

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.

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

3.35 INSPECTION AND TESTING

- 3.35.1 The Engineer-in-charge or his duly authorized representative and/or an external inspection agency acting on behalf of the Employer shall have access, at all reasonable time to inspect and examine the materials and workmanship of the plant / equipment during its manufacture, erection, shop assembly and testing and if part of the plant is being manufactured or assembled on another premises or works, the Contractor shall obtain for the Engineer-in-charge and his duly authorized representatives, permission to inspect it as if the works were manufactured or assembled on Contractor's own premises or works.
- 3.35.2 The Contractor shall give the written notice to Employer, for testing of any material being ready for inspection/testing at least 15 (Fifteen) days in advance from the date of actual inspection/testing at the premises of the Contractor or elsewhere. Such Inspection / testing shall be carried out to the Contractor's account except for the expenses of the representative of the Employer. However, the Employer at its own discretion may waive the inspection / testing in writing under very special circumstance. The Engineer-in-Charge or his representative (s), unless the inspection of the tests is in writing waived, shall attend such tests on the date of which the equipment is notified by the Contractor as being ready for test / inspection, failing which the Contractor may proceed with the tests which shall be deemed to have been made in the Employer's presence. The Contractor shall forthwith forward to the Engineer-in-charge duly certified copies of test results in quadruplicate, for approval of the Engineer-in-charge. However, waiver accorded by the EIC will not absolve the Contractor towards the execution of the Contract in conformity with the Contract Agreement.
- 3.35.3 The Engineer-in-Charge shall, within 15 (Fifteen) days from the date of inspection as defined herein, give notice in writing to the Contractor, of any objection to any drawing, testing procedure and testing facility and all / or any equipment and workmanship which in his opinion is not in accordance with the Contract. The Contractor shall give due consideration to such objection and shall make the modifications that may be necessary to meet the said objection at no extra cost to the Employer.
- 3.35.4 When the factory tests have been completed at the Contractor's or Sub-Contractor's works, the Engineer-in-Charge shall issue a certificate to this effect within 15 (Fifteen) days after completion of tests. However, if the tests are not witnessed by the Engineer-in-Charge, the certificate shall be issued within 15 (Fifteen) days of receipt of the Contractor's test certificate by the Engineer- in-Charge only when the tests have been carried out as per relevant codes / standards. The completion of these tests or the issue of the certificate, shall not bind the Employer to accept the equipment, should it, on further tests after erection, be found not to comply with the Contract.

- 3.35.5 In all cases where the Contract provides for inspection/ tests to be carried out, whether at the premises of the Contractor or of any Sub-Contractor, the Contractor/Sub-Contractor shall provide free of charges such items as labour, materials, electricity, fuel, water, stores, apparatus, instruments etc. as may reasonably be demanded by the Engineer-in-Charge or his authorized representative(s) to carry out efficiently such test / inspection of the plant / equipment in accordance with the Contract and shall give facilities to the EIC or to his authorized representative to accomplish testing. Charges for any special test(s), other than those specified in the Contract, if required, will be paid by the Employer. Rate(s) for such special test(s) shall be mutually discussed and agreed.
- 3.35.6 All inspection, measuring and test equipment used by contractor shall be calibrated periodically depending on its use and criticality of the test/measurement to be done. The Contractor shall maintain all the relevant records of periodic calibration and instrument identification, and shall produce the same for inspection by RECPDCL. Wherever asked specifically, the Contractor shall re- calibrate the measuring/test equipment in the presence of EIC.
- 3.35.7 The Employer or his authorized representative shall have the right to carry out inward inspection of the items on delivery at Site and if the items have been found to be not in line with the approved specifications, shall have the liberty to reject the same.
- 3.35.8 The Contractor has to provide the necessary testing reports to the Employer as and when required.
- 3.35.9 The Contractor shall submit 3 (three) copies of purchase order for materials purchased / to be purchased for use in the works, which will require inspection / testing by the Employer's representative at the places other than the Contractor's works before shipment. In such cases, all the above-mentioned clauses will apply. When the inspection/test has been satisfactorily completed, the Employer will issue a certificate to that effect.
- 3.35.10 Neither the waiver of inspection / testing nor acceptance after inspection and or testing by the Employer shall relieve the Contractor in way of the responsibility of supplying the plant/equipment/materials strictly in accordance with the specifications, drawings, etc. In any case, the Contractor shall remain fully responsible for satisfactory performance of the plant/equipment/materials.

3.36 THIRD PARTY INSPECTION AGENCY

A third-party inspection agency ("Third Party Inspectors" or "TPI") may be appointed by the Employer, at its sole discretion, to conduct any kind of inspection regarding procurement, fabrication, installation, hook-up and commissioning during the execution of the Project. The Contractor shall provide necessary access and coordination to conduct such inspections. The extent of third-party inspectors' involvement shall be finalized after mutual discussions between the Contractor and the Employer.

3.37 AUTHORIZED TEST CENTRES FOR TEST CERTIFICATES

3.37.1 The Solar PV Modules, inverters, cables and other Balance of system equipment deployed in the solar PV power plant shall have valid test certificates for their qualification as per above specified IEC/ IS Standards by one of the NABL Accredited Test centers in India. In case of the equipment for which such Test facilities may not exist in India, test certificates from reputed ILAC Member body accredited Labs abroad (with proper proof of accreditation) will be acceptable.

3.38 COMMISSIONING

3.38.1 As soon as installation of the Facilities, in the opinion of the Contractor, has been completed as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Engineer-in-Charge in writing to witness the pre-commissioning of the Facility.

3.38.2 After all the works in respect of Pre-commissioning are completed and in the opinion of the Contractor, the Facilities is ready for Commissioning, the Contractor shall so notify the Engineer-in-charge in writing. The commissioning of the facilities shall be carried out in the presence of the Engineer-in-charge or his representative(s) in accordance with RfS Document, in line with the commissioning procedure of Implementing Agency and as per procedures detailed in this Specifications. The Authorized representative of Implementing Agency /State Nodal Agency may also witness or validate the commissioning procedure at site.

3.39 PART COMMISSIONING

Part commissioning of the Project shall be allowed in two parts as mentioned below:

- i. Minimum project capacity to be commissioned in the first part shall be 50 MW (AC).
- ii. Balance capacity in the second part.

3.40 OPERATIONAL ACCEPTANCE

3.40.1 Operational Acceptance shall occur in respect of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts) when the Performance Guarantee Test, as specified and in accordance with the procedure(s) specified in Clause No 4.4.6.2 of Section-IV: Technical Specifications, have been successfully completed.

3.40.2 At any time after successful completion of Guarantee Test(s) for Operational Acceptance, the Contractor shall give a notice to the Employer requesting the issue of Operational Acceptance Certificate in respect of the Facilities or the part thereof specified in such notice. The Employer shall issue an Operational Acceptance Certificate upon the receipt of such notice provided Commissioning Certificate has been issued by the State Nodal Agency or Implementing Agency and COD of the entire plant or part thereof has been declared.

3.40.3 In case of any shortfall in the Performance Guarantee, the contractor shall make all necessary

corrections in minimum possible time and shall repeat the Plant Performance Guarantee Test (PG Test) and any other Guarantee Tests as specified in the specifications in accordance with the procedure specified in the specifications within fifteen (15) days of unsuccessful PG attempt, so as to demonstrate the PG as specified in Clause No 4.4.6.2 Section: IV of Technical Specification.

3.40.4 The period of O&M shall commence immediately after the Operational Acceptance of the entire Plant by the Employer.

3.41 FINAL ACCEPTANCE AND WORK COMPLETION CERTIFICATE:

3.41.1 Final acceptance shall occur when:

- a) Contractor has completed the supply installation, testing & commissioning of all the components of the Plant & Equipment along with its associated infrastructure & facilities in all respect, successfully completed all outstanding works and completion of all facilities in accordance with scope of works as specified in Technical Specifications as per satisfaction of Engineer-in-Charge and has submitted all technical documentation and acceptance of the same by Engineer-in-Charge.
- b) The Employer/EIC has issued Operational Acceptance Certificate for the entire capacity of the project and the same has been handed over to the Contractor for Operation & Maintenance for a period of 3 (three) years.
- c) The Contractor has submitted the requisite Contract Performance Cum Security Guarantee (CPSG) as per Clause No. 3.48.
- d) The Contractor has paid the Liquidated Damages as per the Clause No. 3.49 (if applicable)

3.41.2 Work Completion Certificate will be issued by Employer /EIC on occurrence of Final Acceptance.

3.42 REJECTION OF DEFECTIVE PLANT

3.42.1 If, during the progress of works, the Engineer-in-Charge shall decide and inform in writing to the Contractor that the Contractor has assembled any plant or part of the plant unsound or imperfect or has furnished any plant inferior to the quality specified, the Contractor, on receiving details of such defects or deficiencies shall, at his own expense, within 7 (Seven) days of receiving notice or otherwise, and for a period of time as may be decided by the Engineer-in-Charge for making it good, proceed to alter, reconstruct or remove such work and furnish fresh equipment up to the standard of specifications. In case the Contractor fails to do so, the Engineer-in-charge may, on giving the Contractor minimum 7 (Seven) days' notice in writing of his intentions to do so, proceed to remove the portion of the work so complained of

and at the risk and cost of the Contractor, perform all such work or furnish all such equipment, provided that nothing in this Clause shall be deemed to deprive the Employer of or affect any rights under the Contract which the Employer may otherwise have in respect of such defects and deficiencies.

3.42.2 In case of such replacement / rectification by the Employer, the Contractor shall be liable to pay to the Employer the extra cost, if any, for such replacement/by delivery and/or erected, as provided for in the original Contract, such extra cost being the ascertained difference between the price by the Employer under the provision above mentioned, for such replacement and the Contract price for the plant so replaced. If the Employer/EIC does not so replace the rejected plant, the Contractor shall be liable only to repay to the Employer/EIC all money paid by the Employer to him in respect of such plant.

3.42.3 In the event of such rejection, the Employer shall be entitled to the use of the plant in responsible and proper manner till a time reasonably sufficient to enable him to obtain other replacement plant.

3.43 WARRANTY

3.43.1 In addition to the defect liability specified under clause No. 3.44, the Contractor shall also provide warranty for any such component of the Facilities and during the period of time as may be specified in Section- IV: Technical Specification.

3.44 DEFECT LIABILITY

3.44.1 The contractor shall warrant that the equipment will be new & in accordance with the contract documents, relevant standards and free from defects arising due to deficiencies in design & engineering and from defects in material and workmanship **for a period of 12(Twelve) calendar months from the date of Operational Acceptance of the entire plant.** The Contractor shall be liable to replace/ upgrade with the specific consent of RECPDCL, any defective parts in the equipment supplied and erected by him under the contract arising solely from faulty design, materials and /or workmanship. All replaced defective parts shall be returned to the Contractor unless otherwise arranged by RECPDCL.

3.44.2 If it becomes necessary for the contractor to replace or renew any defective component/part of the plant, the provision of this clause shall apply to such component/part of the plant so replaced or renewed and the Defect Liability Period for such replaced or renewed component/part of the plant shall be extended for a period of *12 (twelve)* calendar months from the date of such replacement/renewal or thirty-six (36) calendar months from the date of Operational Acceptance of the entire plant, whichever first occurs. The rectification / replacement / repairs shall be done at the shortest possible time to minimize the loss of the Employer and as mutually agreed to. If any defects are not remedied within a reasonable time, RECPDCL may proceed to do the work as per Clause No. 3.64, but without prejudice to any other rights, which RECPDCL may have against the contractor in respect of such defects.

3.44.3 The repaired or new parts will be furnished and erected free of cost by the Contractor. If any

repair is carried out on contractor's behalf by RECPDCL at the site through some other Agency, the Contractor shall bear the cost of such repairs.

3.44.4 The cost of any special or general overhaul rendered necessary during the defect liability period due to defects in the plant or defective work carried out by the Contractor shall be borne by the Contractor.

3.44.5 The acceptance of the equipment by the RECPDCL shall in no way relieve the Contractor of his obligations under the Contract.

3.44.6 The Contractor shall be responsible for any loss or damage to the plant until the O&M contract is over.

3.45 COMPENSATIONS FOR SHORTFALL IN NET ANNUAL GUARANTEED GENERATION DURING O&M

3.45.1 CRITERIA FOR GENERATION

For each year of O&M, the contractor shall demonstrate actual delivered energy at CTU/STU end metering point as compared to the Declared Net Annual Guaranteed Generation (kWh) as per Attachment 10 of Section V: Bid Response Sheets and Annexures for that particular year.

3.45.2 SHORTFALL IN GENERATION DURING O&M

- a) If the contractor fails to achieve declared Net Annual Guaranteed Generation (kWh) as per Attachment 10 of Section V: Bid Response Sheets and Annexures, at delivery point (accounted annually for each year of O&M), the contractor shall pay to the employer the compensation towards shortfall in declared Net Annual Guaranteed Generation along with applicable GST as per Technical Specification Clause 4.4.12.
 - b) The generation loss shall be relaxable to the extent of grid non-availability for evacuation which is beyond the control of the contractor and other factors not attributable to the contractor as per the provisions of RfS document.
- 3.45.3 In case the project fails to generate any power continuously for two (2) months any time during the O&M period (due to reason(s) attributable to the contractor) it shall be considered as an event of default. Upon occurrence of any such event of default, RECPDCL shall have right to encash the entire amount of O&M Bank Guarantee or equivalent amount from CPSG submitted by the contractor and recover the losses from any payment due.

3.45.4 EXCESS GENERATION DURING O&M

In case the generation is more than 10% of the declared annual CUF by RECPDCL in the PPA signed as per RfS Document, the Employer will be free to sell it to any other entity provided first right of refusal will vest with the UPPCL. In case the UPPCL purchases the excess generation, it will do so at 75% (seventy-five per cent) of the PPA tariff.

3.46 MANUALS AND DESCRIPTIVE LITERATURE

The Contractor shall furnish 3 (Three) copies of Instruction Manuals at least 2 (Two) months prior to commencement of Pre-Commissioning activities. The manuals shall contain full details such as drawings of all the equipment furnished, storage procedures and operation and maintenance procedures of the equipment. Descriptive literature and data on various equipment shall also be furnished along with these manuals.

3.47 SPARES

- 3.47.1 The Contractor shall supply and maintain adequate inventory of all the spares (including software) required for safe, reliable and trouble-free operation & maintenance of the complete Solar PV Plant during the period of contract. The price of these spares shall be deemed to be included in the contract price.
- 3.47.2 The list of mandatory spares envisaged by the Employer has been mentioned at Clause No. 4.4.9 of Section-IV: Technical Specifications. The Contractor may note that it shall be the responsibility of the Contractor to ensure sufficient spares including but not limited to the mandatory spare list to maintain its contractual obligations.
- 3.47.3 All spares for the equipment under the Contract will strictly conform to the specification and will be identical to the corresponding main equipment /components supplied under the Contract and shall be interchangeable.
- 3.47.4 Without any extra cost, the Contractor shall provide the Employer with the catalogues, drawings, part numbers and any other information/documents required by the Employer in the form of manual(s) so as to enable the Employer to identify the spares required during the whole life of all the equipment to be supplied.
- 3.47.5 The Contractor shall ensure the long-term availability of spares for the equipment covered under the Contract. In case, any spare becomes obsolete, the Contractor will ensure adequate inventory of other equivalent make of such obsolete spare and shall also provide to the Employer, detailed information (catalogues, make, part number, drawings etc.,) of the same.
- 3.47.6 Further in case of discontinuance of supply of spares by the Contractor or his Sub-Contractors, the Contractor will provide the Employer with full information for replacement of such spares with other equivalent make.
- 3.47.7 The Contractor shall provide a list of all the spares required to maintain the facility for two (02) years. The Contractor agrees to supply such spare parts, as recommended or otherwise required for efficient operation and maintenance of the Facilities.

3.48 CONTRACT PERFORMANCE CUM SECURITY GUARANTEE

- 3.48.1 Within twenty eight (28) days from the date of issue of Letter of Award by the Employer, the Successful Bidder shall furnish to the Employer, an unconditional /irrevocable Contract Performance cum Security Guarantee (CPSG) for an amount equivalent to 3% of total value of EPC Contract Price (sum of contract price of the First Contract and the Second Contract

mentioned at Serial No. 1 & 2 of Clause No. 3.6.1 herein above) with a validity up to sixty (60) days beyond the expiry of Defect Liability Period as per Clause No 3.44 of this Bid Document.

- 3.48.2 The Contractor shall submit a CPSG for an amount equivalent to **INR 50000/- per MW for Cumulative Capacity of 125 MW_{AC}** with initial validity up to next 01(one) year, 30 days prior to expiry of earlier CPSG submitted by the contractor as per Clause No 3.48.1.

Every year a fresh bank guarantee shall be submitted by the Bidder, having validity for the subsequent year, one month prior to expiry of existing Bank Guarantee or the existing bank guarantee can be amended suitably for specified amount every year till 60 days beyond the O&M contract Period.

- 3.48.3 The Bank Guarantee against CPSG submitted by the contractor as per Clause No 3.48.1 shall be discharged by the Employer and returned to the Contractor without any interest, not later than sixty (60) days after issuance of Defect Liability Certificate of the equipment under the contract and acceptance thereof by the Employer; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to Clause No 3.44.2 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. This security shall be returned to the Contractor immediately after 60 days beyond the Defects Liability period of such equipment(s).

The Bank Guarantee against CPSG submitted by the contractor as per Clause No 3.48.2 shall be discharged by the Employer and returned to the Contractor without any interest, not later than sixty (60) day after the completion of O&M contract period provided however that the entire plant is handed over by the contractor to the Employer as per provisions of the contract and acceptance by the Employer.

- 3.48.4 The above performance Bank Guarantees shall be issued by any Scheduled Bank / Nationalized Bank and denominated in the currency of the contract and shall be in the form of irrevocable Bank Guarantee in the format attached at **Annexure-2 & Annexure-3** of this Bid Document.

- 3.48.5 The original Bank Guarantee against the CPSG should be sent to RECPDCL directly under Regd. Post (A.D.) by the issuing Bank / Branch. Where the original Bank Guarantee against CPSG is handed over to the Contractor by the issuing Bank / Branch, the Contractor shall ensure that a copy of the Bank Guarantee against CPSG duly signed by the authorized person of the issuing Bank/Branch along with Covering Letter has been sent immediately by the issuing Bank/Branch under Regd. Post (A.D.) directly to RECPDCL.

- 3.48.6 The proceeds of the Bank Guarantee against CPSG shall be payable to the Employer as compensation for any loss resulting from the Contractor's failure to complete its obligations under the contract.

- 3.48.7 In case of any shortfall at any stage on account of recovery of any dues from the CPSG, Contractor shall make-up the recovered amount by furnishing a separate CPSG for such amount.

3.48.8 In the event of failure of the Contractor to extend the CPSG for the required period, the Employer reserves the right to invoke the CPSG in favour of Employer on the date of its expiry.

3.48.9 The interest @ 15.5 % per annum shall be charged on delay period for breach in timely submission of CPG without prejudice to right of RECPDCL to other remedies available under the contract

3.49 LIQUIDATED DAMAGES(LD) FOR EPC CONTRACT

3.49.1 Time is the essence of the Contract. Except otherwise specifically provided in the contract, if the performance of the Contract is delayed beyond the time schedule as specified in the Contract due to reasons attributable to the Contractor, the Employer shall, without prejudice to its other remedies under the contract, retain/recover the damages specified in Clause 3.49.3 & 3.49.4.

3.49.2 The project shall be commissioned by Scheduled Commercial Operation Date (SCOD). However, maximum time period allowed for commissioning of the full Project Capacity with applicable liquidated damages shall be limited to the date as on 6 months from the Scheduled Commercial Operation Date (SCOD).

3.49.3 LIQUIDATED DAMAGES DUE TO DELAY IN ACHIEVING COD:

(i) In case of delay in commissioning of the Project beyond the SCOD until the date as on 21 months from the Effective Date of the PPA, as part of liquidated damages, the total CPSG amount pursuant to clause 3.48.1 shall be encashed on per-day basis. For e.g., if commissioning of entire Project capacity is delayed by 18 days beyond the SCOD, then the liquidated damages shall be: CPSG amount \times (18/180). For the purpose of calculations of Liquidated Damages, the month shall be considered consisting of 30 days.

(ii) In case the Commissioning of the Project is delayed beyond the date as on 21 months from the Effective Date of the PPA, the contracted capacity of PPA shall be reduced to the project capacity commissioned upto the date as on 21 months from the effective date of PPA.

Accordingly, the Employer shall accept the capacity of the project which commissioned upto the date as on 21 months from the effective date of PPA and EPC Contract Price as well as O&M Contract Prices shall also be reduced in consonant to the accepted capacity. Further, the amount paid to the contractor in respect of capacity not commissioned shall be adjusted against any amount due to the contractor or from CPG/retention money etc. However, contractor shall be allowed to take all the balance equipment of un-utilized capacity excluding the common equipment used for commissioning of the project.

3.49.4 LIQUIDATED DAMAGES FOR PG DEVIATION

During the Operational Acceptance, any shortfall in the Performance Guarantee (PG) will be determined through the PG Test Procedure specified in Clause 4.4.6.2 of Technical Specifications: Section IV. Any shortfall will attract Liquidated Damages (LD) as under:

In Case the plant is not able to achieve the target generation, as per the performance guarantee procedure during the test period then the LD of an amount equivalent to loss of generation based on tariff for complete life of plant shall be applicable maximum up to 20% of the contract value of EPC Contract (First and Second Contract). Sample calculation for LD is shown in table –B, technical specification clause no 4.4.6.2

3.49.5 The amount of Liquidated Damages along with applicable GST shall be payable by the Contractor whenever demanded by the Employer and /or Employer can recover the amount of Liquidated Damages (to the extent leviable at any time) along with applicable GST from the amounts payable to the Contractor/Bank Guarantee available with the Employer under this contract.

3.49.6 LD can be recovered from any dues of the party.

3.50 TERMS AND PROCEDURES OF PAYMENT

3.50.1 GENERAL

- a. The Employer shall pay to the Contractor after signing the Contract Agreement, in the following manner and at the following terms, on the basis of the Price Break-up given in the Letter of Award subject to any deduction which the Employer may be authorized to make under this contract and/or to any additions or deductions provided for in this contract.
- b. The Contractor's request(s) for payment shall be made to the Engineer-In-Charge in writing, upon fulfillment of required obligations stipulated in the contract.
- c. The contractor shall submit the Invoice in triplicate showing description, quantity, Unit rate and total amount with all supporting documents as per terms of the contract. After due verification, the Employer shall process the verified Bill for release of payment. In case contractor fails to submit the Invoice with all the required documents, the Employer reserves the right to hold the payment against such bills.
- d. Payments shall be made by the Employer within thirty (30) days after submission of an invoice along with all supporting documents as per terms of contract by the Contractor.
- e. In case the payments in respect of amount payable as per contract are delayed beyond 45 days, the contractor will be entitled for interest at the rate of one-year SBI MCLR applicable as on the date of payment.
- f. The contractor shall raise the invoice on monthly basis.

- g. The contractor shall ensure to make timely payments to its sub-contractor(s)/sub-vendor(s) engaged in the execution of project to ensure timely completion of works. However, in case of delayed payment/non-payment by the contractor to its approved sub-contractor(s)/sub-vendor(s), the Employer reserves the right to make direct payment to such sub-contractor(s)/sub-vendor(s) as per the terms of payment on the request of Contractor or on the request of approved sub-contractor(s)/sub-vendor(s) or otherwise, in the interest of completion of project.

3.50.2 INVOICE DETAILS FOR TAXES AND DUTIES

Except as otherwise specifically provided in the contract, the Employer shall pay to the Contractor GST & Cess thereon, applicable if any, on submission of GST Invoice containing mainly the following contents:

- i. Name, Address & Contact Detail of the Service Provider/contractor.
- ii. GSTIN of the Service Provider/Contractor.
- iii. PAN of the Service Provider/Contractor.
- iv. GSTIN of the Employer/Owner
- v. HSN/SAC of the respective item(s)

3.50.3 E- PAYMENT

RECPDCL shall make all the payments in respect of Contractor through e-payment system. Contractor shall open its account with banks having Core Banking Facility (CBS Branch) and fill in Electronic Fund Transfer (EFT) Form (to be submitted at signing of Contract Agreement) and return to Employer duly signed and stamped by its bankers. In case Contractor fails to provide requisite information as sought, it may result in delay in payment for which RECPDCL will not be responsible. Any directions, instructions or orders issued by the Government of India from time to time regarding any or all matters arising or pertaining to the Import License shall be binding on the Contractor.

3.50.4 TERMS OF PAYMENT AGAINST “FIRST CONTRACT”

The payment for First Contract shall be made as per following:

- i. **15 % (Fifteen Percent)** of the supply value of the Contract i.e. ‘First Contract’ may be given as “Initial Advance” , at the interest rate of 50 basis point above one-year MCLR (Marginal Cost of Funds based Lending Rate) of State Bank of India prevailing on the date of payment and to be compounded quarterly shall be released on submission of following documents:
 - a) An unconditional acceptance of the Letter of Awards and signing of the Contract Agreement.
 - b) Unconditional and irrevocable Bank Guarantee for an amount equivalent to the 110% advance payment to be paid to the contractor as per **Annexure-4** to be valid up to (ninety) 90 days beyond the schedule date for Completion of the last facility

covered under the Package. However, in case of delay in completion of the facilities covered under the package, the validity of this Bank Guarantee shall be extended by the period of such delay.

- c) Submission of Unconditional Bank Guarantee towards Contract Performance cum Security Guarantee (CPSG) as per Clause No. 3.48.1.
- d) Submission of a detailed PERT Network chart based on the work schedule as per clause 3.21.3.

NOTE: In case any contractor does not require Initial Advance payment, the above 15% payment shall be paid alongwith the payment on dispatch of material from manufacturer's work. In such a case, the total payment on dispatch of material from manufacturer's work as indicated at Clause No. 3.50.4 (ii)(a) below will become 75% instead of 60%.

- ii. (a) **55% (Fifty-Five percent)** of Price Component of the First Contract of each identified equipment shall be paid, Pro-rata basis along with 100% of GST, on dispatch of material from manufacturer's work on production of the following: -
 - a. Application of payment along with three (3) copies of GST Invoice.
 - b. Material Dispatch Clearance Certificate (MDCC) issued by the Employer, wherever applicable as per relevant clause(s) of this Bid Document.
 - c. Indemnity Bond as per the **Annexure-5** of section V: Bid Response Sheets & Annexures.
 - d. Submission of Storage & Erection All Risk Insurance policy as per clause no. 3.56, only with the first Invoice.
- ii (b) **10% (Ten Percent)** of Price Component of the First Contract of each identified equipment shall be paid, Pro-rata basis, on receipt of material at Site on production of the following:-
 - a. Application of payment along with three (3) copies of GST Invoice.
 - b. Physical Verification & discrepancy report by RECPDCL for the equipment/material received and stored at site. Payment shall be released after making adjustment of discrepancies only.
- iii. **2.5 % (Two and half percent)** of Price Component of the First Contract shall be paid, pro-rata basis, on completion of erection of each identified equipment upon certification by the EIC.
- iv. **2.5 % (Two and half percent)** of Price Component of the First Contract shall be paid, pro-rata basis, on issuance of commissioning certificate of the entire plant or part thereof, as allowed by the Implementing agency (IA).

- v. **15 % (Fifteen percent)** Price Component of the First Contract shall be paid on final acceptance of the entire plant and issue of Work Completion Certificate by the Employer.

NOTE: The contractor may take MNRE exemption for taxes and duties & shall consider the same while submission of the Price Bid. All required documentation for getting any types of exemption in taxes falls with the Contractor's scope. Contractor may also consider High Sea Sales, Sale in Transit while submission of the Price Bid. However, all risks/responsibilities, costs, obligations and liabilities shall be with EPC Contractor. The Employer will endorse/sign the relevant documents wherever and whenever required.

3.50.5 TERMS OF PAYMENT FOR "SECOND CONTRACT"

The payment for the second contract shall be made as per following:

Maximum **10% (Ten percent)** of the value of the 'Second Contract' may be given as Mobilization Advance, at the interest rate of 50 basis point above one-year MCLR (Marginal Cost of Funds based Lending Rate) of State Bank of India prevailing on the date of payment and to be compounded quarterly. Without prejudice to any other mode of recovery available to the Employer, recovery of the Mobilization Advance shall start after the Contractor has received payment towards the Contract equivalent to 10% of Price Component of the 'Second Contract' and shall be effected on pro-rata basis against running bill of EPC contract in such a way that the full advance with interest there upon is recovered by the time 60% of the Price Component of the second Contract is to be paid or full amount shall be recovered within 10 months from the effective date of contract, whichever is earlier.

Advance shall be released on production of the following documents: -

- a) Unconditional and irrevocable Bank Guarantee for an amount equivalent to 110% of the advance amount as per **Annexure-4**.
- b) A copy of unconditional acceptance of the Letter of Award and signing of the Contract Agreement (if not submitted earlier against 3.50.4 (i)).
- c) Unconditional Bank Guarantee towards Contract Performance cum Security Guarantee (CPSG) as per Clause No. 3.48.1 (if not submitted earlier against 3.50.4 (i)).

The interest shall be calculated on the outstanding amount of principal from the date of release of advance till the date of recovery of the amount from the running bill of the contractor with quarterly compounding. The recovery of interest shall be started from the first running bill of second contract.

I. "Erection, Testing, Commissioning of Plant and Equipment including Handling and Unloading at site, Insurance Covers, Storage of the Plant and Equipment supplied under First Contract"

- i. **75% (Seventy Five Percent)** of Price component of Second Contract shall be paid, on Pro-rata basis along with 100% of GST, on production of the following: -
 - a) Application of payment along with three (3) copies of GST Invoice.

- b) Declaration from Contractor on claim of completed activities as per project schedule approved by RECPDCL.
 - c) Certification from EIC for completion of erection activities of claimed equipment.
 - d) Submission of documentary evidence by the Contractor towards having taken the insurance policy(ies) in terms of relevant provisions of Clause No 3.56.1 (Insurance).
- ii. **10 % (Ten percent)** of Price component of Second Contract shall be paid on successful completion of Performance Guarantee (PG) test of the complete Power Project and upon issue of Operational Acceptance Certificate by the Employer.
 - iii. **15 % (Fifteen percent)** of Price component of Second Contract shall be paid on Final Acceptance of the entire plant and issue of Work Completion Certificate by the Employer.

II. “All Civil, Architectural & Structural Works complete in all respects”

- i. **75% (Seventy Five Percent)** of the total Civil Works Price Component under the Second Contract shall be paid progressively along with 100% of GST, on production of the following:-
 - a) Application of payment along with three (3) copies of GST Invoice.
 - b) Certification by the EIC for the quantum of work completed/Milestones achieved and by the Employer’s field quality surveillance representative for the successful completion of quality check points involved in the quantum of work / Milestones billed.
 - c) Submission of documentary evidence by the Contractor towards having taken the insurance policy(ies) in terms of relevant provisions of Clause No. 3.56.1 (Insurance).
- ii. **(10%) Ten percentage** of total Civil Works Price Component under the Second Contract shall be paid on successful commissioning of the entire plant on production of the following:
 - a) Application of payment along with three (3) copies of GST Invoice.
 - b) Certification by EIC with regard to successful commissioning as specified in the Bid Document.
- iii. **(15%) Fifteen percentage** of total Civil Works Price Component under the Second Contract shall be paid on production of the following:
 - a) Application of payment along with three (3) copies of GST Invoice.
 - b) Certification by EIC with regard to Operational Acceptance as specified in the Bid Document.

3.50.6 TERMS OF PAYMENT FOR “THIRD CONTRACT”

- i. The payment for Third Contract shall be made on quarterly basis including GST on production of the following:
 - a) Application of payment for O&M Charges along with three (3) copies of GST Invoice.
 - b) Submission of Certificate for satisfactory performance of service issued by EIC.
 - c) Submission of documentary evidence towards having taken the insurance policy(ies) in terms of relevant provisions of Clause No. 3.56.2 (Insurance).
- ii. The quarter will be defined as a period of three months ending on 30th June, 30th September, 31st December and 31st March except last quarter of the third contract wherein, payment will be made for the number of days covered till the last scheduled date of the third contract on pro rata basis.

Also, payment for the first quarter of the third contract will be made for the number of days covered during this quarter on pro rata basis.
- iii. The payment for the last quarter of a Financial Year of the O&M contract will only be paid after deducting the compensation amount, to be calculated as per the Clause No-3.45, towards shortfall in Net Annual Guaranteed Generation (if any), pertaining to that year. This will, however, be relaxed to the extent of grid non-availability for evacuation and Force Majeure, during daylight power generation hours, which is beyond the control of the contractor.
- iv. Compensation amount towards the penalty imposed by Implementation Agency on RECPDCL, if any, due to reasons solely attributable to the contractor, shall be recovered from the O&M charges due for the quarter.
- v. If the amount payable under any interim bill is not sufficient to cover the compensations due as specified above in Clause 3.50.6 (iii), 3.50.6 (iv) and calculated as per clause 3.45, the balance outstanding shall either be recovered from the next payment immediately falling due or Contract Performance Guarantee towards O&M Contract.

3.50.7 DELAYED PAYMENT

Omissions on the part of the EIC to pay the amount due upon measurement or otherwise shall neither vitiate nor make the contract void. Further, no claim for interest or damages will be entertained or payable by the Employer upon

- (i) any Bank Guarantee or payments in arrears or retention of amount due to non-fulfillment of obligation on the part of the contractor
- (ii) any balance amount (to be paid if any) which may become due on final settlement/re-conciliation of the account at the time of closure of the contract or
- (iii) Amount withheld by the Employer owing to any dispute or difference between the parties.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

3.50.8 FINAL BILL

The final bill relating to the EPC Contract shall be prepared only when the equipment has been installed and tested for Final acceptance under Clause No 3.41 and it will include adjustment of all claims against the Contractor by the Engineer-in-Charge. The amount equivalent to losses or damages for which Contractor fails to settle claim with the insurer before completion of entire work would also be recovered from any amount due to contractor.

3.51 CONTRACT PRICE AND PRICE ADJUSTMENT

The Bidder shall give prices of EPC contract and O&M contract for 03 years as prescribed under Bid Response Sheet I to IV except otherwise specifically mentioned in the bid document, the prices shall remain FIRM during the entire period of Contract.

3.52 TAXES, DUTIES AND CESS

- a) Except as otherwise specifically provided in the contract, the Contractor shall bear and pay all taxes, duties, cess, levies and charges assessed on the Contractor, by all municipal, state or central government authorities.
- b) The contractor shall furnish proof of GST registration with GSTN Portal in the State in which the Project is being executed, covering the services under this contract. Registration should also bear endorsement for the premises from where the billing shall be done by the contractor on RECPDCL for this project/ work.
- c) Contractor shall submit to RECPDCL the GST compliant tax invoice/debit note/revised tax invoice on the basis of which RECPDCL may claim the input tax credit in its return.
- d) Tax invoice/debit Note/revised tax invoice shall contain all such particulars as prescribed in GST law.
- e) TDS under GST as applicable shall be deducted at prevailing rates from the running bills.
- f) The Contractor shall be responsible for the issuance of e-way bill and other compliances relating to e-way bill as per GST law. The existing provisions regarding road permit will continue till such time if applicable.

3.53 STATUTORY VARIATIONS

If, after the date seven (7) days prior to deadline for date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-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 items in respect of direct transactions between the Employer and the Contractor and Bought out items (to be dispatched directly from the sub-vendor's works to Employer's site). These adjustment shall not be applicable on procurement of raw materials, intermediary components etc. by the Contractor.

Benefits, if any allowed by UPNEDA and/or concerned authority regarding applicability of Safeguard Duty shall be covered under "statutory variations" beyond the effective date of contract till 29.07.2021 (as per Notification No. 02/2020-Customs (SG) on Solar Modules). Further, modification/changes in the rates of custom duty and/or antidumping duty shall also be covered under statutory variations, if allowed under change in law clause of RFS issued by UPNEDA.

The above adjustment however shall be restricted to schedule date of dispatch or actual whichever is less.

However impact of basic custom duty which will be applicable as per MNRE OM No: 283/3/2018-GRID SOLAR shall not be considered under Change in law.

3.54 NEW TAXES/LEVIES

- a. In case Government imposes any new levy / tax, after the date seven (7) days prior to deadline for date of bid submission, during the tenure of the contract, RECPDCL shall reimburse the same at actual on submission of documentary proof of payment subject to the satisfaction of RECPDCL that such new levy / tax is applicable to this contract.
- b. Unless otherwise stipulated in Clause No. 3.53, any liability occurs due to, increase in the rate of GST or it is found that the actual rate of GST on any item is higher than the quoted rate, the same shall be borne by the contractor or recovered from any payment/amount due to the contractor if it is already paid/submitted or to be paid/submitted by RECPDCL to the statutory body/concerned authority.
- c. As regards the Indian Income Tax, Surcharge on Income Tax and any other Corporate Tax the Employer shall not bear any tax liability whatsoever. The Contractor shall be liable and responsible for payment of such tax, if attracted under the provisions of the law existing or subsequent and Employer will make tax deductions at source (TDS) as applicable.

3.55 DEDUCTION FROM CONTRACT PRICE

- 3.55.1 All costs, claims, damages or expenses which the Employer may have paid for which the Contractor is liable under the Contract, shall have to be refunded by the Contractor within 21 (Twenty-One) days of receipt of the bills. If the bills are not paid within the said period, this may be deducted by the Engineer-in-charge from the Performance Guarantee or from any money due or which will become due to the Contractor under this Contract.
- 3.55.2 The Employer shall be entitled to recover all dues in terms of the Contract including, but not limited to, Liquidated Damages for delay etc. by way of deductions from the payments due to the Contractor or that may become due to the Contractor in future or from any securities/guarantees under the Contract and/or otherwise.

3.55.3 In case of any dispute, the sum of money so obtained under this clause by the Employer will be kept withheld or retained as such by the Employer till all the claims arising out of the Contract is either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account ,subject to compliance of the Govt. of India Guidelines.

3.56 INSURANCE

3.56.1 INSURANCE FOR EPC CONTRACT

The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified below. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

- I. Cargo/Marine All Risk Insurance:** Covering loss or damage occurring, while in transit from the Contractor's or Subcontractor's works or stores until arrival at the site including unloading, to the Plant and Equipment (including spare parts thereof) and to the Contractor's Equipment.

This policy shall cover 'ALL RISKS' under and /or on deck as per Institute Cargo Clause 'A'.

II. ERECTION ALL RISKS INSURANCE

Covering any physical loss or damage to the equipment during handling, transportation, storage, erection of the Facilities at the Site, occurring prior to completion of the Facilities, with extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defects Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

III. THIRD PARTY INSURANCE

Before receipt of equipment at site but without limiting his obligations and responsibilities under this clause hereof, the Contractor shall insure against his liability for any equipment, material, property (including the Employer's property and any parts of the facilities that have been accepted by the Employer), or physical damage covering bodily injury or death suffered by third parties (including the Employer's personnel) by or arising out of the execution of the contract or in the carrying out of contract.

IV. WORKMEN'S COMPENSATION INSURANCE

The contractor shall protect himself against all claims applicable under the Workmen's Compensation Act, 1923. This policy shall also cover the contractor against claims for injury, disability, disease or death of his or his sub-contractor's employees, which for any reason are not covered under the Workmen's Compensation Act, 1923. The liabilities under Workmen's Compensation Insurance shall be as per statutory provisions.

Employer shall not be liable for or in respect of any damage or compensation payable in law in respect or in consequence of any accident or injury to any workman or other person in the employment of the contractor(s) or any sub-contractor(s), save and except an accident or

injury resulting from any act or default of the Employer.

3.56.1.2 The contractor shall at his own expense take out and maintain insurance cover during the performance of the contract as below:

S.No.	Insurance	Sum Insured	Deductibles	Conditions	Validity Period
A.	Cargo/Marine all risk Insurance	Sum of (A+B) A= 100% of total Plant & Equipment F.O.R price i.e. sum of the total price of BRS P-II . B= 25% of A to cover taxes & duties etc	Minimum as per insurance policy	Open policy All risk insurance, SRCC (Strikes, Riots, Civil Commotion), terrorism etc	From 1st shipment to last shipment.
B.	Storage & Erection All Risk.	Sum of (A+B+C) A= 100% of total Plant & Equipment F.O.R price i.e. sum of the total price of BRS P-II . B= 100% of Erection, Commissioning & Civil/ structural works cost as per BRS P-III . C= 25% of Sum of (A+B) to cover taxes & duties etc.	Minimum as per insurance policy	<ul style="list-style-type: none"> • Installation risk, RSMD (Riots, Strikes, Malicious Damages), Earthquake Cover • Air Freight cover • Maintenance cover • Extra Charge Cover • Contractor's Plant & Machinery • Rs. 100 Lakhs Cross Liability • Employer & Contractor's Sub Contractor to be named as co-insured • Wind Gusting 	From commencement of work on Site to the End of Defects Liability Period
C.	Third Party Liability (Extension EAR Policy)	INR 10.00 Crore Single Event Limit for bodily injury and property damage. (Ratio of 1:4)	Rs.2,50,000/-	Contractors, subcontractors to be named as co-insured.	From commencement of work on Site to the End of Defects Liability

Note:

- The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Clause 3.56 except for Third Party Liability, Workman's

Compensation. Payment shall be released to the Contractor by the Insurance Company after receipt of NOC from the Employer. The appropriate Clause shall be incorporated in the Insurance Policy taken by Contractor to ensure this requirement.

- ii. In case the Contractor has taken/takes blanket insurance policy for “Erection All Risk policy” during storage and erection, such policy shall also be acceptable to Employer provided that; the name of the Employer and the Project is endorsed in the said policies.
- iii. The Contractor shall provide the Engineer-in-Charge with copies of all insurance policies and documents taken out by him in pursuance of the contract. Any amendment (s) of Insurance Policies, if required, shall be informed to the Contractor by Engineer-in-Charge. The Insurance Policies shall be amended by the Contractor within 15 days of the receipt of such request. In case, Contractor fails to submit amended Insurance Policy than no future/progressive payment shall be released.
- iv. The Contractor shall ensure that, where applicable, its Sub- contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- v. It shall be the responsibility of the contractor to extend the period of insurance policy (ies) if required to comply with the provisions of contract. The Engineer-in-Charge shall inform the Contractor in writing at least thirty (30) days in advance from the date of expiry for the extension of the Insurance Policy. If the Contractor fails to extend the said policy within 15 days of notice period, RECPDCL reserves the right to extend the said policy and the cost of the premium paid towards extension of said policy shall be recovered/deducted from the amount payable/due to the Contractor.
- vi. The Contractor shall be responsible for preferring of all claims and make good the damages or loss by way of repairs and / or replacement of the work, damaged or lost. The Transfer of Title shall not in any way relieve the Contractor of the above responsibility during the period of contract. The Employer shall give to the Contractor all such reasonable assistance with respect to insurance claims in which the Employer’s interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer.
- vii. Notwithstanding the insurance requirements mentioned above, it would be the Contractor's responsibility to take adequate insurance cover as may be pertinent to protect his interest and interest of the Employer. If at any point of time during execution of the Contract, the insurance policies are found to be inadequate, the Contractor shall take fresh insurance policies meeting aforesaid requirements.
- viii. In case of any loss or damage or pilferage or theft or fire accident or combination of the said incidents etc. under the coverage of insurance, the Contractor shall make good the damages or loss by way of repairs and/or replacement of plant and equipment damaged or lost and lodge the claim as per rules of insurance. Any FIR required to be lodged to local Police Station shall

be the responsibility of the Contractor. Notwithstanding the extent of insurances cover and the amount of claim available from the underwriter, the contractor shall be liable to make good the full replacement/rectification of all the equipment/materials and to ensure their availability as per project requirement without additional financial liability to the Employer.

- ix. All cost on account of insurance liabilities covered under the contract will be to the Contractor's account and will be included in contract price.
- x. The Contractor shall arrange insurance with Indian Insurance Companies.

3.56.2 FOR O&M CONTRACT

INSURANCE DURING OPERATIONAL ACCEPTANCE AND O&M PERIOD

The Contractor shall at its expense take out and maintain in effect the insurances set forth below during Operational Acceptance and O&M Period. The insurances provided shall be seamless with the insurance provided during the construction period by the Bidder with no gap between the two:

I. FIRE & ALLIED PERIL INSURANCE

Insurance policy for Fire and allied perils must include clauses such as earthquake, flood, storms, cyclone, tempest, hurricane, inundation, typhoon, theft & burglary and Public Liability Insurance (Third Party), burglary, reinstatement/replacement value clause, earthquake cover, and RSMTD cover.

II. WORKMEN'S COMPENSATION INSURANCE

This insurance shall protect the Contractor against all claims applicable under the Workmen's Compensation Act, 1948

Workmen's Compensation Provisions As per Statutory

Employee's Liability Provisions As per Statutory

- ##### **III. COMPREHENSIVE GENERAL LIABILITY INSURANCE:**
- The insurance shall protect the Contractor against all claims arising from injuries, disabilities, disease or death of members of public or damage to property of others, due to any act or omission on the part of the Contractor, his agents, his employees, his representatives and Sub Contractors or from riots, strikes and civil commotion.

Note: The contractor is obliged to take all the O&M Insurances mentioned above for the project immediately after the commissioning of the plant.

3.57 DELAYS BY EMPLOYER OR ITS AUTHORIZED REPRESENTATIVE(S)

- 3.57.1 In case the Contractor's performance is delayed due to any act of omission on the part of the Employer, then the Contractor shall be given due extension of time for completion of the work, to the extent such omission on the part of the Employer has caused delay in the Contractor's performance of the contract. Regarding reasonableness or otherwise of the extension of time, the decision of the Engineer -in Charge shall be final.

- 3.57.2 In addition, the Contractor shall be entitled to claim demonstrable and reasonable

compensation if such delays have resulted in any increase in cost. The Employer shall examine the justification for such a request for claim and if satisfied, the extent of compensation shall be mutually agreed depending upon the circumstances at the time of such an occurrence.

3.58 DELAYS IN THE CONTRACTOR'S PERFORMANCE

3.58.1 Delivery of the Goods and performance of Services shall be made by the Contractor in accordance with the time schedule prescribed by the Employer in Bid Document.

3.58.2 Except as provided under Conditions of Contract Clause No 3.59, a delay by the Contractor in the performance of its obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to Conditions of Contract Clause 3.49 unless an extension of time is agreed upon pursuant to Conditions of Contract Clause 3.61 without the application of liquidated damages.

3.59 FORCE MAJEURE

3.59.1 Notwithstanding the provisions of Condition of Contract Clause No. 3.49, 3.64 and 3.58, the Contractor shall not be liable for forfeiture of its Contract Performance Guarantee, liquidated damages or termination for default if and to the extent that the delay in performance or other failure to perform its obligations under the contract is the result of an event of Force Majeure.

3.59.2 "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, and shall include, without limitation, the following:

- i. war, hostilities or war like operations (whether as state of war be declared or not), invasion, act of foreign enemy and civil war,
- ii. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts,
- iii. confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority,
- iv. sabotage, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague; but does not include any strike/ lockout and any type of agitation/gherao/dharna by local communities causing restriction/blockade to the 'right of way' to the site or causing hindrance to the working of the Project,
- v. earthquake, landslide, volcanic activity, fire, flood/ flash flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; but does not include incessant rain,
- vi. Shortage of labour, materials or utilities where caused by circumstances that are

themselves Force Majeure.

vii. Any other condition(s) specific to the opportunity/RfS.

3.59.3 If a Force Majeure situation arises, the Contractor shall promptly notify RECPDCL in writing of such condition and the cause thereof. Unless otherwise directed by RECPDCL in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

3.59.4 The Contractor or RECPDCL shall not be liable for delays in performing their respective obligations resulting from and to the extent applicable and necessitating rescheduling, if any, of the balance critical activities to any Force Majeure causes as referred to and/or defined above. The date of completion will, be extended by a reasonable and justifiable time.

3.59.5 The delay in fulfilment by the Parties of their obligations under this Contract shall not exceed the duration of Force-Majeure circumstances and also their consequences.

3.59.6 If the performance of the contract is delayed for more than six (6) months for one of the reasons mentioned above, the performance of contract shall be continued on mutual terms & conditions.

3.59.7 Force majeure shall not apply to RECPDCL's obligations to make payment for the work done under the contract.

3.59.8 The contractor shall not claim any compensation for force majeure conditions and shall take appropriate steps to ensure man & material utilized by it under the contract well in advance.

3.60 SUSPENSION OF WORK

3.60.1 The Employer reserves the right to suspend and reinstate execution of the whole or any part of the work. Order for suspension or reinstatement of the works will be issued by the Engineer-in-charge to the Contractor in writing. The Time for Completion of the works will be extended for a period equal to the duration of the suspension.

3.60.2 Any necessary and demonstrable costs incurred by the Contractor, as a result of such suspension of the works, will be paid by the Employer, provided that such costs are substantiated to the satisfaction of the Employer. The Employer shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Contractor or his Sub-Contractor

3.61 EXTENSION OF TIME FOR COMPLETION

3.61.1 Except where otherwise specifically provided in the Contract, if at any time during performance of the contract, the Contractor should encounter conditions impeding timely delivery of the Goods/execution of the contracts, the Contractor shall promptly notify the Employer in writing of the fact of the delay, its likely duration and its cause(s) together with particulars of the event or circumstance and supporting documents/data/records, hindrance register, evidence(s) justifying such extension as soon as reasonably practicable after the

commencement of such event or circumstance. Following documents shall become principal basis for consideration of time extension: -

- i. Records maintained in the Hindrance Register
- ii. Minutes of Weekly Project Review Meeting
- iii. Minutes of Monthly Project Review Meeting
- iv. Written notices issued by EIC or his authorized representative to contractor in relevant period.

As soon as practicable after receipt of the Contractor's notice, the Employer shall evaluate the situation and may at its discretion extend the Contractor's time for performance, with or without levy of Liquidated Damages, in which case the extension shall be ratified by the parties by amendment of the contract.

3.61.2 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

3.62 BANKRUPTCY

3.62.1 If the Contractor shall become bankrupt or have a receiving order made against him or compound with his creditors, or being a Corporation commence to be wound up, not being a voluntary winding up for the purpose only of amalgamation reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the Employer will be at liberty.

- a) To terminate the contract forthwith by notice in writing to the liquidator or receiver or to any person in whom the contract may become vested and to act in the manner entitled 'Contractor's Default', as though the last-mentioned notice has been the notice referred to in such clause and the equipment and materials have been taken out of the Contractor's hands
- b) To give such liquidator, receiver, or other person the option of carrying out the contract subject to his providing a guarantee, for the due and faithful performance of the contract, up to an amount to be determined by the Employer.

3.63 CONTRACTOR'S DEFAULT

3.63.1 If the Contractor shall neglect to execute the works with due diligence and expedition or shall refuse or neglect to comply with any reasonable orders given to him in writing by the Engineer-in-charge in connection with the works, or shall contravene the provisions of the Contract, the Employer may give notice of default, in writing to the Contractor to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days or otherwise, for a period of time as may be decided by the Engineer-in-charge from the date of service thereof, then and in such a case, the Employer shall be at liberty to employ other workmen and forthwith execute such part of the works as the Contractor may have neglected to do or, if the Employer shall think fit, without prejudice to any other right he may have under the Contract, to take the works wholly or in part out of the Contractor's hand and enter into a separate Contract with any other person or persons to complete the works or any part thereof. In such event, the Employer shall have free use of all

the Contractor's equipment that may have been at that time at the site in connection with the works, without being responsible to the Contractor for wear and tear thereof and to the exclusion of any right of the Contractor over the same, and the Employer shall be entitled to retain and apply any balance which may otherwise be due under the Contract by him to the Contractor, or such part thereof as may be necessary, to the payment of cost of executing the said part of the works or of completing the works, as the case may be. If the cost of completing the works or executing a part thereof as aforesaid shall exceed the balance due to the Contractor, the Contractor shall pay such excess amount. Such payment of excess amount shall be independent of the Liquidated Damages for delay that the Contractor shall have to pay if the completion of works is delayed.

3.63.2 In addition, such action by the Employer as aforesaid shall not relieve the Contractor of his liability to pay Liquidated Damages for delay in completion of works as defined in the Contract.

3.63.3 The termination of the Contract under this Clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Performance Guarantee shall be valid for the full value and for the full period as originally stipulated in the Contract, including Guarantee Period.

3.64 TERMINATION OF CONTRACT ON CONTRACTOR'S DEFAULT

3.64.1 RECPDCL, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Contractor, by registered A/D may terminate this contract in whole or in part in any of the following cases:

(a) If the Contractor fails to perform any obligation(s) under the contract or

(b) If the Contractor, in the judgment of RECPDCL has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

3.64.2 In the event RECPDCL terminates the contract in whole or in part, pursuant to Condition of Contract Clause 3.64.1, RECPDCL may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered at the risk and cost of the Contractor and without any prejudice to any right of the Employer provided in the Contract. The Contractor shall be liable to RECPDCL for any excess costs for such similar Goods or Services. However, the Contractor shall continue performance of the contract to the extent not terminated. The Contractor, however, shall under no circumstances, be entitled to any gain on account of such action by the Employer

3.64.3 In case of termination of the contract due to contractor's default, the contractor may be debarred from participation in future tenders by the employer, through a communication in writing for a period to be specified therein.

3.65 TERMINATION OF THE CONTRACT ON THE EMPLOYER'S INITIATIVE

3.65.1 The Employer reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under the Clause No 3.63 & 3.64 of this Bid Document. The Employer, shall, in such an event, give 30 (Thirty) days' notice in writing to the Contractor of his decision to do so.

3.65.2 The Contractor, upon receipt of such notice, shall discontinue the work on the date and, to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and Contracts to the extent they are related to the work terminated and upon terms favourable to the Employer, stop all further sub-Contracting or purchasing activity related to the work terminated, and assist the Employer in maintenance, protection and disposition of the works acquired under the Contract by the Employer.

3.65.3 In the event of such termination, the Contractor shall be paid compensation, equitable and reasonable dictated by the circumstances prevalent at the time of termination, as decided by the Employer.

3.66 TERMINATION DUE TO INSOLVENCY

The Employer may at any time terminate the contract by giving written notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Employer.

3.67 FORECLOSURE OF CONTRACT IN FULL OR PART DUE TO ABANDON OR REDUCTION IN SCOPE OF WORK

If at any time after acceptance of the Bid the Employer decides to abandon or reduce the scope of the works for reason whatsoever and hence does not require the whole or any part of the work to be carried out, the Engineer-In-Charge shall give notice in writing to that effect to the Contractor and the Contractor shall have no claim to any Payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he could not derive in consequence of the foreclosure of the whole or part of the works. The Contractor shall be paid at Contract rates for actual amount of the works executed at site

3.68 SETTLEMENT OF DISPUTES

3.68.1 ADJUDICATOR

- i) If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the facilities-whether during the progress of the facilities or after their completion and whether before or after the termination, abandonment or breach of the contract-parties shall seek to resolve such a dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the Adjudicator, with a copy to the other party.
- ii) The dispute adjudication board (DAB) shall consist of either one or three suitably qualified persons ("the Members").
- iii) If the DAB consists of three members, each party shall nominate one member for the

approval of the other party. The parties shall consult both the members and shall agree upon third member, who shall be appointed as Chairman of DAB.

- iv) The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Employer or the Contractor within one hundred eighty (180) days of such reference, the decision shall become final and binding upon the Employer and the Contractor. Any decision that has become final and binding shall be implemented by the parties forthwith.
- v) Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not fulfilling its functions in accordance with the provisions of the Approvals Failing agreement between the two within twenty eight (28) days, the new Adjudicator shall be appointed at the request of either party or by the Appointing Authority (the CMD, RECPDCL Ltd). The adjudicator shall be paid fee plus reasonable expenditures incurred in the execution of its duties as adjudicator under the contract. This cost shall be divided equally between the Employer and the Contractor.

3.68.2 **ARBITRATION**

- i. If either the Employer or the Contractor is dissatisfied with the Adjudicator's decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to it, then either the Employer or the Contractor may, within one hundred eighty (180) days of such reference, give notice to the other party, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- ii. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with the above clause, shall be finally settled by arbitration. Arbitration may be commenced prior to or after completion of the Facilities.
- iii. **In case the Contractor is a Public Sector Enterprise or a Government Department:/Organization**

In the event of any dispute or difference relating to the interpretation and applications of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations(excluding disputes concerning Railways, Income Tax, Customs & Excise Department) such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative mechanism for resolution of CPSEs Disputes) as mentioned in DPE OM No. 4(1)/2013-DPE (GM)/FTS-1835 dated 22-05-2018 and any subsequent amendment(s) issued from time to time .

- iv. **In case the contractor is not a Public Sector Enterprise or a Government Department/Organization:**

Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

- a) The Employer and the Contractor shall each appoint one arbitrator, and these

two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for arbitrator (the CMD, RECPDCL Ltd).

- b) If one party fails to appoint its arbitrator within forty-two (42) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator.
- c) If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws and a substitute shall be appointed in the same manner as the original arbitrator.
- d) Arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and any amendment(s) thereto as issued by the Govt of India from time to time. The venue of arbitration shall be at Delhi/ the place where the Solar Power Project is located.
- e) The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from such enforcement.
- f) The arbitrator(s) shall give reasoned award.
- g) Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.

3.69 GOVERNING LANGUAGE

The bid prepared by Bidder and all correspondence/ drawing/ documents relating to the bid between Bidder and RECPDCL shall be written in English language only. In case the literature is furnished in another language, same may be accompanied by English translation duly authenticated by the authorized translator. The English version shall govern in case of any variation.

3.70 APPLICABLE LAW/ JURISDICTION

The Contract shall be governed by and interpreted in accordance with the laws of land. The Courts governing the territorial jurisdiction of the Solar Power Project shall have exclusive jurisdiction in all matters arising under the contract.

3.71 TRANSFER OF OWNERSHIP

3.71.1 The title of the equipment and materials supplied by the Contractor to RECPDCL would be

transferred to RECPDCL upon receiving the goods at site. This Transfer of Title shall not be construed to mean the acceptance and the consequent “Final Acceptance” of equipment and material. The Contractor shall continue to be responsible for the quality and performance of such equipment and material and for their compliance with the specification during the entire period of the performance of the contract.

- 3.71.2 This transfer of Title shall not relieve the Contractor from the responsibility of all risks of loss and damage to the equipment and material as specified under the Clause No 3.19 of this Bid Document.

3.72 INDEMNITY TO RECPDCL

- 3.72.1 The Contractor shall at all times indemnify and keep indemnified RECPDCL against all losses and claims for injuries or damages to any person or property whatsoever which may arise out of consequence of the execution of the works and against all claims, demands, proceedings including civil and criminal, damages, cost, charges and expenses whatsoever in the respect of or in settlement thereto.
- 3.72.2 The Contractor shall at all times indemnify RECPDCL against any claim which may be made under Workmen’s Compensation Act or any statutory modifications thereof or otherwise for or in respect of any damage or compensation payable in consequence of any accident or injury sustained by any workman or other person whether in the employment of the Contractor or not.
- 3.72.3 The Contractor shall at all times keep RECPDCL indemnified against all claims, damages or compensation under the provisions of payment of Wages Act, 1936, Minimum Wages 1948, Employees Liability Act 1938, The Workmen’s Compensation Act, 1923, Equal remuneration Act-1976, Employment of Child Labor Act –1938, Abolition of bonded labor Act and the Contract Labour (Regulation and abolition) Act-1970 or any other Acts regulating the employment of Labour by Contractor.
- 3.72.4 The Contractor shall at all times indemnify RECPDCL against all claims which may be made in respect of the plant and machinery for infringement of any right protected by patent, registration of design and trade mark. Provided always that in the event of any claim in respect of any alleged breach of patent, registered designs or trade mark made against RECPDCL, the same shall be notified to the Contractor and Contractor shall at his own cost either settle any such dispute or conduct any litigation that may arise there from

3.73 LAW PERTAINING TO LABOUR

- 3.73.1 This contract shall be governed by the various Labour Laws for the time being in force in India or in the state where the project is located. The Contractor shall be responsible for compliance of all applicable central, state & municipal laws, Panchayat Raj Act& rules & legislation in force from time to time at work site & shall be solely responsible to comply with all obligations & payments there under.
- 3.73.2 No compensation will be entertained for the liabilities arising out of any provision of any act, Law, rules, & legislation in force from time to time pertaining to labour. In case RECPDCL is liable to pay any charges/penalty arising out of noncompliance by the Contractor, the same

shall be recovered from the Contractor.

- 3.73.3 The contractor shall provide an updated list of sub-contractors and their laborers every month and ensure that all the payments are made to the Subcontractor/vendors using digital payment methods.
- 3.73.4 Identification of designated place(s) to store different types of waste such as not recycled and hazardous waste materials. Waste shall be segregated at a source and removed by a licensed waste removal contractor.
- 3.73.5 Broken PV panels must be collected as electric and electronic equipment waste paying particular attention to avoid environmental pollution by parts of the panel.

3.74 COMPLIANCE WITH REGULATIONS

- 3.74.1 Unless otherwise specified, all works / supply, to the extent applicable, shall be carried out in accordance with the Indian Electricity Act, 2003, the Indian Electricity Rules, 1956 or any amendment / order thereof, which may be issued during the currency of the Contract and the requirements of any other Rules, Regulations and Act in India to which the Employer may be subjected to.
- 3.74.2 The Contractor shall comply with all applicable laws, or ordinances, codes, approved standards, rules and regulations and shall procure all necessary Municipal and Government permits, licenses etc., at his own cost. The Contractor shall leave the Employer and Engineer-in-charge harmless as a result of any infraction thereof.

3.75 REGULATIONS OF LOCAL AUTHORITIES

- 3.75.1 The Contractor shall, throughout the continuance of the Contract and in respect of all matters arising out of the performance thereof, comply the laws, rules and regulations of the Local Authorities. The contractor shall also comply with the Minimum Wages Act, 1948, Payment of Wages Act 1936, the Contract (Regulation and Abolition) Act 1970 and other Act, Laws, Rules and Regulations applicable in performance of the Contract. All registrations, permissions, inspections, rights etc., required for execution of the Contract shall be arranged by the Contractor himself at his own cost. The Employer will provide the necessary documentary assistance to the extent possible, in obtaining the same. The Employer shall not, be responsible for delay on this account.
- 3.75.2 If, under any statute/law, any registration, permission, inspection, right etc., is required to be arranged specifically by the Employer, this shall be brought to the notice of the Employer by the Contractor along with the Bid.

3.76 NOTICES

- 3.76.1 Any notice given by one party to the other pursuant to this contract shall be sent to the other party in writing or by E-mail or facsimile and confirmed in writing to the other party's address specified in Contract Document.
- 3.76.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

3.77 ENVIRONMENTAL LAWS