

**ENGINEERING, PROCUREMENT & CONSTRUCTION
(EPC) AGREEMENT BETWEEN CONTRACTORS
AND
NABL, GURGAON
FOR
DESIGN, MANUFACTURE, SUPPLY, ERECTION,
TESTING AND COMMISSIONING INCLUDING
WARRANTY, OPERATION & MAINTENANCE OF
GRID CONNECTED SOLAR ROOF TOP
PHOTOVOLTAIC POWER PLANTS IN CAPEX
MODEL**

ENGINEERING, PROCUREMENT & CONSTRUCTION AGREEMENT

This Engineering, Procurement & Construction Agreement (hereinafter referred to as the “**Agreement**”) is entered into on this _____(date), at _____(Location)**BY** and **BETWEEN** a company incorporated under the Companies Act, 1956/2013 and having its registered office

_____ (hereinafter referred to as the " **CONTRACTOR**" which expression shall where the context so admits be deemed to include its executors, administrators, representatives and permitted assigns) of the ONE PART;

AND _____ legal owner of the premises (address of the customer who he/she intend to get installed the GCRT solar PV system, say **Government Organization, PSU and Offices**), (hereinafter referred to as the "**CUSTOMER/BENEFICIARY**" which expression shall where the context so admits be deemed to include its heirs, executors, administrators, representatives and permitted assigns) of the OTHER PART;

The expressions "**CONTRACTOR**" and "**CUSTOMER/BENEFICIARY**", wherever the context so permits or requires shall collectively be referred to as "**Parties**" and individually as the "**Party**".

WHEREAS:

- A.** **CONTRACTOR** is a fully integrated solar solutions provider that offers comprehensive solar solutions to governments, corporate houses, villages, industries and other consumers.
- B.** **CUSTOMER/BENEFICIARY** is a <Government Organization, PSU/ Office>
- C.** **CONTRACTOR** has been notified as successful bidder by (<**IMPLEMENTING AGENCY/EXPERT PSU**>) vide its Letter of Allocation dated _____ for design, manufacture, supply, erection, testing and commissioning including

warranty, operation and maintenance for a period of ____ years of roof-top Solar PV System and has been awarded ____kW capacity in ____.

D. CONTRACTOR and CUSTOMER/BENEFICIARY enter into this Agreement for engineering, procurement & construction of a roof-top Solar PV Power System.

NOW, this Agreement witnesseth as follows:

1. PURPOSE & SCOPE OF THE AGREEMENT

- 1.1 The purpose of this Agreement includes design, manufacture, supply, erection, testing and commissioning including warranty, operation & maintenance for a period of 5 years of a ____KW proof-top Solar PV Power System (hereinafter referred to as the **“Solar Power System”**) for the CUSTOMER/BENEFICIARY, (hereinafter cumulatively referred to as the **“Works”**), for which the CUSTOMER/BENEFICIARY has handed over the premises, which is with a clear title and is encumbrance free, to the CONTRACTOR, along with required approvals from concerned authorities, and the CUSTOMER/BENEFICIARY’s entering into this Agreement is proof enough of its consent to start work thereon.
- 1.2 The technical specifications (hereinafter referred to as the **“Technical Specifications”**) that need to be adhered to by the CONTRACTOR in implementing the roof-top Solar PV Plant for the CUSTOMER/BENEFICIARY shall be in accordance with the ones issued by <IMPLEMENTING AGENCY/EXPERT PSU> vide RfS / Tender No. _____ dated _____ and the performance parameters (hereinafter referred to as the **“Performance Parameters”**) that shall govern the Scope of Duty of the CONTRACTOR regarding the Works for the CUSTOMER/BENEFICIARY are mentioned in detail in **Schedule 1** to this Agreement.
- 1.3 All the pedestals meant for mounting the modules must be casted on the lintel by removing the tiles and other loose material in the area where the pedestals are to be casted. The surface of the lintel should be thoroughly cleaned and an adhesive should be applied on the lintel surface before casting the pedestals in order to

have strong bonding with the lintel. After casting of the pedestals the water proofing material should be applied surrounding the pedestals in order to avoid any water seepage during rainfall.

- 1.4 Contractor shall ensure that SPV modules, parts of MS structures, other hardware like nuts, bolts and grouting hardware etc., are not loosely scattered over the terrace of a building. These items must be securely stored in an enclosed room where they cannot be affected by winds or such loose materials must be tied properly. Further, Successful bidder shall ensure that rooftop Solar PV system should be designed and installed in such a way that its performance should not be affected due to the problem of water logging at site etc.
- 1.5 The design, engineering, manufacture, supply, installation, testing and performance of the equipment shall be in accordance with latest appropriate IEC/Indian Standards as detailed in the relevant MNRE's scheme. Where appropriate Indian Standards and Codes are not available, other suitable standards and codes as approved by the MNRE shall be used.
- 1.6 Any supplies which have not been specifically mentioned in this Contract but which are necessary for the design, engineering, manufacture, supply & performance or completeness of the project shall be provided by the Bidder without any extra cost and within the time schedule for efficient and smooth operation and maintenance of the SPV plant.

2. EFFECTIVE DATE

The Agreement will enter into effect from the date of its execution (the “**Effective Date**”) for all contractual obligations under this Agreement.

3. NON DISCLOSURE & CONFIDENTIALITY

Any information (whether oral, written, visual or otherwise, hard or soft copy as may be provided by either Parties, provided the same is reduced in writing immediately and marked and identified as confidential information) disclosed or made known by the Parties to each other, shall be considered “**Confidential Information**” unless otherwise specified. Both the Parties commit to a strict maintenance of confidentiality, of any information shared by either of the Parties. Any confidential information shared as a result of this Agreement shall remain in force until that particular Confidential Information falls into the public domain through no act or omission on part of the Parties or for a period of two (2) years from the last disclosure, whichever is later.

4. **COMPLETION PERIOD**

The completion period of the project shall be _____ from receipt of sanction letter from <IMPLEMENTING AGENCY/EXPERT PSU>

5. **PAYMENT TERMS**

- 5.1 In consideration of the completion of Works, the CUSTOMER/BENEFICIARY shall pay to CONTRACTOR the Contract Price in Indian Rupee (INR). The “**Price**” shall mean the total of the Price for completion of Works including the price for operation and maintenance of the Solar Power System, as mentioned in detail in **Schedule 2** to this Agreement.
- 5.2 For any extra work beyond CONTRACTOR’s scope, the same is payable additionally by the CUSTOMER/BENEFICIARY
- 5.3 In case of any statutory variations in the rate of applicable taxes and duties or imposition of new taxes & duties, including, but not limited to anti-dumping

duties, during the tenure of the Agreement, which will impact the Contract Price, the same shall be borne by the CUSTOMER/BENEFICIARY

6. WARRANTIES

6.1 In case of CUSTOMER/BENEFICIARY being a company, it warrants to the CONTRACTOR as follows:

- (a) it is a company duly incorporated under the laws of India, and it has all corporate powers and has applicable governmental approvals, if any, required to own the Site and to carry on its business as now conducted and is duly qualified to do business in the jurisdiction where it operates;
- (b) It has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes a legal, valid and binding obligation on it; and,
- (c) It has the corporate power and authority to execute and deliver the terms and provisions of this Agreement and has taken all necessary corporate action to authorize the execution and delivery by it of this Agreement and the transactions contemplated hereby.

6.2 The CONTRACTOR hereby warrants to the CUSTOMER/BENEFICIARY that the Scope of Work as executed by the CONTRACTOR shall be of good workmanship for a period of 5 years from Acceptance. During the period of 5 years from the date of completion of work (“**Warranty Period**”) the CONTRACTOR shall rectify any part of the Works done found defective due to faulty materials and workmanship, for reasons solely attributable to the CONTRACTOR.

- 6.3 The CONTRACTOR will obtain manufacturers' warranties on the PV modules, inverters, as well as other components of the Power System for which manufacturer's warranties are available, in the name of the CUSTOMER/BENEFICIARY. Up until Acceptance, the CONTRACTOR will exercise any rights under the manufacturers' warranties on behalf of the CUSTOMER/BENEFICIARY.

7. **FORCE MAJEURE**

- 7.1 Force majeure shall mean any cause, existing or future, which is beyond the reasonable control of any of the parties including acts of God, storm, fire, floods, explosion, epidemics, quarantine, earthquake, strike, riot, lock out, embargo, interference by civil or military authorities, acts, regulations or orders of any governmental authority in their sovereign capacity, acts of war (declared or undeclared) including any acts of terrorism.
- 7.2 None of the parties shall be liable for the failure to perform any obligation in terms of this Agreement if and to such extent such failure is caused by a Force Majeure, provided that none of such acts of Force Majeure will relieve the CUSTOMER/BENEFICIARY from meeting its payment obligations.
- 7.3 The party prevented to fulfil its obligations (hereinafter referred to as "**the Affected Party**") by Force Majeure shall notify the other party through written means including fax/email/ post within one week after occurrence and cessation of such Force Majeure and it shall be established by the Affected Party that the Force Majeure had delayed performance of the Affected Party's obligations and services and was beyond the reasonable control of the Affected Party and not due to the default or negligence of the Affected Party.

- 7.4 The periods for performance of this Agreement as agreed upon shall be extended by the periods of delay caused by such Force Majeure, as long as the period of Force Majeure does not last longer than three months.
- 7.5 If a Force Majeure continues for more than three months and the parties are not able to reach an agreement on the continuation of the Agreement within a further term of one month, the fulfilment of the Agreement shall automatically be deemed impossible and shall stand suspended / terminated.
- 7.6 Upon such suspension/termination, the CONTRACTOR shall be entitled to be paid the following amount:
- a) the amounts payable for the work completed until the date of suspension,
 - b) the cost of materials which have been delivered to CUSTOMER/BENEFICIARY, or of which CONTRACTOR is liable to accept delivery: this material shall become the property of CUSTOMER/BENEFICIARY when paid for by it, and CONTRACTOR shall place the same at CUSTOMER/BENEFICIARY's disposal,
 - c) any other cost or liability, including unamortized cost of materials, which in the circumstances was reasonably incurred by CONTRACTOR in the expectation of completion of the Works,
 - d) demobilization costs of CONTRACTOR personnel and equipment,
 - e) all other costs incurred by CONTRACTOR on account of cancellation of order on such other suppliers.

8. INSURANCE

- 8.1 CUSTOMER/BENEFICIARY shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Agreement, the appropriate insurances set forth the sums equivalent to the contract price.
- 8.2 CONTRACTOR shall at its expense take out and maintain in effect or cause to be taken out and maintained in effect, during the construction period, the appropriate insurances for transportation of goods and materials

9. SITE ACCESS

- 9.1 The CUSTOMER/BENEFICIARY shall ensure the accuracy of all information and/or data to be supplied by the CUSTOMER/BENEFICIARY and shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, for preparation and maintenance of proper access roads to, and provide the right of way for, the Site, and for providing possession of and access to all other areas reasonably required for the proper execution of the Agreement, including all requisite rights of way, on or before the Effective Date.
- 9.2 The CUSTOMER/BENEFICIARY is under an obligation to provide access to Site at all times to the CONTRACTOR and to<IMPLEMENTING AGENCY/EXPERT PSU> officials, for the entire life of the Power System.
- 9.3 The progress of Works will be monitored by <IMPLEMENTING AGENCY/EXPERT PSU> and the Power System will be inspected for quality at any time during commissioning or after the completion of the Power System either by officer(s) from <IMPLEMENTING AGENCY/EXPERT PSU> or a

team comprising of officers from <IMPLEMENTING AGENCY/EXPERT PSU>, and State Nodal Agency (SNA).

10. CUSTOMER/BENEFICIARY OBLIGATIONS

10.1 The CUSTOMER/BENEFICIARY must not interrupt the Works, and/or shall abstain from any act or omission of which it can reasonably be expected that it may delay the Works or make the Works more difficult and or expensive for CONTRACTOR. In addition to this, the CUSTOMER/BENEFICIARY alone shall be responsible, at his cost and expenses, for:

- a) Necessary statutory declaration forms, certificates, way bills, etc. on timely basis as may be required by the CONTRACTOR for movement of the goods to the Site and for claiming the tax or duty benefits on the imported, inter-state and local supplies and the services provided under this Agreement in line with policies in vogue.
- b) The CUSTOMER/BENEFICIARY & CONTRACTOR shall obtain in a timely and expeditious manner No Objection certificate from the DISCOM.

11. SITE ADDRESS

The Site address where Works need to be performed to construct the Power System is:_____

12. PROVISION OF DATA

The CONTRACTOR shall be under an obligation to provide all data pertaining to Works and Power System for 5 years to <IMPLEMENTING AGENCY/EXPERT PSU>, *inter alia*, about PV array energy production, solar irradiance, wind speed, temperature, etc. The customer/beneficiary as such will

allow the CONTRACTOR to install a data logging system for power system monitoring.

- 12.1 The parameters of Works, and/or Power System shall be measured by using solar monitoring system to maintain and to study the performance of Power System.
- 12.2 For access to real-time data, the CUSTOMER/BENEFICIARY agrees to provide <IMPLEMENTING AGENCY/EXPERT PSU>with the right to install any additional online monitoring equipment(s) on the Power System.

13. INDEMNITY

Both Parties shall fully Indemnify and hold harmless both parties and its affiliates, associates, directors and employees from and against, any and all losses, costs, damages, injuries, liabilities, claims and causes of action, including without limitation arising out of or resulting from claims by third Parties, acts, omissions or breach of any of the both parties affiliates, suppliers, employees, agents or contractors in the performance of both parties obligations under this Agreement or otherwise arising out of the Power System or its usage

14. NOTICES

Any notice through facsimile/e-mail/post and other communication provided for in this Agreement shall be in writing and sent to the address mentioned on the first page of the agreement

15. DISPUTE RESOLUTION

If any dispute of any kind whatsoever arises between Customer and Contractor in connection with or arising out of the contract including without prejudice to the generality of the foregoing, any question regarding the existence, validity or

termination, the parties shall seek to resolve any such dispute or difference by mutual consent. .

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. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with Sub Clause either 15.1 or 15.2, shall be finally settled by arbitration.

- 15.1 In case the contractor is a Public Sector Enterprise or a government department.

In case the Contractor is a Public Sector Enterprise or a Government Department, the dispute shall be referred for resolution in Permanent Machinery for Arbitration (PMA) of the Department of Public Enterprise, Government of India. Such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusive. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

15.2 In all other cases

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.

The Customer 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.

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.

If for any reason an arbitrator is unable to perform its function for a period of 45 days or more, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in Clause 16 (Governing Law) and a substitute shall be appointed in the same manner as the original arbitrator.

Arbitration proceedings shall be conducted with The Arbitration and Conciliation Act, 1996. The venue or arbitration shall be Vadodara.

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.

The arbitrator(s) shall give reasoned award. Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree.

Cost of arbitration shall be equally shared between the Contractor and Customer.

16. GOVERNING LAW

All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of India, and the courts at Vadodara, India shall have exclusive jurisdiction with respect to any Dispute that occurs according to, or in relation to, the Agreement.

17. SEVERABILITY

If any provision of this Agreement is deemed or held by a court of competent jurisdiction, to be contrary to law or otherwise unenforceable, the provisions of this Agreement shall be enforced to the extent legally permissible and unenforceability of any of the provisions of this Agreement shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. LIMITATION OF LIABILITY

- 18.1 Subject to Clause 13 of this Agreement, but notwithstanding anything contained anywhere else in this Agreement, in no event shall a Party be liable, whether in contract, tort or otherwise, to the other Party for special, indirect or consequential loss or damages (such as, not exclusively, loss of production, loss of reputation, loss of income, loss of profit), except in case of fraud, wilful default or reckless misconduct by the defaulting Party.

18.2 The maximum aggregate liability of the CONTRACTOR to the CUSTOMER/BENEFICIARY, arising out of or in connection with this Agreement or any breach, non-performance or performance of any provisions hereof, after Acceptance, and till up to the period of operation and maintenance, cannot amount to more than 5% (five per cent) of the Price for the Power System.

19. **BINDING AGREEMENT**

19.1 This Agreement, along with its Schedules, in and of itself is an enforceable binding contract and constitutes the entire agreement between the Parties with respect to the subject matter hereof to the exclusion of all other understandings and assurances, either written or oral. The clauses contained in this Agreement shall not be construed as creating a partnership or joint venture, agency or employment relationship among the Parties. The relationship between the Parties under this Agreement is as principal to principal basis.

IN WITNESS WHEREOF the authorized signatories of the Parties hereto have signed this Agreement on the day, month and year first above written:

FOR AND ON BEHALF OF < Name of Contractor > M/s _____		FOR AND ON BEHALF OF <Name of Customer/ beneficiary, i.e. Government Organization, PSU and Offices > _____	
_____ AUTHORISED SIGNATORY		_____ AUTHORISED SIGNATORY (Of Government Deptt./PSU/Office)	
NAME: DESIGNATION: _____ WITNESSNAME:		NAME: DESIGNATION: _____ WITNESSNAME:	

SCHEDULE 1: PERFORMANCE PARAMETERS

Project-

Site Location- (Latitude & Longitude)

Total Rooftop Area (m²)

Total Usable Rooftop Area for solar installation (m²)

Type of Roof & Tilt

Radiation data reference:

Energy Simulation:

Power evacuation:

Energy in Thousand kWp

End Of year	Global Horizontal (kWh/m2/year)	Global Inclined (kWh/m2/year)	Net Energy at Metering point ((kWh/kWp/year))	PR (%) at the metering point
1				
2				
3				
4				
5				

SCHEDULE 2: PAYMENT TERMS

Price including shall remain fixed and will not be subject to revision during the Agreement duration subject to the conditions mentioned within this Agreement.

PRICE

Total project capacity is _____kWp. Subsidy amount on _____kWp which is of price Rs_____Wp

Capacity (kWp)	Total price	Subsidy	Total Payable

TERMS

* 60% of the total project cost (excluding incentive) on pro rata basis upon submission of running bills/invoices for various services and delivery at site.

* 15% of the total project cost (excluding incentive) on completion of installation and commissioning and demonstration of required performance parameters.

* 25% of the total project cost (excluding incentive) shall be disbursed in equal 05 instalments in 05 year upon demonstration of required performance parameters.

The payment shall be released by the roof top owner/customer directly whereas the applicable incentive shall be released by GIPCL directly to successful bidder/developer.

TAXES:

The pricing given is inclusive of all taxes.

The terms of payment indicated above are generic only and subject to change. Final payment terms shall be discussed and decided mutually between the roof top owner/customer and successful bidder/developer at the time of signing of EPC Agreement.