Contract Agreement (CA)

for

for setting up of Grid Connected Rooftop Solar PV Power Project

of

…………. kW

at

……………….

Between

…………………………….. (name of Client Organization)

AND

……………………… (Name of Successful Bidder or its SPV)

__.__.20__

This Contract Agreement (the "**Agreement**") is made on the __st day of ____ of 20___ at ______

between

____________________ (CIN- ____________________), a Company incorporated under the Companies Act 2013, having its registered office at _________________ (hereinafter referred to as "**Employer**" or **"Owner"** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the First Part;

and

_________________________________ (CIN-______________________), a Company incorporated under the Companies Act 2013, having its registered office at ______________________________ (Hereinafter referred to as **"Contractor",** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the Second Part;

The Contractor and Employer are individually referred to as 'Party' and collectively referred to as 'Parties'.

WHEREAS:

A. EMPLOYER is developing a _________kW Grid connected Rooftop Power Project (the "**Project**") located at ________________________.

B. SECI had initiated a Competitive Bid Process for Selection of Project Developer for setting up of Grid connected ______ kW Rooftop Solar PV Power Project in CAPEX mode for various Client Organization as per the terms and conditions contained in the Request for Proposal (herein after referred to as 'RfP') vide RfP No. __________________________ dated ____________ including its subsequent amendments and clarifications, if any.

C. __________________________ has been selected in the Competitive Bidding Process for Design & Engineering, Procurement and Supply of equipment and materials, Testing at manufacturers works, multi-level Inspections, Packing and Forwarding, Supply, Receipt, Unloading and storage at site, associated civil works, services, permits, licenses, installation and incidentals, insurance at all stages, erection, testing and commissioning of the Project and performance demonstration with associated equipment and materials along with 5 (five) years of Comprehensive Operation and Maintenance.

D. SECI has issued the Notification of Award (NoA) vide No. _________________________ dated __________ in favour of _______________________ for the above-mentioned work as per the terms and conditions contained in the RfP, including its amendments and clarifications and other bidding documents, as well as the conditions contained in the aforementioned Notification of Award.

E. In terms of the RfP and the bidding documents, the Contractor has furnished the Contract Performance Guarantee in the form of ___________________ for a sum of **Rs. ____** in favour of _____________ as per the format provided as a part of the RfP as per the terms and conditions of the RfP.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

ARTICLE 1: DEFINITIONS

1.1. ***Definitions***

To ensure clarity and consistent interpretation throughout this Agreement, the following definitions apply:

“Acceptance Tests” or “AT”	The series of tests conducted at the Project site to verify that the Project components after installation and commissioning, meets the agreed-upon technical specifications and performance guarantees. This typically includes Site Acceptance Tests (SAT) and Performance Acceptance Tests (PAT).
“Approved”	shall mean approved in writing including subsequent written confirmation of previous verbal approval
"Approval"	shall mean approval in writing including as aforesaid
“Appointing Authority”	for the purpose of arbitration shall be the person so designated by the Employer.
“Arbitrator”	means the person or persons appointed under the contract by the Employer and the Contractor to decide on or to settle any dispute, differences or claims between the Employer and the Contractor and incudes the Arbitral Tribunal.
“Commissioning”	Shall be as defined in Appendix C of this Agreement.
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Contract Year”	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which commissioning of the first part capacity of the Contracted Capacity would occur, the Contract Year shall commence from the date of commissioning of first capacity and end on the immediately succeeding March 31, and thereafter

	each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"RfP"	means the Request for Proposals for Selection of Solar Power Developer for setting up of Grid Connected Rooftop Solar PV Project along with Operation and Maintenance issued vide RfP ____________________________ dated ______________ including its amendments and clarifications.
"Downtime"	Any period during which the Project, or a critical component preventing its full functionality, is unable to deliver its rated power or energy due to a fault, malfunction, or required corrective maintenance not caused by the Employer or a Force Majeure event. Downtime begins from the time a fault is reported to the Contractor and ends when the Project is restored to full operational capability.
"Effective Date"	shall mean the date of signing of this Contract Agreement from which the Time for commissioning shall be determined or any other specific date as provided in the Notice to Proceed (NTP)/Agreement.
"Goods & Service Tax (GST)"	means taxes or cess levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax (Compensation to States) Act and various State/Union Territory Goods and Services Tax Laws and applicable cesses, if any under the laws in force (hereinafter referred to as relevant GST Laws) w.e.f. 01.07.2017, which shall be fully complied with by the Parties.
"Grid Code Regulations" or "Grid Code"	shall mean the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time.
"MWh"	shall mean Mega-Watt Hour.
"Performance Guarantees"	The minimum operational specifications and limits that the Project is contractually obligated to meet throughout the operation and maintenance period.
"Project Manager" or	shall mean the person appointed by the Employer (or the Employer's authorized representative) who shall be responsible for supervising the

“Engineer-In-Charge” or “EIC”	execution of the Works, administering the Contract, and acting on behalf of the Employer in all matters related to the Project. The Employer shall appoint and notify the Contractor the name of Project Manager or EIC.

Other Definitions as brought out in the RfP shall be applicable on this Agreement too.

ARTICLE 2: CONTRACT DOCUMENTS

2.1 The following documents shall constitute the Contract between EMPLOYER and the Contractor, and each shall be read and construed as an integral part of the Contract:

Part-A

(a) This Contract Agreement and the Appendices thereto, with an Effective Date of ____________.

Part-B

(a) Notification of Award (NOA) No. ___________________________ dated _______ and the Appendices thereto.

Part-C

(a) Bidding documents for the Project issued vide RfP No. ________________ dated ________________ read in conjunction with amendments and clarifications issued thereto.

Part-D

(a) Bid submitted by M/s ______________________________under the said RfP.

(Only relevant extracts are attached herewith for easy reference. Should the circumstances warrant, the original Bid along with the enclosures thereof, shall be referred to.)

2.2 Order of Preference

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 as listed in Article 2.1 above.

2.3 Capitalized words and phrases used herein shall have the same meaning ascribed to them in the RfP.

ARTICLE 3: SCOPE OF WORK

3.1 The detailed Scope of Work under this Contract is contained in Appendix-C of this Agreement.

ARTICLE 4: TIME SCHEDULE

4.1 The deadline for completion of entire scope of works under this Contract including Design, Engineering, Procurement and Supply, Construction, Erection, Testing and Commissioning shall be the ________________.

4.2 The Works shall be deemed completed only upon successful issuance of the Operational Acceptance by EMPLOYER, following satisfactory completion of performance testing in accordance with the Contract.

ARTICLE 5 : CONTRACT PRICE

Under this Contract Agreement, EMPLOYER hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of **INR** ___________ (Indian Rupees ____ only) or such other sums as may be determined in accordance with the terms and conditions of the Contract. The detailed break-up of Contract Price is given under **Appendix B "Schedule of Detailed Price Break-up".**

ARTICLE 6: TERMS OF PAYMENT

Payment will be made to the account of the Contractor as per the payment terms mentioned below based on the certification of Engineer-In-Charge. The payments shall be made after the conditions listed for such payment have been met, and the Contractor has submitted an invoice to the Employer specifying the amount due.

6.1 All payment shall be made against invoices raised in line with the approved billing break-up.

6.2 The payment shall be made as per the following terms and conditions:

i. Seventy percent (70%) payments shall be paid on pro-rata basis against supply, receipt and acceptance of Materials at site on submission of documents, Contractor's detailed invoice & packing list identifying contents of each shipment, evidence of dispatch (GR/ LR copy), Manufacturer's/ Contractor's Guarantee certificate of Quality, submission of the certificate by the Executing Agency's authorized representative that the item(s) have been received and MDCC (Material Dispatch Clearance Certificate) issued by Client's authorized representative in original and Material Receipt Note (MRN).

ii. Twenty percent (20%) payments of the total value shall be paid against successful erection, testing and commissioning of materials on pro rata basis on submission of documents, Supplier's detailed invoice & Test reports/certificates and Work Completion Certificate (WCC).

iii. Final Ten percent (10%) payment of total value of Contract shall be paid against the Final Acceptance of the plant Facility after first year of operation of the project pursuant to successful Guarantee Tests and demonstration of performance parameters including submission of all as-built drawings and O&M manual.

6.3 For the Operation and Maintenance part of the Contract, the payment shall be made as detailed below: -

The payment for Operation and Maintenance (O&M) of the entire Project shall be released on a quarterly basis, at the end of each quarter, for a period of five (05) years from the commencement of the O&M period.

i. Year 1: O&M-1
ii. Year 2: O&M-2
iii. Year 3: O&M-3
iv. Year 4: O&M-4
v. Year 5: O&M-5

In case of any default, Non-Performance or breach of contractual conditions of the O&M contract during the O&M period, the penalties/deductions, if applicable will be liable to be deducted from the Quarterly O&M payments first & then from the Contract Performance Guarantee.

The required ESI/PF Challans/any other mandatory compliance will also be provided by the Contractor during any of the Service (Services + O&M) related payments.

6.4 EMPLOYER shall make all endeavor to make payments within 45 days of submission of invoice by the Contractor and acceptance of the same by the Engineer-In-Charge, having following payment milestones as mentioned above.

6.5 The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in **Appendix A (Major Terms & Conditions and Procedures of Payment)** hereto.

ARTICLE 7: COMMUNICATIONS

7.1 The address of the Employer for communication purposes is:

7.2 The address of the Contractor for communication purposes is:

ARTICLE 8: APPENDICES

The Appendices listed in the List of Appendices, as mentioned below, shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

List of Appendices

Appendix A	Major Terms & Conditions and Procedures of Payment
Appendix B	Schedule of Detailed Price Break-up
Appendix C	Annexure-B of the RfP containing Scope of Works, Technical Specifications, General Annexures and Specific Annexures

Notwithstanding the award of Contract under this agreement in the aforesaid manner, the Contractor shall overall, be responsible to ensure the execution of the Contract to achieve successful completion and taking over of the facilities by EMPLOYER as per the requirements stipulated in the Contract. Notwithstanding the break-up of the Contract Price, the contract shall, at all times, be construed as a single source responsibility contract and any breach in any part of any one of the Contract shall be treated as a breach of the Contract in entirety. It is expressly understood and agreed by the Contractor that any default or breach of the contract will be giving EMPLOYER a right to terminate the contract either in full or in part, and/or recover damages there under that contract and shall give EMPLOYER an absolute right to terminate this contract at the Contractor's risk, cost and responsibility and /or recover damages accordingly. However, such breach or default or occurrence shall not automatically relieve the Contractor of any of its responsibility/ obligations under this contract. It is also expressly understood and agreed by the Contractor that the equipment /materials supplied by the Contractor under this 'Contract Agreement' when installed and commissioned by the Contractor shall give satisfactory performance in accordance with the provisions of the Contract.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by for and

on behalf of the EMPLOYER

Signature..

Designation

in the presence of

Witness

1.

2.

Signed by for and

on behalf of the Contractor

Signature..

Designation

in the presence of

Witness

1.

2.

APPENDIX – A

MAJOR TERMS & CONDITIONS

1. Contract Performance Security

1.1. The Contractor has submitted a Contract Performance Guarantee (CPG) (……………………………………..) for an amount of INR ……………………………../- (Indian Rupees ………………………………………………. Only) with a validity up to ………………………….. issued by ……………………………. against this Contract Agreement.

1.2. EMPLOYER has agreed to accept the CPG in the form of an unconditional and irrevocable Bank Guarantee instead of the cash deposit with the clear position intimated to the bidder that the CPG shall be encashable for being appropriated by EMPLOYER in terms of the guarantee as in the case of appropriation of the cash deposit lying with EMPLOYER.

1.3. EMPLOYER at its sole discretion may encash the CPG in the following scenarios:

1.3.1. In case of any 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 constituting sufficient grounds for forfeiture of the CPG. In such cases, the liability on account of GST will be borne by the Contractor.

1.3.2. In case the Contractor is unable to submit Drawing & Test Certificates within the reasonable time.

1.3.3. In case the Contractor doesn't replace/rectify the defective plant and material within a time period of 3 months from the last supply of plant and material.

1.3.4. In case if the percentage of defective plant and material crosses 10% of the total supplied plant and material, irrespective of the replacements / rectification done for the defective plant and material.

1.3.5. All compensation or other sums of money payable by the Contractor to the Employer under terms of this Contract may be deducted from or paid by the encashment of a sufficient part of its CPG or from any sums which may be due or may become due to the Contractor by the Employer of any account whatsoever, and in the event of its CPG 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 its CPG, or any part thereof. No interest shall be payable by the Employer for the sum deposited as Contract Performance Guarantee.

1.4. The Contract Performance Security shall cover the entire Scope of Work as per this Contract, including additional supplies/services provided by the Contractor. If the additional supplies or services result in a price increase of up to (and including) 0.5% of the original Contract Price, and the CPG submitted at the time of signing of this Contract already accounts for this increase, no additional CPG will be required. However, if the increase in the Contract Price exceeds 0.5%, the Contractor shall be required to furnish and additional CPG for an amount proportionate to the increase in the original Contract Price and calculated @7.5% of the increase in the Contract Price.

1.5. If the Contractor/Sub-Contractor or their employees or the Contractor's agents and representatives damage, break, deface or destroy any property belonging to the Owner or others during the execution of the Contract, the same shall be made good by the Contractor at its 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).

1.6. This CPG shall be released to the Contractor, without any interest, not later than 75 (Seventy-Five) days after the successful completion of the entire Operations and Maintenance (O&M) period of 5 (five) years, subject to the satisfactory performance and acceptance of all deliverables pertaining to the O&M period by EMPLOYER.

2. <u>Penalty</u>

2.1. Subject to Force Majeure, if the Contractor fails to achieve Completion/ successful commissioning of the Project in accordance with timelines as mentioned above or any extension thereof, then the Employer shall encash the Contract Performance Guarantee (CPG) as Penalty not amounting to penalty, an amount calculated @ half percent (0.5%) per week of the unexecuted value of the Contract Price (corresponding to the un-commissioned part/capacity), subject to the maximum limit of five percent (7.5%) of Contract Agreement's Price. This shall be without prejudice to the Employer's other remedies under the Contract.

2.2. Once the maximum limit of Penalty (7.5% of the Contract Price) is reached, Employer may consider the termination of CA and/or as an alternative to the Penalty at its option, get the Work executed from a 3rd party at the risk and cost of the Contractor, irrespective of the fact whether the scope of work in the contract signed with the 3rd party is identical to the original scope of work in the CA. In case the Employer chooses the alternative course as mentioned, it will be entitled to recover compensation/damages on account of non-execution of the works from the Contractor irrespective of maximum limit prescribed.

2.3. The Employer shall deduct the amount of such damages through encashment of Contract Performance Guarantee (CPG). The deduction of such damages from CPG shall not relieve the Contractor from its obligation to complete the Supply, or from any other of its obligations and liabilities under the Contract.

2.4. The Employer may, by giving one (01) months' notice to the Contractor, cancel the Contract, without prejudice to the Employer's right under Clauses above or any other provisions contained in the Contract and shall claim damages from the Contractor.

3. <u>Procedure for Action in Case of Corrupt/ Fraudulent/ Collusive/ Coercive Practices</u>

Procedure for action in case Corrupt/ Fraudulent/ Collusive/ Coercive Practices is enclosed below:

3.1. **Definitions:**

i. "Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions in selection process or in contract execution. It also includes any omission for misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

ii. "Fraudulent Practice" means and include any act or omission committed by an agency or with his connivance or by his agent by misrepresenting/ submitting false documents and/ or false information or concealment of facts or to deceive in order to influence a selection process or during execution of contract/ order.

iii. "Collusive Practice amongst bidders (prior to or after bid submission)" means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

iv. "Coercive practice" means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improperly actions of an agency, obstruction of any investigation or auditing of a procurement process.

v. "Vendor/ Contractor/ Supplier/ Consultant/ Bidder" is herein after referred as "Agency"

vi. "Competent Authority" shall mean the authority, who is competent to take final decision for Suspension of business dealing with an Agency/ (ies) and Banning of business dealings with Agency/ (ies) and shall be the "Committee" concerned.

vii. "Allied Agency" shall mean all the concerns within the sphere of effective influence of banned/ suspended agencies. In determining this, the following factors may be taken into consideration:

   a. Whether the management is common.
   b. Majority interest in the management is held by the partners or directors of banned/ suspended firm.
   c. Substantial or majority shares are owned by banned/ suspended agency and by virtue of this it has a controlling voice.

viii. "Investigating Agency" shall mean any department or unit of Employer investigating into the conduct of Agency/ party and shall include the Vigilance Department of the Employer, Central Bureau of Investigation, State Police or any other agency set up by the Central or state government having power to investigate.

3.2. **Actions against bidder(s) indulging in corrupt /fraudulent/ collusive/ coercive practice:**

i. Irregularities noticed during the evaluation of the bids: If it is observed during bidding process/ bids evaluation stage that a bidder has indulged in corrupt/ fraudulent/ collusive/ coercive practice, the bid of such Bidder (s) shall be rejected and its Earnest Money Deposit (EMD, if applicable) shall be forfeited. Further, such agency shall be banned for future business with Employer for a period specified in clause 4.3 below from the date of issue of banning order.

ii. Irregularities noticed after award of contract:

a. During execution of contract: If an agency, is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, during execution of contract, the agency shall be banned for future business with Employer for a period specified in para 4.3 below from the date of issue of banning order.

The concerned order(s)/ contract(s) where corrupt/ fraudulent/ collusive practices are observed, shall be suspended with immediate effect by Engineer-in-Charge (EIC)/ Employer whereby the supply/ work/ service and payment etc. will be suspended. The action shall be initiated for putting the agency on banning list.

After conclusion of process, the order(s)/ contract(s) where it is concluded that such irregularities have been committed shall be terminated and Contract Performance Security submitted by agency against such order(s)/ contract(s) shall also be forfeited. The amount that may have become due to the Contractor on account of work already executed by him shall be payable to the Contractor and this amount shall be subject to adjustment against any amounts due from the Contractor under the terms of the contract.

No risk and cost provision will be enforced in such cases.

b. After execution of contract and during Defect liability period (DLP)/ Warranty/ Guarantee Period: If an agency is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, after execution of contract and during DLP/ Warranty/ Guarantee Period, the agency shall be banned for future business with Employer for a period specified in para 3.3 below from the date of issue of banning order.

Further, the Contract Performance Security submitted by agency against such order(s)/ contract(s) shall be forfeited.

c. After expiry of Defect liability period (DLP)/ Warranty/ Guarantee Period

If an agency is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, after expiry of Defect liability period (DLP)/ Warranty/ Guarantee Period, the agency shall be banned for future business with Employer for a period specified in para 4.3 below from the date of issue of banning order.

Nothing mentioned hereinabove restricts the right of the Employer to initiate action under the law of the land for the time being in force.

3.3. **Period of Banning:**

Banning period shall be reckoned from the date of issuance of banning order and shall be for a period as may be decided by the Employer based on specific case basis. However, minimum period of ban shall be 06 (Six) months from the date of issuance of banning order.

In exceptional cases where the act of vendor/ Contractor is a threat to the National Security, the banning shall be for indefinite period.

3.4. **Effect of banning on other ongoing contracts/tenders**

i. If an agency is banned, such agency shall not be considered in ongoing tenders/ future tenders.

ii. However, if such an agency is already executing other order(s)/ contract(s) where no corrupt/ fraudulent/ collusive/ coercive practice is found, the agency shall be allowed to continue till its completion without any further increase in scope except those incidental to original scope mentioned in the contract.

iii. If an agency is banned during tendering and irregularity is found in the case under process:

   a. after issue of the enquiry/ bid/ tender but before opening of Technical bid, the bid submitted by the agency shall be ignored.
   b. after opening Technical bid but before opening the Price bid, the Price bid of the agency shall not be opened and EMD, if applicable submitted by the agency shall be returned to the agency.
   c. after opening of price bid, EMD, if applicable made by the agency shall be returned; the offer/Bid of the agency shall be ignored & will not be further evaluated. If the agency is put on banning list for fraud/ mis-appropriation of facts committed in the same tender/ other tender.

4. <u>Non-Applicability of Arbitration Clause in Case of Banning of Vendors/ Suppliers/ Contractors/ Bidders/ Consultants Indulged In Fraudulent/ Coercive Practices</u>

Notwithstanding anything contained contrary in RfP and other "Contract Documents", in case it is found that the Contractor/Bidder indulged in fraudulent/ coercive practices at the time of bidding, during execution of the contract etc., and/ or on other grounds as mentioned in Employer's "Procedure for action in case Corrupt/ Fraudulent/ Collusive/ Coercive Practices", the Contractor/ bidder shall be banned (in terms of aforesaid procedure) from the date of issuance of such order by Employer, to such Contractor/ Bidder.

The Contractor/Bidder understands and agrees that in such cases where Contractor/ Bidder has been banned (in terms of aforesaid procedure) from the date of issuance of such order by Employer, such decision of Employer shall be final and binding on such Contractor/ Bidder and the 'Arbitration clause' in the RfP and other "Contract Documents" shall not be applicable for any consequential issue/ dispute arising in the matter.

5. Representatives and Field Management & Controlling

5.1. 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 tenure 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.

5.2. Contractor's Representative & Construction Manager:

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 RfP shall apply thereto.

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.

All notices, instructions, information and all other communications given by the 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.

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 RfP Clauses.

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.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with the RfP Clause shall be deemed to be an act or exercise by the Contractor's Representative.

Notwithstanding anything stated in 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.

From the commencement of installation of the Facilities at the Site until Acceptance, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper Performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

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.

If any representative or person employed by the Contractor is removed in accordance with 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.

5.3. **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 occurrence of the hindrance and get it duly certified by the EIC or its authorized representative.

6. <u>Force Majeure</u>

6.1. 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 Contract, 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:

i. 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, volcanic eruption, landslide, unprecedented flood, cyclone, typhoon, tornado, pandemic and quarantine. {if and only if it is declared / notified by the competent state / central authority / agency (as applicable)},
ii. 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 {if and only if it is declared / notified by the competent state / central authority / agency (as applicable)}; or
iii. Radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.

6.2. **Force Majeure Exclusions**

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

i. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, or consumables for the Project.
ii. Delay in the performance of any Contractor, sub-Contractor, or their agents.
iii. Non-performance resulting from normal wear and tear typically experienced in project materials and equipment.
iv. Strikes at the facilities of the Contractor/ Affected Party including any transport strikes not directly affecting the delivery of goods from manufacturer/Contractor to Project site.
v. Insufficiency of finances or funds or the agreement becoming onerous to perform including any commercial hardships faced; and
vi. Non-performance caused by, or connected with, the Affected Party's:
    a) Negligent or intentional acts, errors, or omissions.
    b) Failure to comply with an Indian Law; or
    c) Breach of, or default under this Contract Agreement.
    d) Normal rainy seasons and monsoon.

6.3. Upon occurrence of above mentioned events, the party alleging that it has been rendered unable as aforesaid, thereby, shall notify the other party in writing by registered notice within 7 (Seven) Days of the alleged beginning thereof giving full particulars and satisfactory evidence in support of its claim. Further, within 14 (Fourteen) 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.

6.4. 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 Contract, as soon as practicable after becoming aware of each of these cessations.

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

6.6. 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 lasts.

6.7. 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.

6.8. If supply is suspended by Force Majeure conditions lasting for more than two months, the Employer shall have the option of cancelling this Contract in whole or part thereof, at its discretion.

6.9. 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.

7. <u>Termination of Contract</u>

7.1. **Termination for Employer's Convenience:**

I. The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination. Upon receipt of the notice of termination, the Contractor shall either immediately or upon the date specified in the notice of termination:

   i. cease all further works, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the works already executed, or any work required to leave the Project site in a clean and safe condition.

   ii. Remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Sub- Contractors' personnel from the Site, remove any wreckage, rubbish and debris of any kind from the Project site, and leave the whole of the Project site in a clean and safe condition, and

iii. Terminate all subcontracts, except those to be assigned to the Employer pursuant to clause 7.1.I.iv.c below

iv. Subject to the payment specified in clause 7.1.II:

a. Deliver to the Employer the parts of the works executed by the Contractor up to the date of termination.

b. To the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the works and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub- Contractor; and

c. Deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Sub-Contractor as at the date of termination in connection with the works.

I. In the event of termination of the Contract, the Employer shall pay to the Contractor the following amounts:

i. The Contract Price, properly attributable to the supply executed by the Contractor till the date of termination.

ii. The costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Project site and in the repatriation of the Contractor's and its Sub-Contractors' personnel

iii. Any amounts to be paid by the Contractor to its Sub-Contractors in connection with the termination of any subcontracts, including any cancellation charges

iv. Costs incurred by the Contractor in protecting the works and leaving the Project site in a clean and safe condition.

7.2. **Termination for Contractor's Default:**

i. If the Contractor,

a. has abandoned or repudiated the Contract.

b. has without valid reason failed to commence supply/work promptly or has suspended the progress of Contract Performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed.

c. persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.

d. refuses or is unable to provide sufficient materials, services or labor to execute and complete the Contract in the manner specified in the Schedule at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Contract by the Time for Completion (or as extended).

Then, the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor.

ii. Upon receipt of the notice of termination, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

a. cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the facilities already executed, or any work required to leave the Site in a clean and safe condition.

b. terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below

c. deliver to the Employer the parts of the works executed by the Contractor up to the date of termination

d. to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the works and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

e. deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Sub- Contractors as of the date of termination in connection with the works.

iii. Subject to clause 7.2.iv, the Contractor shall be entitled to be paid the Contract Price attributable to the works executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of Clause 7.2.ii. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

iv. If the Employer completes the works, the cost of completing the work by the Employer shall be determined. If the sum that the Contractor is entitled to be paid, pursuant to Clause 7.2.iii, plus the reasonable costs incurred by the Employer in completing the works, exceeds the Contract Price, the Contractor shall be liable for such excess. If such excess is greater than the sums due the Contractor under Clause 7.2.iii, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under Clause 7.2.iii, the Employer shall pay the balance to the Contractor. The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

8. Change in Laws and Regulations

8.1. The term 'Change in Law' shall refer to the occurrence of any of the following events pertaining to this supply only after the date seven (7) days prior to the date of Bid submission, including-

i. The enactment of any new law; or
ii. An amendment, modification or repeal of an existing law; or
iii. Any change in the rates of any taxes including any duties and cess or introduction of any new tax made applicable for setting up the project.

But does not include

i. Any change in taxes on corporate income or
ii. Any change in any withholding tax on income or dividends distributed to the shareholders of the Contractor, or
iii. Any change on account of regulatory measures by the Appropriate Commission.

8.2. The term "law" in this Article includes any Act, Ordinance, order, bye-law, rule, regulation, and notification, for the time being in force, in the territory of India.

8.3. If, after the date seven (7) days prior to the date of bid submission, any Law, Regulation, Ordinance, Order or Bye-law having the force of Law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the Competent Authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the Performance of any of its obligations under the Contract. Contractor shall promptly and within 15 days of such enactment coming into force, forward relevant supporting documents to Employer.

8.4. However, these adjustments would be restricted to direct transactions between the Employer and Contractor and Bought out items (dispatched directly from sub vendor's supply to Site). These adjustments shall not be applicable on procurement of raw materials, intermediary components, and intermediary services etc. by the Contractor.

8.5. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

8.6. However, any increase in the rate of these taxes, duties and levies beyond the contractual completion period on account of default of the Contractor shall be solely to the Contractor's account and any such decrease shall be passed on to Employer.

9. Arbitration

9.1. If any dispute or difference or claim occurs 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 the formation, existence, validity termination or breach, the parties shall seek to resolve any such dispute or difference by mutual consent.

9.2. If the parties fail to resolve, such a dispute or difference by mutual consent, within 45 days of its arising, then the dispute shall be referred by either party by giving notice to the other party in writing of its intention to refer to Arbitration as hereafter provided regarding matter under dispute. No arbitration proceedings will commence unless such notice is given.

9.3. In all other cases, 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.

i. 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 Thirty (30) days after the later of the two Arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for third Arbitrator which shall be the President, Institution of Engineers.

ii. If one party fails to appoint its Arbitrator within thirty (30) 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.

iii. 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. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator (s).

9.4. Arbitration proceedings shall be conducted in accordance with 'The Arbitration and Conciliation Act, 1996' and the rules made thereunder and for the time being in force.

9.5. The venue or arbitration shall be New Delhi and the language of the proceedings will be in English.

9.6. The award of the arbitrator shall be final and binding on the parties to this contract.

9.7. The decision of a majority of the Arbitrators (or of the third Arbitrator chairing the Arbitration Panel, 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.

9.8. The Arbitrator(s) shall give reasoned award.

9.9. Notwithstanding any reference to the Arbitration herein, the parties shall continue to perform their respective obligations under the contract unless they otherwise agree.

9.10. Cost of arbitration shall be equally shared between the Employer and the Contractor. The fees payable to the Arbitrator and the manner of payment of the fees shall be such as may be governed by the Fourth Schedule of the Arbitration and Conciliation Act 1996.

9.11. The Courts in Delhi alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this Contract and any award or awards made by Arbitration Tribunal hereunder shall be filed (if so required) in the concerned Courts in Delhi only.

9.12. This Arbitration Clause shall continue to survive termination, completion, or closure of the Main contract for 120 days thereafter.

9.13. The Contract and arbitration shall be governed by Indian Law

10. Jurisdiction

The Contract shall be governed by and interpreted in accordance with laws in force in India. The Courts of Delhi shall have exclusive jurisdiction in all matters arising under the Contract.

11. Mutual Consultation

If any dispute of any kind whatsoever shall arise between the Employer/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, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute may be settled through Arbitration/ other remedies available under the applicable laws.

12. Indemnity

12.1. If any action is brought before a Court, Tribunal or any other Authority against the Employer or an officer or agent of the Employer, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or damage or injury or death caused by the alleged omission or negligence on the part of the Contractor, its agents, representatives or its Sub-Contractor's, or in connection with any claim based on lawful demands of Sub- Contractor's workmen suppliers or employees, the Contractor, shall in such cases indemnify and keep the Employer and/ or their representatives harmless from all losses, damages, expenses or decrees arising out of such action.

12.2. The Contractor shall, at its own expense, defend and indemnify the Employer against all third-party claims of infringement of Intellectual Property Rights, including patent, trade mark, copy right, trade secret or industrial design rules arising from use of the products or any part thereof. The Contractor shall expeditiously extinguish any such claims and shall have full rights to defend itself there from. The Employer shall not pay any compensation to a third party resulting from such infringement and the Contractor shall be fully responsible for the same, including all expenses and court and legal fees. The Employer will give notice to the Contractor of any such claim without delay, shall provide reasonable assistance to the Contractor in disposing of the claim, and shall at no time admit any liability for or express any intent to settle the claim.

12.3. The Contractor shall supply the Goods perform the Services and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advance technology and safe methods. The Contractor shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Sub- Contractor or third parties. any action is brought before a Court, Tribunal or any other Authority against the Employer or an officer or agent of the Employer, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or damage or injury or death caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his Sub-Contractor's, or in connection with any claim based on lawful demands of Sub-Contractor's workmen suppliers or employees, the Contractor, shall in such cases indemnify and keep the Employer and/ or their representatives harmless from all losses, damages, expenses or decrees arising out of such action.

12.4. The Contractor has submitted the Indemnity Bond to EMPLOYER in line with Format 7.11 of the RfP, prior to signing of this Agreement.

13. Government Directives

13.1. To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order

2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services.

13.2. For procurements in respect of which the Ministry of New and Renewable Energy (MNRE) has notified that there is sufficient local capacity and local competition, only 'Class-I local suppliers' shall be eligible to bid, irrespective of the purchase value.
In all other procurements, only 'Class-I local suppliers' and 'Class-II local suppliers' shall be eligible to bid, except when a global tender enquiry has been issued. In such cases, 'Non-local suppliers' are also eligible to participate along with Class-I and Class II local suppliers.

13.3. For the procurement of goods, services, or works not covered above, and where the estimated value is less than ₹200 crore, as per Rule 161(iv) of the GFR, 2017, Global Tender Enquiries shall not be issued except with the prior approval of the competent authority, as designated by the Department of Expenditure (DoE).

13.4. Further, the Contractor shall comply with the O.M. issued by the Department of Expenditure, Ministry of Finance, vide No. 6/18/2019-PPD dated 23.07.2020 and subsequent amendments and clarifications thereto.

APPENDIX – B

SCHEDULE OF DETAILED PRICE BREAK-UP

Under this Contract Agreement, EMPLOYER hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of **INR ____________ - (Indian Rupees ________________________________ only)** or such other sums as may be determined in accordance with the terms and conditions of the Contract.

The detailed break-up of Contract Price is given as under:

APPENDIX – C

ANNEXURE-B OF THE RFP

(Annexure-B of the RfP to be attached here)