**ENGINEERING, PROCUREMENT & CONSTRUCTION (EPC) AGREEMENT BETWEEN CONTRACTORS**

**AND ROOFTOP BENEFICIARY**

**FOR**

**DESIGN, SUPPLY, ERECTION, TESTING AND COMMISSIONING INCLUDING FIVE (05) WARRANTY, OPERATION & MAINTENANCE OF GRID CONNECTED ROOF-TOP SOLAR PHOTOVOLTAIC UNDER RFP NO.** MSEDCL/COMM/2021/PHASE-II RTS/T-01 Dated: 13.10.2021 (Version-3)

# ENGINEERING, PROCUREMENT & CONSTRUCTION AGREEMENT

This Engineering, Procurement & Construction Agreement (hereinafter referred to as the “**Agreement**”) is entered into on this (date), at (Location) by*[Insert the name of EPC Contractor],* a company incorporated under the Companies Act, 1956/2013 or Limited Liability Partnership firm under the Limited Liability Partnership Act, 2008 or Proprietorship firm under Shop Act or Partnership firm under Partnership Act and having its registered office *[Insert the detailed address]* (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);

**AND** *[Insert the name]* legal owner of the premises (address of the customer who intend to get installed the GCRT Solar PV system, say **Rooftop Beneficiary**), (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);

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:

1. CONTRACTOR is a fully integrated solar solutions provider that offers comprehensive solar solutions to governments, corporate houses, villages, industries and other consumers.
2. CUSTOMER/BENEFICIARY is a <***Rooftop beneficiary***>
3. CONTRACTOR and CUSTOMER/BENEFICIARY enter into this Agreement for engineering, procurement & construction of a roof-top Solar PV Power System.

NOW, this Agreement witnessed as follows:

# PURPOSE & SCOPE OF THE AGREEMENT

* 1. The purpose of this Agreement includes Design, Supply, Erection, Testing and Commissioning including warranty, operation & maintenance for a period of 5 years of a kW Rooftop 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.
  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 Ministry of New and Renewable Energy 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.
  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.
  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, Contractor 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.
  5. The design, engineering, supply, installation, testing and performance of the equipment shall be in accordance with latest appropriate IEC/Indian Standards (BIS) 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.
  6. Any supplies which have not been specifically mentioned in this Contract but which are necessary for the design, engineering, supply & performance or completeness of the project shall be provided by the Contractor within the time schedule for efficient and smooth operation and maintenance of the SPV plant.

# EFFECTIVE DATE

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

# 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.

# COMPLETION PERIOD

The completion period of the project shall be within 6 months from the issuance of the sanction letter or the last date of the project timeline specified by MNRE to MSEDCL i.e., 18.01.2024, whichever is earlier..

# PAYMENT TERMS

* 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.
  2. For any extra work beyond CONTRACTOR’s scope which is not defined in the **RFP No. MSEDCL/COMM/2021/PHASE-II RTS/T-01 Dated: 13.10.2021 (Version-3)**, the same is payable additionally by the CUSTOMER/BENEFICIARY in the format of Annexure-V given in the RFP. The format of Annexure-V is attached as **Schedule-3** to this agreement.
  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.

# WARRANTIES

* 1. 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.
  2. 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.

# FORCE MAJEURE

* 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.
  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.
  3. The party prevented to fulfill 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.
  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.
  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 fulfillment of the Agreement shall automatically be deemed impossible and shall stand suspended/ terminated.
  6. Upon such suspension/termination, the CONTRACTOR shall be entitled to be paid the following amount:

1. The amounts payable for the work completed until the date of suspension,
2. 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,
3. 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, demobilization costs of CONTRACTOR personnel and equipment,
4. All other costs incurred by CONTRACTOR on account of cancellation of order on such other suppliers.

# INSURANCE

* 1. CONTRACTOR shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Agreement, the appropriate insurances set forth the sums equivalent to the contract price.
  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

# SITE ACCESS

* 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.
  2. The CUSTOMER/BENEFICIARY is under an obligation to provide access to Site at all times to the CONTRACTOR and to MSEDCL officials/third party agency designated by MNRE or MSEDCL, for the entire life of the Power System.
  3. The progress of Works will be monitored by MSEDCL through monthly progress reports and MNRE and the Power System may be inspected for quality at any time during commissioning or after the completion of the Power System either by officer(s) from MSEDCL Officials/MNRE or a team comprising of officers from agency appointed by MNRE/MSEDCL for disbursement of subsidy.

# CUSTOMER/BENEFICIARY OBLIGATIONS

* 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.
  2. The CUSTOMER/BENEFICIERY & CONTRACTOR shall obtain in a timely and expeditious manner approval from MSEDCL.

# SITE ADDRESS

The Site address where Works need to be performed to construct the Solar Power System is [Insert the detailed address].

# PROVISION OF DATA

The CONTRACTOR shall be under an obligation to provide all data pertaining to Works and Solar Power System for 5 years to MSEDCL/MNRE (If requested), *INTER ALIA*, about PV array energy production etc.

* 1. The parameters of Works, and/or Solar Power System shall be measured by using solar monitoring system to maintain and to study the performance of Power System.
  2. For access to real-time data, the CUSTOMER/BENEFICIARY agrees to provide MNRE with the right to install any additional online monitoring equipment(s) on the Power System.

1. **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.

1. **PLANT PERFORMANCE AND SOLAR POWER CONTRACTOR’S LIABILITY:**

Solar Power Plant must be installed, commissioned and maintained to produce satisfactory power for a period of 5 years. If performance of the solar plant goes below to the norms given in the RfP, it will be treated as CONTRACTOR’s default.

1. **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

1. **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.

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.

* 1. 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 17 (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 [*Insert the name of Place for Arbitration*].

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.

1. **GOVERNING LAW**

All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of India/State, and the courts at [Name the state]/[*Insert the name and place of Arbitration*], shall have exclusive jurisdiction with respect to any Dispute that occurs according to, or in relation to, the Agreement.

1. **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.

1. **LIMITATION OF LIABILITY**

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, willful default or reckless misconduct by the defaulting Party.

# BINDING AGREEMENT

* 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 | FOR AND ON BEHALF OF |
| **< Name of Contractor>** | <Name of Customer/ |
|  | beneficiary, i.e. **Rooftop** |
|  | **Beneficiary** |
|  |
| WITNESS NAME: | WITNESS NAME: |

# SCHEDULE 1: PERFORMANCE PARAMETERS

Details of Project: (Capacity of RTS system)

Name of Beneficiary:

Consumer No:

Address-

Total Rooftop Area (m2):

Total Usable Rooftop Area for solar installation(m2):

Power Evacuation: Energy in kWp

|  |  |
| --- | --- |
| End of year | Energy Generated by Rooftop Solar System (kWh/year) |
| 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 .

All prices in Rupees

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Capacity (kWp) | Cost of Project (Excluding GST) | GST | Total Project cost including GST  (A) | Subsidy from MNRE  (B) | Additional Project cost  (C) | Total payable to Contractor D= (A-B+C) |
|  |  |  |  |  |  |  |

# TERMS:

* 20% payment in advance after signing of agreement.
* 20% payment after installation of structure
* 20% payment after installation of SPV modules and inverters at site
* 20% payment after completing plant installation (including net-metering) and submission of written inspection request to the MSEDCL
* Final 20% payment after commissioning of the plant and injection of power tothe grid

# TAXES:

The pricing given is inclusive of all taxes

**SCHEDULE 3: Agreement between Vendor and beneficiary for additional cost**

This agreement is signed between two parties i.e., M/s (Name of Contractor) registered at address, who is an empanelled vendors in the tender MSEDCL/COMM/2021/PHASE-II RTS/T-01 Dated: 13.10.2021 (Version-3) floated by MSEDCL for implementation of grid connected rooftop solar (GCRTS) PV projects in MSEDCL jurisdiction area of the state of Maharashtra, hereby referred to in as the ‘Vendor’ or ‘first party’ AND (Name of Consumer, residing at…….) , hereby referred to in as the ‘customer’ or ‘second party’.

Both the parties mentioned above, by mutual consent, are entering into an agreement for  
installation of grid connected rooftop solar project under Phase-II of grid connected rooftop solar programme of MNRE, being implemented by MSEDCL in the MSEDCL jurisdiction area of Maharashtra. The second party has satisfied itself that the first party is an empanelled vendor in the tender floated by MSEDCL and rooftop solar project of ….kW capacity will be installed by first party at the residence of second party, under the tender floated by MSEDCL.

Both the parties referred above, do hereby declare that they are aware of the fact that the L-1 price discovered in the tender floated by MSEDCL is Rs. /kW. However, the second party has agreed to pay additional cost to the first party for desired customization in the project which is in the form of (mention the customizations). Due to these customizations, the additional cost of the rooftop project comes out to be (Rs.\_\_\_\_\_). The details of customizations are attached separately.

The first party hereby declares that the invoice raised to the second party for amount mentioned above, is on actual basis after taking into account the cost of any customization and no other extra/hidden charges are being charged to the second party. The second party hereby declares that they are aware of the provisions of the scheme and do hereby consent to pay the additional cost of customization to the first party for the desired customizations. MNRE and the MSEDCL shall not be, in any case, be held responsible for any dispute arising out of this agreement/financial transactions.

This agreement is entered into ……..day of the month of ……….in year……

For First Party For Second Party  
(Name of Contractor) (Name of Consumer)