

- 3.1.35 'Date of Contract'/'Commencement Date'** shall mean the date on which Letter of Award will be issued.
- 3.1.36 'Zero Date'** will be started from the date of issuance of Letter of Award (LOA).
- 3.1.37 "Program"** means the Program to be submitted by the Contractor in accordance with GCC and any approved revisions thereto.
- 3.1.38 "GCC"** means the General Conditions of Contract hereof.
- 3.1.39 "SCC"** means the Special Conditions of Contract.
- 3.1.40 "Trial run"** means the first continuous operation of the complete Plant & Equipment including all systems & sub-systems in the of mode Remote operation from SCADA for three (03) days with continuous daily operation, trial shall necessarily include steady operation of the plant at its evacuation capacity successfully without any unforeseen/spurious tripping of any running equipment.

3.2. CONTRACT DOCUMENTS

3.2.1. CONSTRUCTION OF CONTRACT

The Contracts to be entered into between the Purchaser and the successful bidders shall be as under:

"PART A" is for ex-works supply of Equipment / Materials & Transport, transit insurance, unloading, storage, handling

"PART B" is for civil works as per Schedule of Works (Electrical & Civil), at Site, installation services (including rates and prices for all material/ labour, Contractor's Equipment, temporary works, consumables and all matters and things of whatsoever nature of such works), training of Purchaser's personnel etc and all other services specified in the Contract Documents.

- b. **"Second Contract"** for Comprehensive Operation & maintenance for five (5) years which shall be conferred after successful completion of the project.

3.2.2. The award of these three Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Works as per Contract Documents.

3.2.3. If the successful bidder is a Bidding Consortium then the award of this three contract will be conferred on the Lead Member. But all the member of the consortium shall be severally and jointly liable and responsible for execution of the contract. In the event of failure on the part of the second member of the consortium to perform its obligation, then the Lead member of the consortium shall be solely responsible to fulfil the remaining

obligations of its partner for the purpose of completion of contract including statutory obligations(refer Clause-3.49).

3.2.4. Subject to **Sl no.2** of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3.2.5. Subsequent to signing of the Contract Agreement, the Contractor at his own cost shall provide the Purchaser with at least **six (6) copies** of the Contract Documents within **seven (07)** days after signing of the Contract Agreement.

3.2.6. The Contractor shall provide free of cost to WBPDC all the engineering data, drawings and descriptive materials submitted with the bid, complete set of his bid and bidding documents, copies of all the correspondence with WBPDC, etc. in at least **four (4)** copies to form a part of the Contract Documents after seven (07) days of the Letter of Award (**LOA**).

3.2.7. Endorsement of Terms

The failure of either party to endorse at any time any of the provisions of the Contract or any rights in respect thereto or to an option herein provided shall in no way be construed to be a waiver of such provisions, rights or option or in any way to effect the validity of the Contract. The exercise by either party of any of his rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.

3.2.8. Effect

The Contract shall be considered to come into force on the date of issuance LOA by PURCHASER to the Contractor which may be in the form of a fax, E-MAIL or a Letter of Award. The Time for Completion shall be reckoned from that date.

3.2.9. All Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language. If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under this clause, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.3. NOTICE

3.3.1. Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract. Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, Registered post or e-mail followed by post confirmation to the address of the relevant party as mentioned in SCC

- 3.3.2.** Any notice sent by registered post or speed post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered **ten (10) days after dispatch**. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities for transmission by airmail or registered post.
- 3.3.3.** Any notice delivered personally or sent by registered post shall be deemed to have been delivered if the same is properly received by the other party.
- 3.3.4.** Either party may change its address at which notices are to be received by giving ten (10) days' notice to other party in writing.

3.4. INTERPRETATION

3.4.1. Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.4.2. Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4.3. Persons

Words importing persons or parties shall include firms, corporations and government entities.

3.4.4. INCOTERMS

Unless inconsistent with any clause of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by the Incoterms.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.4.5. Entire Agreement

Subject to **GCC.3.17.3**, the Contract constitutes the entire agreement between the Purchaser and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract..

3.4.6. Independent Contractor

The Contractor shall be an independent Contractor (if JV/Consortium then Lead Member) performing the Contract.

The Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub-contractors engaged by the Contractor in connection with the performance of the Contract subject to

approval of WBPDC shall be under the complete control of the Contractor and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Sub-contractors and the Purchaser.

3.4.7. Non-Waiver

Any waiver of Purchaser's/bidder's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Purchaser/bidder granting such waiver, and must specify the right and the extent to which it is being waived.

Subject to above, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.4.8. Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.5. GOVERNING LAW

The Contract shall be governed by and interpreted in accordance with laws in force in India including any such Laws passed or made or coming into force during the period of the Contract. The Courts of Kolkata under the superintendence of High Court of Calcutta shall have exclusive jurisdiction in all matters arising under the Contract.

3.6. SETTLEMENT OF DISPUTE

3.6.1 If any dispute(s) or difference(s) of any kind whatsoever arise between the parties hereto in connection with or arising out of any contract, the parties hereto shall negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of 30 (thirty) days from the date on which the dispute(s) or difference(s) arose, either party shall give a notice to the other party, of such intention to invoke Arbitration within 14 (fourteen) days from the expiry of the aforesaid period of 30 (thirty) days within which amicable resolution could not be reached.

Such dispute(s) or difference(s) shall be referred to and settled by an Arbitral panel comprising of 3 (three) arbitrators. Both the parties shall appoint one

arbitrator each. The third Arbitrator shall be appointed by both the Arbitrators who shall act as the Presiding Arbitrator.

- 3.6.2** If the appointed Arbitrators fail to agree upon the Presiding Arbitrator within 30 (thirty) days from the date of their appointment, the appointment of Presiding Arbitrator shall be made upon request of either party by, the Hon'ble High Court, Kolkata, West Bengal.
- 3.6.3** The Arbitration clause can be invoked at any time during the currency of the contract or after the expiry/ termination or closure of the contract.
- 3.6.4** The arbitration proceedings shall be in accordance with the prevailing Arbitration laws of India as amended or enacted time to time
- 3.6.5** The existence of any dispute(s) or difference(s) or the initiation or continuance of the Arbitration proceedings shall not permit the parties to postpone or delay the performance by the parties of their respective obligations pursuant to the Contract.
- 3.6.6** The seat of arbitration shall be Kolkata, West Bengal, India.

3.7. COMPLIANCE WITH LAWS

3.7.1 Compliance with Laws, statutes, regulations

The Contractor shall, in all matters arising in the performance of the Contract, comply with in all respects, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

3.7.2 Statutory Obligations

The Contractor shall adhere to the statutory provisions under Payment of Minimum Wages Act, Contract Labour (Regulation & Abolition) Act-1972, Employee's Provident Fund & Miscellaneous Provisions Act-1952, Employers' Compensation Act-1923, ESI Act 1998 and other available relevant statutes. The Contractor shall also be responsible and liable for such statutory compliance as stated hereinabove in respect of the Sub Contractors engaged by them. At any point of time non-compliance of the statutory provisions in respect of contract labour engaged in the job by the contractor/sub-contractors may attract penal action against Contractor from the law enforcing authorities. All liabilities arising out of the non-compliance of the Law of the land will have to be borne by the Contractor and PURCHASER will not be responsible in any manner whatsoever for the same.

- 3.7.3** The Contractor shall indemnify and hold harmless the Purchaser 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 Sub-contractors and their personnel,

but without prejudice to **GCC 3.10.1** hereof.

B. SUBJECT MATTER OF CONTRACT

3.8. SCOPE OF WORKS

3.8.1 Unless otherwise expressly provided in the Technical Specifications, the Contractor's obligations cover the provision of all Equipment/ Materials including spares and the performance of all services required for the design, the manufacture (including quality assurance, construction, installation, associated civil, structural and other construction works and delivery) of the Equipment/Materials and the installation, commissioning, completion of the Works and carrying out completion tests for the Works in accordance with the plans, procedures, Specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such Specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, Equipment, spare parts (as specified in **GCC 3.8.3**) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site), insurance and storage, except for those supplies, works and services that will be provided or performed by the Purchaser.

3.8.2 The Contractor shall, at no extra cost to the Purchaser, unless specifically excluded in the Contract, perform all such Works and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining successful completion of the Works as if such Works and Materials were expressly mentioned in the Contract.

3.8.3 The Contractor agrees to supply spare parts required for the operation and maintenance of the Works as per provision of subsequent sub clauses of **GCC 3.8.3**.

3.8.3.1. All the spares for the Equipment/material under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main Equipment/Materials supplied under the Contract and shall be fully interchangeable.

3.8.3.2. All the spares covered under the Contract shall be manufactured along with the main Equipment/ Materials as a continuous operation and the delivery of the spares will be effected along with the main Equipment/ Materials in a phased manner and the delivery would be completed by the respective dates for the various categories of Equipment/ Materials as per the agreed Program.

3.8.3.3. The Contractor will provide the Purchaser with the manufacturing drawings,

catalogues, assembly drawings and any other document required by the Purchaser so as to enable the Purchaser to identify the spares. Such details will be furnished to the Purchaser during design and drawing approval.

- 3.8.3.4. In addition to the spares covered in the Scope of Work, if the Purchaser further identifies certain items of spares, the Contractor will submit the prices and delivery quotation for such spares within thirty (30) days of receipt of such request with a validity period of six (6) months for consideration by the Purchaser and placement of order for additional spares, if the Purchaser so desires.
- 3.8.3.5. The quality plan and the inspection requirement finalized for the main Equipment/ Materials will also be applicable to the corresponding spares.
- 3.8.3.6. The Contractor will provide the Purchaser with all the addresses and particulars of his Sub-contractors while placing the order for Equipment/ Materials covered under the Contract and will further ensure with his vendors that the Purchaser, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors.
- 3.8.3.7. The Contractor shall guarantee the long-term availability of spares to the Purchaser for the full life of the Equipment/ Materials covered under the Contract. The Contractor shall guarantee that before going out of production of spare parts of the Equipment/ Materials, he shall give the Purchaser at least twelve (12) months advance notice so that the latter may order his bulk requirement of spares, if he so desires. The same provision will also be applicable to Sub-Contractor of any spares by the Contractor or his Sub-Contractors. Further, in case of discontinuance of manufacture of any spares by the Contractor or his Sub-Contractors, the Contractor will provide the Purchaser, two (2) years in advance, full manufacturing drawings, material specifications and technical information required by the Purchaser for the purpose of manufacture of such items..
- 3.8.3.8. In case the Contractor fails to supply the spares in the terms stipulated above, the Purchaser shall be entitled to purchase the same from the alternate sources at the risk and the cost of the Contractor and recover from the Contractor, the excess amount paid by the Purchaser, if any, over the rates worked on the above basis. In the event of such risk purchase by the Purchaser, the purchases will be as per the Policy and Procedures of the Purchaser prevalent at the time of such purchases and the Purchaser at his option may include a representative from the Contractor in finalizing the purchases.
- 3.8.3.9. It is expressly understood that the final settlement between the parties , in terms of relevant clauses of the Contract Documents shall not relieve the

Contractor of any of his obligations under the provision of long term availability of spares unless otherwise discharged expressly in writing by the Purchaser.

- 3.8.3.10 The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from defects in design, material and workmanship

3.8.4 COMPREHENSIVE OPERATION AND MAINTENANCE

Maintenance contract shall be commence after final commissioning of the plant. 05 (five) years comprehensive operation & maintenance of the plant shall also be the scope of work. The contractor needs to submit 03 (three) sets of comprehensive user's manual and 02 (two) sets of Operation and Maintenance manual book after commissioning of the plant.

The scope of maintenance shall include supply of spare parts, replacement of all damaged equipment and accessories with new one within the price of yearly maintenance charge.

Time for repair/ replacement of equipment or any works in case of any major failure will be granted by the Controlling Officer considering the type of failure and receiving written prayer from the contractor for the same. But in general the downtime will be 72 hours.

The period of unavailability of Grid & Force Majeure Conditions will not be considered as downtime.

Arrangement of security (Minimum 3 nos. of security personnel in each of the three shifts) shall be a scope of the operation and maintenance.

The contractor shall arrange sufficient transportation arrangement (24X7) for the operation and maintenance purpose. The maintenance includes Routine and preventive, Breakdown and Capital Maintenance which shall be but not limited to the following.

3.8.4.1. Routine and preventive maintenance:

This shall include:

- i. Regular cleaning of PV modules.
- ii. Checking & tightening of all electrical connections and mechanical fittings.
- iii. Checking and restoring of earthing system.
- iv. Cleaning of Inverter and other electrical equipment.
- v. Routine maintenance as recommended by the original equipment manufacturer.

The contractor shall be responsible to carry out routine and preventive maintenance and replacement of each and every damaged/faulty component/ equipment of the power plant and he shall provide all labour, material, consumables etc for routine and preventive maintenance at his own cost.

3.8.4.2. Breakdown maintenance:

Breakdown maintenance shall mean the maintenance activity including repairs and replacement of any component or equipment of the power plant which is not covered by routine and preventive maintenance and which is required to be carried out as a result of sudden failure/breakdown of that particular component or equipment while the plant is running. The supplier shall be responsible to carry out breakdown maintenance of each and every component of the power plant and he shall provide the required manpower, materials, consumables, components or equipment etc. for breakdown maintenance at his own cost irrespective of the reasons of the breakdown/failure.

3.8.4.3. Capital maintenance:

Capital Maintenance shall mean the major overhaul of any component or equipment of the power plant which is not covered by routine, preventive and breakdown maintenance which may become necessary on account of excessive wear & tear, aging, which needs repair/replacement. The capital maintenance of power plant and all civil structures shall normally be planned to be carried out on an annual basis. For this purpose a joint inspection by the supplier and WBPDCCL shall be carried out of all the major components of the power plant, about two months in advance of the annual maintenance period, in order to ascertain as to which components of the power plant require capital maintenance. In this regard the decision of WBPDCCL will be final and binding.

However, if the condition of any plant component wants its capital maintenance at any other time, a joint inspection of WBPDCCL and supplier shall be carried out immediately on occurrence of such situation and capital maintenance shall be carried out by arranging the shutdown of the plant/part of the plant, if required, in consultation with concerned authorities. The decision of WBPDCCL shall be final and binding to the contractor.

The capital maintenance also includes painting of mechanical & civil structures etc.

The contractor shall undertake necessary maintenance /troubleshooting work of the Solar PV Power Systems. Down time shall not be more than 72 hours from time of occurrence of such faults. Adequate measures should be taken for prevention of wear and tear of the machines. Solar PV Power System is to be designed to operate with a minimum of maintenance.

The scope of support service provides preventive maintenance as & when necessary within the contract period and break down maintenance in the event of malfunctions, which prevent the operation of the power system or part of it within the stipulated time period & free replacement of spares required for

maintenance.

The contractor will provide Spare parts & measuring instruments.

The contractor shall submit the detailed schedule for routine and preventive maintenance before final commissioning of the plant. The contractor shall also submit Detailed Report to WBPDC for any capital or breakdown maintenance mentioning the cause of breakdown, actions taken to resolve that issue and preventive measures taken to avoid failure/damage/loss of generation due to similar incidents/accidents in future etc. within 07 (seven) days from the date of recovery.

- 3.8.4.4. **Operation & Maintenance Report:** Maintenance register / log book must be maintained at site. However, quarterly maintenance and monthly generation report of each location as per format duly approved by WBPDC must be submitted in original by the contractor to WBPDC with certification of WBPDC by the contractor within 30 day of the following month. Failing of which maintenance service will be deemed to be not attended.

- 3.8.4.5. **Deployment of Competent Manpower:**

As the vendor is to satisfy the NMGG of the plant as per clause 3.33, however deployment of man power shall be in line with Clause 4.10.1 of SCC.

- 3.8.4.6. **Cost & Payment Terms for O&M Contracts:**

O&M contract value: 10% of the Basic Project Cost (excluding GST) for 5(five) years.

Payment Terms:

The payment shall be made on monthly basis and the Eligible amount will be due for payment after the certification by the Controlling Officer within 45 (forty five) days from the end of each month subject to satisfactory performance and submission of maintenance report in regular basis as mentioned in Clause No. 3.8.4 of GCC. The total yearly amount payable shall be subject to following table and as per certification of the Controlling Officer.

O&M Operation Year end	Amount of Payment
1 st Year	1.5% of the contract value
2 nd Year	2% of the contract value
3 rd Year	2% of the contract value
4 th Year	2% of the contract value
5 th Year	2.5% of the contract value

GST will be paid by WBPDC at actual subject to submission of proper document.

3.9. VARIATION, ADDITIONS AND OMISSIONS

The Contractor shall not modify the scope of work except under direction in writing by the WBPDC. The quantities provided in the schedule of works are fixed.

3.10. OBLIGATIONS OF THE CONTRACTOR

- 3.10.1 The Contractor shall, in accordance with the Contract, with due care and diligence, carry out the Works as necessary for successful completion of all the obligations, within the time for completion. All statutory norms has to be followed throughout the project and final NOC has to be obtained from site HR&A department of WBPDC.
- 3.10.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the conditions and circumstances at the Site affecting the Contract Price, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site including existing roads and bridges and other means of access to the Site, presence of obstructions on the Site. 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
- 3.10.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country/ state where the Site is located that are necessary for the performance of the Contract.
- 3.10.4 The Contractor shall arrange/ construct at his own cost any storage/access, structures, bridges and approach to the work sites from public roads as may be required for execution of Works.
- 3.10.5 Contractor shall be responsible for all necessary statutory compliance in respect of the employees deployed by them or by the sub-contractor(s) to execute the contract. However, Form no. V for obtaining labour license under the contract labour (R&A) act , 1970 and rules framed there under shall only be issued to the Contractor.

3.11. OBLIGATIONS OF THE PURCHASER

- 3.11.1 The Purchaser shall provide the contractor physical possession of the Site and access thereto except where providing access is included in the scope of work of the Contractor on or after the date(s) of issuance of LOA.

- 3.11.2 The Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings where the Site is located, which such authorities or undertakings require the Purchaser to obtain in the Purchaser's name for the execution of the Contract (they include those required for the performance by both the Contractor and the Purchaser of their respective obligations under the Contract).
- 3.11.3 Without prejudice to the obligations of the Contractor under the Contract Agreement, if requested by the Contractor, the Purchaser shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses 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 Sub-contractors or the personnel of the Contractor or Sub-contractors, as the case may be, to obtain.
- 3.11.4 The Bidder shall provide sufficient, properly qualified operating and maintenance personnel; shall supply, other materials and facilities and shall perform work and services of whatsoever nature for properly carry out Commissioning, Trial run and Guarantee Tests at or before the time specified in the Program furnished by the Contractor under GCC 3.23.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Bidder and make available all raw materials, utilities, lubricants, chemicals, catalysts etc. at site.

C. PAYMENT

3.12. CONTRACT PRICE

- 3.12.1 The Contract Price shall be specified in the Contract Agreement.
- 3.12.2 Subject to **GCC 3.11.1** hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 3.12.3 No interest shall be paid by WBPDC for delay in making payment.

3.13. TERMS AND PROCEDURE FOR PAYMENT

The payments to the Contractor for the performance of the Contract will be made by the Purchaser as per terms and conditions specified in **Clause 4.3.4.6**. No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the Works or any part thereof. The currency of payment shall be Indian rupees.

3.14. SECURITIES

3.14.1 Mobilisation Advance Payment

10 % of the Contract Price (Supply & Erection contract) will be paid as Mobilization advance to the contractor against submission of BG (Annexure-3) equivalent to 110 % of the Mobilization Advance. The mobilization advance will be interest free for the scheduled Completion period from the date of LOA of the Project against 110 % unconditional BG with a claim period of 90 days initially. The payment of Mobilisation advance shall be subject to deduction of tax at source as per law. The unadjusted mobilization advance if any after the schedule completion period, will be recovered with interest at the Rate of 8.5% p.a.

This Bank Guarantee shall be returned to the Contractor after full recovery of advance with interest **if any** and against request by the Contractor. The validity of Bank Guarantee would require to be extended by the Contractor, if so required by the Purchaser. The details terms and Condition of the Mobilisation Advance has been specified in Clause No. 4.3.4.2.

3.14.2 Contract Performance Bank Guarantee(PBG)

3.14.2.1 The Contractor shall furnish an unconditional and irrevocable Bank Guarantee in favour of the Purchaser as per **Annexure-2** of **Section VII**, towards Performance guarantee for faithful and due fulfilment of all obligations under the Contract after placement of LOA. Bank Guarantee shall be furnished for an amount equal to ten percent (3%) of the Project cost plus GST, from a Scheduled commercial Bank in India. The Bank Guarantee shall be valid for Seventy Two (72) months subject to satisfactory completion of Defect Liability Period (Five year) with further claim period for ninety (90) days thereafter. The value of the Bank Guarantee is not to be construed as limiting the damages under Defects Liability Period. The Purchaser reserves the right to verify the authenticity of the Bank Guarantee from the issuing bank.

3.14.2.2 The Contract Performance Bank Guarantee is liable to be invoked on demand of PURCHASER, for any breach under the Contract irrespective of any dispute or difference between PURCHASER and the Contractor, pending before any court, tribunal or any other authority,

3.14.2.3 The Performance Bank Guarantee shall be returned to the Contractor within ninety (90) days after receipt of application for release of Performance Bank Guarantee along with certification regarding completion of Defects Liability Period and O&M period. No claim shall be made against the Performance Guarantee after the issue of Defects Liability Certificate. However, no costs shall be paid for the Bank Guarantee by the Purchaser, irrespective of date of release.

3.15. TAXES, DUTIES AND OTHER LEVIES

3.15.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all the applicable taxes and duties (**GST, Custom related Duties, BOCW Labour welfare cess as per laws** and other Govt. Tax or Levies) and charges assessed on the Contractor, its Sub-contractors in connection with this Works. Apart from GST all applicable taxes, duties and levies, (Customs related Duties, entry tax etc.) where applicable and payable on Equipment/Materials, components, sub-assemblies, raw materials and any other item required for manufacture of finished Equipment/Material or completion of Works shall be deemed to have been included in base price.

3.15.2 The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's persons or on earnings of any of his employees and shall hold the Purchaser indemnified and harmless against any claims that may be made against the Purchaser. The Purchaser does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor or his personnel. If it is obligatory under the provisions under the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Purchaser.

3.15.3 Bidder shall submit the base price and GST in their Bid as per clause 3.15.1 & 3.15.5.

3.15.4 GST will be reimbursed at actual by the WBPDC to the bidder on submission of appropriate supporting document.

3.15.5 Customs related Duty (if Applicable)

3.15.5.1 The Contractor is requested to identify the value of imported components, if any and its price and accordingly the custom duty of its and should be included as base price in the price bid.

3.15.5.2 In case of any change in custom duty, entry tax. etc. during the currency of the contract, the same shall be borne by the bidder. No reimbursement shall be allowed.

3.15.5.3 All taxes and duties payable outside India shall be borne and paid by the contractor. No claim will be entertained by the PURCHASER whatsoever on this account.

3.15.6 Advance Payment

The GST payable if any in respect of advance payment may be paid to the contractor by the PURCHASER in addition to the amount of advance, subject to providing appropriate documentary evidence that GST on advance has been paid by the contractor.

3.15.7 Tax Deduction at Source (TDS) towards Income Tax/Other Taxes

Deduction of Tax at source at prevailing rate shall be effected by the PURCHASER before payment as a statutory obligation wherever applicable. Income tax and all other taxes as applicable as per statutory obligation/s enactments shall be progressively deducted from the payments released to Contractor, by the PURCHASER, for depositing with the Income tax/other Tax authorities as per Income Tax Act.

TDS on Works Contract shall be deducted at source by the PURCHASER as per statutory provisions. However, if "No Deduction at Source Certificate" is furnished from the Tax Authorities by the Contractor, deduction of TDS on Works Contract shall not be effected.

3.15.8 Personal Income Tax & Cess

Income Tax and cess, if any payable by the Contractor's Sub-contractor's employees shall be paid by the said employees directly, and the PURCHASER shall not be liable to pay the income tax & cess payable by the employee of the contractor/sub-contractor and the purchaser is not responsible for filing the tax returns of contracts employees/experts.

3.15.9 Reverse Charge Mechanism

In case the liability to discharge GST is on the employer under reverse charge mechanism, then the said fact should be clearly mentioned on the face of the invoice. Further, GST should not be charged by the vendor in such cases.

3.15.10 It shall be responsibility of the Contractor to comply with all the requirements prescribed in the GST Act and Rules as may be applicable in respect of the activities/supply made by them under the contract to enable the PURCHASER to avail entire input tax credit on timely basis. It is the responsibility of the vendor to comply with the following key compliance requirements, failing which the Contractor shall be responsible of any loss of tax credit or any other cost including interest, penalty, etc that may levied or recovered from the employer.

- i. The contractor shall issue a proper tax invoice containing all the particulars as prescribed in the GST Invoice.
- ii. The Contractor shall deposit the GST amount due to the Government on a timely basis.
- iii. The Contractor shall file the periodic statements/returns as per the provisions of GST Law on a timely basis and include therein details of all the invoices raised during the relevant month under the present contract.
- iv. The Contractor shall support WBPDCCL on a best effort and timely basis to sort out the discrepancies communicated by GSTIN, if any.

- 3.15.11** Under GST regulation, taxes are levied on deductions under Liquidated Damage (LD). Such taxes will be charged extra by WBPDCCL. The rate of such tax on LD would be as per laws applicable at the time of imposition of LD when a Debit Note/Invoice is raised by WBPDCCL. This is because LD is a post-delivery/performance event & is not part of initial price bid.

D. INTELLECTUAL PROPERTY

3.16. PATENT RIGHTS & ROYALTIES

- 3.16.1** Royalties and fees for patents covering Equipment/Materials, articles, apparatus, devices or processes used in the Works shall be deemed to have been included in the Contract Price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the Purchaser indemnified in that regard.
- 3.16.2** The Contractor shall, subject to the Purchaser's compliance with GCC.16.3, indemnify and hold harmless the Purchaser, his successors or assignees, its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of : (a) the installation of the Works by the Contractor or the use of the Works in the country where the Site is located; and (b) the sale of the products produced by the Works in any country. Such indemnity shall not cover any use of the Works 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 Works or any part thereof, or any products produced thereby in association or combination with any other Equipment/ Materials not supplied by the Contractor, pursuant to the Contract Agreement.
- 3.16.3** If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in **GCC 3.16.2**, the Purchaser shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then

the Purchaser shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Purchaser within the thirty (30) day period, the Purchaser shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

- 3.16.4** The Purchaser shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- 3.16.5** All design and drawings submitted by the Contractor will be the property of Purchaser. The Purchaser reserves the right to use the same in its future project without any further reference and additional charges to the Contractor for such use.
- 3.16.6** The Purchaser's Drawings, Specification and other information submitted by the Purchaser to the Contractor shall remain the property of the Purchaser. They shall not, without the consent of the Purchaser, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract. Any error in any such drawing/Specification etc. shall not absolve the Contractor of his responsibility.

3.17. CONFIDENTIAL INFORMATION

- 3.17.1** The Purchaser and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Sub-Contractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Sub-contractor(s) to perform its Works under the Contract, in which event the Contractor shall obtain from such Sub-contractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause GCC 3.17.
- 3.17.2** The obligation of a party under GCC 3.17.1 above, however, shall not apply to that information which
- a. now or hereafter enters the public domain through no fault of that party
 - b. can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
 - c. otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality
- 3.17.3** The above provisions of this Clause GCC 3.17 shall not in any way modify any

undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or any part thereof

- 3.17.4** The provisions of this Clause GCC 3.17 shall survive termination, for whatever reason, of the Contract.

3.18. ADVERTISING

Any advertising stating the subject of this Contract by the Contractor in India or in foreign countries shall be subject to approval of the Purchaser prior to the publication. Publication of approved articles, photographs and other similar materials shall carry acknowledgment to the Purchaser.

E. WORK EXECUTION

3.19. PURCHASER'S REPRESENTATIVE

- 3.19.1** The PURCHASER shall appoint an experienced engineer designated as the **Project Manager** who shall carry out the functions and obligations of the Purchaser under the Contract.
- 3.19.2** The PURCHASER may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. The PURCHASER shall take reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of Works. The Project manager shall represent and act for the Purchaser at all times during the currency of the Contract.
- 3.19.3** Any decision, instruction or approval given by the Project Manager to the Contractor shall have the same effect as if it had been given by the Purchaser.
- 3.19.4** All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.
- 3.19.5** The Project Manager may authorize his representative as site-in-charge for the Works. The Project Manager will also be the consignee officer for the Works.

3.20. CONTRACTOR'S REPRESENTATIVE

- 3.20.1** If the Contractor's representative is not named in the Contract, then the Contractor shall appoint the Contractor's representative and shall request the Purchaser in writing to approve the person so appointed. If the Purchaser makes no objection to the appointment within 7 days, the Contractor's representative shall be deemed to have been approved. If the Purchaser objects to the appointment within fifteen (15) days giving the reason thereof, then the

- Contractor shall appoint a replacement of such objection, and the foregoing provisions of this Sub-Clause GCC 3.20.1 shall apply thereto.
- 3.20.2** The Contractor's representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.
- 3.20.3** Any instruction or notice which the Purchaser gives to the Contractor's representative(s) shall be deemed to have been given to the Contractor. An instruction book shall be kept at Site to record instruction of the Purchaser or his representative at the time of Site visit.
- 3.20.4** The Contractor shall not revoke the appointment of the Contractor's representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC 3.20.1
- 3.20.5** The Contractor's representative may, subject to the approval of the Purchaser within 7 days, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Purchaser and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Sub-Clause GCC 3.20.5 shall be deemed to be an act or exercise by the Contractor's representative.
- 3.20.6** The Contractor shall in addition to a Contractor's representative, employ one or more competent representative(s) to superintend the carrying out of the Works at Site. Such representative shall be fluent to communicate in local language for day to day work. Their names and contact addresses shall be communicated in writing to the Purchaser before commencement of Works.
- 3.20.7** The Purchaser may, by notice to the Contractor, object to any representative or person employed by the Contractor in the execution of the Contract ,who, in the reasonable opinion of the Purchaser, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC.3.26.6. The Purchaser shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site.

3.20.8 If any representative employed by the Contractor is removed in accordance with GCC 3.20.7 the Contractor shall, where required, promptly appoint a replacement

3.21. MILESTONE OF PROJECT

The whole work must be completed within **360 (Three Hundred Sixty)** days from the date of issuance of 'Letter of Award'. The duration of milestone will be calculated from the date of Letter of Award'.

Sl. No.	Description	Completion Time from date of LOA
1.	Approval of Detailed Design Report	45 Days
2.	Finalizations of Plant layout (including Modules, cable routes, inverter Control Room)	4 Months
3.	Completion of construction of Inverter Control Room	6 months
4.	Supply of 12.5 MVA transformer at site	9 Months
5.	Completion of Supply of Floaters & Modules	10 Months
6.	Completion of Modules & Electrical Equipment Erection	11 Month
7.	Complete installation of transformer and testing	11 Months
8.	Evacuation of Power	12 Months

Detailed time schedule for the site work has to be prepared based on the aforesaid milestones. Bidder has to submit the Detailed Design Report with complete time schedule within the milestones aforesaid. At the time of execution if delay occurs time extension may be allowed on the basis from request from Bidder. However, all such time extension order shall be without prejudice to the terms and condition of the contract.

WBPDC shall have the right, without prejudice to any other clauses, to terminate contract forthwith and to take possession of the balance work/materials and have the same allotted to any other agency and the contractor shall be liable to compensate the loss that may be occasioned to the WBPDC on that account. Any letter in writing by the Controlling Officer shall be treated as conclusive on behalf of the Company.

3.22. SUBMISSION OF DETAILED DESIGN REPORT

The contractor shall submit 03 (three) sets of the Detailed Design Report along with editable soft copy in a compact disk for approval from WBPDC.

The contractor shall submit 05 (five) sets of the finalized Detailed Design Report along with editable soft copy in a compact disk to the Executive Director(Project & Planning), WBPDC within 45 (Forty Five) days from the date of issuance of 'Letter of Award' to carry out further course of action.

3.23. PROGRAMME

3.23.1 The Contractor shall supply to the Purchaser and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Works. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed after placement of LOA. The Contractor shall promptly inform the Purchaser and the Project Manager in writing of any revision or alteration of such an organization chart.

3.23.2 The Contractor shall submit to the Purchaser for his approval the Program schedule in the form of **MS Project Network**, within fifteen(15) days of placement of LOA, with respect to Contract ,where such programme schedule is required, which shall, interalia, contain the following:

- a. the order in which the Contractor proposes to carry out the Works (including but not limited to design, engineering, manufacture, supply, finalization of Sub-contractors , Quality plans, transport, delivery to Site, assemble, erection, testing and commissioning),
- b. the date(s) by which the Contractor reasonably requires that the Purchaser shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the Program and to achieve Completion and conductance of guarantee test of the Works in accordance with the Contract
- c. the times of submission and approval of the Contractor's Drawings

3.23.2.1. The Program so submitted by the Contractor shall be in accordance with the Time Schedule mentioned above and any other dates and periods specified in the Contract. The Contractor shall update and revise the Program as and when appropriate or when required by the Project Manager, but without modification in the Time for Completion of the milestone and any extension granted in accordance with GCC 3.46 and shall submit all such revisions to the Project Manager.

- 3.23.2.2. This Program shall show clearly all activities and its duration along with earliest and latest dates and the first and last dates of submission of the drawings and each date of shop inspection by the Purchaser and critical path for the Works. The Program approved by the Purchaser shall form part of the Contract.
- 3.23.2.3. The approval by the Purchaser of the Program shall not relieve the Contractor from any obligation under the Contract towards timely completion of Works.
- 3.23.2.4. Once the programme schedule has been finalized, no revision shall normally be permitted as long as the scope of work remains unchanged. However, in cases of increase in quantities, while executing the work as per original scope; suitable adjustments may be made without affecting the time for completion. The revision in programme schedule, for aforesaid reasons, shall be done with the approval the Purchaser.
- 3.23.2.5. If the scope of work undergoes changes during execution stage resulting into additional scope over that originally provided, for which the Contractor insists extension in time for completion, such extension shall be granted while ordering additional scope of work. Contractor shall submit revised programme schedule for approval of the Purchaser.
- 3.23.2.6. In case the scope of work does not change but the time for completion is extended because of delayed commencement of the work on account of non fulfilment of obligations by Purchaser or because of any other reasons not attributable to Contractor, programme schedule shall be suitably revised as per the extended time for completion. Once the time for completion has been extended with the approval of Purchaser, Contractor shall submit revised programme schedule for the approval of Purchaser.

3.23.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the Program referred to in **GCC 3.23.2**, and supply a progress report to the Project Manager every month, with a copy to officials as mentioned in the SCC. Guarantee

- 2.23.3.1. The progress report shall be in a form acceptable to the Project Manager and shall also indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the Program, giving comments and likely consequences and stating the corrective action being taken.

3.23.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the Program

referred to in GCC 3.23.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Purchaser or the Project Manager, prepare and submit to the Project Manager a revised Program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Works within the Time for Completion as stated in SCC, or within such extended time to which the Contractor shall be entitled under GCC 3.46.2

3.24. DESIGN AND ENGINEERING

3.24.1 The Contractor shall submit to the Purchaser for approval:

Within the time given in the Contract or in the Program such documents including drawings, samples, models or information as may be called for therein, and in the numbers therein required, in a sequential order of execution and during the progress of the Works, such documents of the general arrangement and details of the Works as specified in the Contract. The Purchaser shall signify his approval or disapproval as detailed in the schedule and procedure of documents approval indicated below.

3.24.2 The Contractor shall prepare (or cause its Sub-contractors to prepare) and furnish to the Project Manager the documents, including Manufacturing Quality Plan and Field Quality Plan wherever required or review as specified and as in accordance with the requirements of GCC 3.23.2.

3.24.3 Any part of the Works covered by or related to the documents to be approved by the Purchaser's Representative shall be executed only after the Project Manager's approval thereof

3.24.4 The Contractor shall supply additional copies of approved documents in the format and numbers stated in the Contract.

3.24.5 The Schedule and Procedure of Documents Approval shall be finalised at the **Kick off** meeting and also Contract Coordinate Procedure (**CCP**) shall be prepared.

3.24.6 If any dispute or difference occurs between the Purchaser and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be settled in accordance with **GCC 3.6.1** thereof.

3.24.7 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

3.24.8 Approval of any documents by the Purchaser shall not relieve the Contractor of his responsibility for the accuracy thereof or modification required during actual execution or for any deviation in scheme from Technical Specification with accepted deviations if there be any

3.24.9 Approval of Design and Drawing:

The contractor shall have to prepare and submit the designs and drawings associated with civil, mechanical, electrical and other work which includes design of foundation, structure cable sizing, fabrication work, layout design, wiring diagram etc. and obtain approval prior to the execution of work and for this purpose the contractor shall submit Detailed Design Report for obtaining approval from WBPDC. The contents of the Detailed Design Report shall be as mentioned in the scope of work (Clause no. GCC 3.24.10).

Materials: Contractor shall obtain prior approval for the materials deliverable under the project from WBPDC as mentioned in the technical specification.

3.24.10 Detailed Design Report (DDR)

Contractor shall prepare and submit the Detailed Design Report to WBPDC which must contain site meteorological data considered with necessary supporting documents, calculations for annual energy generation, schedule of site works (L1 & L2 network), Design of modules layout with Floaters and associated calculations for selection of different major equipment for the plant based on the site location and relevant code of practice. Design calculation of Solar Plant shall be submitted in latest version of PVsyst software.

The Detailed Design Report shall contain detailed Billing Breakup (BBU) for supply as well as Erection of Plant.

3.25. PROCUREMENT

3.25.1 The Contractor shall manufacture or procure and transport all the Equipment/Materials in an expeditious and orderly manner to the Site.

3.25.2 Defective Material

If in the opinion of the Engineer, any of the machineries/ equipment/ materials etc. brought to the site for use are not of the quality or kind specified in the contract and/or are unfit for the work, he shall be at liberty to order the removal of the said items and the contractor shall remove the same within twenty four (24) hours after notice has been given to him and if he fails to remove them within the time the engineer may cause them to be removed anywhere at the risk of the Contractor and any cost incurred in so doing shall be deducted from the dues to the contractor under the contract. In such case, items as prescribed by the Controlling Officer or his representative are to be

substituted immediately.

3.25.1 Transportation.

- 3.25.3.1. The Contractor shall at its own risk and expense transport all the Equipment/Materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances
- 3.25.3.2. Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Equipment/Materials and the Contractor's Equipment.
- 3.25.3.3. Upon dispatch of each shipment of the Equipment/ and the Contractor's Equipment, the Contractor shall notify the Purchaser by courier, email, post or by fax followed by post confirmation of the description of the Equipment/Materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival at the Site. The Contractor shall furnish the Purchaser with relevant shipping documents to be agreed upon between the parties
- 3.25.3.4. The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Equipment/ Materials and the Contractor's Equipment to the Site. The Purchaser shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Purchaser from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Equipment/ Materials and the Contractor's Equipment to the Site.
- 3.25.3.5. **Transit Damages:** In the event of receipt of goods in damaged condition or having found them so upon opening of packages at site, Contractor shall make good of all such damages within a reasonable time from such intimation by WBPDC.

3.26. CONTRACTOR'S CONSTRUCTION MANAGEMENT:

3.26.1 Setting Out

The Contractor shall be responsible for the true and proper setting-out of the Works in relation together, reference marks and lines provided to it in writing by or on behalf of the Purchaser.

The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Purchaser in writing and provide all necessary instruments, appliances and labour for such purposes. If at any time during the execution of Works, any error appears in the positions, levels, dimensions

or alignment of the Works, the Contractor shall rectify the error at his cost. The checking of any setting-out by the Purchaser shall not relieve the Contractor of his responsibility for the accuracy thereof.

3.26.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the installation of the Works, and the Contractor's representative(s) shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the Works

3.26.3 Labour

- 3.26.3.1 The Contractor shall provide and employ on the Site in the installation of the Works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills
- 3.26.3.2 Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- 3.26.3.3 The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s), if required, from the appropriate authorities for the entry of all labour and personnel to be employed on the Site.
- 3.26.3.4 The Contractor shall at its own expense provide the means of repatriation to all of its and its Sub-contractor's personnel, employed on the Contract, at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure.
- 3.26.3.5 The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Sub-contractors.
- 3.26.3.6 The Contractor shall, in all dealings with its labour and the labour of its Sub-contractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

3.26.4 Contractor's Equipment

- 3.26.4.1 The Contractor shall provide all erection Equipment haulage & power if necessary to complete the Works as per Time for completion, including transport at his own cost. The Contractor shall provide additional manpower as

well as haulage and other erection equipment as necessary for maintaining the Time schedule of completion.

3.26.4.2 Contractor's all equipment shall, when brought to the Site, be deemed to be exclusively intended for the execution of Contract. The Purchaser shall have lien on all such Equipment brought to Site for the purpose of erection, testing and commissioning of the Equipment/Materials.

3.26.4.3 The Contractor shall not remove from the Site any such Equipment, except when it is no longer required for the completion of the Works, or when the Purchaser has given his consent.

3.26.5 Purchaser's Equipment

The Contractor shall pay hire charges as may reasonably be levied for the Purchaser's equipment, if used, and also provide the transport, haulage, power etc. thereof at his own cost.

3.26.6 Site Regulations and Safety

The Purchaser and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Purchaser, with a copy to the Project Manager, proposed Site regulations for the Purchaser's approval, for which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Works, gate control, sanitation, medical care, and fire prevention. Details are mentioned in **SCC clause no.4.8**.

3.26.7 Environment & Social Policy and Procedures (ESPP) of Purchaser

The Contractor shall make himself aware of the ESPP of the Purchaser and shall execute the scope of work under the Contract in compliance with the said provisions.

3.26.8 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Works, or for the safety of the Purchasers and occupiers of adjacent property and for the safety of the public.

3.26.9 Clearance of Site

The Contractor shall, from time to time during the progress of the Works clear away and remove all surplus/ rejected materials and debris from Site. On completion of the Works, the Contractor shall remove all Contractors' Equipment and leave the whole of the Site clean and in a workmanlike condition to the satisfaction of the Purchaser.

3.26.10 Communication

The Contractor may require the Purchaser to confirm in writing any decision or instruction of the Purchaser which is not in writing. The Contractor shall promptly notify the Purchaser of such requirement.

3.26.11 Authority of Access

No persons other than the employees of the Contractor or his authorised representative shall be allowed at the Site. Purchaser or his representative shall have access to the work sites at any time.

3.26.12 Emergency work

- 3.26.12.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Works, the Contractor shall immediately carry out such work.
- 3.26.12.2 If the Contractor is unable or unwilling to do such work immediately, the Purchaser may do or cause such work to be done, as the Purchaser may determine it necessary in order to prevent damage to the Works. In such event the Purchaser shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons thereof. If the work done or caused to be done by the Purchaser is such that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Purchaser in connection therewith shall be paid by the Contractor to the Purchaser.

3.27. INSPECTION & TESTING

3.27.1 Inspecting Agency

The Purchaser may delegate inspection and testing to an outside agency in place of personnel of PURCHASER with due notice, not less than Twelve (12) days, to the Contractor. Any such outside agency shall be considered as a **Project Manager**

3.27.2 Inspection and Testing During Manufacture

- 3.27.2.1 The Purchaser or his designated representative shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Equipment to be supplied under the Contract. This shall take place on the Contractor's premises during working hours.
- 3.27.2.2 No such inspection, examination or testing shall relieve the Contractor of his obligation under the Contract regarding quality of material and soundness of manufacture.
- 3.27.2.3 No inspection call will be valid before drawings are approved under approval

category without comments.

3.27.3 Dates for Inspection and Testing

After getting the related drawings approved under approval category, the Contractor shall give the Purchaser notice of inspection along with factory test results in writing of the date and the place at which any Equipment/Materials will be ready for testing as provided in the Contract. The Purchaser shall attend at the place so named within twelve (12) days of the date which the Contractor has stated in his notice. The Purchaser shall give the Contractor notice, in writing, of his intention to attend the tests. The above notices shall be given at first by the quickest possible means and confirmed later in writing. The Contractor shall render all possible assistance in carrying out inspection in time

3.27.4 Facilities for Testing

- 3.27.4.1 Where the Contract provides for tests on the premises of the Contractor or Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently without any extra charges. If the facilities are inadequate to carry out tests as per standard, the Contractor shall have to arrange suitable testing place having all such required facilities and the cost towards this will be on Contractor's account.
- 3.27.4.2 The Contractor shall be responsible for proper execution of the quality plans. The Works beyond Purchaser's hold points will progress only with Purchaser's prior written consent. The Purchaser may also undertake quality surveillance and quality audit of the systems and procedures and quality control activities. Any change in the Quality Plans shall be made only with Purchaser's prior written approval.
- 3.27.4.3 The Contractor shall provide the Purchaser with the necessary facilities for carrying out quality audit and quality surveillance of the Contractor's and its Sub-Contractors' Quality Assurance System and manufacturing activities

3.27.5 Routine and Acceptance Tests

All routine tests and acceptance tests shall be carried out at manufacturer's works or test site of the Contractor/Sub-contractor/test laboratory as per stipulation of relevant Indian Standard and relevant IEC in presence of Project Manager. All tests shall be carried out on every lot offered for inspection as per relevant I.S. and IEC.

3.27.6 Type Test

- 3.27.6.1 The successful bidder shall submit complete test reports of all tests (including type tests) as stipulated in the relevant I.S. and IEC and carried out in a Govt.

recognized Test House or laboratory/NABL accredited laboratory on Equipment/ Materials of identical design conforming to our Technical Specification, along with submission of drawing during detailed engineering stage

- 3.27.6.2 PURCHASER may also undertake Proto checking and quality approval of structural items (wherever applicable) before erection. Each type test report shall provide the following information with test results:

Complete identification, date and Serial No.

Method of application where applied, duration and interpretation of each test.

3.27.7 Repetition of Tests

If any of the type tests, routine or acceptance tests fails to pass, the Contractor shall arrange for repetition of the tests, after rectification or replacement, at his own cost and expenses. If, however, the tests fail for the 2nd time, the related Sub-contractor shall be rejected immediately and the Contractor will be required to furnish the name of another Sub-contractor immediately either from the already approved list of Sub-contractor for that particular Equipment/Materials, or any new Sub-contractor along with submission of all relevant documents in support, towards approval of the new Sub-contractor as stated in this tender document.

3.27.8 Reports of Inspection and Tests

After the factory tests have been completed at the Contractor's or Sub-contractor's works, the Contractor shall submit **three (3) copies** of Test Reports for approval of Purchaser. The Purchaser in turn will approve the same on being satisfied. The Contractor shall provide the Purchaser with **four (04) copies** of Approved Reports of all inspection and tests.

- 3.27.9 If the Purchaser or his designated representatives fails to attend the test and/or inspection or if it is agreed between the parties that such persons shall not do so, then the Purchaser may advise the Contractor in writing to proceed with the test and/or inspection in the absence of such persons. The Contractor should provide the Purchaser with a certified report of the results thereof.

3.27.10 Covering Up

- 3.27.10.1 The Contractor shall give the Purchaser full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.
- 3.27.10.2 The Contractor shall give due notice to the Purchaser whenever such work is ready for examination, measurement or testing.
- 3.27.10.3 The Purchaser shall then notify the Contractor within **seven (07) days** that the Purchaser shall carry out the examination, measurement or testing. Unless it is notified specifically the Contractor may proceed with the work as per

Programme submitted.

3.27.11 Uncovering Works

If so instructed by the Purchaser, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Purchaser's satisfaction at the risk, cost and responsibility of the Contractor

3.28. TESTS ON COMPLETION.

3.28.1 Notice for Tests on Completion

The Contractor shall give to the Purchaser seven (07) days notice of the date after which he will be ready to conduct the Tests on Completion. Unless otherwise agreed upon, the Tests shall be carried out as per agreed schedule.

3.28.2 Delayed Tests

If the tests are being unduly delayed by the Contractor, the Purchaser may, by notice, require the Contractor to make the tests within twenty one (21) days after the receipt of such notice. If the Contractor fails to make the tests **Fifteen (15) days** of such notice, the Purchaser may himself proceed with the tests. All tests so made by the Purchaser shall be at the risk and cost of the Contractor and cost thereof shall be deducted from the Contract Price. The tests shall also be deemed to have been made in the presence of the Contractor and shall be accepted as accurate and no claim whatsoever in this respect of the Contractor shall be entertained.

3.28.3 Facilities for Tests on Completion

The Contractor, except where otherwise specified, shall arrange such labour, material, fuel, water, stores and testing apparatus as may be reasonably required to carry out such tests efficiently, without any extra charge

3.28.4 Re-testing

If the work or any portion thereof fails to pass the Tests, the Purchaser or the Contractor may require such tests to be repeated on the same terms and conditions. All costs of such retesting will be borne by the Contractor.

3.28.5 Consequences of Failure to Pass Tests on Completion

If the Works or any portion thereof fails to pass the tests or the repetition thereof under GCC.28, the Purchaser, after due consultation with the Contractor, shall be entitled to

Order one further repetition of the Tests under the conditions of GCC 3.26, or
Reject the Works or portion thereof in which event the Purchaser shall have the same remedies against the Contractor as are provided under GCC 3.27 or
Issue a Taking-Over Certificate, if the Purchaser so wishes, notwithstanding that the Works are not complete. The Contract Price shall then be reduced by such amount as may be agreed by the Purchaser and the Contractor or, failing

agreement, as may be determined under GCC 3.6. As soon as the work or any portion thereof has passed the tests, the Purchaser shall issue a Completion certificate to the Contractor to that effect.

3.29. REJECTION

Purchaser may not accord approval to test results if those results are not in conformity with Guaranteed Technical Particulars with given tolerable limits as per relevant standard or the results and procedure followed are found not in line with standard. The results may be rejected even if the Project Manager had witnessed the test. On approval of Test results only, Material Inspection Clearance Certificate will be issued by the Purchaser. Approval of Test results will not relieve the Contractor of its obligation as regards quality, standard and suitability of the Equipment/ Materials.

3.30. PERMISSION TO DELIVER

3.30.1 The Contractor shall apply in writing to the Purchaser for permission to deliver any Equipment / Materials to the Site. No Equipment/ Materials shall be delivered to the Site without the Purchaser's written permission

3.30.2 The Contractor shall make arrangement for receipt of all Equipment/ Materials delivered to Site under the scope of Contract besides all other Equipment/Materials required for the purpose of execution. Upon arrival at Site, the Contractor shall give a notice to the Purchaser when and where materials has arrived and been stored.

3.31. COMPLETION OF WORKS

3.31.1 As soon as execution of the Works or any part for which a separate completion schedule is provided in the Contract has, in the opinion of the Contractor, been completed operationally and structurally and put in tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Works, the Contractor shall so notify the Purchaser in writing within **seven (7) days** of the date of completion.

3.31.2 If, for reasons not attributable to the Contractor, the Works cannot be completed in next six (6) months, the Purchaser at, its discretion, may take up the inspection of the portion of the Works already completed, the balance payment due to the Contractor can be released against Bank Guarantee of equivalent amount. The Bank Guarantee validity shall be initially for a period of twelve (12) months or until three (3) months after expected date of commissioning, whichever is earlier. If the completion and thereafter commissioning does not take place within the validity period of the Bank

Guarantee, the validity shall be extended from time to time up from the date from which the concerned work was held up on aforesaid account. The Contractor shall also be required to extend the validity of the Contract Performance Guarantee.

3.31.3 For 'Works' not involving Commissioning

- 3.31.3.1 Within **fifteen (15) days** of intimation from the Contractor regarding completion of Works, the Project Manager shall cause to inspect the Works to verify the completion status, in presence of the Contractor's representative.
- 3.31.3.2 If the Works are found to be completed and acceptable in all respects (except for minor defects and deficiencies, if any), Completion Certificate (**Annexure-6**) / Taking over Certificate (TOC) shall be issued by the Purchaser after the Contractor's intimation. The Completion certificate shall generally contain the following details: (a) Date of completion; (b) Defects to be rectified; (c) Items not conforming to Specification but can be accepted at a reduced rate; (d) items not acceptable at all and need to be re-done
- 3.31.3.3 If, on inspection, Works are not found to be completed or rectification of major nature is required, the Purchaser shall, within twenty-one (21) days of Contractor's intimation, inform the incomplete works/ defects & deficiencies to the Contractor in writing advising him to take necessary action and to inform PURCHASER after completion/ rectification. The Purchaser shall give reasonable time to the Contractor for remedying the defects/ deficiencies. However, if the Contract specifies separate completion period for different parts of works for the purpose of taking over also, Completion certificate/ TOC shall be issued in respect of portion of works that are completed and are acceptable.
- 3.31.3.4 The provisions contained in GCC 3.31.3.1 to GCC 3.31.3.3 shall also be applicable in relation to a part of the Works for which separate schedule of completion has been provided in the Contract and such part of Works can be taken over independently

3.32. TAKING OVER

- 3.32.1** The Works shall be taken over by the Purchaser after completion, either in full or in part (where for part completion, separate completion schedule has been provided in the Contract), upon successful erection, testing and commissioning of Works at Site by the Contractor in accordance with provisions of Contract.
- 3.32.2** On successful completion of Works or any part thereof as provided in GCC 3.32.1 and upon request of the Contractor for taking over the Works and issuance of TOC, the Purchaser shall, within forty-five (45) days after the receipt of the Contractor's application, or within fifteen (15) days from the date of actual handing over of relevant Works, either issue the TOC or reject the

application giving his reasons and specifying the work required to be done by the Contractor to enable the TOC to be issued

- 3.32.3** Notwithstanding the above mentioned provisions, the issuance of TOC shall not be held up for delay in completion/ rectification of works of minor nature that do not affect the performance/ use of the building/installation/ equipment/sub-system/system at rated voltage. In such a case the Contractor shall however be required to give an undertaking that in case he fails to complete/rectify within a mutually agreed period, the Purchaser shall be at liberty to carry out the work at his risk and cost, and deduct an amount as may be considered appropriate by the Purchase.
- 3.32.4** Issuance of such certificates shall not relieve the Contractor of any of his obligations which otherwise comes under the terms and conditions of the Contract.
- 3.32.5** Issuance of TOC for any part of the Works is only for the purpose of facilitating the Contractor to receive the payment for part of the Works completed and for determination of liquidated damages in respect thereof and shall not relieve the Contractor of his responsibilities under the Contract towards other parts of the Works.
- 3.32.6** TOC is issued to the Contractor on stating the date on which the Works or any part thereof were complete and ready for taking over, after ascertaining the following:
- a.** The Works under the Contract have been satisfactorily completed by the Contractor as per the provisions of Contract.
 - b.** Submission of required number of reproducible of approved as-built drawings (hard copies & soft copy in CDs), design documents duly authenticated by Purchaser, O&M manuals, data sheets, test reports, pamphlets and manuals of spares, maintenance and testing equipment by the Contractor.
 - c.** The Contractor has cleared the Site of all the surplus materials, removed all scaffoldings, shuttering materials, labour huts/ sheds, cleaned the dirt from part of building, sanitary arrangement, water supply connection and all electrical gadgets/ equipment/ switches, wiring, any wood work or any such item, to the satisfaction of the Project Manager, except those required for carrying out rectification works.
 - d.** All the defects have been rectified to the complete satisfaction of the

Project Manager

3.32.7 Notwithstanding the above mentioned provisions, the issuance of TOC shall not be held up for delay in completion/ rectification of works of minor nature that do not affect the performance/ use of the building/installation/ equipment/sub-system/system at rated voltage. In such a case the Contractor shall however be required to give an undertaking that in case he fails to complete/rectify within a mutually agreed period, the Purchaser shall be at liberty to carry out the work at his risk and cost, and deduct an amount as may be considered appropriate by the Purchaser.

F. GUARANTEES AND LIABILITIES

3.33. NET MINIMUM GUARANTEED GENERATION (NMGG)

Contractor shall have to ensure Net Minimum Guaranteed Generation @ 1.52 MU/MW for the first year after final commissioning and at a reduced rate of 1% per year for subsequent years. Initially, the above Guarantee shall be required for the 5 years i.e. in the O&M period. The same guarantee shall continue for extended O & M period, if agreed on mutual terms & conditions. The Contractor shall design their plant to achieve the Net Minimum Guaranteed Generation.

The Generated energy will be measured at the new 33 kV Incoming feeders at 33 kV Bhojudih Switchyard of the Solar PV Power Plants of Pond no 1 after deducting the auxiliary LT load for the solar plant under scope i.e. the Net Minimum Guaranteed Generation will be calculated without considering the Auxiliary Load.

- If contractor is not responsible for non-availability of Grid hours subject to submission of proper documentary evidence with due signature of WBPDC official then said hours may be considered for finalization of NMGG calculation if it satisfies following condition:
 - a) Grid outage where contractor is not responsible.
 - b) If outages occur only during the daytime (daytime shall be considered as per data available in WMS).
 - c) MW reduction calculation for grid outage for above two reasons:
 - i) **If grid outage for few hours :**
The average generation of that particular day (MWhr/generation

Hr) X number of hours of Grid outage (supporting document)

ii) **If Grid outage for days:**

Average generation of that week (MWhr/days generation) X
number of days grid outage (supporting document)

d) All the above records shall need to be accepted and signed by the
WBPDC site authority.

3.34. LIQUIDATED DAMAGES

3.34.1 LD for Time Delay:

Compensation of loss on account of late delivery/completion (notionally/actually) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply/execution of work. Time schedule of delivery/completion shall be essence of the order. If the contractor fails to execute the order in full or part thereof within the fixed period or any time repudiate the contract before the expiry of such period, the Corporation may, without prejudice to any other right or remedy available, recover damages for breach of contract and to safeguard its interest.

‘In the event of any delay in the supplies of ordered materials/execution of works beyond the stipulated delivery/completion schedule including any extension permitted in writing, the Corporation reserves the right to recover from the contractor a sum equivalent to 0.5% of the value of delayed supply/work for each week of delay and part thereof subject to a maximum of 10% of the Project cost plus GST.’

3.34.2 LD for Milestone Delay

Delay in attaining the milestones by the contractor shall lead to imposition of intermediary Liquidated damages @0.25% per week of delay upto the maximum extent of 5(Five) Percent of the Project cost plus GST.

Intermediary Liquidated damages shall be calculated based on the following Milestones.

Sl. No.	Description	Completion Time from date of LOA	% of LD
1.	Approval of Detailed Design Report	45 Days	0.25
2.	Finalizations of Plant layout (including Modules, cable routes,	4 Months	0.75

	inverter Control Room)		
3.	Completion of construction of Inverter Control Room	6 months	0.25
4.	Supply of 12.5 MVA transformer at site	9 Months	0.75
5.	Completion of Supply of Floaters & Modules	10 Months	1.0
6.	Completion of Modules & Electrical Equipment Erection	11 Month	1.5
7.	Complete installation of transformer and testing	11 Months	0.25
8.	Evacuation of Power	12 Months	0.25

3.34.3

The total/aggregate LD (LD for Time Delay + LD for Milestone Delay) leviable for this contract shall not exceed **10(Ten) Percent** of the Contract price.

However no LD for milestone delay will be charged if the project is completed within the stipulated time provided such milestone delay does not hamper scheduled execution of any other related projects/activities thereby causing loss or damage to the Purchaser

3.35. DEFECTS LIABILITY

3.35.1 The Contractor warrants that the Works or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Equipment/Materials supplied and of the work executed.

3.35.2 The Defect Liability Period shall be as specified in the SCC. Where any part of the Works is taken over separately, the Defects Liability Period for that part shall commence on the date it was taken over.

3.35.3 If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Equipment/Materials supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Purchaser 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 Works caused by such defect.

3.35.4 The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Works arising out of or resulting

from any of the following causes:

- a. improper operation or maintenance of the Works by the Purchaser
- b. operation of the Works outside Specifications provided in the Contract
- c. normal wear and tear

3.35.5 The Purchaser shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the

3.35.6 The Purchaser shall afford the Contractor all necessary access to the Works and the Site to enable the Contractor to perform its obligations under this Clause GCC 3.35. The Contractor may, with the consent of the Purchaser, remove from the Site any Equipment/Materials or any part of the Works that are defective, if the nature of the defect and/or any damage to the Works caused by the defect is such that repairs cannot be expeditiously carried out at the Site

3.35.7 If the repair, replacement or making good is of such a nature that it may affect the efficiency of the Works or any part thereof, the Purchaser may give to the Contractor a notice requiring that tests of the defective part of the Works shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Works passes such tests. The tests, in character, shall in any case be not inferior to what has already been agreed upon by the Purchaser and the Contractor for the original part of the Works.

3.35.8 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Works caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Purchaser may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any money due to the Contractor or claimed under the Performance Securities.

3.35.9 If the Works or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Works or such part, as the case may be, shall be extended by a period equal to the period during which the Works or such part cannot be used by the Purchaser because of any of the aforesaid reasons.

At the end of the Defect Liability Period, the Contractor's liability ceases except

for latent defects. The Contractor 's liability for latent defects warranty for the Equipment/Materials, including spares, shall be limited to a period of five (5) years from the end of Defect Liability Period of the respective Equipment/Materials, including spares. For the purpose of this clause, the latent defects shall be the defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during the Defect Liability Period as defined in this Clause GCC 3.35 but later.

3.35.10 Except as provided in Clauses GCC 3.35 and GCC 3.40, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Works or any part thereof, the Equipment/Materials, design or engineering or work executed that appear after Completion of the Works or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor

3.35.11 In addition, the Contractor shall also provide an extended warranty for any such component of the Works and for the period of time as may be specified in the SCC. Such obligation shall be in addition to the defect liability specified under GCC 3.35.2

3.35.12 Defects Liability Certificate and No-Claim Certificate

When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Works or the part, the Purchaser shall issue to the Contractor a Defects Liability Certificate to that effect within next twenty-eight (28) days. A No-Claim Certificate should be furnished by the Contractor for contract closure before the issuance of the final Defects Liability Certificate by the Purchaser. Such No-claim certificate shall be furnished by the Contractor as per Annexure of Section VIII. The Contractor is expected to complete all formalities for closure of Contract including their final claims relating to the Contract. All claims will be deemed to be settled and no further claims of the Contractor will be entertained after the furnishing of the No-Claim Certificate by the Contractor.

3.36. LIMITATIONS OF LIABILITY

3.36.1 Liability after Expiry of Defects Liability Period

The Contractor shall have no liability to the Purchaser for any loss of or damage to the Purchaser's physical property which occurs after the expiry of the Defects Liability Period unless caused by Gross Misconduct of the Contractor provided that this exclusion shall not apply to any obligation of the Contractor to pay Liquidated Damage to the Purchaser.

The aggregated liability of the Contractor to the Purchaser under the Contract

shall not exceed the Contract Price provided that this limitation shall not apply to any obligation of the Contractor to the cost of repairing or replacing the defective Equipment/ Materials or to indemnify the Purchaser with respect to patent infringement

3.36.2 Mitigation of Loss or Damage

In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur

G. RISK DISTRIBUTION

3.37. TRANSFER OF PURCHASERSHIP

3.37.1 Purchasership of the Equipment/Materials (including spare parts) procured from within/outside the country shall be transferred to the Purchaser when the Equipment/Materials (including spare parts) are loaded on to the mode of transport to be used to convey the Equipment/Materials (including spare parts) from the works to the Site and upon endorsement of the dispatch documents in favour of the Purchaser.

3.37.2 Purchasership of the Contractor's Equipment used by the Contractor and its Sub-Contractors in connection with the Contract shall remain with the Contractor or its Sub-contractors.

3.37.3 Notwithstanding the transfer of Purchasership of the Equipment/Materials, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC 3.39 hereof until Completion of the Works or the part thereof in which such Equipment/Materials are incorporated

3.37.4 Indemnity by Contractors: As this is a turnkey project and the contractor is fully responsible for handling, erection and commissioning of the equipment and materials so for executing the work, the Contractor shall execute an Indemnity Bond in favour of the Purchaser for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said Contract. The Indemnity Bond shall be furnished as per proforma in **Annexure-5** of Section VII. The Purchaser shall also issue a separate Authorization Letter to the Contractor to enable him to take physical delivery of Equipment/ Materials from the Purchaser as per proforma enclosed in **Annexure-11** of Section VII.

3.37.5 After material reached at site contractor shall apply for gate pass to enter the material as per the **Annexure-10B** in the Purchaser's site. The Materials reached at site will be in the custodian of the Contractor.

3.37.6 The Purchaser will issue a Materials Receipt Certificate (MRC) as per

Annexure-12 after receiving the materials and equipment at site.

3.38. RISK AND RESPONSIBILITY

3.38.1 Allocation of Risk and Responsibility

The Risks of loss of damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Purchaser and the Contractor as follows

- a. the Purchaser: the Purchaser's Risks as specified in GCC 3.38.2
- b. the Contractor's Risks as specified in GCC 3.38.3

3.38.2 Purchaser's Risks

- a. War and hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b. revolution, insurrection, military or usurped power or civil war,
- c. use or occupation of the Works or any part thereof by the Purchaser,
- d. the use or occupation of the Site or any part thereof, for the purposes of the Contract, or interference, whether temporary or permanent with any right-of-way, any easement, way leave or right of a similar nature which is inevitable result of the construction of the Works in accordance with the Contract.
- e. the right of the Purchaser to construct the Works or any part thereof on, over, under, in or through any land,
- f. damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract,
- g. the act, neglect or commission or breach of Contract or of statutory duty of the Purchaser

3.38.3 Contractor's Risks

The Contractor's Risks are all risks other than those identified as the Purchaser's Risks.

3.39. CARE OF WORKS

3.39.1 Contractor's Responsibility for the care of Works, man and Materials/Equipment

The Contractor shall be responsible for the care of Works, man and materials/equipment from the Commencement Date until the Risk Transfer Date applicable thereto under GCC 3.39.2

3.39.2 Risk Transfer Date

The Risk Transfer Date in relation to the Works is the date of occurrence of any of the following

- a. the date of issue of the TOC, or
- b. the date of expiry of the notice of termination when the Contract is terminated by the Purchaser or the Contractor in accordance with these Conditions

The risk of loss or damage to the Works shall pass from the Contractor to the Purchaser on the Risk Transfer date applicable thereto.

3.39.3 Making Goods Damage

3.39.3.1 After risk transfer date

To making good forthwith loss or damage caused by the Contractor prior to the completion of the Defects Liability period

- 3.39.4** Till such time the system is not commissioned or taken over by PURCHASER, its custody and watch and ward shall remain with Contractor who shall accordingly be required to maintain a skeleton establishment at Site. Charges towards insurance cover for Contractor supplied Equipment /Material shall be paid by the Contractor till completion of the defect liability period.

3.40. ACCIDENT OF INJURY

Damage to property and injury to persons, accident or injury to workers

3.40.1 Contractor's liability

Except as provided under GCC 3.43 the Contractor shall be liable for and shall indemnify the Purchaser against all losses, expenses and claims in respect of any loss of or damage to physical property (other than Works), death or personal injury to the extent caused by :

- a. defective design, material or workmanship of the Contractor, or
- b. negligence or breach of statutory duty of the Contractor, his Sub-contractors or their respective employees and agents

3.40.2 Accidents

The Contractor shall be liable for and shall indemnify the Purchaser against all losses, expenses or claim arising in connection with the death of or injury to any person employed by the Contractor or his Sub-contractors for the purposes of the Works.

The Contractor/Sub-contractor shall obtain necessary insurance coverage under the Employees compensation Act-1923 to cover the risk of payment of compensation in case of injury/death arising in course and out of employment to any employee.

3.41. INSURANCE

- 3.41.1** The Contractor at his own cost shall arrange, secure and maintain all insurances as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Purchaser against all perils detailed

herein in the type and up to the limit of such insurance as defined herein together with the underwriter in each case shall be acceptable to the Purchaser. The identity of insurers and the form of policies shall be subject to the approval of Purchaser which shall not be unreasonably withheld. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all times during the period of Contract including the extended period of Contract shall be of Contractor alone

3.41.2 Any loss or damage to the Equipment/ Materials during transportation, handling, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning of the Equipment and handed over to the Purchaser shall be to the account of the Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the Equipment/ Materials, damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of Contract. The Contractor shall provide the Purchaser with copy of all insurance policies and documents taken out by him in pursuance of the Contract. Such copies of documents shall be submitted to the Purchaser immediately after such insurance coverage. The Contractor shall also inform the Purchaser in writing at least sixty (60) days in advance regarding the expiry/cancellation and/or change in any of such documents and ensure revitalization, renewal etc. as may be necessary well in time at his cost, risk and responsibility.

3.41.3 The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks), workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, terrorist attacks, war risks etc. The scope of such insurance shall be adequate to cover the replacement/ reinstatement cost of the Equipment/Materials for all risks up to and including delivery of goods on ex-works basis and shall also cover transportation and other costs till the Equipment/ Materials are delivered, erected and installed. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/ rectification value of all Equipment/Materials and to ensure their availability as per project requirements at its cost.

3.41.4 The Contractor shall ensure that for all activities to be performed under the Contract viz. transportation, storage, erection, testing, commissioning etc. till the Works are handed over to the Purchaser; the insurance cover shall only be

taken from Indian Insurance Companies

3.42. CHANGE IN LAWS AND REGULATIONS

If, after the date seven (7) days prior to the last date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the Purchaser and the Contractor and shall also not be applicable on the bought out items despatched directly by Sub-contractor(s) to Site. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

3.43. FORCE MAJEURE

- 3.43.1** "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.
- 3.43.2** In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under this Contract, relative obligation of the party affected by such Force Majeure shall be treated as suspended during which the Force Majeure clause last.
- 3.43.3** The term "Force Majeure" shall herein mean riots (other than among the Contractor's employee), Civil commotion, War (whether declared or not), invasion, act of foreign enemies hostilities, civil war, rebellion, revolution, insurrection, military coup, damage from aircraft, embargoes, quarantines, acts of god such as earthquake, floods, fires not caused by Contractor's negligence and other causes which the Contractor has no control. Normal climatic conditions such as rainy season, monsoons, storms, etc., are not to be considered as Force Majeure.
- 3.43.4** Upon occurrence of such causes, the party claiming that it has been rendered unable as aforesaid, thereby, shall notify the other party in writing by registered notice within 10 (Ten) days of the beginning of the event thereof giving full particulars and satisfactory evidence in support of its claim.

- 3.43.5** The burden of proof as to occurrence of the event of Force Majeure and its effect shall be upon the party claiming the Force majeure event and such claim shall be supported by documentary evidence in the form of a Certificate Issued by a recognized Chamber of Commerce or any other local, state or national authority.
- 3.43.6** Time for Performance of the relative obligation suspended by the event of force majeure shall stand extended by the period for which such clause lasts.
- 3.43.7** If works are suspended by Force Majeure conditions lasting for more than two months leading to prolonged force majeure, the parties shall hold consultation to find a solution/resolve the problem satisfactorily. Provided, The Employer shall reserve the right to cancel the Order/Contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangement for completion of delivery and other schedules.
- 3.43.8** The Contractor shall not claim any compensation for Force Majeure conditions and shall take appropriate steps to insure men and materials utilized by it under the Contract well in advance.

3.44. WAR RISKS

- 3.44.1** War risks shall mean any of the following events occurring or existing in or near India:
- a. war, hostilities or warlike operations (whether a state of war is declared or not), invasion, act of foreign enemy and civil war
 - b. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts, and
 - c. any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war
- 3.44.2** Notwithstanding anything contained in the Contract, each party to the Contract shall bear its own costs for any loss or damages as may be incurred on accounts of war risks with respect to:
- a. destruction of or damage to Works or any part thereof to the extent not taken over by the Purchaser shall be the Contractor's risk and for those taken over by the Purchaser, it shall be the Purchaser's risk.
 - b. injury or loss of life of its personnel

H. CHANGE IN CONTRACT ELEMENTS

3.45. VARIATIONS

3.45.1 Changes originating from Purchaser

The Purchaser may, by variation order to the Contractor, at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or

otherwise vary any part of the Works. The Contractor shall not vary or alter any of the Works, except in accordance with a variation order from the Purchaser. The Contractor may, however, at any time propose variations of the Works to the Purchaser.

The Contractor shall not request for extension of time for completion in case of variation of quantity during execution for an increase as specified in SCC.

3.45.2 Variation order procedure

Prior to any variation order under **GCC. 3.44.1** the Purchaser shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Purchaser:

- a. A description of Works, if any, to be performed, its anticipated quantity, the proposed rate in case of a new item and total adjustment to the Contract Price. In case of items for which the rates are available in the Contract the extra quantities shall be executed by the Contractor at the same rates upto the variation limit provided in the Contract.
- b. The Contractor's proposals for any necessary modifications to the Program according to **GCC 3.23** or to any of the Contractor's obligations under the Contract.

3.45.3 Following the receipt of the Contractor's submission, the Purchaser shall, after due consultation with the Contractor, decide whether or not the variation shall be carried out.

3.45.3.1 If the Purchaser decides that the variation shall be carried out, he shall issue a variation order clearly identified as such in accordance with the Contractor's submission or as modified by mutual agreement.

3.45.3.2 Pending issue of variation order, the Purchaser may require the Contractor to proceed ahead with the Works to avoid delay in the progress of Works. In such situations, subject to physical verification, payment shall be made up to sixty percent (60%) of rates as provided in the Contract, for items for which separate rates are available beyond prescribed limit of quantity variation as per the Contract.

3.45.3.3 In case of new items/ substituted items, up to forty (40%) of amount estimated by the Purchaser shall be paid to the Contractor subject to reasonableness of the claim. If the Purchaser and the Contractor are unable to agree to the adjustment of the Contract Price, the provisions of **GCC 3.45.4** shall apply.

3.45.4 Disagreement on adjustment of the Contract Price

3.45.4.1 If the Contractor and the Purchaser are unable to agree on the adjustment of the Contract price, the adjustment shall be determined in accordance with the rates specified in the approved Price Schedules(BBU), subject to ceiling in

Contract Price variation as specified in SCC.

3.45.4.2 If the rates contained in the Price Schedules are not directly applicable to the specific Works in question, suitable rates shall be established by the Purchaser reflecting the level of pricing in the Price Schedules.

3.45.4.3 Where rates are not contained in the said Price Schedule, for the sake of reaching a reasonable rate in respect of any sort of erection work, the number of skilled, semi-skilled and unskilled labour and minimum wage rate declared by the Govt. of West Bengal and/or the rates specified on the latest PWD/CPWD Schedule, overhead, profit and consumables shall be the basis for determination of reasonable rate.

3.45.4.4 For any supply item, reasonable rates shall be reached based on current purchase rate of identical equipment purchased by PURCHASER. The Contractor shall also be entitled to be paid:

the cost of any partial execution of the Works rendered useless by any such variation, and

The cost of making necessary alterations to Equipment already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation.

The Purchaser shall on this basis determine the rates or prices to enable on account payment to be included in certificates of payment.

3.45.5 Contractor to Proceed

On receipt of a variation order, the Contractor shall forthwith proceed to carry out the variation and be bound to these conditions in so doing as if such variation was stated in the Contract. The Works shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under **GCC 3.45.4**.

3.45.6 Records of costs

In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price, keeping in mind that the adjustment of Contract Price due to this variation shall be guided by **GCC 3.45.4** the Contractor shall keep the necessary records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection/ verification by the Purchaser at all reasonable times.

3.45.7 Quantity variation

PURCHASER, during execution of the Contract, reserves the right to increase or decrease the quantity of goods and services for the items included in the Contract with variation of the total Contract Price as specified in SCC but without any change in unit price or other terms and conditions. The quantity of

the individual items of goods and services may however vary up to any extent within the overall ceiling limit of the Contract Price.

3.46. EXTENSION OF TIME FOR COMPLETION

3.46.1 Delivery and installation of Equipment/Materials as per requirement of work Program shall be made by the Contractor in accordance with Time Schedule pursuant to the SCC or within such extended time to which the Contractor shall be entitled under **GCC 3.46.2**

3.46.2 Reasons for Extension of Time for Completion

The Contractor may seek an extension of the Time for Completion if he is or will be delayed in completing the Works by any of the following reasons:

- a. extra or additional work ordered in writing under GCC 3.45.
- b. the delay in completion of Works caused for no fault on the part of the Contractor due to orders/instructions issued by the Purchaser
- c. Force Majeure as per GCC 3.43.
- d. any changes in laws and regulations as provided in GCC 3.42.
- e. any other matter specifically mentioned in the Contract

3.46.3 The Contractor shall give notice to the Purchaser of his intention to make a claim for an extension of time within fifteen (15) days of the occurrence of any of the above cause(s). The notice shall be followed as soon as possible by the claim with full supporting details.

3.46.4 The Contractor shall demonstrate to the Purchaser's satisfaction that it has used its best endeavour to avoid or overcome such causes for delay and the parties will mutually agree upon remedies to mitigate or overcome causes for such delays.

3.46.5 Notwithstanding the provisions of clause **GCC 3.46.4**, the Contractor shall not be entitled to an extension of time for completion, unless the Contractor, at the time when circumstances specified in **GCC 3.46.2** arises, has immediately notified the Purchaser in writing that it may claim such extension as caused by such circumstances. The Purchaser on receipt of such notice may agree to extend the Contract completion period as may be reasonable and mutually agreed but without prejudice to other terms and conditions of the Contract.

3.46.6 Earlier Completion:

The Purchaser may require completion of the Works or part thereof earlier than the Time for Completion, as mutually agreed between the Purchaser and the Contractor. The earlier completion date so agreed, if not achieved, shall not be considered for the purpose of levy of Liquidated damages.

3.47. TERMINATION