- (e) The Contractor shall keep the Owner informed as to the status of all Hazardous Materials brought to the Facility by the Contractor or any Subcontractor or any of their respective agents or employees and disposal of all Hazardous Materials by the Contractor or any Subcontractor or any of their respective agents or employees from the Facility.

- (f) The Contractor shall bear all costs and expenses and shall be solely liable for any response, removal, investigation, clean-up, or other remedial action required by Environmental Laws related to any Hazardous Material introduced to the Facility by the Contractor, its Subcontractors or any person for which the Contractor is responsible.
- (g) The Contractor shall implement and administer a Hazardous Material handling program, in accordance with the terms mentioned under the HSE Plan, for all of its employees and all Subcontractors which shall include, without limitation, development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Materials and the development, implementation and enforcement of procedures for notification of the Owner and appropriate Governmental Authorities about, and clean-up of, spills and other emissions of Hazardous Materials.
- (h) The Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by (a) any negligent or intentional release by the Contractor or any of its Subcontractors of any Hazardous Material, and (b) any Hazardous Materials that were brought onto the Facility by the Contractor, its Subcontractors or any person for which the Contractor is responsible.

For the avoidance of doubts, the Parties agree that any change in the Environmental Laws or in the interpretation of the Environmental Laws which could have a direct impact on the definition of Hazardous Material or the conditions of its management or disposal shall be subject to the Change in Laws provision in accordance with the Contract.

#### **7.4 HSE RELATED RIGHTS OF OWNER**

- (a) The Owner reserves the right to conduct audits on Contractor's compliance with the HSE Plan, or to make audits conducted by an HSE Officer at any given time without providing any advance Notice to the Contractor.
- (b) Neither this reservation of rights, nor the discretion to exercise those rights, will relieve the Contractor of its obligation to comply with the Facility Operating

Plan, nor will it constitute control over the manner and means by which the Contractor implements this provision.

- (c) No act or omission by the Owner will operate as a waiver of the Owner's right to enforce the HSE Plan or the Contractor's duty to comply thereunder.

## **7.5 ALCOHOL AND DRUG RESTRICTIONS**

- (a) The Contractor shall establish a policy to ensure that the Facility is kept free of drug and alcohol use by the Personnel/employees/officers of the Contractor or its Subcontractors. The Contractor shall ensure that none of its Personnel/employee/officer or its Subcontractor's employees/officer shall:
  - (i) perform any service in connection with the O&M Services while under the influence of alcohol; or narcotic drugs or psychotropic substance; or
  - (ii) use, possess, distribute or sell alcoholic beverages, illicit or un-prescribed controlled drugs, drug paraphernalia or misuse legitimate prescription drugs in contravention to applicable Laws, while on the Facility or execution of the O&M Services.
- (b) Contractor shall carry out blood alcohol content testing with the use of breathalyser of Contractor's Personnel and any person(s) holding designated position(s) on a daily basis or as per requirement of the Owner and such employee failing in such test will be immediately removed from the Facility.
- (c) The Owner shall be at liberty to object to and to require the Contractor to remove immediately from the Facility or to refuse or restrict access to the Facility of any person who, in the opinion of the Owner misconducts himself or whose presence on the Facility is otherwise considered by the Owner to be in contravention to 7.5 (a) above, and such person shall not be again allowed upon the Facility without the consent of the Owner. Any such objection shall not be made unreasonably and shall be made in writing, giving detailed reason and incident details. Any person so removed shall be replaced as soon as possible by a suitably qualified and experienced person to whom the Owner shall not have raised any objection and such removal or replacement

of any person shall not relieve the Contractor of any of his obligations under the Contract.

- (d) The Owner reserves the right to conduct drug test on its own periodically from a proper testing lab on any of the persons employed/chartered/deputed/deployed at the Facility by the Contractor.
- (e) The Owner retains the exclusive right to waive any or all parts of the requirements for drug and alcohol testing and background investigations.

## **8.0 DOCUMENTS COMPRISING TECHNICAL PART OF OFFER**

The particulars and supporting documents required in respect of the technical part of the bid, but not limited to the following sub-clauses 8.1 to 8.7 should be strictly followed. In case, any of the details are either not furnished or inadequately furnished, the entire offer may be rejected without informing the Contractor.

### **8.1 GUARANTEED TECHNICAL PARTICULARS**

The GTP (Guaranteed Technical Particulars) offered along with their complete technical description supported by Drawings shall be furnished by the Contractor. Relevant specifications like IS/ BS/ IEC etc. will be mentioned.

### **8.2 TEST REPORTS**

- (a) A list showing various type tests and routine tests as required under the relevant specifications shall be furnished by the Contractor and all such tests shall be carried out on the Goods and the components offered for supply upon the Effective Date of this Contract.
- (b) Against each such test as per letter 8.2 a) above, the results of test performance shall be mentioned along with the name of laboratories/ testing houses, where tests were so conducted. In support of the results whether type tests or factory tests, certified copies of the test certificates shall be furnished. In case any of the prescribed tests has not been carried out, the same shall be clearly mentioned in this list stating the reasons for not carrying out the tests.

- (c) The Contractor also shall furnish a separate list of tests which they have and will carry out on their product or components of their product for ensuring the required quality, which are not stipulated explicitly, in the relevant ISS or BS specifications.
- (d) For type test reports to be acceptable, the tests have to be carried out at an NABL accredited laboratory. Reports of Type test conducted in laboratories other than the above will be acceptable only if witnessed by an officer from a power utility.
- (e) Type test reports of Goods (products / Equipment) of higher capacity or voltage class than those specified is acceptable for the purpose of bidding. However, in that case, the successful Contractor shall conduct type tests on the offered Goods (products/ Equipment) free of charge.
- (f) Type test reports conducted 5 years prior to the date of opening of Bid, in general, will not be accepted.

### **8.3 SPARE PARTS**

Each Contractor shall indicate the expected life in use of their Goods (products / Equipment). A list of spares, which may be necessary for replacement during the maintenance of the Facilities in service shall be furnished indicating if these are of proprietary nature or of standard make available in the market. In case, the requirement of spares is not explicitly mentioned in the Special Conditions of Contract or Technical Documents, the list of spares necessary for the Defects Liability Period should be provided by the Contractor. In case these Spare Parts are of proprietary nature, their prices and the likely quantities that may be necessary during the useful life of the Facilities shall also be mentioned.

### **8.4 IS CERTIFICATION**

All the Equipment, Goods to be supplied shall conform to the relevant IS/IEC Codes & Standards. The Contractor shall state clearly if the particular product offered by him is covered by any IS certification mark and if so, the Contractor will furnish the particulars of the IS Specification, the year of obtaining the certification and a copy of the certification and if not a confirmation in respect of the product so Equipment so offered confirms to BIS standard Code.

## **8.5 PAST EXPERIENCE**

A complete list of supplies/ works/ services in respect of the particular supplies/ works/ services offered to various parties during the period of last 5 (five) years along with total value of supplies shall be furnished. A separate list of supplies/ works/ services not exactly same as the one offered but similar to it, supplied during the last five years shall also be furnished. The Contractor shall state clearly any requirement for experience specific to a particular product required in the Contract Documents. If so, reference of the purchase orders, the ordering authority and the consignees shall also be furnished.

## **8.6 SOURCES OF SUPPLIES**

8.6.1 The Contractor shall clearly state the names of the manufacturer of the Facilities, the brand name of the Facilities and the place/ places of its manufacture. In case, the components of the Facilities are obtained from ancillary manufacturers, the names and addresses of such manufacturers also shall be furnished. It shall be mentioned clearly how the Contractor ensures quality control over such ancillary components and if manufacturer of such components is covered by any IS/ BS/ IEC or any other relevant specification.

8.6.2 The Contractor shall mention clearly whether he is a manufacturer, a sole selling agent or a commission agent of the Facilities.

8.6.3 When the Contractor is not a manufacturer, submission of manufacturer's authorization for supply of the offered equipment or Goods by the Contractor along with Warranty pledged by the manufacturer is compulsory.

8.6.4 Further, the manufacturing experience of the manufacturer in respect of the particular product or similar product also shall be furnished, indicating chronological development of the industry or the manufacturing unit.

8.6.5 The sources of receipt of the raw materials whether indigenous or imported shall be clearly mentioned against each type of such raw materials used. The methods by which quality control of such raw materials being enforced shall be clearly described.

## **8.7 DELIVERY / WORK SCHEDULE**

The delivery/ work schedule as stipulated in the SCC or in the Technical Specification shall be binding on the Contractor. In case, delivery/ work schedule of the intermittent dates is not acceptable to the Contractor, then the Contractor may give their own intermittent date meeting the overall delivery schedule/ completion time specified. Acceptance of such deviations in the delivery/ completion schedule is entirely optional to the Owner.

## **9.0 OWNERSHIP AND USE OF DRAWINGS**

Contract Documents and Drawings, Technical Documents and data, developed by Contractor and furnished to the Owner in performance of the Contract, shall be the property of the Owner and may be used by the Owner without restriction. Contractor shall arrange that any rights and titles, including Intellectual Property Rights (together with the obligations connected therewith) relating to Work which Contractor or any of its Subcontractor may acquire vis-à-vis third parties can, if so required by Owner, be assigned to Owner.

Copyright in the Owner's requirements and other Contract Documents issued by the Owner or the Owner's Representative to the Contractor shall (as between the Parties) remain the property of the Owner. The Contractor may, at his cost, copy, use and communicate any such documents for the sole purpose of the execution of the Contract only. The Contract Documents shall not, without the Owner's prior written consent, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract

## **10.0 CONFIDENTIAL INFORMATION**

**10.1** Receiving Party hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under the Contract. Receiving Party agrees to use the same degree of care to protect Confidential Information received by it as Receiving Party uses with respect to its own proprietary or Confidential Information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose or use the Confidential Information and shall not distribute, reproduce or otherwise communicate or make available to any other Person any such Confidential Information.

**10.2** Notwithstanding the provisions of this Clause 10, Receiving Party



- (i) will not be limited in its use of the Confidential Information to the extent necessary to prosecute or defend a Claim against the Disclosing Party; and
- (ii) may disclose any of the Confidential Information if, but only to the extent, that, Receiving Party is required to do so by the disclosure requirements of any applicable Laws. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with immediate Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if requested) may seek a protective order or other appropriate remedy.

Notwithstanding anything to the contrary in Clause 10.0 (but subject to the obligations set forth therein), either Party may disclose Confidential Information as may be required required for obtaining board and other corporate or limited liability company approvals, in addition to prospective purchasers of the Facility and the Lenders.

**10.3** Subject to Clause 10.1(i) above, Receiving Party shall not, without the prior written consent of Disclosing Party, disclose to any third party the fact that Confidential Information has been made available to Receiving Party.

**10.4** Notwithstanding anything contained herein, the Parties shall have no obligation with respect to documentation or information which:

- (i) is or becomes publicly known through no act of the Receiving Party;
- (ii) is approved for release by written authorization of the Disclosing Party;
- (iii) is required to be disclosed to their respective employees and authorized contractors, Subcontractors and agents to fulfil the terms of the Contract, who shall be bound by the terms and provisions of this Clause 10;
- (iv) is required to be disclosed by the Receiving Party pursuant to a legal process;
- (v) has been rightfully furnished to the Receiving Party without any restriction on use or disclosure and not in violation of the rights of the other Party; and
- (vi) is required to be disclosed to people professionally engaged by a Party provided such persons shall be required by such Party to undertake to keep such information confidential and provided further that such Party shall use reasonable endeavours to secure compliance with such undertaking.

**10.5** Contractor will not at any time without the prior written consent of Owner publish, disclose or otherwise disseminate, duplicate or use, directly or indirectly, Confidential Information to or for the benefit of any third party whether or not it relates to the Facilities, a process thereunder, or apparatus embodied therein. Contractor shall not (either directly or indirectly), and nor permit any of its Affiliates to, issue or make any public release or announcement with respect to or concerning any matter the subject of, or contemplated by, the Contract without the prior written consent of the Owner and affording the Owner a reasonable opportunity to provide comments on such proposed release or announcement; provided that, subject to the provisions of this the Contract shall prevent either Party from independently making such public disclosure or filing as it determines in good faith is required by applicable Laws; and provided, further, that the Lenders may disclose information regarding the Facility in accordance with their internal disclosure.

**10.6** The Contractor shall disclose Confidential Information only to those Subcontractors and employees of Contractor and its Subcontractor directly involved in the performance of the Contract on a strictly need to know basis and shall be responsible to ensure that such Subcontractors and employees undertakes confidentiality obligation similar to those herein in addition to adapt any other non-disclosure practises..

**10.7** Each Party acknowledges that any unauthorized use or disclosure of Confidential Information, or any threat thereof, would cause the Disclosing Party irreparable harm that could not be fully remedied by monetary damages. Accordingly, in the event of a breach or threatened breach by a Party of the confidentiality obligations set forth herein, the other Party shall have the right, in addition to, and not lieu of, monetary damages or any other legal or equitable remedy available to it, to seek injunctive or other equitable relief from a court of competent jurisdiction, without the necessity of proving damages or posting any bond, as may be necessary to prevent unauthorized use or disclosure of Confidential Information.

## **11.0 RELEASE OF INFORMATION**

**11.1** Contractor acknowledges that the trade and service names, marks, and logos of Owner, its parent, and all Affiliates are of great value and agrees not to use or permit the use or misuse of such marks in any manner that would impair the ownership or image of Owner.

## **12.0 SYNCRONISATION, COMMISSIONING AND COMMERCIAL OPERATION (Refer Clause No. 11 of SCC)**

## **13.0 NOT APPLICABLE**

## **14.0 DRAWINGS**

**14.1** All Drawings shall preferably be prepared in AutoCAD 2010 software or its latest version. The Contractor shall also supply AutoCAD and pdf versions of all submissions.

**14.2** Within 3 days from the date of acceptance of notification of award of Contract, the Contractor shall send to the Owner a preliminary list of all the Drawings with their respective identification numbers, titles and expected date of submission. This list shall be amended or extended by the Contractor as and when necessary during the progress of the Work and O&M Services under the Contract.

**14.3** All titles, notes and inscriptions on the drawings shall be in English.

**14.4** All Drawings, which the Contractor shall send to the Owner for approval shall be approved or rejected or returned for modification within 3 days of receipt by the Owner. In case of modification or rejection the Contractor shall submit the correct Drawings within 2 days, or as mutually decided from receipt of communication from the Owner.

**14.5** Upon approval by the Owner, the Contractor shall not depart from them in anyway whatsoever except with the written permission of the Owner.

### **14.6 FINAL AS-BUILT DRAWINGS**

In the final stages of the Completion of the Facility, the Contractor shall submit to the Owner hard copies as well soft copies of complete set of "As-Built" Drawings. Any changes or modifications of the "As-Built" Drawings shall be submitted to the Owner following any modification or changes to the Facility.

### **14.7 MISTAKES/ ERRORS IN DRAWINGS:**

The Contractor shall be responsible and liable for any change in the Work due to any discrepancies, errors, or omissions in the Drawings or other particulars which have arisen due to inaccurate information or particulars furnished by the Contractor, even though approved by the Owner.

## **15.0 SUBCONTRACTING:**

The Contractor shall not, without the Owner's prior written consent assign or sublet the Contract, or any substantial part thereof or interest therein or benefit or advantage whatsoever, other than for raw materials or for minor details or for any part of the Work or O&M Services of which are approved subcontracted to a Subcontractor in the Bid, provided any such consent by the Owner shall not relieve the Contractor from any obligation, duty or responsibility under the Contract.

## **16.0 QUALITY ASSURANCE, INSPECTIONS AND ACCEPTANCE**

16.1 To ensure the conformance of the Plant & Equipment, Goods and the services, whether manufactured or performed at the Site, the Contractor's Work and O&M Services or that of his Subcontractors, to the Contract provisions, Contractor shall adopt, as well as ensure adoption by its Subcontractors, suitable Quality Assurance Programme. Such Programme shall inter-alia cover the following:

- (a) The Contractor's Organization structure for the management and implementation of the proposed Quality Assurance Programme.
- (b) The design and documentation control system.
- (c) The procedure for purchase and vendor selection including vendor analysis, source inspection, inspection of incoming raw materials, verification of purchased goods etc.
- (d) The system for shop manufacturing including process control.
- (e) The system for control of non-conforming items and corrective actions.
- (f) The procedures for inspection and testing.
- (g) The system for indication and appraisal of inspection status.
- (h) The system for control of calibration and testing of measuring and testing Equipment.
- (i) The system for quality audits.
- (j) The system for authorizing release of manufactured Goods (product / Equipment) (s) to the Owner.
- (k) The system for maintenance of records.
- (l) The system for packing and forwarding including transportation (where called for).

- 16.2 The Quality Assurance Programme, proposed for adoption by the Contractor, under the Contract, shall be submitted for the review and approval of the Owner, within five (5) days of the issuance of the Notification of Award. Owner may, where it deems fit, indicate Customer Hold Points (CHPs) during the various stages/process of manufacturing/construction etc., beyond which part of the Work and/or O&M Services shall not proceed at the Site or Work and/or O&M Services of the Contractor or its Subcontractor, without the specific clearance of the Owner. The approved Quality Assurance Programme shall form part of the Contract and shall be strictly adhered to.
- 16.3 Owner and/or its representative(s) shall at all working hours have access to all parts of the Contractor's and his Subcontractor's factory / Site where the items of the Facilities are being manufactured and/or performed.
- 16.4 The Owner or its representative(s) shall have the right to inspect and/or to test the Goods and services to confirm their conformity with the Contract provisions. The Quality Assurance Programme shall inter-alia specify the required inspections and tests, the procedures involved and the place where they shall be conducted;
- (a) The inspections and test may be conducted on the premises of the Contractor or its Subcontractor at point of delivery and/or at the Goods final destination. When conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance including access to Drawings, calibration to measuring instruments and production data shall be furnished to the inspectors at no charge to the Owner. Further, in case the Goods are not offered and/or the approved Drawings/data sheets/quality assurance plans are not provided to the Owner's and or its representative during inspection, the Owner reserves the right to recover the cost incurred by the Owner in arranging the inspection.
  - (b) Should any inspected or tested Goods fail to conform to the Contract requirements, the Owner may reject them, and the Contractor shall either replace the rejected Goods or make all alterations necessary to meet Contract requirements, free of cost to the Owner.
  - (c) None of the Goods to be furnished or used in connection with the Contract shall be dispatched until shop inspection, satisfactory to the Owner or their representative has been made and Material Despatch Clearance Certificate (MDCC) issued by the Owner.
  - (d) The Owner's right to inspect, test and, where necessary, reject the Goods, after their arrival at the final destination, shall in no way be limited or waived by reason of the

same having been previously inspected, tested and passed by the Owner or their representative, prior to their despatch.

- (e) Nothing in this Clause shall, in any way, release the Contractor from any of its Warrantee or other obligations under this Contract.
- (f) The Contractor shall give not less than seven Business Days prior notice as to the time and place of any scheduled inspection or the performance tests.
- (g) The Contractor shall prepare a quality programme meeting the intent of ISO 9001, which will apply to the Work and O&M Services and which will be satisfactory in all respects to the Owner. Contractor shall submit such plan for approval within 5 days from the date of Letter of Award. Contractor shall also be responsible for monitoring each Subcontractor's compliance with the quality programme. The Owner shall have the right to conduct audits of the Contractor's Quality Programme.

## **17.0 PACKING & MARKING**

- 17.1 The order shall include provisions for secured/ protective packing of Goods (product / Equipment) so as to avoid deterioration and damage during sea, river, rail and road transportation to the Site and storage at the Site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing. Further, in case of dispatch by road, the transporters shall be approved by the Owner at the time of dispatch.
- 17.2 All bright metal parts shall be thoroughly protected from rust during transit.
- 17.3 All Goods (product / Equipment / materials) shall be packed in suitable strong cases or crates as per standard practice, unless otherwise specified. Large Goods (product / Equipment / materials etc.) such as power transformers, etc. which are not packed in cases, shall have all screwed holes plugged with wood and all machined faces shall be properly protected. Each package should be suitably marked with **Owner** marking as specified in the purchase order / Owner's instructions.
- 17.4 Contractor shall notify Owner of the date of each dispatch from its Works (for indigenous supply) and sailing date from port of shipment (for offshore supplies), and the expected date of arrival at the port of discharge and also Site for the information of the Owner.
- 17.5 Contractor shall also give all dispatch information concerning the weight, size and content of each package including any other information that the Owner may require.

17.6 The following documents shall be sent by registered post to the Owner within three (3) days from the date of dispatch:

- Invoice.
- Packing List.
- Delivery Challan.
- Consignee copy of Consignment Note (for indigenous supplies).
- Bill of Lading or Airway Bill (for offshore supplies).
- Material Dispatch Clearance Certificate.
- Test Certificate, wherever applicable.
- Certificate of Insurance
- Certificate of Origin (for offshore supplies).

17.7 Contractor shall prepare detailed packing list of all packages and containers, bundles and loose material forming each and every consignment dispatched to Site. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his works or place of dispatch till the Site and also till the Facilities and Goods is erected, tested and commissioned.

## **18.0 CO-OPERATION WITH OTHER CONTRACTORS**

18.1 The Contractor shall agree to co-operate with the Owner's other contractors for associated supplies and services and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication. No remuneration shall come from the Owner for such technical co-operation.

## **19.0 TEST AT SITE FOR ERECTION WORK**

19.1 The Contractor after erection and Commissioning of the Facilities shall arrange testing to prove correct workmanship as per Technical Specification. The Contractor shall bear all testing cost at Site of work and shall become responsible for rectification of Defects found on testing within reasonable time as decided by the Owner.

## **20.0 NO WAIVER OF RIGHTS**

20.1 Neither the inspection by the Owner or any of their officials, Personnel, employees or agents nor any order by the Owner for payment of money or any payment for or acceptance of, the

whole or any part of the Work and/or O&M Services by the Owner, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the Owner or any right to damages herein provided nor shall any waiver of any breach under the Contract be held to be a waiver of any other or subsequent breach.

## **21.0 CONTRACTOR'S RESPONSIBILITIES**

- 21.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities and carry out the PG tests with due care and diligence in accordance with the Contract.
- 21.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the Owner, and on the basis of information that the Contractor could have obtained from Site and of other data readily available to it relating to the Work and O&M Services. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Works.
- 21.3 The Contractor shall acquire in its name all Permits, from all local, state or national Government Authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract.
- 21.4 The Contractor shall comply with all Laws in force in the country where the Facilities are installed and where the Installation Services and O&M Services are carried out. The Laws will include all national, provincial, municipal or other Laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Owner from and against any and all liabilities, damages, Claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such Laws by the Contractor or its Personnel, including the Subcontractors and their Personnel.
- 21.5 The Contractor shall be responsible for compliance of the Covid-19 appropriate behaviour at Site by its Personnel, including the Subcontractors and their Personnel i.e. Contractor shall make necessary arrangements for checking & registering body temperature during entry &



exit, masks, sanitizers, hand washing, regular sanitization of Site and compliance of guidelines issued by Authorities from time to time.

21.6 The Contractor shall ensure that all its Personnel, including the Subcontractors and their Personnel are vaccinated against Covid-19 to minimize the risk of spread of Covid-19.

21.7 The Contractor shall arrange and maintain a separate accommodation at Site for its Personnel, including the Subcontractors and their Personnel for isolation of the suspected/infected Covid-19 patients.

## **22.0 OWNER'S RESPONSIBILITIES**

22.1 The Owner shall ensure the accuracy of all information and/or data to be supplied by the Owner as described in Technical Specifications and Special Conditions of Contract.

22.2 The Owner shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto.

22.3 The Owner shall acquire and pay for all Permits from all local, state or national Government Authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Owner to obtain them in the Owner's name, are necessary for the execution of the Contract.

22.4 If requested by the Contractor, the Owner shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all Permits necessary for the execution of the Contract from all local, state or national Government Authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the Personnel of the Contractor or Subcontractors, as the case may be, to obtain.

## **23.0 CERTIFICATE NOT TO AFFECT RIGHT OF THE OWNER AND LIABILITY OF CONTRACTOR**

No interim payment certificate of the Owner nor any sum paid on account by the Owner nor any extension of time for execution of the Work and/or O&M Services granted by the Owner

shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of his obligations for the due performance of the Contract or be interpreted as approval of the Work and/or O&M Services done. No certificate shall create liability for the Owner to pay for alterations, amendments, variations or additional Work or Additional Services not ordered, in writing, by the Owner or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which it is bound to indemnify the Owner nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the Owner against the Contractor.

#### **24.0 CONTRACT PRICE**

The Contract Price shall be as specified in the Notification of Award and/or the Contract Agreement, or as amended subsequently by means of Variations.

#### **25.0 WARRANTIES AND DEFECT LIABILITY PERIOD**

The Contractor warrants that the Facilities or any part thereof shall be free from Defects in the design, engineering, materials and workmanship of the Facilities supplied and of the Work executed. Defect Liability Period for the various components of the project shall be as following:

- (a) The Warranty and Defects Liability Period for Performance of Transformers, Inverters & Robot dry cleaning system for Modules shall be valid for ten (10) years. from the date of Completion..
- (b) For all other inputs/services/Goods/Plants & Equipment provided by the Contractor the Warranty and Defect Liability Period shall be eighteen (18) months from the date of Completion. However, if the PG test is not completed within six (6) months after Commissioning the Warranty and Defect Liability Period will be extended correspondingly by the period of such delay.
- (c) The Solar PV Modules, if supplied by the Contractor, shall carry a Product Warranty of 12 years and Power Output Warranty of 25 years from the date of Completion.

Notwithstanding the above, If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Facilities supplied or of the Work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Owner regarding appropriate remedying of the Defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such Defect as well as any damage to the Facilities caused by such Defect

## **26.0 SECURITIES**

### **26.1 ADVANCE PAYMENT SECURITY (NOT APPLICABLE)**

### **26.2 CONTRACT PERFORMANCE SECURITY**

The Contractor shall, provide securities for the due performance of the Contract for ten percent (10%) of the Contract Price in the form of Performance Bank Guarantee as per Form 11.1 from any schedule/ nationalised bank with an initial validity up to eighteen (18) months beyond the successful Commissioning of Facilities with an additional claim period of 90 days. However, in case of delay in conducting successful PG test within six (6) months from the completion of the Commissioning of Facilities, the validity of the Performance Bank Guarantee shall be extended correspondingly by the period of such delay.

26.3 The Performance Bank Guarantee in Clause 26.2 shall be released by the Owner on successful completion of the PG test, subject to Contractors submission of Performance Bank Guarantee's as listed in letter (a) to (d) below

- (a) For O&M SERVICE: A Performance Bank Guarantee as per listed in Clause 26.2. above of ten percent (10%) of the value of the O&M Service Base Fee with an initial validity up to ninety (90) days beyond the Operation & Maintenance (O&M) period of three (3) years prior to the release of final payment for the Work under the Contract.
- (b) For TRANSFORMERS : Ten percent (10%) of the value of Transformers in the Price Breakup mentioned in the Contract in the form of Performance Bank Guarantee from any schedule/nationalized bank with an initial validity up to ten (10) years prior to the release of final payment for the Work under the Contract.

- (c) For INVERTERS : Five percent (5%) of the value of Inverters in the Price Breakup mentioned in the Contract in the form of Performance Bank Guarantee from any schedule / nationalized bank with an initial validity up to ten (10) years prior to the release of final payment for the Work under Contract.
- (d) For ROBOTIC DRY MODULE CLEANING SYSTEM : Five percent (5%) of the value of Robotic Dry Module cleaning system in the Price Breakup mentioned in the Contract in the form of Bank Guarantee from any schedule/nationalized bank with an initial validity up to ten (10) years prior to the release of final payment for the Work under Contract.

## **27.0 TAXES AND DUTIES**

27.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and also pay cess as per provisions of BOCW 1996 and also all Taxes, duties, levies and charges assessed on the Contractor, its Subcontractor or their employees including by all municipal, state or national Government Authorities in connection with the Facilities in and outside of the country where the Site is located.

27.2 Notwithstanding GCC Sub-Clauses 27.1 above, the Owner shall bear and pay/reimburse to the Contractor Goods and Services Tax (GST) applicable on the details mentioned below and agreed in the Letter of Award/ Notification of Award.

- (a) Plant & Equipment including Spare Parts specified in Price Schedule No. 1 (and also on locally supplied Recommended Spare Parts quoted in Price Schedule No. 5, when awarded);

- (b) Transportation and Transit Insurance of the Plant & Equipment including Spare Parts specified in Price Schedule No. 2;

- (c) Installation Services, Civil & Structural works for the Plant & Equipment & Solar Modules specified in Price Schedule No. 3

27.3 Notwithstanding anything to contrary contained in the Contract, the Contractor's right to payment under the Contract is subject to issuance of valid Tax invoice, payment of

applicable GST to the credit of appropriate Government and submission of valid particulars of Tax invoice under GST returns in accordance with GST Laws.

- 27.4 The Contractor shall issue Tax invoices, file appropriate returns, and deposit the applicable GST to the account of appropriate government within the time limit prescribed under the GST Laws. In the event of any default, Contractor shall be liable to pay any Claims/penalty/demand raised for the account of or incurred by Owner in full due to default by Contractor, The Contractor shall be responsible for the issuance of e-way bill and other compliances relating to e-way bill as per GST law.
- 27.5 The Owner will deduct GST at source at the applicable rates in case transactions under the contract are liable to GST deduction at source as per the prevailing provisions of GST Laws.
- 27.6 If any Tax exemptions, reductions, allowances or privileges are available to the Contractor in the country where the Site is located, the Owner shall use its best endeavours to enable the Contractor to benefit from any such Tax savings to the maximum allowable extent.

## **28.0 COMPLETION**

- 28.1 The Contractor shall attain Completion of the Work (or of a part where a separate time for Completion of such part is specified in the SCC), within the milestones stated in the SCC Clause 4.
- 28.2 As soon as the Work, in the opinion of the Contractor, is Completed as per requirements of the Contract, the Contractor shall so notify the Owner in writing.
- 28.3 The Owner shall, within seven (7) days after receipt of the Contractors notice, either issue a Completion Certificate in the form specified by the Owner, stating that the supply/ Work thereof have reached Completion on the date of Contractor's Notice or Notify the Contractor in writing of any Defects and/or deficiencies.
- 28.4 If the Owner notifies the Contractor of any Defects and/or deficiencies, the Contractor shall then correct such Defects and/or deficiencies and shall repeat the procedure described in Sub-Clause 28.3.
- 28.5 If the Owner is satisfied that the supplies/ Work have reached Completion, the Owner shall, within seven (7) days after receipt of the Contractor's repeat notice, issue a Completion

Certificate stating that the supplies/ Work have reached Completion on the date of the Contractor's repeat notice.

- 28.6 If the Owner fails to issue the Completion Certificate and fails to inform the Contractor of any Defects and/or deficiencies within seven (7) days after receipt of the Contractor's notice or within seven (7) days after receipt of the Contractor's repeat notice, then the Contractor and the Owner need to discuss and agree to a joint status report of the project.

## **29.0 COMPLETION OF CONTRACT**

Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed at the expiration of the Guarantee Period as provided for relevant clause with regards to Defects Liability Period in the GCC Clause 25.

## **30.0 LIQUIDATED DAMAGES**

As detailed in the SCC Clause 9 and 10.

## **31.0 CHANGE/VARIATION ORDER**

- 31.1 The Work shall be subject to change by additions, deletions or revisions (Variations) thereto by Owner. Contractor shall be notified of such changes by receipt of additional and/or revised Drawings, Technical Documents, specifications, exhibits or other written notification. The Contractor shall carry out Variations and be bound by them in so doing as though the Variations were stated in the Contract.
- 31.2 If, upon receipt of any notification from the Owner, Contractor considers that a change is involved that could affect its costs of performing the Work or the schedule and/or milestones for the performance or the Completion of the Works, Contractor is obligated to inform Owner within two (2) Days of Contractor receiving the notification. Unless Contractor notifies Owner in accordance with this clause 31.2, Contractor is obliged to perform the Work in accordance with the Variation and will have no entitlement to any additional compensation or to any

change to the schedule and/or milestones. While informing the Owner under this Clause, the Contractor shall provide following details to the Owner:

- (a) a detailed description of the circumstances and reasons for the adjustment;
- (b) the specific reasons a reasonably detailed itemization and substantiation of the adjustment;
- (c) documentation, charts, graphs, photographs and reports which bear on the Variation;
- (d) specific references to the provisions of this Contract on which the Contractor intends to rely; and
- (e) any other supporting data upon which Contractor intends to rely or which the Owner requests.

31.3 Contractor shall submit to Owner, within five (5) working days after submission of the notification by Contractor required under clause 31.2 above, a detailed take off with supporting calculations and pricing for the Variation, together with any requested adjustments in the schedule and/or milestones. The pricing shall be itemized as required by Owner and shall be in sufficient detail to permit an analysis of all required labour service and Goods and shall cover all work involved in the Variation, whether deleted, added or modified. Amounts related to Subcontracts shall be supported in similar detail. Any adjustments to be directed by the Owner.

## **32.0 DEDUCTION FROM CONTRACT PRICE**

32.1 All cost, damages or expenses which the Owner may have made for which, under the Contract, the Contractor is liable, may be deducted by the Owner from any monies due or becoming due by him to the Contractor or may be recovered by action at law or otherwise from the Contractor.

32.2 In the event of recovery to the necessary extent becoming impossible owing to insufficiency of the security deposit and withheld amounts, the balance due to the Owner may at the option of the Owner be recovered from any monies due to the Contractor from the Owner under any contracts with the Contractor.

## **33.0 CHANGE OF NAME OF THE CONTRACTOR**

33.1 At any stage after Bidding, the Owner shall deal with the Contractor only in the name and the address under which he submitted the Bid. All the liabilities/ responsibilities for due performance of the Contract shall be that of the Contractor. The Owner may however, in his discretion deal with agents/ representatives/ distributors/ manufacturers/ associates/ principals/ subsidiaries and such dealings shall not absolve the Contractor from the responsibilities/ obligations/ liabilities to the Owner under the Contract.

33.2 Any change/ alteration of registered legal entity name/ constitution/ organization of the Contractor shall be duly notified to the Owner and the Owner reserves the right to terminate the Contract, in case of any such notification.

#### **34.0 LAWS AND REGULATIONS**

34.1 This Contract shall be governed by the Indian Laws and rules as amended from time to time.

34.2 The Courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract, including execution of arbitration.

34.3 Contractor shall comply strictly with local, municipal, state, federal and governmental Laws, orders, rules and regulations applicable to Contractor's operations in the performance of the Works hereunder.

34.4 Contractor shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution Laws or regulations relating to this Contract, or to the performance thereof, without Owner's prior written approval.

34.5 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable Laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Works. Contractor shall comply with all legal regulatory requirements applicable to the Works performed under this Contract and shall be responsible



for compliance with all hazardous waste, health and safety, notice, training, and Environmental protection Laws, rules, regulations and requirements.

### **35.0 ARBITRATION**

- 35.1 If at any time, any question, disputes or differences whatsoever shall rise between the Owner and the Contractor, upon or in relation to or in connection with the Contract, either Party may forthwith give notice to the other in writing of the existence of such question of dispute or difference and the same shall be settled by arbitration, under and in accordance with the provisions of The Indian Arbitration Act, 1996 or any statutory modification, in the manner hereinafter provided. The venue of arbitration shall be New Delhi, India. The arbitration shall be conducted with three arbitrators, one each to be nominated by the Contractor and the Owner and the third to be nominated by the two arbitrators nominated by the Parties at the commencement of arbitration proceedings and failing agreement between them, in accordance with the said act. The third arbitrator so appointed shall act as the presiding arbitrator.
- 35.2 The decision of the majority of the arbitrators shall be final and binding upon the Parties and shall be kept confidential. The expense of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of both the Parties increase the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the Party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 35.3 The arbitrators shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with the Contract, and neither Party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Owner for the purpose of obtaining the said decision.
- 35.4 No decision given by the Owner in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.
- 35.5 During settlement of disputes and arbitration proceedings, both Parties shall be obliged to carry out their respective obligations under the Contract.

35.6 The Parties agree that the Party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

35.7 The Parties agree that neither Party shall be entitled any interest on the amount of an award.

### **36.0 PRECAUTIONS TO BE TAKEN DURING CONSTRUCTIONS / ERECTION**

The Contractor shall take reasonable and statutory precaution during execution of erection, installation and commissioning Work so as to avoid accident and damage to the Facilities and injury to Personnel/workmen and to prevent theft, pilferage etc.

### **37.0 LIABILITY FOR ACCIDENT AND DAMAGE**

37.1 The Contractor shall not Claim for compensation arising out of any accident(s) or damages done during the course of erection including civil & structural Work and Commissioning, and the Contractor will be responsible for paying compensation to the Personnel/worker as per workmen's compensation Act, 1923 and subsequent amendments thereof.

37.2 The Contractor shall adequately insure against liability to third party, in the joint names of the Owner and the Subcontractor as per Clause 42.0, for any loss, damage, death or bodily injury which may occur to any physical property owned by others, the goods or to any person which may arise out of the performance of the Contract.

### **38.0 BANNING OF BUSINESS DEALINGS WITH CONTRACTORS:**

The Owner may ban business dealings with a Contractor or Subcontractor, if:

- (a) The owner (s) of the Contractor or Subcontractor is convicted by a court of law following prosecution for offences involving unethical, unlawful, fraudulent means in relation to business dealings.

- (b) There is strong justification that Contractor or Subcontractor has been guilty of malpractices such as, bribery, corruption, fraud, substitution of Bids, interpolation, misrepresentation, evasion or habitual default in payment of any Government Tax etc.
- (c) The Contractor or Subcontractor is under investigation of or found guilty of involving in unethical practices, such as: "corrupt practice" involving offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of any such official/ party in procurement process or in contract execution.
  - 1. "fraudulent practice" involving misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract to the detriment of the Owner.
  - 2. "collusive practice" involving a scheme among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Owner of the benefits of free and open competition.
- (d) "coercive practice" involving harming or threatening to harm directly or indirectly, Persons or their property to influence procurement process or the execution of a contract.

### **39.0 LIMITATION OF LIABILITY**

39.1 Notwithstanding any other provision of the Contract, except as explicitly provided below in this Section 39.1, the Contractor's total aggregate liability arising out of or relating to the Contract from any and all causes whether based on Contract, Warranty, indemnification (except as set forth below), tort (including negligence), strict liability, or any other cause of action, shall in no event exceed the value of the Contract Price:

- (a) Notwithstanding any of the foregoing, the foregoing limits shall not apply to any liabilities resulting from the following (and liability arising from the following shall not count toward any such caps):
  - (i) Fraud or any misrepresentation by the Contractor in connection with the Contract;

- (ii) indemnity obligations in relation to bodily injury, sickness, death and third party property damage;
- (iii) breach of confidentiality;
- (iv) breach of applicable Laws (including but not limited to failure to pay Taxes, failure to comply with labour Laws or Environmental Laws) and failure to obtain, maintain and comply with the terms of any Government Approvals;
- (v) breach of Intellectual Property Rights owned by parties other than any part of the Owner Group;
- (vi) any amounts payable under Section 6.04;
- (vii) the wilful misconduct or gross negligence of the Contractor Group;

- (b) The limitation of liability shall not relieve the Contractors insurers from its obligations for such insured risks, as per the scope of the O&M Services of the Contractor.
- (c) Notwithstanding any of the foregoing, none of the limits on the amount of insurance required to be maintained hereunder pursuant to Article VIII (Contractor's Insurances only) shall operate to limit the Contractor's liability under the Contract.
- (d) Starting from and including the date of Commissioning of the Facility in full or part, the Contractor shall be liable for any liquidated damages and any other amounts payable by the Owner pursuant to the applicable Laws (including the Grid Code) and the Facility Documents, as a result of a breach of the Contractor's obligations under the Contract.

39.2 Except in cases of criminal negligence or wilful misconduct or third party liability arising out of the activities of the Contractor, neither Party including Affiliates nor the respective directors, officers and employees of the referenced shall be liable (in contract, tort (including negligence, strict liability, indemnity (except as set forth below) and Warrantee or otherwise) for loss of Contract, loss of profits, loss of opportunity, loss of revenue and for any special, indirect, exemplary, incidental or consequential damages of any nature whatsoever (including loss of business opportunities, subsidies, favourable Tax treatment, credits and/or

environmental attributes; increased expense of borrowing or financing; and increased cost of capital), arising out of or relating to such Party's obligations under the Contract.

39.3 The Parties agree that, for the purpose of the Contract, liquidated damages shall not be considered as consequential damages.

#### **40.0 INTELLECUAL PROPERTY INDEMNITY**

40.1 The Contractor shall indemnify, defend and hold the Owner Group harmless from and against any and all suits, actions or administrative proceedings, Claims, demands, Losses, damages, costs, Taxes and expenses of whatsoever nature, including attorney's fees and expenses, which the Owner Group may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other Intellectual Property Rights registered or otherwise existing at the date of the Contract by reason of: (a) the performance and/or installation of the Facilities by the Contractor under the Contract, (b) the Contractor's violation of any third party license or other right to use intellectual property in connection with its performance the Contract or the use of the Facilities in the country where the Site is located; and (c) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any infringement caused by use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof (or any products produced thereby) in association or combination with any other Equipment, plant or goods not supplied by the Contractor, pursuant to the Contract.

The Owner shall indemnify, defend and hold the Contractor Group harmless from and against any and all Losses along with the applicable Taxes arising out of or resulting from (i) actual infringement or misappropriation by Owner of any patent, copyright, trade secret, trademark, service mark, trade name, or other Intellectual Property Right arising from Owner's performance of the Contract, and (ii) the Owner's violation of any third party license or other right to use intellectual property in connection with the performance of the Contract.

40.2 If any proceedings are brought or any Claim is made against the Owner arising out of the matters referred to in GCC Sub-Clause 39.0, the Owner shall notify the Contractor and the

Contractor shall at its own expense and attend to conduct such proceedings or Claim, any negotiations settlement of any such proceedings or Claim and keep the Owner indemnified on such matters.

- 40.3 If the Contractor fails to notify the Owner within Seven (7) days after receipt of such notice that it intends to conduct any such proceedings or Claim, then the Owner shall be free to conduct the same on its own behalf at the expense and cost of the Contractor. Unless the Contractor has so failed to notify the Owner within the Seven (7) day period, the Owner shall make no admission that may be prejudicial to the defence of any such proceedings or Claim.

#### **41.0 CARE OF THE FACILITIES AND WORK**

The Contractor shall be responsible for the care and custody of the Facilities and the Work or part thereof, including operational works on partial commissioned components, until Completion. The Contractor shall also be responsible for the loss or damage to any property caused by the Contractor or any of its Subcontractor during the execution of the Work.

#### **42.0 INSURANCE**

- 42.1 The Contractor shall take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the adequate insurances in respect of Cargo Insurance During Transit, Installation All Risk Insurance, Third Party Liability Insurance Automobile Liability Insurance, Workers' Compensation, Liability Insurance to protect his interest as well the interest of the Owner. The Contractor shall also take Other Insurance as listed in the Annexure - 1. Owner shall be identified as co- insured in insurance policies like Cargo Transit Insurance and Installation All Risk Insurance.
- 42.2 Each Party shall procure the insurance required by the contract from institutions approved by IRDA.

#### **43.0 FORCE MAJEURE**

##### **43.1 DEFINITION**

Force Majeure Event means any event or circumstance or a combination of events and circumstances those stated below that wholly or partly prevents or unavoidably delays a Party ("Affected Party") in the performance of its obligations under the Contract, but only if such event is:

- (a) is beyond the control, directly or indirectly of the Affected Party or its Subcontractors;
- (b) is without fault or negligence on the part of the Affected Party or its Subcontractors or contractors and is not the result of a breach by the Affected Party or its Subcontractors or contractors of any of their obligations under any Facility contract (including, in respect of the Affected Party, the Contract), any consent or any applicable Law;
- (c) was not foreseeable;
- (d) could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices;
- (e) prevents, hinders or delays the Affected Party in its performance of all or a material part of its obligations under the Contract; and
- (f) to the extent arising out of the following circumstances:
  - (i) any material effect of the natural elements or act of God, including lightning, drought and explosion (to the extent originating from a source external to the Facility), fire, earthquake, epidemic, pandemic (except for Covid-19), landslide, cyclone, tornado, volcanic eruption or typhoon;
  - (ii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
  - (iii) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Facility by the Affected Party or those employed or engaged by the Affected Party; or
  - (iv) vandalism, loot, riot or public general unrest caused on account of district wide or state wide issues (or impacting a substantial portion of a district or a state where the Facility is located) in the relevant area.
  - (v) Industrial disputes, strikes or any lockout undertaken by the registered and recognised professional representation body of workers across the industry in India but will not include any dispute, strike or any lockout which occurs or arises or affects only the Contractor or its Subcontractors.

#### 43.2 FORCE MAJEURE EXCLUSIONS

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, save in case they are consequences of an event of Force Majeure affecting the Contractor or any of its Subcontractors:

- (a) Unavailability, late delivery, or changes in cost of the Facility, machinery, equipment, materials, Spare Parts or consumables for the Facility;
- (b) Delay in the performance of any contractor, Subcontractor or their agents;

- (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- (d) Strikes at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the Contract becoming onerous to perform;
- (f) Unavailability or less than regular availability of labour or manpower unless attributable to any Force Majeure Event affecting the Facility and/or labour strike or labour unrest affecting the district or state (or a substantial portion of the district or state where the Facility is located);
- (g) Any delay caused by the Covid-19 virus, except in the event the delay is caused by Governmental restriction not known or foreseen at the time of entering into this Contract.;
- (h) Seasonal rains; and
- (i) Non-performance caused by, or connected with, the Affected Party's:
  - (i) Negligent or intentional acts, errors or omissions;
  - (ii) Failure to comply with applicable Law; or
  - (iii) Breach of, or default under the Contract.
  - (iv) Failure on part of the Contractor to mitigate the default falling under the Guarantee/Warranty coverage.

#### 43.3 EFFECTS OF FORCE MAJEURE EVENT

The Affected Party will be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that:

- (a) the Affected Party gives the other Party prompt Notice (within five (5) Days from the date upon which the Affected Party became aware of the occurrence) describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such Party's obligations hereunder, and continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;
- (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (c) no liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence;
- (d) the Affected Party shall exercise all reasonable endeavours to mitigate or cure the effect of the Force Majeure Event;
- (e) the Affected Party shall continue to perform all of its obligations hereunder which are not impaired by the Force Majeure Event; and
- (f) when the Affected Party is able to resume performance of its obligations under the Contract, the Affected Party shall give the other Party written Notice to that effect and shall promptly resume performance hereunder.



#### 43.4 NOTIFICATION OF FORCE MAJEURE EVENT

The Affected Party shall give Notice to the other Party of any Force Majeure Event as soon as reasonably practicable, but not later than five (5) Days after the date on which such Party knew or should reasonably have known of the commencement of the Force Majeure Event (the "FM Notice"). If a Force Majeure Event results in a breakdown of communications rendering it unreasonable to give Notice within the applicable time limit specified herein, then the Affected Party shall give such Notice as soon as reasonably practicable after reinstatement of communications, but not later than two (2) Day after such reinstatement.

Provided that the issuance of the FM Notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the Contract, the FM Notice shall include to the extent possible particulars of the Force Majeure Event, its effects on the Party claiming relief and the remedial measures proposed. No later than Fifteen (15) Days from the submission of the FM Notice, the Affected Party shall provide full details of the Force Majeure Event explaining the full extent of its potential consequences and financial impacts. Thereafter the Affected Party shall provide regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

The Affected Party shall give notice to the other Party of:

- (a) the cessation of the relevant Force Majeure Event; and
- (b) the cessation of the effects of such Force Majeure Event on the performance of its rights or obligations under the Contract, as soon as practicable after becoming aware of each of these cessations.

#### 43.5 DUTY TO PERFORM AND DUTY TO MITIGATE

To the extent not prevented by a Force Majeure Event pursuant to Section 43.2, the Affected Party shall continue to perform its obligations pursuant to the Contract. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

#### 43.6 AVAILABLE RELIEF FOR A FORCE MAJEURE EVENT

Subject to this Clause 43:

- (a) no Party shall be in breach of its obligations pursuant to the Contract to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;

- (c) for avoidance of doubt, neither Party's obligation to make payments of money due nor payable prior to occurrence of Force Majeure Events under the Contract shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party;
- (d) provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

43.7 Should the Force Majeure continue for a continuous period of one hundred and eighty (180) Days or more or simultaneously with the termination of the PPA on account of a Force Majeure Event, then either Party shall terminate the Contract with immediate effect unless otherwise agreed by the Parties. Such a termination shall be deemed to be without fault by either Party and shall have the consequences set out in Section 7.04.

43.8 It is hereby clarified that grant of any relief pursuant to this Article shall be subject to grant of equivalent relief to the Owner under the PPA in respect of such Force Majeure Event.

#### **44.0 SUSPENSION**

44.1 The Owner may, by notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Works) and statutory obligations until ordered in writing to resume such performance by the Owner.

44.2 If, by virtue of a suspension order given by the Owner, other than by reason of the Contractor's default or breach of the Contract, the Contractor may give a notice to the Owner requiring that the Owner shall, within twenty-eight (28) days of receipt of the Notice, order the resumption of such performance or request time extension.

#### **45.0 TERMINATION FOR OWNER'S CONVENIENCE**

45.1 The Owner may at any time terminate the Contract, either partially or in full, for any reason whatsoever by giving the Contractor a notice of termination.

45.2 Upon receipt of the notice of termination the Contractor shall either immediately, or upon the date specified in the notice of termination, cease all further Work covered by the termination. Notwithstanding the foregoing, upon termination, the Contractor is nevertheless obligated to initiate and perform such actions and task as required for the sole purpose of protecting that part of the Facilities already executed, or any Work required to leave the Site in a clean and

safe condition. Upon partial termination of the Work, Contractor's obligation to complete the Work not part of the termination without any delays remains unchanged.

45.3 In the event of termination of the Contract under GCC Sub- Clause 45.1, the Owner shall pay to the Contractor the following amounts:

- (a) The Contract Price, properly attributable to the parts of the Work executed by the Contractor as of the date of termination.
- (b) The costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' Personnel.
- (c) Any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any cancellation charges costs incurred by the Contractor in protecting the Work and leaving the Site in a clean and safe condition.

#### **46.0 TERMINATION FOR CONTRACTOR'S DEFAULT**

46.1 The Owner, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to the GCC Sub-Clause 46.2.

- (a) If the Contractor becomes bankrupt or insolvent, has a receiving order issued it, compounds with its creditors, or, or if the contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt.
- (b) If the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 50 (Assignment).
- (c) If the Contractor, in the judgement of the Owner has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

46.2 If the Contractor has abandoned or repudiated the Contract, or has without valid reason failed to commence the Work promptly, or persistently fails to execute the Contract in accordance with the Contract, or persistently neglects to carry out its obligations under the Contract without just cause; or refuses or is unable to provide sufficient Goods, services or labour to execute and complete the Work in the manner specified in the program furnished, the Owner may, without prejudice to any other rights it may possess under the Contract, give a Notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same.

If the Contractor fails to remedy or to take steps to remedy the same within Seven (7) days of its receipt of such Notice, then the Owner may terminate the Contract forthwith by giving a Notice of termination to the Contractor. Upon receipt of the Notice of termination, the Contractor shall, either immediately or upon such date as is specified in the notice of termination:

- i) Cease all further work, except for such work as the Owner may specify in the Notice of termination for the sole purpose of protecting that part of the Facilities and/or Work already executed, or any work required to leave the Site in a clean and safe condition.
- ii) Terminate all Subcontracts, except those to be assigned to the Owner pursuant to paragraph (iii) below.
- iii) Deliver to the Owner the parts of the Facilities and/or Work executed by the Contractor up to the date of termination to the extent legally possible, assign to the Owner all right, title and benefit of the Contractor to the Works and to the Facilities as at the date of termination, and, as may be required by the Owner, in any subcontracts concluded between the Contractor and its Subcontractors.
- iv) Deliver to the Owner all Technical Documents, including drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities and/or Work.

#### **47.0 TERMINATION BY CONTRACTOR**

The Contractor has the right to terminate the Contract:

- (a) If the Owner has failed to pay the Contractor any undisputed sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant conditions of the Contract or commits a substantial breach of the Contract, the Contractor may give a notice to the Owner that requires payment of such sum, requires approval of such invoice

or supporting documents, or specifies the breach and requires the Owner to remedy the same, as the case may be. If the Owner fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

- (b) If the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Owner, including but not limited to the Owner's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities and/or Work which the Owner is required to obtain as per provision of the Contract or as per relevant applicable Laws of the country, then the Contractor may give a notice to the Owner thereof, and if the Owner has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Owner within twenty-eight (28) days of the said notice.

#### **48.0 STEP-IN RIGHTS**

48.1 Upon the occurrence of Contractor's default under the Contract, Owner may defer the exercise of its right to terminate the Contract and elect to exercise a Step-In Right in the manner set out in this Section 48, by issuing a notice to Contractor (a "Step-In Notice") which notice shall:

- i) specify the scope affected by the Step-In Rights (the "Step-In Scope") that Owner proposes to carry out in the exercise of its Step-In Right pursuant to that Step-In Notice ; and
- ii) nominate a date (being not less than seven (7) Days after the date of Contractor's receipt of the Step-In Notice as the date on or after which Owner will commence the exercise of that Step-In Right.

48.2 During the period between the receipt of the Step-In Notice and prior to the commencement of the Step-In Right by the Owner, if Contractor commences immediately to carry out the Step-In Scope specified in a Step-In Notice, and for so long as it continues

diligently to undertake and carry out those Step-In Scope, Owner may at its election defer the exercise of its Step-In Right. Otherwise, and in any event where Contractor does not commence immediately to carry out the Step-In Scope specified in the Step-in Notice and continue diligently to undertake and carry out those Step-In Works, Owner may, on or at any time after the date nominated in the Step-In Notice, exercise its Step-In Right in the terms of that Step In Notice.

Contractor shall be liable for and shall indemnify Owner against all direct and reasonable costs, expenses incurred, losses, damages, Claims and liabilities relating to, arising out of or in connection with Owner's exercise of the Step-In Right including, without limitation, the fees and costs of any replacement contractor and an overhead cost payable to the Owner of five per cent (5%) of the total of such costs and expenses.

48.3 If Owner has exercised a Step-In Right, then it shall Step-Out if and when:

- (a) the breach in respect of which that Step-In Right was exercised is remedied;
- or,
- (b) Owner determines that it does not wish to continue exercising that Step-In Right.

If Owner Steps-Out under Section 48.3(b) above then the relevant breach on which the exercise of the Step-In Right was grounded shall be taken to have continued since its occurrence, and Owner may accordingly exercise its rights with respect to the right of termination under this CONTRACT.

48.4 The exercise by Owner of any Step-In Right shall not prejudice in any way any other rights of Owner under this Contract or at law.

48.5 Except as otherwise provided by any applicable Laws, Owner shall not be under any obligation to Third Parties in relation to the Work or the O&M Service at any time while it is exercising any Step-In Right.

#### **49.0 CUMULATIVE REMEDIES, LIQUIDATED DAMAGES; EXPRESS REMEDIES**

Except as otherwise set forth in the Contract, remedies for the Work are cumulative and remedies for the O&M Services are cumulative, on a separate basis, and the exercise of, or