

due to the alignment of these lines, the Contractor will re-route or remove the temporary lines at his own cost. The Contractor at his own cost will also provide suitable electric meters, fuses, switches, etc. for purposes of payment to the Employer/ Owner which should be in the custody and control of the Employer/ Owner. The cost of power supply shall be payable to the Employer/ Owner by the Contractor. The Employer/ Owner shall not, however, guarantee the supply of electricity nor have any liability in respect thereof. No claim for compensation for any failure or short supply of electricity will be admissible.

- 2.4.2** It shall be the responsibility of the Contractor to provide and maintain the complete installation on the load side of the supply with due regard to safety requirement at site. All cabling, equipment, installations etc. shall comply in all respects with the latest statutory requirements and safety provisions i.e., as per the Central/ State Electricity Acts and Rules etc. The Contractor will ensure that his equipment and Electrical Wiring etc., are installed, modified, maintained by a licensed Electrician/ Supervisor.
- 2.4.3** At all times, IEA regulations shall be followed failing which the Employer/ Owner has a right to disconnect the power supply without any reference to the Contractor. No claim shall be entertained for such disconnection. Power supply will be reconnected only after production of fresh certificate from authorized electrical supervisors.
- 2.4.4** The Employer/ Owner is not liable for any loss or damage to the Contractor's equipment as a result of variation in voltage or frequency or interruption in power supply or other loss to the Contractor arising therefrom.
- 2.4.5** The Contractor will have to provide and install his own lights and power meters which will be governed as per Central/ State /UT Government Electricity Rules.
- 2.4.6** In case of damage of any of the Employer's/ Owner's equipment on account of fault, intentional or unintentional on the part of the Contractor, the Employer/ Owner reserves the right to recover the cost of such damage from the Contractor's bill.

**2.5 Land for Contractor's Field Office, Godown and Workshop**

The Employer/ Owner will, at his own discretion and convenience and for the duration of the execution of the work make available near the site, land for construction of Contractor's Temporary Field Office, godowns, workshops and assembly yard required for the execution of the Contract. The Contractor shall at his own cost construct all these temporary buildings and provide suitable water supply and sanitary arrangement. On completion of the works undertaken by the Contractor, he shall remove all temporary works erected by him and have the Site cleaned as directed by Engineer-in-Charge/Project Manager. If the Contractor shall fail to comply with these requirements, the Employer/Owner may, at the expenses of the Contractor remove such surplus and rubbish materials and dispose off the same as he deems fit and get the site cleared as aforesaid; and Contractor shall forthwith pay the amount of all expenses so incurred and shall have no claim in respect of any such surplus materials disposed off as aforesaid. But the Employer/ Owner reserves the right to ask the Contractor any time during the pendency of the Contract to vacate the land by giving 07 (Seven) day notice on security reasons or on national interest or otherwise. The Contractor shall put up temporary structures as required by them for their office, fabrication shop and construction stores only in the area allocated to them on the project site by the Employer/ Owner or his authorized representative. No tea stalls/ canteens should be put up or allowed to be put up by any Contractor in the allotted land or complex area without written permission of the Employer/ Owner. No unauthorized buildings, constructions or structures should be put up by the Contractor anywhere on the project site. For uninterrupted fabrication work, the Contractor shall put up temporary covered structures at his cost within Area in the location allocated to them in the project site by the Employer/ Owner or his authorized

representative. No person except for authorized watchman shall be allowed to stay in the plant area/ Contractor's area after completion of the day's job without prior written intimation to Engineer-in-Charge/Project Manager.

## 2.6 Land for Residential Accommodation

No Land shall be made available for residential accommodation for staff and labour of Contractor.

### [C] ADDITIONAL GENERAL INSTRUCTIONS TO BIDDERS

## 3. Documents

**3.1 Corrections and Erasures:** All correction(s) and alteration(s) in the entries of Tender document shall be signed in full by the bidder with date. No erasure or over writing is permissible.

**3.2 Witness:** Witness and sureties shall be persons of status and property and their names, occupation and address shall be stated below their signature.

**3.3 Details of Experience:** The bidder should furnish, along with his Tender, details of previous experience in having successfully completed in the recent past works of this nature, together with the names of Employers/ Owners, location of sites and value of Contract, date of commencement and completion of work, delays if any, reasons of delay and other details along with documentary evidence(s).

**3.4 Liability of Government of India:** It is expressly understood and agreed by and between bidder or/ Contractor and Employer/ Owner that, Employer/ Owner is entering into this agreement solely on its own behalf. In particular, it is expressly understood and agreed that the Government of India has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that Employer/ Owner is an independent legal entity with power and authority to enter into Contracts solely on its own behalf under the applicable Laws of India and general principles of Contract Law. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, bidder/ Contractor hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this Contract and covenants not to sue to Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement.

## 4. Transfer of Tender Documents

**4.1** Transfer of Tender Documents purchased by one intending bidder to another is not permissible.

## 5. Right of Employer/Owner to Accept or Reject Tender

**5.1** The right to accept the Tender will rest with the Employer/ Owner. The Employer/ Owner, however, does not bind himself to accept the lowest Tender, and reserves to itself the authority to reject any or all the Tenders received without assigning any reason whatsoever. At the option of the Employer/ Owner, the work for which the Tender had been invited, may be awarded to one Contractor or split between more than one bidders, in which case the award will be made for only that part of the work, in respect of which the bid has been accepted. The quoted rates should hold good for such eventualities. Tenders in which any

of the particulars and prescribed information are missing or are incomplete in any respect and/ or the prescribed conditions are not fulfilled are liable to be rejected. The Tender containing uncalled for remarks or any additional conditions are liable to be rejected. Canvassing in connection with Tenders is strictly prohibited and Tenders submitted by the Tenderers who resort to canvassing will be liable to rejection.

## 6. Time Schedule & Progress Reporting

- 6.1 The work shall be executed strictly as per the Time Schedule specified in Section - V, Special Conditions of Contract (SCC).
- 6.2 A joint program of execution of the work will be prepared by the Contractor based on priority requirement of this project & submitted to the Engineer in charge. This program will take into account the time of completion mentioned above and the time allowed for the priority works by the Engineer-in- Charge.
- 6.3 Void
- 6.4 The Contractor shall monitor progress of all the activities specified in the work schedule referred in GCC above and submit the progress report to the Project Manager as per the Contract Co-ordination procedure.
- 6.6 If at any time the Contractor's actual progress falls behind the scheduled program, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager/ EIC, prepare and submit to the Project Manager/ EIC a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager/ EIC, of the steps being taken to expedite progress so as to attain Completion of O&M of the Facilities within the Time for Completion. If any extension thereof entitled under GCC, or any extended period as may otherwise be agreed upon between the Employer and the Contractor, Contractor shall submit the revised plan for completion of Facility accordingly
- 6.7 Maintenance of Records of Progress Review Meeting

The Contractor shall be required to attend all site progress review meetings organized by the 'Project Manager/ EIC' or his authorized representative. The deliberations in the meetings shall inter-alia include the program, progress of work (including details of manpower, material, tools and plants deployed by the Contractor vis-à-vis agreed schedule), inputs to be provided by Employer, delays, if any and recovery program, specific hindrances to work and work instructions by Employer. The minutes of the meetings shall be recorded with the 'Project Manager/ EIC' or his authorized representative.

## 7. Conflict of Interest and Bidder's Responsibility

- 7.1 A bidder shall not have a Conflict of Interest. All bidders found to have Conflict of Interest shall be disqualified. A bidder may be considered to have a Conflict of Interest with one or more parties in this bidding process, if:
  - (a) They have a controlling partner in common; or
  - (b) They receive or have received any direct or indirect subsidy from any of them; or
  - (c) They have the same legal representative for the purposes of this bid; or
  - (d) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decision of the Employer/ Owner regarding this bidding process; or

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- (e) A bidder submits more than one bid in this bidding process, either individually [including bid submitted as an agent/ authorized representative on behalf of one or more bidders or through license - licensor route, wherever permitted as per the provision of the Qualification Requirement for the bidders in the Annexure to Bid Data Sheet (BDS)] or as a partner in a Joint Venture/ Consortium, except for alternative offers permitted under Tender. This will result in the disqualification of all such bids; or
- (f) A bidder or any of its Affiliates participated as a consultant in the preparation of the Design or Technical Specification or Detailed Project Report (DPR) of the Plant and Installation of services\*/ goods and related services\*\* that are the subject of the bid; or
- (g) A bidder or any of its Affiliate has been hired (or is proposed to be hired) by the Employer/ Owner as a Project Manager for the Contract

**Unquote:**

- \* Applicable for Supply & Installation Contracts
- \*\* Applicable for Supply & Supply cum Supervision of Installation Contracts

- 7.2 The intending bidder shall be deemed to have visited the Site and familiarized himself before submitting the Tender. Non-familiarity with the site conditions will not be considered a reason either for extra claims or for not carrying out the works in strict conformity with the Drawings and Specifications or for any delay in performance.

**8. Retired Government or Company Officers**

- 8.1 No Engineer of Gazetted rank or other Gazetted Officer employed in Engineering or Administrative duties in an Engineering Department of the States/ UT/ Central Government or of the Employer/ Owner is allowed to work as a Contractor for a period of two years after his retirement from Government Service, or from the employment of the Employer/ Owner. The Contract, if awarded, is liable to be cancelled if either the Contractor or any of his employees is found at any time to be such a person, who has not obtained the permission of the State/ Central Government before submission of Tender, or engagement in the Contractor's service as the case may be.

**9. Representatives and Field Management & Controlling**

- 9.1 Project Manager / Engineer- In –Charge (EIC):

If the Project Manager/ EIC is not named in the Contract, then within seven (7) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager/ EIC. The Employer may from time to time appoint some other person as the Project Manager/ EIC 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 Employer shall take reasonable care, unless unavoidable to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager/EIC shall represent and act for the Employer at all times during the currency of the Contract.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager/ EIC, except as herein otherwise provided.

- 9.2 Contractor's Representative & O&M Manager

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If the Contractor's Representative is not named in the Contract, then within seven (07) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing. If the Employer objects to the appointment within seven (07) days giving the reason therefor, then the Contractor shall appoint a replacement within seven (07) days of such objection, and the foregoing provisions of this GCC shall apply thereto.

- 9.3 The Contractor's Representative shall represent and act for the Contractor at all times during the tenure of the Contract and shall give to the Project Manager/ EIC all the Contractor's notices, instructions, information and all other communications under the Contract.
- 9.4 All notices, instructions, information and all other communications given by the Owner/ Employer or the Project Manager/ EIC to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.
- 9.5 The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Clauses.
- 9.6 The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), 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 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 Project Manager/EIC.
- 9.7 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Clause shall be deemed to be an act or exercise by the Contractor's Representative.
- 9.8 Notwithstanding anything stated in GCC Clause above, for the purpose of execution of contract, the Employer and the Contractor shall finalize and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Co-ordination Procedure.
- 9.9 Void
- 9.10 The Employer may object to any Contractor's representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be in- competent or negligent, or may commit a serious breach of the Site regulations and safety.
- 9.11 If any representative or person employed by the Contractor is removed in accordance with GCC Clause above, the Contractor shall, where required, promptly appoint a replacement. The Engineer-in-Charge/Project Manager may also authorize his representatives to assist in performing his duties and functions.
- 9.13 **Hindrance Register**

The Contractor may also maintain a Hindrance Register where reasons along with documentary evidence for delay/ fault may be recorded from time to time and at the time of

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occurrence of the hindrance and get it duly certified by the Project Manager or his authorized representative.

#### 10. Note to Schedule of Rates

- 10.1 The Schedule of Rates should be read in conjunction with Section - VIII of the Tender documents.
- 10.2 The bidder shall be deemed to have studied the Drawings (if any), Specifications and details of work to be done within Time Schedule and to have acquainted himself of the condition prevailing at site.
- 10.3 Rates must be filled in the Schedule of Rates of original Tender Documents. If quoted in separate typed sheets no variation in item description or specification shall be accepted.

#### 11. Policy for Tenders under Consideration

- 11.1 Only Those Tenders which are complete in all respects and are strictly in accordance with the Terms and Conditions and Technical Specifications of Tender Document, shall be considered for evaluation. Such Tenders shall be deemed to be under consideration immediately after opening of Tender and until such time an official intimation of acceptance/ rejection of Tender is made by Employer to the Bidder.
- 11.2 Zero Deviation: Bidders to note that this is a Zero Deviation Tender. Employer will appreciate submission of bids based on the terms and conditions in the enclosed General Conditions of Contract (GCC), Special Conditions of Contract (SCC), Instructions to Bidders (ITB), Scope of Work, technical specifications etc. to avoid wastage of time and money in seeking clarifications on technical/ commercial aspects of the bids. Bidder may note that no technical and commercial clarifications will be sought for after the receipt of the bids. In case of any deviation/ nonconformity observed in the bid, it will be liable for rejection.

#### 12. Clarification of Tender Document

- 12.1 Verbal clarification and information given by Employer or its representatives shall not in any way be binding on Employer.

#### 13. Local Conditions

- 13.1 The site is being offered to the bidders for Operation & Maintenance of Project at "**Port Blair, UT of Andaman & Nicobar Island**" basis assuming that bidders have acquainted themselves appropriately with all the local site conditions & no plea will be entertained before/after the award of contract on this ground. It will be imperative on each bidder to acquaint himself of all local site conditions and factors which may have any effect on the execution of work covered under the Tender Document. In their own interest, the bidder(s) is/ are requested to familiarize themselves with the Indian Income Tax Act 1961, Indian Companies Act 1956, and Indian Customs Act 1962, GST Act and other related Acts and Laws and Regulations of India with their latest amendments, as applicable. Employer shall not entertain any requests for clarifications from the bidder regarding such local conditions.
- 13.2 It must be understood and agreed that such factors have properly been investigated and considered while submitting the Tender. Any claim for financial or Forex or any other adjustments to Value of Contract, on lack of clarity of such factors shall not be entertained.

#### 14. Extension of O&M Time Period

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- 14.1 The time period for O&M Project as specified in the SCC is firm & final binding till the final completion of the Operation & Maintenance Period (i.e. 05 (Five) Years from Award). The Time(s) for Completion specified in the SCC shall be extended if the Contractor is impeded in the Performance of any of its obligations under the Contract due to delay in fulfilment of obligations by the Owner or by the reason of any of occurrence of Force Majeure as provided in the Tender for Force Majeure.
- 14.2 The Contractor shall at all times use its reasonable efforts to minimize any delay in the Performance of its obligations under the Contract.

#### **[D] GENERAL OBLIGATIONS**

##### **15.1 Priority of Contract Documents**

Several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer-in-Charge/Project Manager who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:

- Contract Agreement and the appendices, along with the amendments, if any thereto
- Notification of award (NoA)/Letter of Intent (LOI) /Work Order (WO)/Letter of Award (LOA)/Notice to proceed (NTP)
- Special Conditions of Contract
- General Conditions of Contract
- BDS & ITB
- Special Technical Conditions on Technical Specifications
- Technical Specifications and Drawings
- Price Schedules submitted by the Contractor
- Other completed Bidding forms submitted with the Bid
- Any other documents forming part of the Employer's Requirements

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed above. For eg. Contract agreement have precedence over NOA.

##### **15.2 Headings and Marginal Notes**

All headings and marginal notes to the clauses of these General Conditions of Contract or to the Specifications or to any other Tender Document are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and they shall never be deemed to be part thereof or be used in the interpretation or construction thereof the Contract.

##### **15.3 Singular and Plural**

In Contract Documents unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the context so requires.

##### **15.4 Interpretation**

Words implying 'Persons' shall include relevant Corporate Companies/ Registered Associations/ Body of Individuals/ Firm of Partnership' as the case may be.

## 16 Special Conditions of Contract (SCC)

- 16.1 Special Conditions of Contract shall be read in conjunction with the General Conditions of Contract, Specification of Work, Drawings and any other documents forming part of this Contract wherever the context so requires.
- 16.2 Notwithstanding the sub-division of the documents into these separate sections and volumes every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the Contract so far as it may be practicable to do so.
- 16.3 Where any portion of the General Condition of Contract is repugnant to or at variance with any provisions of the Special Conditions of Contract, unless a different intention appears the provisions of the Special Conditions of Contract shall be deemed to over-ride the provisions of the General Conditions of Contract and shall to the extent of such repugnancy, or variations, prevail.
- 16.4 Wherever it is mentioned in the specifications that the Contractor shall perform certain Work or provide certain plant & equipment full/part, it is understood that the Contractor shall do so at his cost and the Value of Contract shall be deemed to have included cost of such performance and provisions, so mentioned.
- 16.5 The materials, design and workmanship shall satisfy the relevant Indian Standards, the Job Specifications contained herein and Codes referred to. Where the job specification stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied.

## 17 Contractor to obtain his own Information

- 17.1 The Contractor in fixing his cost shall for all purpose whatsoever reason may be, deemed to have himself independently obtained all necessary information for the purpose of preparing his tender and his tender as accepted shall be deemed to have taken into account all contingencies as may arise due to such information or lack of same. The correctness of the details, given in the Tender Document to help the Contractor to make up the tender is not guaranteed. The Contractor shall be deemed to have examined the Contract Documents, to have generally obtained his own information in all matters whatsoever that might affect the carrying out of the works at the scheduled rates and to have satisfied himself to the sufficiency of his offer.

Any error in description of quantity or omission therefrom shall not vitiate the Contract or release the Contractor from executing the work comprised in the Contract according to Drawings and Specifications at the scheduled rates. He is deemed to have known the scope, nature and magnitude of the Works and the requirements of materials and labour involved etc., and as to what all works he has to complete in accordance with the Contract documents whatever be the defects, omissions or errors that may be found in the Documents. The Contractor shall be deemed to have visited surroundings, to have satisfied himself to the nature of all existing structures, if any, and also as to the nature and the conditions of the Railways, Roads, Bridges and Culverts, means of transport and communication, whether by land, water or air, and as to possible interruptions thereto and the access and egress from the site, to have made enquiries, examined and satisfied himself as to the sites for obtaining sand, stones, bricks and other materials, the sites for disposal of surplus materials, the available accommodation as to whatever required, depots and such other buildings as may be necessary for executing and completing the works, to have made



local independent enquiries as to the sub-soil, subsoil water and variations thereof, storms, prevailing winds, climatic conditions and all other similar matters effecting these works.

He is deemed to have acquainted himself as to his liability of payment of Government Taxes, duties and other charges, levies etc. Any neglect or omission or failure on the part of the Contractor in obtaining necessary and reliable information upon the foregoing or any other matters affecting the Contract shall not relieve him from any risks or liabilities or the entire responsibility from completion of the works at the scheduled rates and times in strict accordance with the Contract. It is, therefore, expected that should the Contractor have any doubt as to the meaning of any portion of the tender Document he shall set forth the particulars thereof in writing to Employer before bid submission.

The Employer may provide such clarification as may be necessary in writing to Contract, such clarifications as provided by Employer shall form part of tender Documents. No verbal agreement or inference from conversation with any effect or employee of the Employer either before, during or after the execution of the Contract Agreement shall in any way affect or modify and of the terms or obligations herein contained. Any change in layout due to site conditions or technological requirement shall be binding on the Contractor and no extra claim on this account shall be entertained.

## **18 Time of Performance**

### **18.1 Time for Mobilization**

The work covered by this Tender shall be commenced immediately upon issuance of the NOA/ LOI/WO/LOA/NTP (whichever is later) and be completed on or before the dates as mentioned in the Time Schedule of Completion of Work under Section - V, Special Conditions of Contract (SCC). The Contractor should bear in mind that time is the essence of this contract agreement. Request for revision of construction time after tenders are submitted will not receive any consideration. The mobilization period is included within the overall Completion Schedule, not over and above the completion time to any additional work or any other reasons.

**18.2 Plant Availability** - The Contractor shall Operate & Maintain the complete facilities of Project for the period as defined under the tender document and The O&M Contractor shall guarantee to the Owner, minimum Plant Availability of 99%, where Plant Availability refers to the state of Plant injecting power into the grid (subject to grid availability). (unless otherwise agreed / approved by the owner for partial injection due to reasons such as repair of roof etc.)

It is Contractor's responsibility to coordinate with state/central agencies in order to get any permission whatsoever, required for successful operation & maintenance of Plant till its desired life. Other responsibility are as mentioned in Scope of Work under the tender document.

## **19. Force Majeure**

**19.1** A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

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- Act of God, including, but not limited to lightning, fire not caused by Contractors' negligence and explosion (to the extent originating from a source external to the site), earthquake (above 7.0 magnitude on Richter Scale), volcanic eruption, landslide, unprecedented flood, cyclone, typhoon or tornado;
- Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, quarantine;
- Radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above.

## 19.2 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- Delay in the performance of any Contractor, sub-Contractor or their agents;
- Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- Strikes at the facilities;
- Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- Non-performance caused by, or connected with, the Affected Party's:
  - o Negligent or intentional acts, errors or omissions;
  - o Failure to comply with an Indian Law; or
  - o Breach of, or default under this Contract Agreement.
- Normal rainy seasons and monsoon
- Any Transport strikes not directly affecting the delivery of goods from manufacturer to site

19.3 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 the period which the Force Majeure clause last.

19.4 Upon occurrence of such causes, the party alleging that it has been rendered unable as aforesaid, thereby, shall notify the other party in writing by registered notice within 48 (forty eight) hours of the alleged beginning thereof giving full particulars and satisfactory evidence in support of its claim. Further, within 7 (seven) days, the Contractor will furnish a detailed Contingency Plan to overcome the effects of the incident and bring the project on its schedule after cessation of the effect of Force Majeure.

19.5 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

19.6 Time for Performance of the relative obligation suspended by the force majeure shall stand extended by the period for which such Force Majeure clause lasts.

19.7 If works are suspended by Force Majeure conditions lasting for more than two months, the Employer/Owner shall have the option of cancelling this Contract in whole or part thereof, at its discretion.

19.8 The Contractor will not be entitled to claim any compensation for Force Majeure conditions and shall take appropriate steps to insure its men and materials utilized by it under the Contract.

## 20. Liquidated Damages (LD)

20.1 (i) Liquidated Damages in case the Contractor fails to achieve guaranteed CUF shall be as below:

Loss in generation (kWh) / year \* 1 Rs/kWh

Loss in generation will be calculated as follows:

[Guaranteed CUF (annual average CUF of 13%) - Actual CUF]

(ii) The maximum LD to be levied shall be 15% of the total billed value/annum of the O&M contractor towards O&M charges.

20.2 In case the Project fails to generate any power continuously for 1 month any time during the O&M period, apart from the force majeure and grid outages as certified by competent authority from ED-A&N, it shall be considered as "an event of default". In the case of default the entire Contract Performance Security will be forfeited.

20.3 For the purpose of Clause 20 above, the PM activities shall be inclusive of, but not limited to, the PM activities mentioned in Scope of Work under Section VII of Tender document

## 21. Rights of the Owner to forfeit Contract Performance Security

21.1 Whenever any claim against the Contractor for the payment of a sum of money arises out of or under the Contract, the Contractor shall pay to the Owner on demand any balance remaining due to the Owner & Owner shall be entitled to recover such sum by appropriating in part or whole from the Contract Performance Security of the Contractor. In the event of the security being insufficient or if no security has been taken from the Contractor, then the balance or the total sum recoverable, as the case may be shall be deducted from any sum then due or which at any time thereafter may become due to the Contractor.

## 22. Failure by the Contractor to comply with the provisions of the Contract

22.1 If the Contractor refuses or fails to execute the Work or any separate part thereof with such diligence as will ensure its completion within the time specified in the Contract/O&M Contract or extension thereof or fails to perform any of his obligation under the Contract/O&M Contract or in any manner commits a breach of any of the provisions of the Contract/O&M Contract it shall be open to the Employer/ Owner at its option by written notice to the Contractor:

a) To determine the event in which the Contract/O&M Contract shall stand terminated and shall cease to be in force and effect on and from the date appointed by the Owner on that behalf, whereupon the Contractor shall stop forthwith any of the Contractor's work then in progress, except such work as the Owner may, in writing, require to be done to safeguard any property or work, or installations from damage, and the Owner, for its part, may take over the work remaining unfinished by the Contractor and complete the same through a

fresh Contractor or by other means, at the risk and cost of the Contractor, and any of his sureties if any, shall be liable to the Owner for any excess cost occasioned by such work having to be so taken over and completed by the Owner over and above the cost as specified in the schedule of rates.

**b)** The Contractor and any of his sureties are liable to the Owner for any excess cost over and above the cost at the rates specified in the Schedule of Rates, occasioned by such works having been taken over and completed by the Owner.

22.2 In such events of Clause 22.1(a) or (b) above.

**a)** The whole or part of the Contract Performance Security furnished by the Contractor is liable to be forfeited without prejudice to the right of the Owner to recover from the Contractor the excess cost referred to in the Clause aforesaid, the Owner shall also have the right of taking possession and utilizing in completing the works or any part thereof, such as materials, equipment and plants available at work site belonging to the Contractor as may be necessary and the Contractor shall not be entitled for any compensation for use or damage to such materials, equipment and plant.

**b)** The amount that may have become due to the Contractor on account of work already executed by him shall not be payable to him until after the expiry of 06 (Six) calendar months (Without Interest) reckoned from the date of termination of Contract or from the taking over of the Work or part thereof by the Owner as the case may be, during which period the responsibility for faulty materials or workmanship in respect of such work shall, under the Contract, rest exclusively with the Contractor. This amount shall be subject to deduction of any amounts due from the Contract to the Owner under the terms of the Contract authorized or required to be reserved or retained by the Owner.

22.3 Before determining the Contract as per Clause 22.1(a) or (b) provided in the judgement of the Owner, the default or defaults committed by the Contractor is/ are curable and can be cured by the Contractor if an opportunity given to him, then the Owner may issue Notice in writing calling the Contractor to cure the default within such time specified in the Notice.

22.4 The Owner shall also have the right to proceed or take action as per 22.1(a) or (b) above, in the event that the Contractor becomes bankrupt, insolvent, compounds with his creditors, assigns the Contract in favor of his creditors or any other person or persons, or being a company or a corporation goes into voluntary liquidation, provided that in the said events it shall not be necessary for the Owner to give any prior notice to the Contractor.

## **23. Contractor remains liable to pay compensation if**

23.1 In any case in which any of the powers conferred upon the Owner by Clause 22.0 thereof shall have become action not taken under clause 22 exercisable and the same had not been exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercisable in the event of any further case of default by the Contractor for which by any clause or clauses hereof he is declared liable to pay compensation amounting to the whole of his Contract Performance Security, and the liability of the Contractor for past and future compensation shall remain unaffected.

## **24. Contract Performance Security**

Against the Operation & maintenance contract of the project, within 30 (Thirty) days from the issuance of the Notification of Award/ Letter of Intent/Letter of Award (LOA) from Owner, the successful bidder shall furnish an unconditional and irrevocable Contract Performance Security in accordance with Special Conditions of the Contract. The Contract Performance

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Security shall be in the form of either Banker's Cheque or Demand Draft or Bank Guarantee and shall be in the currency of the Contract and will be issued in the name of the Owner as specified in the BDS/SCC. The Contract Performance Security shall be for an amount equal to specified in Special Conditions of Contract (SCC) towards faithful performance of the contractual obligations, performance of equipment and shall cover entire Contract. The validity of Contract Performance Security shall be in conjunction with the provisions mentioned under Section - V, Special Conditions of Contract (SCC).

Bank Guarantee towards Contract Performance Security shall be from any scheduled bank as specified in the List of Banks enclosed at Form F-22, Section - VI, Sample Forms and Formats of Tender documents or a branch of an International Bank situated in India and registered with Reserve Bank of India as scheduled foreign bank in case of Indian bidder. However, in case of Bank Guarantees from Banks other than the Nationalized Indian banks, the Bank must be a commercial Bank having net worth in excess of INR 500 Crores and a declaration to this effect should be made by such commercial bank either in the Bank Guarantee itself or separately on its letterhead. This Bank Guarantee shall be valid for a period in conjunction with the provisions mentioned under Section - V, Special Conditions of Contract (SCC).

The Contract Performance Security may also be submitted in the form of 'crossed payee accounts only' Demand Draft/ Banker's Cheque in favor of as mentioned in the BDS/SCC.

In case of default or failure of the successful bidder to comply with the requirements of this article shall constitute sufficient grounds for the cancellation of the award and forfeiture of the EMD, if applicable.

***In case of default or failure of the Contractor to comply with the requirements of any of the Obligations covered under this Tender Document and/ or Contract Agreement shall constitute sufficient grounds for forfeiture of the Contract Performance Security.***

The Contract Performance Security has to cover the entire contract value including extra works/ services also. As long as the Contract Performance Security submitted at the time of award takes care of the extra works/ services executed and total executed value are within the awarded contract price, there is no need for additional Contract Performance Security. As soon as the total executed value exceeds the ceiling of awarded contract price by more than 0.5%, the Contractor shall furnish additional Contract Performance Security on proportionate basis of the percentage as defined in the Special Conditions of Contract (SCC) for the additional amount in excess to the original contract value.

Further, any delay beyond 30 (Thirty) days shall attract interest @ 1.25% per month on the total Contract Performance Security amount, calculated on pro-rata basis accordingly. Owner at its sole discretion may cancel the NOA/ LOI/LOA & forfeit 100% of EMD if applicable, in case Contract Performance Security is not submitted within 45 (Forty-five) days from issuance of NOA/ LOI/LOA. However, total project completion period shall remain same. Part Security shall not be accepted. The Zero Date shall be counted from the date of LOA or NTP whichever is later.

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If the Contractor/ Sub-Contractor or their employees or the Contractor's agents and representatives shall damage, break, deface or destroy any property belonging to the Employer or others during the execution of the Contract, the same shall be made good by the Contractor at his own expenses and in default thereof, the Engineer-in-Charge may cause the same to be made good by other agencies and recover expenses from the Contractor (for which the certificate of the Engineer-in-Charge shall be final).

All compensation or other sums of money payable by the Contractor to the Owner under terms of this Contract may be deducted from or paid by the encashment of a sufficient part of his Contract Performance Security or from any sums which may be due or may become due to the Contractor by the Owner of any account whatsoever and in the event of his Contract Performance Security being reduced by reasons of any such deductions or sale of aforesaid, the Contractor shall within 10 (Ten) days thereafter make good in cash, bank drafts as aforesaid any sum or sums which may have been deducted from or realized by encashment of his Contract Performance Security, or any part thereof. No interest shall be payable by the Owner for sum deposited as Contract Performance Security.

## **25. Termination of contract**

### **25.1 Termination of Contract in Case of Liquidation/ Bankruptcy etc.**

If the Contractor dissolves his company or becomes bankrupt or insolvent or cause or suffer any receiver to be appointed of his business of any assets thereof compounded with his Creditors, or being a corporation commence to be wound up, not being a member's voluntary winding up for the purpose of amalgamation or reconstruction, or carry on its business under a Receiver for the benefits of its Creditors, Owner shall be at liberty :- To terminate the contract forthwith upon coming to know of the happening of any such event as aforesaid by notice in writing to the Contractor or to give the Receiver or liquidator or other person, the option of carrying out the contract subject to his providing a guarantee up to an amount to be agreed upon by Owner for due and faithful performance of the contract.

### **25.2 Termination of Contract for Non-Performance and Subsequently Putting the Contractor on Banning List:**

In case of termination of Contract herein set forth (under clause 22.0) except under conditions of Force Majeure and termination after expiry of contract, the Contractor shall be put under Banning List [i.e. neither any enquiry will be issued to the party by Employer/ Owner against any type of tender nor their offer will be considered by Employer/ Owner against any ongoing tender(s) where contract between Employer/ Owner and that particular Contractor (as a bidder) has not been finalized] for a period as decided by the Employer/ Owner to such Contractor.

### **25.3 Termination for Convenience**

25.3.1 The Owner may, by written notice sent to the Contractor, terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Owner's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

25.3.2 The Owner shall only pay for the following:

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- a) Goods that are complete and ready for shipment (based on monthly progress report from the Contractor) within thirty (30) days after the date of notice of termination, shall be purchased by the Owner at the Contract terms and prices.
- b) Goods that are in-transit or delivered at site as on the date of delivery of termination notice to Contractor
- c) Services that have been rendered at site until the date of delivery of termination notice to Contractor
- d) It is clarified that payment under point no. a) and b) shall be made only after receipt of goods at site.

## **26. Members of the Employer/ Owner not individually Liable**

- 26.1 No Director, or official or employee of the Employer/ Owner shall in any way be personally bound or liable for the acts or obligations under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

## **27. Employer/Owner not bound by Personal Representations**

- 27.1 The Contractor shall not be entitled to any increase on the price or any other right or claim whatsoever by reason of any representation, explanation statement or alleged representation, promise or guarantees given or alleged to have been given to him by any person.

## **28. Contractor's office & Vehicle requirement for Mobility at site**

- 28.1 The Contractor shall provide and maintain an office near the site for the accommodation of his agent and staff (With meeting room) and such office shall be open at all reasonable hours to receive instructions, notice or other communications. The contractor shall make provisions and arrangements at site locations for temporary office (Portacabin) including all basic amenities having electricity, furniture, Air Conditioning, Sanitation, toilet facilities, etc. at his own cost on behalf & purpose of the Employer and his staff and shall get the clearance of local authorities for setting up/construction of such facilities. Bidders are required to consider all such temporary office construction cost into his account, while bidding. These facilities shall be provided till the final handing over of the project to the Owner. The contractor shall ensure that the area is kept clean and sanitary conditions are maintained as laid down by the local authorities controlling the area.

Further contractor shall also provide & ensure availability of required Vehicle (Preferably SUV Segment Vehicles requiring Off Roding) with driver and fuel/Maintenance/Consumables etc for the purpose of Mobility in and around the site for official purposes for the Employer & its staff. The vehicle mas mentioned is to be provided during O&M period and inspection by SECI as per requirement, failing which SECI shall have full right for alternate arrangement at the risk & cost of the contractor

## **29. Contractor's Subordinate Staff and their Conduct**

- 29.1 The Contractor, on or after award of the Work shall name and depute a qualified Engineer having sufficient experience in carrying out work of similar nature, to whom the equipment, materials, if any, shall be issued and instructions for works given. The Contractor shall also provide sufficient and qualified staff to superintend the execution of the Work, competent sub-agents, foremen and leading hands including those specially qualified by previous

experience to supervise the types of works contained in the Contract in such manner as will ensure work of the best quality, expeditious working. Whenever in the opinion of the Engineer-in-Charge/Project Manager additional properly qualified supervisory staff is considered necessary, they shall be employed by the Contractor without additional charge on accounts thereof. The Contractor shall ensure that Sub-Contractors, if any, shall provide competent and efficient supervision, over the work entrusted to them.

- 29.2 If and whenever any of the Contractor's or Sub-Contractor's agents, sub-agents, assistants, foremen, or other employees be guilty of any misconduct or be incompetent or insufficiently qualified or negligent in the performance of their duties, it is undesirable for administrative or any other reason for such person or persons to be employed in the works, the Contractor, shall at once remove such person or persons from employment thereon. Any person or persons so removed from the works shall not again be employed in connection with the Works. Any person so removed from the Work shall be immediately replaced at the expense of the Contractor by a qualified and competent substitute. Should the Contractor be requested to repatriate any person removed from the works he shall do so and shall bear all costs in connection herewith.
- 29.3 The Contractor shall be responsible for the proper behavior of all the staff, foremen, workmen, and others, and shall exercise a proper degree of control over them and in particular and without prejudice to the said generality, the Contractor shall be bound to prohibit and prevent any employees from trespassing or acting in any way detrimental or prejudicial to the interest of the community or of the properties or occupiers of land and properties in the neighborhood and in the event of such employee so trespassing, the Contractor shall be responsible therefore and relieve the Owner of all consequent claims or actions for damages or injury or any other grounds whatsoever. The Contractor shall be liable for any liability to Owner on account of deployment of Contractor's staff etc. or incidental or arising out of the execution of Contract. The Contractor shall be liable for all acts or omissions on the part of his staff, Foremen and Workmen and others in his employment, including misfeasance or negligence of whatever kind in the course of their work or during their employment, which are connected directly or indirectly with the Contract.
- 29.4 If and when required by the Owner and Contractor's personnel entering upon the Owner's premises shall be properly identified by badges or gate passes which must be worn at all times on Owner's premises. Contractor may be required to obtain daily entry passes for his Staff/ Employees to work within operating areas. These being safety requirements, no relaxations on this account shall be given to Contractor.
- 29.5 Contractor shall at all times provide Employer/ SECI access to site and office during construction/ O&M periods and also provide them with any data/ information sought for.

### 30. Sub-letting of Works

- 30.1 Sub-contracting other than for labour contract/engagement of labour, shall be permitted with the information to the Employer. However, sub-contracting for 100% of the contract on back to back basis shall not be permitted. Any part of the Contract nor any share or interest therein shall in any manner or degree be transferred, assigned or sublet by the Contractor directly or indirectly to any person, firm or corporation whatsoever without the consent in writing, of the Employer except as provided for in the succeeding Clause.

i) **Sub-Contracts for Temporary Works etc.**

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The Employer may give written consent to Sub-Contract for the execution of any part of the Work at the site, being entered in to by Contractor provided each individual Sub-contract is informed to the Engineer-in-Charge/Project Manager.

**ii) List of Sub-Contractors to be supplied**

The Contractor shall furnish to the Engineer-in-Charge/Project Manager list of all Sub-Contractors or other persons or firms engaged by the Contractor and working at the Site during the previous month with particulars of the general nature of the Subcontract or works done by them.

**iii) Contractor's Liability not Limited by Sub-Contractors**

Notwithstanding any sub-letting with such approval as aforesaid and notwithstanding that the Engineer-in-Charge/Project Manager shall have received copies of any Subcontracts, the Contractor shall be and shall remain solely responsible for the quality, proper and expeditious execution of the Contract in all respects as if such sub-letting or Subcontracting had not taken place, and as if such work had been done directly by the Contractor. The Contractor shall bear all responsibility for any act or omission on the part of sub-Contractors in regard to work to be performed under the Contract.

**iv) No Remedy for Action Taken under this Clause**

No action taken by the Owner under the clause shall relieve the Contractor of any of his liabilities under the Contract or give rise to any right or compensation, extension of time or otherwise failing which the Owner shall have the right to remove such Sub-Contractor(s) from the site.

**vi) Termination/ Cancellation of Contract**

Owner is nowhere liable for the communication, acts and deeds and performance of the sub-Contractor as engaged by the principal Contractor. Principal Contractor solely is responsible and liable for the entire execution of project and performance of contract.

***Subject to poor performance and prolonged delay of the project on account of inefficient sub-letting of the project work, Owner may take a final decision to terminate the contract of the principal Contractor which will be binding and non-revertible and henceforth no plea in this regard shall be entertained.***

vii) Subject to the provisions of 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 shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner. 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 Owner.

viii) Under no circumstances the sub-Contractor shall claim or shall put any binding to the Owner and at all times the sub-Contractor must be managed by the Contractor. The Owner shall not be responsible for any claims at any time by the Contractor in relation to the sub-Contractor.

ix) 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

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by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

x) 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.

xi) The Contractor shall be solely responsible for ensuring that his sub-Contractors fulfil and comply with the statutory requirements of Labour and other Laws.

### 31. Power of Entry

31.1 If the Contractor shall not commence the Work in the manner previously described in the Contract documents or if he shall at any time in the opinion of the Engineer-in-Charge/Project Manager:

- i) fail to carry out the Work in conformity with the Contract documents, or
- ii) fail to carry out the Work in accordance with the Time Schedule, or
- iii) substantially suspend the Work for a period of minimum 14 (Fourteen) days without authority from the Engineer-in-Charge/Project Manager, or
- iv) fail to supply sufficient labour, materials or things, or
- v) Commit, suffer, or permit any other breach of any of the provisions of the Contract on his part to be performed or observed or persist in any of the above-mentioned breaches of the Contract for 14 (Fourteen) days, after notice in writing shall have been given to the Contractor by the Engineer-in-Charge/Project Manager requiring such breach to be remedied, or
- vi) if the Contractor abandon the Work, or
- vii) If the Contractor during the continuance of the Contract shall become bankrupt, make any arrangement or composition with his creditors or go into liquidation whether compulsory or voluntary not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction

then in any such case, the Owner shall have the power to enter upon site and take possession thereof and of the materials, temporary Work, construction plant, and stock thereon, and to revoke the Contractor's license to use the same, and to complete the Work by his agents, other Contractors or workmen or to sublet the same upon any terms and to such other person, firm or corporation as the Owner in his absolute discretion may think proper to employ and for the purpose aforesaid to use or authorize the use of any materials, temporary work, Construction Plant, and stock as aforesaid, without making payment or allowance to the Contractor for the said materials other than such as may be certified in writing by the Engineer-in-Charge/Project Manager to be reasonable, and without making any payment or allowance to the Contractor for the use of the temporary said works, construction plant and stock or being liable for any loss or damage thereto, and if the Owner shall by reason of his taking possession of the Work or of the Work being completed by other Contractor (due account being taken of any such extra work or works which may or be omitted) then the amount of such excess shall be deducted from any money which may be due for work done by the Contractor under the Contract and not paid for.

Any deficiency shall forthwith be made good and paid to the Owner by the Contractor and the Owner shall have power to sell in such manner and for such price as he may think fit all or any of the construction plant, materials etc. constructed by or belonging to Contractor and to recoup and retain the said deficiency or any part thereof out of proceeds of the sale.

### 32. Contractor's responsibility

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