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## Request for Proposal


**Design, Supply, Testing, Installation, Commissioning,  
Operation and Maintenance of 20 MW/ 40 MWh  
Battery Energy Storage Systems (BESS) in Delhi  
under Tariff-Based Competitive Bidding**

**Ref: TERI/MAT/2023-24/014**

**Tender publishing date: 01 Sep 2023**


**Due Date for Submission of Bids: 22 Sep 2023**

**Vol III: Draft General Conditions of Contract & Special  
Conditions of Contract**

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This Request for Proposal is meant to invite applications from interested Bidder(s) capable of delivering the BESS described herein. The content of this RFP has been documented as a set of three volumes explained below:

*Volume I: Scope of Work and Technical Specifications*

Volume I of this RFP contains details regarding the scope of work and technical specifications of the BESS that Buying Utility deems necessary. The information set out in this volume includes the detailed technical specifications of the BESS which is to be installed and operated.

*Volume II: Instructions to Bidders and Evaluation Criteria*

Volume II contains instructions for bidders when responding to this RFP. It also contains the eligibility conditions and the evaluation criteria for selecting of successful bidder.

*Volume III: General Conditions of contract*


Volume III explains the draft contractual terms that Buying Utility wishes to specify at this stage. Prospective bidders must follow the respective terms and conditions in each agreement.

*It is envisioned that the following agreement will be signed with the selected bidder.*

Type of agreement and Scope	Involved parties	Estimated Period of Performance
Battery Energy Storage Service Agreement (BESSA)	Buying Utility and Winning Bidder (BESS Developer (BESSD))	From signing of BESSA until 12 years post Commercial Operation Date (COD) of BESS

**This document is Volume III.**

The ultimate terms of the Battery Energy Storage Service Agreement (BESSA) contract are subject to discussion with the winning bidder and final approval from the Appropriate Commission.

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## General Conditions of Contract

### 1. General Instructions

- 1.1. All the Bids shall be prepared and submitted in accordance with these instructions.
- 1.2. Bidder shall bear all costs associated with the preparation and delivery of its Bid including site visit, and the Buying Utility will in no case shall be responsible or liable for these costs.
- 1.3. The Buying Utility reserves the right to request for any additional information and also reserves the right to reject the proposal of any Bidder, if in the opinion of the Buying Utility, the data in support of RFP requirement is incomplete.
- 1.4. The Bidder is expected to examine all instructions, forms, terms & conditions, and specifications in the Bid Documents. Failure to furnish all information required in the Bid Documents or submission of a Bid not substantially responsive to the Bid Documents in every respect may result in rejection of the Bid. However, the Buying Utility's decision in regard to the responsiveness and rejection of bids shall be final and binding without any obligation, financial or otherwise, on the Buying Utility.

### 2. Term of Agreement


#### 2.1. Effective Date

2.1.1. This Agreement shall come into effect from the date of signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement. Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either Party against the other under this Agreement shall be that, Buying Utility shall obtain approval of tariff from the Appropriate Commission on the terms and conditions contained in the BESSA.

2.1.2. The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of Contracted Capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

2.1.3. In case the tariff approval from the Appropriate Commission is issued prior to signing the BESSA, no extension for Scheduled Commissioning Date shall be given. However, if the requisite Commission order is issued after the signing of BESSA, this shall entail a corresponding extension in the Scheduled Commissioning Date for equal number of days for which the Commission order has been delayed beyond the signing of BESSA.

#### 2.2. Term of Agreement

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2.2.1. Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a period of 12 years from the date of COD. The BESSD would be required to demonstrate the operational residue BESS capacity of not less than 70% of the total project capacity (40 MWh) before the end of contract period i.e., 12th contract year and at least within 90 days prior to the expiry date and duly transfer the entire Project to Buying Utility at Re 1 and free from any encumbrances or liability. Such capacity demonstration shall be made by the BESSD as per the procedure for capacity demonstration detailed under Commissioning Procedure and shall be witnessed by a Committee having Buying Utility's representatives. **The date of transfer of the project shall be regarded as the Expiry Date for this BESSA.**

2.2.2. In case BESSD fails to demonstrate operational residue capacity of 70%, BESSD at its own risk and cost shall augment the BESS capacity to not less than 70% of the Project Capacity within 90 days of demonstration made as per Article 2.2.1. above, failing which cost estimated by the Buying Utility through a competitive bidding process for such augmentation of BESS shall be recovered from the Performance Bank Guarantee. Moreover, in case of non-payment of any aforementioned balance dues/ penalty, Buying Utility may debar the BESSD from participating for a period of 2 years in any of its Bidding Processes.

### 2.3. Early Termination


2.3.1. This Agreement shall terminate before the Expiry Date if either Buying Utility or BESSD terminates the Agreement, pursuant to Article 8 of the General Conditions of Contract.

### 2.4. Survival


2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under General Conditions of Contract - Article 4 (Force Majeure), Article 8 (Events of Default and Termination), Article 9 (Liability and Indemnification), Article 11 (Governing Law and Dispute Resolution), Article 12 (Miscellaneous Provisions), and other Articles and Schedules of the General/ Specific Conditions of Contract which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

## 3. Definitions of Terms

shall be as defined in Volume 1 of this RFP. Save where the contrary is indicated, any reference in this Agreement to:

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- 3.1.1. "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 3.1.2. An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule, and a paragraph/clause respectively of this Agreement;
- 3.1.3. A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 3.1.4. "Confidential information" shall mean any information disclosed by one Party to the other Party, in any form including without limitation; terms and conditions of the transaction contemplated hereby to third parties, documents, business plans, source code, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs, any information relating to personnel or affiliates of a Party and includes information disclosed by third parties at the direction of a disclosing Party and marked as confidential. Confidential Information shall however, exclude any information which (i) is/ was publicly known or comes into public domain; (ii) is received by the receiving Party from a third party, without breach of this Agreement; (iii) was already in the possession of receiving Party, without confidentiality restrictions, at the time of disclosure by the disclosing Party; (iv) is permitted for disclosure by the disclosing Party in writing by law; (v) independently developed by the receiving Party without use of Confidential Information
- 3.1.5. An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 3.1.6. "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 3.1.7. A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 3.1.8. "Rupee", "Rupees", "Rs", "INR", or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 3.1.9. The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection, or relief of debtors;


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- 3.1.10. Words imparting the singular shall include the plural and vice versa;
- 3.1.11. This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 3.1.12. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 3.1.13. A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 3.1.14. Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 3.1.15. The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 3.1.16. All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 3.1.17. The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 3.1.18. The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 3.1.19. This Agreement and other documents such as Request for Proposal Documents, Guidelines including subsequent clarifications, amendments, and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/ contradiction between provisions of different documents, the Battery Energy Storage Service Agreement (BESSA) shall supersede the RFP Document & Letter of Award (LoA).

#### 4. Force Majeure

##### 4.1. General

A ‘Force Majeure’ (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant BESSA, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

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- i) Act of God, including, but not limited to lightning, fire, and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon, or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Buying Utility.
- ii) Radioactive contamination or ionising 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 BESS by the Affected Party or those employed or engaged by the Affected Party.
- iii) The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land and/or as per prudent industry practices.
- iv) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- v) 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, or Industry-wide strikes and labour disturbances, having a nationwide impact in India.
- vi) Nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the BESSD, as a result of which the BESSD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the BESSA. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Buying Utility or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the BESSD or BESSD related parties.

#### 4.2. Force Majeure Exclusions

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

- i) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, or consumables for the BESS;
- ii) Delay in the performance of any BESSD, sub-contractor, or their agents;
- iii) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;



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- iv) Strikes or labour disturbances at the facilities of the Affected Party; e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- v) Non-performance caused by, or connected with, the Affected Party's: (i) Negligent or intentional acts, errors or omissions, or lack of due diligence expected from any prudent and rational human being; (ii) Failure to comply with an Indian Law; or (iii) Breach of, or default under this Agreement.

#### 4.3. Notification of Force Majeure Event

- i) The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force Majeure Event, within 30 days of the receipt of the intimation, accompanied with supporting documents available with the Affected Party
- ii) Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the BESSA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event
- iii) 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 the BESSA, as soon as practicable after becoming aware of each of these cessations.

#### 4.4. Performance Excused

- i) The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the BESSA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) days from the date of issuance of the FM Notice, or any extended period as mutually agreed. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event. However, in

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case of the FM continuing up to a period of 180 days or any extended period as mutually agreed, either Party has the right to terminate the BESSA

- ii) For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the BESSD shall be entitled for a day-to-day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the BESSA period, as the case may be. The Term of the BESSA will be suitably extended as per the above extension
- iii) Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event
- iv) Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### 4.5. No Liability for Other Losses


Save as otherwise provided in these Guidelines, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

#### 4.6. Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the BESSA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard

#### 4.7. Termination Due to Force Majeure Event

- i) If, prior to the completion of the 180-day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180-day period or any extended period agreed in pursuance of Clause 4.4 above (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the BESSA, and the termination shall take effect from the date on which such decision is taken
- ii) Without prejudice to the provisions of Clause 4.7 (i) above, the Affected Party shall, after the expiry of the period of 180 days or any other mutually extended period, be entitled to forthwith terminate the BESSA in its sole discretion by issuing a notice to that effect.

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iii) On termination of the BESSA pursuant to Clause 4.7(ii):

- a. In case of termination on account of an event listed as Force Majeure as per Clauses 4.1. (i), (ii), (iii), or (iv) above, no Termination Compensation shall be payable to the BESSD. The BESSD shall be liable to remove the assets from the premises and return the land to Buying Utility.
- b. In case of termination at the instance of the BESSD, on account of an event listed as Force Majeure as per Clauses 4.1. (v) and (vi) above, the Buying Utility will have the option to (but will not be obliged to) take-over the BESS in mutual consultation with Lender. In case the Buying Utility chooses not to exercise the above option, the BESSD shall be liable to remove the assets from the premises, with the land being returned to the Buying Utility at the earliest.
- c. The parties to BESSA shall be eligible for undisputed payments under outstanding Monthly Bill(s) before the occurrence of Force Majeure Event.


## 5. Metering

- 5.1. For installation of ABT Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the BESSD and the Buying Utility shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 5.2. The BESSD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal, and repair of meters at BESSD side of Delivery Point for injection and drawl of power from the Grid during discharging and charging of BESS.
- 5.3. In addition to ensuring compliance of the applicable codes, the BESSD shall install Main & Check meters at the Delivery Point for both Charging and Discharging, along with Stand-by meter(s) as per the applicable Central/State regulations.
- 5.4. Online arrangement would have to be made by the BESSD for real time monitoring and submission of metering data regularly for the entire period of BESSA to the SLDC, Buying Utility and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 5.5. Reports on metering parameters on monthly basis, and/or as required by regulation / Guidelines, shall be submitted by the BESSD to Buying Utility / POSOCO through Buying Utility for entire Term of the BESSA.

## 6. Insurances

### 6.1. Insurance

- 6.1.1. The BESSD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of BESSA, Insurances against such risks to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily

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merit maintenance of and as required under the Financing Agreements, and under the applicable laws.

## 6.2. Application of Insurance Proceeds

- 6.2.1. In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the BESS, or any part of the BESS shall be first applied to reinstatement, replacement or renewal of such loss or damage to the Contracted Capacity followed by the balance Project Capacity.

## 7. Change in Law

### 7.1. Definitions


- 7.1.1. The term 'Change in Law' shall refer to the occurrence of any of the following events, after the last date of the bid submission, which have a direct effect on the Project, leading to corresponding changes in the cost requiring change in tariff, and includes (i) a change in interpretation of any law by a competent court; or (ii) the enactment of any new law; or (iii) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union Territory administration leading to corresponding changes in the cost; or; (iv) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost;. However, Change in Law/ Regulation shall not include (i) any change in taxes on corporate income or any change in any withholding tax on income or dividends, or (ii) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission. The term "law" in this provision, includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

### 7.2. Relief for Change in Law

- 7.2.1. The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law and the charge adjustment to enable the affected party to restoration to the same economic position as would have been if the change in law had not happened.
- 7.2.2. The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

## 8. Events of Default and Termination

### 8.1. BESSD Event of Default

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The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Buying Utility of its obligations under this Agreement, shall constitute an BESSD Event of Default:

8.1.1. the failure to commence the supply of Contracted Capacity to the delivery point within 180 days from the COD including the schedule provided to BESSD under this agreement during the validity of this agreement, or

8.1.2. non-availability of facility/system by BESSD to the Buying Utility for a continuous period of 90 days or more; or

8.1.3. if

i) BESSD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project without consent of Buying Utility in contravention of the provisions of this Agreement; or

ii) BESSD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

a. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or


b. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

8.1.4. if (a) BESSD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against BESSD, or (c) BESSD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

8.1.5. BESSD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Buying Utility in this regard;

8.2. Procedure for cases of BESSD Event of Default

8.2.1. Upon the occurrence and continuation of any BESSD Event of Default under Article 8.1, Buying Utility shall have the right to deliver to the BESSD a notice, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice

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8.2.2. Following the issue of Default Notice, the Consultation Sixty days (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

8.2.3. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

8.2.4. After following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or BESSD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, subject to the terms of this Agreement, BESSD shall be liable to pay to Buying Utility, liquidated damages, as provided in articles 2.4.4 of Special Conditions of Contract – Part A - Design, Supply, Testing, Installation & Commissioning of the BESSA for failure to commission within stipulated time. For other cases, the BESSD shall be liable to pay to Buying Utility, damages equivalent to 4 (four) months, as detailed in clause 1.1 of Applicable Tariff in Special Conditions of Contract – Part B – Operations & Maintenance of this BESSA, or balance BESSA period whichever is less, of charges for its contracted capacity. Buying Utility shall have the right to recover the said damages by way of forfeiture of performance bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.


8.2.5. In addition to the levy of damages as aforesaid, the project lender, in concurrence with the Buying Utility, may seek to exercise right of substitution by an amendment or novation of the BESSA in favour of the selectee. BESSD shall cooperate with Buying Utility to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this BESSA till such time as the substitution is finalized. In case of non-feasibility of the substitution by the lender, the Buying Utility shall have the first right of refusal for the BESS.

8.2.6. In the event the lender and Buying Utility are unable to substitute the defaulting BESSD within the stipulated period, Buying Utility may terminate the BESSA. The PBG submitted for Design, Supply, Testing, Installation & Commissioning and Operation & Maintenance may be encashed by the Buying Utility. The BESSD shall be liable to remove the assets from the premises, with the land being returned to the Buying Utility at the earliest.

### 8.3. Buying Utility Event of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Buying Utility Event of Default:




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- 8.3.1. Any invoice raised by the BESSD under the Monthly Bill remains outstanding beyond a period of one hundred and eighty (180) days after the Due Date and BESSD is unable to recover the amount outstanding from the Buying Utility through the Letter of Credit; or
- 8.3.2. Early termination of this Agreement or any other associated agreements for reasons attributable to Buying Utility, resulting BESSD to dismantle the project before the expiry date of BESSA.
- 8.3.3. Buying Utility repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from BESSD in this regard; or
- 8.3.4. except where due to BESSD's failure to comply with its material obligations, Buying Utility is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by Buying Utility within thirty (30) days of receipt of first notice in this regard given by BESSD.
- 8.3.5. Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Utility.

#### 8.4. Procedure for cases of Buying Utility Event of Default

- 8.4.1. Upon the occurrence and continuation of Buying Utility Event of Default under Article 8.3, BESSD shall have the right to deliver to Buying Utility a notice, stating its intention to terminate this Agreement (BESSD Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 8.4.2. Following the issue of BESSD Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 8.4.3. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

After following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Buying Utility Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Buying Utility under intimation and prior consent to BESSD shall, novate its part of the BESSA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the BESSD, or if no offer of novation is

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made by Buying Utility within the stipulated period, then the BESSD may terminate the BESSA and at its discretion require Buying Utility to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and Adjusted Equity less Insurance Cover or ii) take an exit from the BESSA after release of PBG, subject to the payment of all dues from the Buying Utility to the BESSD till the date of exit.

Provided further that at the end of three (3) months period from the Consultation Period, this BESSA may be terminated by the BESSD.

#### 8.5. Termination

- 8.5.1. In case of Termination under clause 4.7 i.e., Force Majeure, the process specified therein shall be followed.
- 8.5.2. That agreement can also be terminated at an early occasion, if any, including revocation of any of the permits, approval, or clearances for reasons not attributable to BESSD and reasons not attributable to Buying Utility, resulting BESSD to dismantle the project before the expiry date of BESSA.
- 8.5.3. if (a) the Buying Entity becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Entity, or (c) the Buying Entity goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, the same shall attract the termination of the agreement.

Provided that a dissolution or liquidation of Buying Utility will not attract termination, if such dissolution or liquidation is for the purpose of a merger, consolidation, or reorganization and where the resulting company retains creditworthiness similar to Buying Utility and expressly assumes all obligations of Buying Utility under this Agreement and is in a position to perform them


- 8.5.4. No termination compensation shall be made by either of the Parties due to Termination for the reasons mentioned above in 8.5.1, 8.5.2 and 8.5.3

### 9. Liability and Indemnification

#### 9.1. Indemnity

- 9.1.1. The BESSD shall indemnify, defend, and hold Buying Utility harmless against:



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- i. any and all third-party claims against Buying Utility for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the BESSD of any of its obligations under this Agreement; and
- ii. any and all losses, damages, costs, and expenses including legal costs, fines, penalties, and interest actually suffered or incurred by Buying Utility from third party claims arising by reason of a breach by the BESSD of any of its obligations under this Agreement, (provided that this Article shall be in addition to such breaches by the BESSD, for which specific remedies have been provided for under this Agreement).

9.1.2. Buying Utility shall indemnify, defend, and hold the BESSD harmless against:

- i. any and all third-party claims against the BESSD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Buying Utility of any of their obligations under this Agreement; and
- ii. any and all losses, damages, costs, and expenses including legal costs, fines, penalties, and interest ('Indemnifiable Losses') actually suffered or incurred by the BESSD from third party claims arising by reason of a breach by Buying Utility of any of its obligations.

## 9.2. Procedure for claiming Indemnity


### Third party claims

9.2.1. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 9.1.1(i) or 9.1.2(i), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 9.1.1 or 9.1.2 in respect of which it is entitled to be indemnified.

Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice.

Provided however that, if:

- i) the Parties choose to refer the dispute in accordance with Article 11; and
- ii) third party claim shall be subject to the outcome of the dispute between the parties herein, unless otherwise directed by the Judicial and Quasi-Judicial Authority,

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the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute if such Dispute is not settled in favour of the Indemnified Party.

- 9.2.2. The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be Indemnified under Article 9.1.1 or 9.1.2 and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim raised by third parties without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.


An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### 9.3. Indemnifiable Losses

- 9.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 9.1.1 or 9.1.2, the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 9.3, unless the right to approach judicial resolution has been involved, such event shall constitute a payment default under Article 8.

### 9.4. Limitation on Liability

- 9.4.1. Except as expressly provided in this Agreement, neither the BESSD nor Buying Utility nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, other than such claims based upon breach of warranty, tort (including negligence, whether of Buying Utility, the BESSD or

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others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

9.4.2. Buying Utility shall have no recourse against any officer, director, or shareholder of the BESSD or any Affiliate of the BESSD or any of its officers, directors or shareholders for such claims excluded under Article 9. The BESSD shall have no recourse against any officer, director, or shareholder of Buying Utility, or any affiliate or any of its officers, directors or shareholders for such claims excluded under Article 9.

#### 9.5. Duty to Mitigate

9.5.1. The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under Article 9.

### 10. Assignments and Charges

#### 10.1. Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by Buying Utility subject to the compliance of provisions contained in this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD.


Provided that, Buying Utility shall permit assignment of any of BESSD's rights and obligations under this Agreement in favour of the lenders to the BESSD, if required under the Financing Agreements.

Provided that, such consent shall not be withheld if Buying Utility seeks to transfer to any transferee all of its rights and obligations under this Agreement.

The enforcement of the rights and obligation between the BESSD and Buying Utility provided in this Agreement and in the BESSA shall not be treated as an assignment, but an enforcement of the terms agreed under this Agreement. Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

#### 10.2. Permitted Charges

Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

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## 11. Governing Law and Dispute Resolution

### 11.1. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

### 11.2. Amicable Settlement

11.2.1. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

- a description of the Dispute;
- the grounds for such Dispute; and
- all written material in support of its claim.

11.2.2. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 11.2.1(i), furnish:


- counter-claim and defences, if any, regarding the Dispute; and
- all written material in support of its defences and counter-claim.

11.2.3. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to this article

- if the other Party does not furnish any counter claim or defence under this article
- on thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in Article 11.2.1.
- the Dispute shall be referred for dispute resolution in accordance with Article 11.3.

### 11.3. Dispute Resolution

Dispute Resolution by the Appropriate Commission

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11.3.1. Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, and relates to any matter agreed to be referred to the Appropriate Commission, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

#### 11.4. Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement

## 12. Miscellaneous Provisions

### 12.1. Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties.

### 12.2. Third Party Beneficiaries


This Agreement is solely for the benefit of the Parties and their respective successors and permitted assignees and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement

### 12.3. Waiver

12.3.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party.

12.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

### 12.4. Confidentiality

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12.4.1. The Parties undertake to hold in confidence this Agreement and not to disclose such confidential information to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law, without the prior written consent of the other Party.

12.4.2. The aforesaid restrictions does not apply to any information or data which (a) is obtained from another source without restriction, (b) is in the possession of, or was known to the receiving Party prior to its receipt, without an obligation to maintain confidentiality, (c) is or becomes generally known to the public without violation of this Agreement, (d) is independently developed by the receiving Party without the use of confidential Information, (e) required to be provided under any law, or process of law.

12.4.3. If any receiving Party determines that it is required by law or court order to disclose any Confidential Information it shall, at a reasonable time before making any such disclosure or filing, consult with the disclosing Party regarding such disclosure or filing and seek confidential treatment for such portions of the disclosure or filing as may be requested by the disclosing Party, or provide reasonable assistance to the disclosing Party so that the disclosing Party can contest the same.

12.4.4. No clause under this agreement shall grant any rights to either Party in Intellectual Property Rights or in the Confidential Information of the other Party.

12.4.5. The Confidentiality obligation under this Agreement shall survive for a period of twelve years i.e., expiry of the BESSA or till the date of termination of BESSA.


12.4.6. Both, BESSD and Buying Utility, shall be responsible for maintaining absolute secrecy and security with respect to BESS application as well as any other confidential information shared between the Parties.

## 12.5. Severability

12.5.1. The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

## 12.6. Notices

12.6.1. All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

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12.6.2. If to the BESSD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address :  
 Attention :  
 Email :  
 Fax. No. :  
 Telephone No.:

12.6.3. If to Buying Utility, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address : BSES Bhawan, BSES Rajdhani Power Limited, Nehru Place,  
 New Delhi - 110019  
 Attention :  
 Email :  
 Fax. No. :  
 Telephone No.:

12.6.4. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

12.6.5. Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.


## 12.7. Language

12.7.1. All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

12.7.2. If any of the agreements, correspondence, communications, or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications, or documents shall prevail in matters of interpretation.

## 12.8. Restriction of Shareholders / Owners' Liability



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12.8.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

#### 12.9. Taxes and Duties

12.9.1. The BESSD shall bear and promptly pay all statutory taxes, duties, levies, and cess, assessed/ levied on the BESSD, contractors or their employees that are required to be paid by the BESSD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

12.9.2. Buying Utility shall be indemnified and held harmless by the BESSD against any claims that may be made in relation to the matters set out in Article 12.9.1.

12.9.3. Buying Utility shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the BESSD by Buying Utility on behalf of BESSD.

#### 12.10. Independent Entity


12.10.1. Buying Utility and BESSD shall be independent entities performing their obligations pursuant to the BESSA.

12.10.2. Subject to the provisions of the BESSA, the BESSD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the BESSD or contractors engaged by the BESSD in connection with the performance of the Agreement shall be under the complete control of the BESSD and shall not be deemed to be employees, representatives, contractors of Buying Utility and nothing contained in the Agreement or in any agreement or contract awarded by the BESSD shall be construed to create any contractual relationship between any such employees, representatives, or contractors and Buying Utility.

#### 12.11. Compliance with Law

12.11.1. Despite anything contained in this Agreement but without prejudice to Article 12, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.



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#### 12.12. No Consequential or Indirect Losses

The liability of Buying Utility and the BESSD shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall BESSD or the Buying Utility claim from one another any indirect or consequential losses or damages.

#### 12.13. Order of priority in application

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed there under, the order of priority as between them shall be the order in which they are placed below:

- i) applicable Law, rules and regulations framed there under;
- ii) the Grid Code; and
- iii) the terms and conditions of this Agreement;

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IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of BRPL

For and on behalf of [BESSD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal


Witness:

- a.
- b.

Witness:

- 1.
- 2.

Mandatory to read all the terms and conditions before signing the tender

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## Special Conditions of Contract – Part A - Design, Supply, Testing, Installation & Commissioning of BESS

### 1. Performance Bank Guarantee

#### 1.1. Performance Bank Guarantee/ Payment on Order Instrument

1.1.1. The Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until 9 months after the COD submitted for a value equal to 7.5% of the capital expenditure quoted by the BESSD in their financial bid, to be furnished under this Agreement shall be for guaranteeing the commencement of the supply (injection/ drawal) of power / energy up to the Project Capacity within the time specified in this Agreement as given in Volume 2

1.1.2. The failure on the part of the BESSD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the BESSD.

1.1.3. If the BESSD fails to commence supply of power from the Scheduled Commissioning Date specified in Article 2.4.1 of the Special Conditions of Contract Part-A or any further extension thereof granted by Buying Utility, subject to conditions mentioned in Article 2.3 of the Special Conditions of Contract Part-A, Buying Utility shall encash the Performance Bank Guarantee equivalent to the amount calculated as per liquidated damages applicable as on the date of encashment without prejudice to the other rights of Buying Utility under this Agreement.

#### 1.2. Return of Performance Bank Guarantee/ Payment on Order Instrument


1.2.1. Subject to Article 1.1, Buying Utility shall return / release the first Performance Bank Guarantee/ Payment on Order Instrument immediately after the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement.

1.2.2. The return/ release of the Performance Bank Guarantee/ Payment on Order Instrument shall be without prejudice to other rights of Buying Utility under this Agreement


### 2. Construction & Development of The Project

#### 2.1. BESSD's Obligations

The BESSD undertakes to be responsible, at BESSD's own cost and risk, for the following:

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- 2.1.1. Establishment of the BESS at the Buying Utility substation identified as Project Location.
- 2.1.2. The Buying Utility's obligations shall be limited to Clauses 3 and 4 of the Special Conditions of Contract – Part A. Beyond these, the BESSD shall be responsible and make arrangements for associated infrastructure for development of the Project and for Connectivity till Delivery Point/ Interconnection/ Metering point for confirming the evacuation of power by the COD and all clearances related thereto. Connectivity beyond the Delivery Point/ Interconnection/ Metering point has been assured to be provided to the BESSD by the Buying Utility. All the requisite costs associated including fees with obtaining connectivity shall be borne by the BESSD.
- 2.1.3. Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. The Buying Utility's obligations shall be limited to Clauses 3 and 4 of the Special Conditions of Contract – Part A. Beyond this, the BESSD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing and operating the project. Any steps that may be taken by Buying Utility in regard to grant of such consents and permits or any other approval to be taken by the BESSD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.
- 2.1.4. Designing, constructing, erecting, commissioning, completing, and testing the Project in accordance with the applicable Law, the CERC Indian Grid Code Regulations 2023, the terms and conditions of this BESSA and Volume 1, and Prudent Utility Practices.
- 2.1.5. The commencement of supply of power / energy up to the Contracted Capacity to Buying Utility no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- 2.1.6. The BESSD shall make adequate arrangements to connect the BESS with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- 2.1.7. Owning the BESS throughout the Term of BESSA free and clear of encumbrances, except those expressly permitted under the Article regarding Assignments and Charges.
- 2.1.8. maintaining its controlling shareholding in the project as per provisions of the RFP Document.
- 2.1.9. fulfilling all other obligations required to be undertaken by the BESSD under this Agreement for development of Project in Build, Own, Operate and Transfer basis and

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supply of BESS Capacity during Term of this Agreement and as per provisions of this Agreement, RFP, and LOA.

2.1.10. The BESSD shall fulfil the technical requirements according to criteria mentioned under Volume 1 of the RFP.

2.1.11. Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,

2.1.12. As part of scheduling of power / energy from / to the Project for discharging / charging, the BESSD will be required to punch-in their respective schedules and subsequent revisions as per the procedure defined by the Buying Utility. Buying Utility may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on Buying Utility. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / penalty.


## 2.2. Information regarding Interconnection Facilities

2.2.1. The BESSD shall be required to obtain all information from Buying Utility with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection facilities on the BESSD's side of the Delivery Point to enable injection / draw of electricity at the Delivery Point. The transmission of power/ energy to / from BESS up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at its own cost.

2.2.2. Penalties, fines, and charges under any statute or regulation in relation to delay in commissioning of Project shall be payable by the BESSD to the extent the delay is attributable to the BESSD.

2.2.3. The responsibility of getting connectivity from the BESS up to the Interconnection Point, will lie with the BESSD. The power evacuation from BESS up to the interconnection/metering/delivery point including metering system as per clause 5 of BESSA shall be the responsibility of the BESSD at his own cost. The maintenance of power evacuation system up to the interconnection/metering/delivery point including metering system as per the applicable terms and conditions shall be the responsibility of the BESSD. All costs, charges, and losses up to and including at the Interconnection metering/delivery Point associated with this arrangement will also be borne by the BESSD.

## 2.3. Extensions of Time

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2.3.1. In the event that the BESSD is prevented from performing its obligations under Article 2.1 by the Scheduled Commissioning Date due to:

- a) any Buying Utility Event of Default; or
- b) Force Majeure Events affecting Buying Utility, or
- c) Force Majeure Events affecting the BESSD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred for a reasonable period but not less than 'day for day' basis, to permit the BESSD/ Buying Utility through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the BESSD/ Buying Utility, or till such time such Event of Default is rectified

2.3.2. Any delay from the Effective Date of BESSA in issuance of Order for the adoption of tariff by the Appropriate Commission, shall entail a corresponding extension in the Scheduled Commissioning Date for equal number of days for which the Commission order has been delayed beyond the Effective Date of BESSA.


2.3.3. In case of extension due to reasons specified in Article 2.3.1(ii) and (iii), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement as per the provisions of Article regarding Force Majeure. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.

2.3.4. If the Parties have not agreed within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article


2.3.5. As a result of such extension on account of Article 2.3.1 or Article 2.3.2, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

2.3.6. Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 2.3.1 & Article 2.3.2 shall be an event of default on part of the BESSD and shall be subject to the consequences specified in the Article 2.4

2.4. Liquidated Damages not amounting to penalty for delay in Commissioning

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- 2.4.1. **The Scheduled Commissioning Date (SCD) for commissioning of the full capacity of the Project shall be the date as on Twenty-four (24) weeks from the date of signing of BESSA.** The BESSD is expected to complete Delivery, Installation, Testing, and Commercial Operations before the SCD.
- 2.4.2. The systems will be deemed commissioned only after successful trial run of the system for seven (7) days from the date of commissioning and submission of relevant test reports. **The Commissioning Committee shall then issue the commissioning certificate, and this date will be regarded as the Commercial Operation Date (COD).**
- 2.4.3. The maximum time period allowed for commissioning of the full Project Capacity with applicable liquidated damages, shall be limited to the date as on 6 months from the SCD or the extended SCD (if applicable).
- 2.4.4. In case of delay in commissioning of the Project beyond the SCD until the date as per Clause 2.4.2 above, as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day-basis. For example, in case of a Project Capacity of 20 MW capacity, if commissioning of 20 MW capacity is delayed by 18 days beyond the SCD, then the liquidated damages shall be: PBG amount X (18/180). For the purpose of calculations of the liquidated damages, 'month' shall be considered consisting of 30 days.
- a) Delay beyond the Scheduled Commissioning Date up to (and including) the date of commissioning, as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day basis. For the purpose of calculations of the liquidated damages, 'month' shall be considered consisting of 30 days. As an alternative to the above encashment of PBG, the BESSD may choose to make a payment of the amount corresponding to the liquidated damages, directly to Buying Utility. The BESSD shall intimate to Buying Utility, its chosen alternative out of the two options, within 3 business days of intimation of the liquidated damages to the Developer, as calculated by Buying Utility. In case no response is received from the BESSD until the lapse of the above deadline, Buying Utility shall encash the PBG for the amount as per the liquidated damages. In case the Developer chooses to make necessary payments in lieu of the liquidated damages, the said payment shall be credited to Buying Utility's account through NEFT payment, no later than 5 business days from the above intimation by the BESSD. In case of non-payment by the developer within the above deadline, the PBG will be encashed by Buying Utility on the next business day.
- b) Delay beyond Six (6) Months from SCD: The Buying Utility may choose to terminate BESSA.
- 2.4.5. The BESSD further acknowledges and accepts that the amount of the liquidated damages as specified above is a fixed, genuine, and reasonable pre-estimate of the damages that may be suffered by Buying Utility.

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## 2.5. Acceptance/Performance Test

- 2.5.1. Prior to synchronization of the BESS, the BESSD shall be required to get the BESS certified for the requisite test including for safety as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Battery Energy Storage projects. Further, BESSD shall ensure that all technical, acceptance and performance criteria as specified in RFP Documents and Guidelines are also complied and maintained.

## 2.6. Third Party Verification

- 2.6.1. The BESSD shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to Buying Utility or their authorized representatives for inspection and verification of the works being carried out by the BESSD at the site of the Project. The BESSD shall provide full support to Buying Utility and/or the third party in this regard.
- 2.6.2. The third party may verify the construction works/operation of the Project being carried out by the BESSD and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from BESSD or require the works to be stopped or to comply with the instructions of such third party.

## 2.7. Breach of Obligations

- 2.7.1. The Parties herein agree that during the subsistence of this Agreement, subject to Buying Utility being in compliance of its obligations & undertakings under this Agreement, the BESSD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement


## 3. Buying Utility's Obligations

### 3.1. Obligation of Buying Utility

- Provide land at the Project Location for setting up of the BESS
- Make payment of the Monthly Bill/ Supplementary Bill by the Due Date
- Fulfil all the obligations undertaken by Buying Utility under this BESSA

### 3.2. Losses




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Buying Utility shall be liable to bear all the losses including transmission losses in respect of the power evacuated beyond the Interconnection/ Delivery/ Metering Point to its receiving substation(s). BESSD shall be liable to bear all the losses from the BESS up to Interconnection/ Delivery/ Metering Point.

#### 4. Synchronisation, Commissioning and Commercial Operation

- 4.1. The BESSD shall give the concerned Buying Utility at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice of the date on which it intends to synchronize the BESS to the Grid System.
- 4.2. Subject to Article 4.1, the BESS shall be synchronized by the BESSD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 4.3. The synchronization equipment and all necessary arrangements / equipment including RTU/ EMS any other equipment for charge and discharge of power from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the BESSD at its facility of the Project at its own cost. The BESSD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 4.4. The BESSD shall immediately after each synchronization/ tripping of system, inform the substation of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code under intimation to Buying Utility. In addition, the BESSD at its own risk and cost, will be required to arrange for the charging and discharging of power for carrying to carry out operational/ functional test prior to commercial operation as well as for commissioning of the Project. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 4.5. The BESSD shall commission the Project within twenty-four (24) weeks of the Effective Date of BESSA. The systems will be deemed commissioned only after successful trial run of the system for seven (7) days from the date of commissioning and submission of relevant test reports. This date will be regarded as the **Commercial Operation Date (COD)**.
- 4.6. There can be no part Commissioning of the Project. The entire capacity shall be commissioned by the Scheduled Commissioning Date (SCD).
- 4.7. The Parties agree that for the purpose of commencement of the BESS capacity by the BESSD to Buying Utility, liquidated damages for delay etc., the Scheduled Commissioning Date (or


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extended Scheduled Commissioning Date) as defined in this Agreement shall be the relevant date.

#### 4.8. Early Commissioning

The BESSD shall be permitted for full commissioning and declaration of Commercial Operation Date (COD) even prior to the Scheduled Commissioning Date. The Buying Utility may purchase the BESS capacity from such early commissioned Project at BESSA tariff and the COD shall be advanced as applicable.

Such intimation for early commissioning shall be provided to Buying Utility at least 15 days before the proposed early commissioning date. In case there is no response provided by Buying Utility within 7 days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been rejected by Buying Utility. COD of the Project under the BESSA will be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project.

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## Special Conditions of Contract – Part B – Operations & Maintenance

1. Buying Utility has agreed to purchase BESS Capacity from the BESSD under the above RFP and accordingly, BESSD has agreed to sign Battery Energy Storage Service Agreements (BESSA) with for sale of 20 MW/ 40 MWh BESS Capacity on a long-term basis.
2. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Battery Energy Storage Service Agreement (“BESSA”) i.e., a definitive agreement, regarding purchase of BESS Capacity from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this BESSA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

The Parties have accordingly agreed to enter into this BESSA to record their understanding and agreement with regard to the purchase of BESS Capacity to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

In consideration of the promises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the parties as follows:

1. This Agreement shall come into effect from signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
2. The expiry date of this Agreement shall be 12 years from the COD.
3. Subject to the terms and conditions contained herein, the BESSD hereby agrees to sell and make available the BESS Capacity from the 20 MW/ 40 MWh Project to be set up by the BESSD at Project Location *(to be finalised as either 33/11 kV Kilokari substation or or 66/11kV C-Block Vasant Kunj Grid Substation in New Delhi)*.
4. The parties hereby agree that the BESSD shall be liable to pay compensation for any shortfall in performance requirement of BESS Capacity provided from the contracted capacity. The amount of such compensation shall be as determined as per the manner and methodology specified in the BESSA. In case Buying Utility does not avail the remittance of such compensation within sixty (60) days of the end of corresponding Contract Year, Buying Utility shall have a right to recover the same from the amount payable by Buying Utility against Monthly Invoices.
5. Buying Utility shall be responsible to for directly coordinating and dealing with the BESSD, Regional Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of Charging & Discharging of Energy from the BESS Capacity and due compliance with deviation and settlement

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mechanism and the applicable Grid code Regulations, acknowledging that Buying Utility is the Grid connected entity. This is subject to the penalty clauses for non-performance of the BESSD.

### **Applicable Tariff**

- 1.1 The Tariff applicable for the sale of BESS Capacity by the BESSD to Buying Utility under this Agreement shall be the capacity-based Tariff as approved by the Appropriate Commission, which will be fixed for entire term of agreement at delivery point. As a capacity-based contract, the payment will be applicable regardless of actual utilisation of the BESS by the Buying Utility and will be subject the availability of the BESS.
- 1.2 As per provisions of the BESSA, the BESSDs are permitted for full commissioning of the BESS even prior to the Scheduled Commissioning Date (SCD). In case of early commissioning of the Project(s) prior to the SCD, Buying Utility may purchase the BESS Capacity at Applicable tariff as per the BESSA.

### **Invoicing and Settlement schedule**


- 2.1 From the commencement of availability of BESS Capacity by the BESSD, Buying Utility shall pay to the BESSD the monthly Tariff Payments, on or before the Due Date i.e., within 60 days from date of submission of invoice, in accordance with Tariff as specified above. All Tariff Payments by Buying Utility shall be in Indian Rupees.

The BESSD shall issue to Buying Utility a signed Monthly Bill on the first business day of the month prepared based on provisional BESS Capacity of the preceding month (except for first month which shall be computed based on Contracted capacity of project as appropriated under this Agreement) and shall also include the following:

- i) Adjustments bill against the Provisional Bills based on availability of BESS Capacity in the preceding months
- ii) Amount payable on account of shortfall in performance requirement as per BESSA
- iii) Late Payment Surcharge if any
- iv) Taxes, duties Levies etc. as applicable

### **2.2 Payment of Monthly Bills**

- 2.2.1 Buying Utility shall pay the amount payable under the Monthly Bill on or before the Due Date i.e., within 60 days of presentation of bill within official hours, to such account of the BESSD, as shall have been previously notified to Buying Utility in accordance with Article 2.2.2 below.

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2.2.2 The BESSD shall open a bank account ("Designated Account") for all Tariff Payments, and notify Buying Utility of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buying Utility shall also designate a bank account at New Delhi. Buying Utility shall inform the BESSD the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. The BESSD and Buying Utility shall instruct their respective bankers to make all payments under this Agreement to Buying Utility's Designated Account or the BESSD's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### 2.3 Late Payment Surcharge

- i. In the event of delay in payment of a Monthly Bill by the Buying Utility, within 30 days beyond its Due Date, a Late Payment Surcharge shall be payable by the Buying Utility to BESSD at the rate of 1.25% per month on the outstanding amount calculated on a day-to-day basis. The Late Payment Surcharge shall be claimed by BESSD through the next Monthly Bill. All payments by Buying Utility to the BESSD for BESS Capacity procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.
- ii. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

### 2.4 Rebate


For payment of any Bill on or before Due Date, the following Rebate shall be paid by the BESSD to Buying Utility in the following manner

- a) A Rebate of 1.5% shall be payable to Buying Utility for the payments made within a period of five (5) days of presentation of bills through email.
- b) Any payments made beyond a period of 5 days from the date of presentation of bill through email up to and including 30 days, shall be allowed a rebate of 1%.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and Late Payment Surcharge.

### 2.5 Payment Security Mechanism

Buying Utility shall provide payment security to the BESSD through:

2.5.1 **Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project under consideration. Buying Utility shall provide to the BESSD, in respect of payment of its Monthly Bills, a single, unconditional, stand-by, and irrevocable letter of credit ("Letter of Credit"), opened and maintained by Buying Utility, which may be drawn upon by the


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BESSD in accordance with this Article. Buying Utility shall provide the BESSD draft of the Letter of Credit proposed to be provided to the BESSD two (2) months before the Scheduled Commissioning Date.

**AND**


- 2.5.2 **Payment Security Fund (PSF)**, which shall be suitable to support payment for at least 3 (three) months' billing of the BESS
- 2.5.3 As a combination of the above two mechanisms, Buying Utility shall provide a total payment security for a total of 4 (four) months' energy billing, out of which, LC should be provided for a minimum period of 1 month's energy billing
- 2.5.4 The BESSD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and shall not make more than one drawl in a Month if there are no outstanding dues.
- 2.5.5 Provided further that if at any time, such Letter of Credit/ Payment Security Fund amount falls short of the amount specified in Article 2.5.3 due to any reason whatsoever, Buying Utility shall restore such shortfall within seven (7) days.
- 2.5.6 Buying Utility shall cause the scheduled bank issuing the Letter of Credit to intimate the BESSD, in writing regarding establishing of such irrevocable Letter of Credit and any of the changes therein.
- 2.5.7 Buying Utility shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 2.5.8 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Buying Utility.
- 2.5.9 If Buying Utility fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 2.5.4, the BESSD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buying Utility, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill which has remained unpaid by Buying Utility;
  - ii) a certificate from the BESSD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

## 2.6 Disputed Bill

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- 2.6.1 If the Buying Utility does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving, such Bill shall be taken as conclusive and binding.
- 2.6.2 If the Buying Utility disputes the amount payable under a Monthly Bill, it shall pay undisputed amount of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- the details of the disputed amount;
  - its estimate of what the correct amount should be; and
  - all written material in support of its claim.
- 2.6.3 If the BESSD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.6.2, the BESSD shall make appropriate adjustment in the next Monthly Bill.
- In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by Buying Utility and up to and including the date on which such payment has been received as refund.
- 2.6.4 If the BESSD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.6.2 it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- reasons for its disagreement;
  - its estimate of what the correct amount should be; and
  - all written material in support of its counter-claim.
- 2.6.5 Upon receipt of the Bill Disagreement Notice by the Buying Utility under Article 2.6.4, authorized representative(s) or a director of the board of directors/ member of board of Buying Utility and the BESSD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 2.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 2.6.5, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in BESSA.
- 2.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Buying Utility shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.




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## 2.7 Quarterly and Annual Reconciliation

2.7.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation and adjustment, if any, within thirty (30) days of the end of the quarter of each Contract Year and annual reconciliation and adjustment, if any, at the end of each Contract Year within thirty (30) days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

2.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be, has been finally verified and adjusted, Buying Utility and the BESSD shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the BESSD shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Except for the Tariff adjustment made during the period from commencement of supply to commissioning of the cumulative awarded capacity/ accepted cumulative capacity by the BESSD, Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Dispute resolution in BESSA.



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## Usage of Contracted Capacity

1. In terms of this BESSA, the BESSD shall, within the timelines provided in the RFP and this BESSA:

1.1. Provide Contract Performance Bank Guarantee

1.2. Perform its obligations as per the Scope of Work as provided in Volume I of the RFP

2. Scope of services

2.1. This Agreement shall govern the provision of the professional services, listed hereunder and more fully described in Volume I of the RFP (Operations and Maintenance), in conformance with the SLA

2.2. The BESSD shall implement the BESS Project and then operate and maintain it for the Term or until termination of this Agreement, commencing from the date of installation or when the acceptance is complete as per the Acceptance Criteria, whichever is later.

2.3. To meet the aforesaid objectives the BESSD will provide the Service Levels in accordance with the technical specifications as described in RFP Volume I and Volume III, from the date on which this Agreement is executed (hereinafter the "Effective Date") and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this BESSA expires or terminates for any reason, which shall be till the end of the Term of the agreement as mentioned below

2.4. Contract period shall commence from the COD of the Project and shall remain valid for 12 years from the COD of the Project.


2.5. If the delay occurs due to a Force Majeure event, a reasonable extension of time shall be granted by the Buying Utility.

2.6. Approvals and required consents

2.6.1. The Parties shall cooperate to procure, maintain, and observe all relevant and regulatory and governmental licenses, clearances, and applicable approvals (hereinafter the "Approvals") necessary for the BESSD to provide the Services

2.7. Access to BESSD or its Nominated Agencies to Project Location

2.7.1. For so long as the BESSD provides Services on a non-permanent basis and to the extent necessary for the BESSD to provide the Services and at no cost to the BESSD, the buying utility, shall, subject to compliance by the BESSD with all safety and

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security guidelines which may be notified by the purchase to the BESSD in writing and provide the BESSD with access to the project location

2.7.2. Provided that, the BESSD has duly intimated the Buying Utility regarding its requirement of accessing any other buying utility's location at least seven (7) days prior to the date of visit

2.7.3. Locations and items shall be made available to the BESSD on an "as is, where is" basis by the Buying Utility. The BESSD agrees to ensure that its employees, agents, and Partners use the location specifically for the purpose for which the access to location was sought by the BESSD and do not use the location, services and items for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; and in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to intellectual property rights or confidentiality).

## 2.8. System Maintenance

2.8.1. The BESSD shall create and maintain a rolling maintenance schedule with regard to the BESS system used in performing the Services. Such maintenance schedule shall be discussed and updated in collaboration with the Buying Utility

## Performance criteria and monitoring

### 1. Performance monitoring


As part of the performance monitoring, the following shall be carried out:

1.1. The BESSD must install necessary equipment to continuously measure BESS operating parameters (voltage, current, ambient condition, etc.) as well as energy input into and energy output from the BESS along with Metering arrangement in accordance with extant regulations. This list of parameters is not exhaustive, and Buying Utility may specify any other operational parameter during detailed planning/ engineering prior to commencement of design of dashboard. The BESSD will be required to submit this data to Buying Utility and/ or concessional lenders online and/or through a report on regular basis every month for the entire duration of contract.

1.2. The BESSD shall provide access to Buying Utility or their authorized representatives for installing any additional monitoring equipment to facilitate online transfer of data.

1.3. All data shall be made available as mentioned above for the entire duration of the BESSA.

1.4. The BESS EMS should be OPC version 2.0a (or a later version including OPC UA)/ IEC 104 compliant, as per technical specifications and requirements defined in Volume 1, and

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implement appropriate OPC-DA server as per the specification of OPC Foundation. All data should be accessible through this OPC server for providing real time online data (BESS parameters) to the concerned authorities/organisations. This time series data shall be available from the EMS to facilitate monitoring and should include among others as stated before, parameters to facilitate daily, monthly, and annual report for performance monitoring

- 1.5. Web-based and app-based monitoring should be available, which should not be machine dependent. The monitoring should provide the same screens as available in the EMS at Buying Utility's SCADA Centre, Balaji. Also, it should be possible to download reports from a remote web-client in PDF or Excel format and as per the clauses in Volume 1.

## **2. Service Level Agreements (SLAs)**

- 2.1. Service Level Agreements (SLAs) within this BESSA reflect the measurements to be used to track and report overall progress, system performance and performance of BESSD's services on a regular basis.
- 2.2. These SLAs shall operate as a legally binding services agreement specifying terms which apply to the parties and to the provision of the services by the BESSD to Buying Utility under this SLA


## **3. Project performance parameters**

- 3.1. The Contracted Capacity of the Project shall be in terms of "MW". The agreed installed contracted Capacity to Buying Utility for Battery Energy Storage System shall be 20 MW/ 40 MWh
- 3.2. Accordingly, for the Contracted Capacity of 20 MW, the BESSA shall entitle the Buying Utility to schedule discharge up to 40 MWh of energy from the BESS in each cycle, subject to the following:

- i. Buying Utility will schedule input energy which will be inclusive of losses of BESS (determined from the guaranteed Round-Trip Efficiency (RtE) of the system as specified in Volume 1).

Illustration: For a Contracted Capacity of 20 MW/40 MWh, assuming an RtE of 97.5%, Buying Utility shall supply charging power to the tune of 41.03 MWh, to expect a discharge of 40 MWh as per the desired schedule.

- ii. Minimum energy scheduled for discharge in a given cycle during a year shall be more than or equal to the Min. Dispatchable Energy Capacity at the End of Year as specified elsewhere under in this Clause.

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3.3. Power rating of a 40 MWh (20 MW x 2 hrs) BESS will be 20 MW, i.e., the maximum value of the active Output and Input Power at the Delivery Point. The Energy rating of 40 MWh of the system will be the dispatchable capacity at COD of the system, as measured at the Metering Point. Terms and definitions of terminologies related to BESS shall be as defined in IEC 62933-2-1.

3.4. The SI shall make the BESS available for 8,760 operational cycles over the operational period of 12 years. Following provisions shall be applicable on the Contracted Capacity to be offtaken by Buying Utility:

- i. The number of operational cycles refers to the number of times per contract term Buyer may fully charge and discharge the Storage Facility each year. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar month equals the Maximum Storage Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The inverse is true for a full discharge
- ii. The procurement shall be in power (MW) terms in intervals of 15-minute timeslots. The BESSD shall install, operate, and maintain the BESS to offer facility to Buying Utility to charge and discharge the BESS on an “on demand” basis. The BESSD shall guarantee a **minimum system availability of 95% on annual basis at the PCS level**. The BESSD shall pay the liquidated damages for such shortfall and shall duly pay such damages to Buying Utility under BESSA. Amount of such liquidated damages shall be 150 percent of the Capacity Charges for the capacity not made available.
- iii. Availability of the Project shall mean the ability of the BESS to execute a function i.e., charging or discharging, when called upon to do so, as per the schedule **or signal provided by the Buying Utility, subject to the minimum system ratings** specified herein. In addition, the BESSD shall also demonstrate, on monthly basis, 100% of the minimum dispatchable Capacity of the BESS as required under Clause 3.5 below.


### 3.5. SLA – System Availability

For a given BESSA, the Annual availability guarantee shall commence from the date of commissioning of the system and shall be calculated as below:

**Annual System Availability = Mean of the System availabilities of all time-blocks during the year in which the Buying Utility has scheduled power for charging/discharging the BESS.**

$$\text{System Availability in a time block}_i = \frac{\text{Actual Injection/Drawal}_i \text{ in MW (A)}}{\text{Scheduled Injection/Drawal}_i \text{ in MW (B)}}$$

Where,


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- a)  $i$  refers to the  $i^{th}$  time-block in the year where *Scheduled Injection/Drawal*  $\neq 0$ .
- b) *Actual Injection/Drawal<sub>i</sub>* is the Energy Scheduled for Charging/Discharging in the  $i^{th}$  time-block
- c) *Scheduled Injection/Drawal<sub>i</sub>* is the Energy Scheduled for Charging/Discharging in the  $i^{th}$  time-block
- d) A and B shall be as per the measurement at the Main ABT Meter at the Point of Interconnection.

Taking into consideration capacity degradation, the minimum dispatchable energy to be made available by the BESSD at the end of a given year shall be as follows:

Year	Min. Dispatchable Capacity at the end of Year (as a % of 40 MWh)
1	97.5%
2	95.0%
3	92.5%
4	90.0%
5	87.5%
6	85.0%
7	82.5%
8	80.0%
9	77.5%
10	75.0%
11	72.5%
12	70.0%

- i. Any shortfall in the minimum dispatchable capacity will be considered as reduction in availability.
- ii. The nameplate ratings shall be achievable during discharge for the full range of environmental conditions at the project site when the battery is fully charged. In any case, the BESS shall be capable of being discharged at reduced power levels from that specified above. However, the energy discharged from the battery shall not require to be greater than the nameplate watt-hour rating specified herein.
- iii. Buying Utility shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the BESSD for despatch of electricity to the Grid during such period

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and in such volume as it may specify in its instructions. The BESSD shall clearly specify the maximum recovery times required to restore the BESS for functional availability between duty cycles. However, in no case shall this time be more than 1 hour.

- iv. Operational Window: Operational Window shall mean the expected hours/duration of system (capacity) availability on each day during the term of the Contract, excluding:
- Maximum BESS recovery time as specified in this document
  - Grid Outages (duly certified to this effect by the Buying Utility)
  - Planned Maintenance Outage duly informed by the BESSD to the Buying Utility with at least one month's prior notice, subject to total no. of planned outage period being not more than 200 hours in the year.

For operational purposes, Operational Window may be decided as mutually agreed between the BESSD and the Buying Utility. Planned Maintenance Outages shall be preferably during non-peak months and during non-peak hours.


- v. In addition to above, the BESSD shall also submit Available energy Test Report as per IEC 62933-2-1 on Annual basis to Buying Utility.
- vi. It shall be the responsibility of the BESSD to make periodic replacements/replenishments of system capacities (to ensure annual guaranteed system ratings), if and when required, up to the Term of the Contract. Outage time as a result of replacement will also be counted as an "Accountable BESS Outage" for the purpose of computing BESS Availability.

Pursuant to the provisions above, the BESSD shall plan the despatch of electricity and convey its availability for scheduling thereof as per the Buying Utility's requirement, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Electricity Act, 2003. The BESSD shall adhere to all the technical requirements as brought out in Volume 1 of the RFP. The BESS shall conform to all the applicable CEA and CERC Standards for connectivity, metering, communication with the grid operators, etc

#### **Shortfall in meeting Performance Criteria**

Following provisions shall be applicable on the Contracted Capacity scheduled by Buying Utility:

Subsequent to COD of full Project Capacity, in case the annual Availability demonstrated by the BESSD is less than the minimum as specified above, such shortfall in performance shall make the BESSD liable to pay the liquidated damages provided in the BESSA to Buying Utility.

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Liquidated damages on account of shortfall in meeting the performance criteria will be computed as follows:

$$\text{Liquidated Damages} = (A - B) \times C \times D \times n \times 1.5$$

where,

**A** is Guaranteed Annual Availability as per Clause 3.4.ii above;

**B** is Actual Annual System Availability, as calculated as per Clause 3.5 above;

**C** is BESS Power Rating, as per Clause 3.3;

**D** is the Capacity Charges/MW/month, i.e., the approved tariff

**n** is the no. of months.

### 3.6. SLA – Round Trip Efficiency

In case the BESSD fails to meet the monthly RtE demonstration as per Clause 3.4.iii above, additional Liquidated Damages for the unavailability of the required minimum RtE shall be applicable for the entire month. However, this damage shall not be applicable in events of Force Majeure identified under the BESSA with Buying Utility, affecting the availability of the system.

The BESSD shall guarantee AC to AC roundtrip efficiency (RtE) of system on monthly basis. The BESSD shall be liable for Liquidated Damages to the Buying Utility, if any, on account of excess conversion losses, based on the following conditions:


- For  $RtE < 70\%$ , there shall be a liquidated damage @ the Average Power Purchase Cost of the Buying Utility charge of previous financial year of the Buying Utility of excess conversion losses considering system  $RtE = 85\%$ . Further, tariff payment for the corresponding month shall not be made to the BESSD;
- For  $70\% \leq RtE < 85\%$ , there shall be a liquidated damage levied @ the Average Power Purchase Cost of the Buying Utility charge of previous financial year of the Buying Utility of excess conversion losses considering system  $RtE = 85\%$ .

*System Roundtrip Efficiency*

$$= \frac{\text{Sum Total of Actual Injection/Discharging}_j \text{ in a month (C)}}{\text{Sum Total of Actual Drawal/Charging}_j \text{ in a month (D)}}$$

Where,



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$j$  refers to the  $j^{th}$  month in a year;

$$D \neq 0;$$

$$D \leq 2 \times E_{BESS} \times (MD_{n-1} - (MD_{n-1} - MD_n) \times \frac{j}{12}) / RtE_g ;$$

$E_{BESS}$  refers to Energy Rating specified above (40 MWh);

$MD_{n-1}$  refers to minimum guaranteed dispatchable energy at the end of the previous year (as a % of Capacity at the COD specified in Clause 3.5 above);

$MD_n$  refers to minimum guaranteed dispatchable energy at the end of the current year;

$RtE_g$  refers to the guaranteed Round-Trip Efficiency under the BESSA;

**C and D shall be as per the measurement at the Main ABT Meter at the Point of Interconnection.**


**Note: It is clarified that the actual injection/ discharging of the BESS shall be considered after Auxiliary Power load of BESS.**

### 3.7. SLA – Dispatch and scheduling of power

3.7.1. The BESSD, in consultation with Buying Utility, shall be required to charge/ discharge the Battery System as per the applicable regulations / requirements / guidelines of CERC/ DERC/ SLDC/ RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law/ direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/ RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the BESSD.

3.7.2. The BESSD shall be responsible for any deviation from scheduling during charging and discharging for reasons not attributable to Buying Utility and for any resultant liabilities on account of charges for such deviation as per applicable regulations. UI charges on this account shall be directly paid by the BESSD.


3.7.3. During a Day, Buying Utility shall not ask to for/ schedule any BESS capacity / Energy in excess of 2 cycles of charge and discharge of 2 hours each. For an example, in a cycle charge to the rated capacity for 2 hours is permitted which could be a single stretch of 2 hours or multiple stretch having total cumulative time period of 2 hours. Similarly, for discharge, there could be a single stretch of 2 hours or multiple stretch having total cumulative time period of 2 hours subject to condition that total scheduled discharge

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of energy from BESS as demanded by the Buying Utility shall be limited to 85% of the energy supplied by the Buying Utility.

### **Statutory and Other Responsibilities of the BESSD**

- 1.1. The BESSD shall exercise control/supervision of his employees in the day-to-day work. The BESSD shall deploy supervisor to act as an interface between the BESSD and the Engineer-in-charge of Buying Utility for effective discharge of services envisaged under the contract and shall be available in the office premises as per requirement. Buying Utility will not retain any control, supervision or the manner of discharge/dismissal or retrenchment or re-employment of the employees engaged/employed by the BESSD.
- 1.2. The BESSD shall maintain all the records such as Name, Father's name, Photograph, Age, Sex, Educational qualifications, present and permanent addresses along with proof of age and details of the dependent family members as required under various provisions of labour laws and acts for the persons deployed by them in the Buying Utility's premises. BESSD has to produce these records as and when required by Buying Utility or the concerned statutory authorities for inspection. In case it is found that BESSD has not complied with any statutory requirement under various Labour Laws/Acts, Buying Utility being the principal Owner shall make the payment and will recover the same with penalty/surcharge from the due payment of the BESSD.
- 1.3. The BESSD shall also before the actual deployment of personnel, submit a certificate from a Registered Medical Practitioner certifying that the person deployed is physically, mentally fit (free from any kind of infectious disease in case of those deployed in Catering services). Such certificate shall be submitted for each person deployed once in a year.
- 1.4. The BESSD shall make arrangement to issue Identity cards to each of the manpower deployed, for entry into the premises which shall have name of employee, place of work, name of the BESSD and photograph verified by the BESSD. The Identity Cards shall be issued by the BESSD at his own cost. Security Staff of Buying Utility premises shall be at liberty to exercise check on any of the Employees while entering, search them in the premises, during the work and while leaving from the premises.
- 1.5. Uniform: Decent Formal dress. Safety shoes/ Personal Protection Equipment.
  - 1.5.1. The BESSD shall make his own arrangement for providing all facilities like lodging & boarding etc. for his workers, while on outstation assignments whenever/ wherever required.
  - 1.5.2. BESSD shall also make out an Attendance card/wage card with endorsement of Time-in and Time-out for each employee deployed with Buying Utility. In case the BESSD does not make the payment to his employee on the specified date mentioned in the attendance/wage card. Buying Utility shall make payment to such employees and

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deduct the same from the BESSD adding 10% overheads charges to the payment made.

1.5.3. The BESSD shall have the sole discretion of employing and terminating the services etc. of their employees. In case of termination of the services of the employee, the BESSD shall ensure that wages and other dues payable is made within 48 hours of the termination. In case it is felt by the Engineer-in-charge or his authorized representative that any workmen of the BESSD is not suitable for carrying out the job, then the BESSD has to take the necessary action immediately on receiving official communication from Buying Utility.


1.5.4. The BESSD shall be responsible for good conduct of his employees. In case of misconduct, BESSD shall take prompt disciplinary action on the advice of Engineer-in-charge Buying Utility.

#### 1.6. Labour Law Provision

1.6.1. BESSD shall keep Buying Utility indemnified against all claims/ liability whatsoever on account of statutory payments, costs, damages, and charges arising out of personal injury / disability or death of BESSD's employees caused by any reason whatsoever. Buying Utility will not be responsible for any injury, damage etc. caused to any of the Employee put on the job by the BESSD directly or indirectly. In the event of any claim BESSD will be solely responsible to meet such claims and Buying Utility will not entertain any claim whatsoever in this regard.

1.6.2. The BESSD shall pay to the personnel employed by him the wages not less than current Minimum wages as notified by the concerned Regional Labour Commissioner (Central) from time to time or the State Government whichever is higher in the presence of Buying Utility authorized representative. Documentary proof of payment of minimum wages having signature of BESSD or his authorized representative, Buying Utility representative and concerned workers must be kept in records. BESSD has to ensure the payment to his labours latest by seventh of every month in presence of Buying Utility representative, irrespective of payments from Buying Utility towards bill raised, failing which payments can be made directly from the bill and suitable action can be taken against the BESSD.

1.6.3. During continuance of the contract, the BESSD shall abide at all times by all applicable existing labour enactments and rules made thereunder, regulations, notifications and byelaws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority or any other law being implemented in Buying Utility or any modifications thereof or any other law relating thereto and rules made

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thereunder from time to time. The employees of the BESSD in no case shall be treated as the employees of the Owner at any point of time.

1.6.4. The BESSD shall keep the Buying Utility indemnified in case any action is taken against the Buying Utility by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments.

1.6.5. If the Buying Utility is caused to pay under any law as Principal Owner such amount as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the Notifications/Byelaws/Acts/Rules/Regulations including amendments, if any, on the part of the BESSD, the Owner shall have the right to deduct any money due to the BESSD under this contract or any other contract with the Buying Utility including his amount of performance security for adjusting the aforesaid payment. The Buying Utility shall also have right to recover from the BESSD any sum required or estimated to be required for making good the loss or damage suffered by the Buying Utility.


1.6.6. The BESSD shall in respect of manpower employed by him comply with all labour laws applicable to the personnel engaged by him for carrying out work and Buying Utility shall bear no liability whatsoever towards any violation by the SI in this regard. The SI shall have the sole discretion of employing and terminating the services etc. of their manpower. In case of termination of the services of the manpower, the SI shall comply of some major laws by the SI are given as under. However, the SI is bound to comply with all the provisions of applicable labour laws even though not expressly mentioned herein.

#### 1.7. Insurance Under Workmen's Compensation Act and Other Liabilities:

1.7.1. Workmen compensation Insurance policy shall be taken by the BESSD in the joint name with Buying Utility as principal Owner and shall be project/ site specific. The cost to be incurred on workmen compensation insurance shall be considered to be included in the bid price (overhead charges/service charges quoted by the Bidder).

1.7.2. The BESSD at his cost shall arrange, secure and maintain all insurance as may be pertinent to the works and obligatory in terms of law against all perils and the responsibility to maintain adequate insurance coverage at all times during the period of contract shall be of the BESSD alone. The BESSD's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations.

1.7.3. The BESSD shall also be responsible for compliance of all the provisions under workmen compensation act and will take necessary insurance for all the persons to be deployed under the contract and will furnish copy of the insurance policy to Buying


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Utility before commencement of work. BESSD shall be responsible for any compensation what so ever to their workers in case of any omissions on the parts of the workers and Buying Utility shall not be held responsible for such omissions of workers.

- 1.7.4. The perils required to be covered under the insurance shall include all risks, but not limited to fire and allied risks, miscellaneous accidents, workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotions, weather conditions, accidents of all kinds etc. The BESSD shall be responsible for the safety and security of the employees of the BESSD & his Sub-contractors throughout execution of the works.
- 1.7.5. Insurance such as third party & workmen insurance, or any other insurance shall be arranged by the BESSD at his cost and expense.
- 1.7.6. In the event of there being any increase of workmen's compensation insurance premium under any law or any additional or new liability under the Employees laws being imposed on the BESSD after the date of submission of the tender, the additional expenditure incurred by the BESSD shall be borne by him and no claims shall be entertained by Buying Utility on any account.
- 1.7.7. All costs on account of insurance liabilities covered under the Contract will be on BESSD's account and will be included in tariff.
- 1.7.8. In absence of valid Workmen compensation Insurance policy, compensation as decided by the labour commissioner/authority shall be payable by the BESSD in case of any accidental death/ injury. Buying Utility shall not be liable for any such payments.
- 1.7.9. In the event of failure on the part of the BESSD to deposit the compensation with the concerned labour authorities, within the stipulated period of one month from the date of accident (If any), Buying Utility shall take necessary action to deposit the same with the concerned authorities and shall recover/ adjust the amount deposited from the bills submitted by the BESSD anywhere in Buying Utility.

#### 1.8. Safety Aspects/ Employees Welfare:

- 1.8.1. Personal Protective Equipment's (PPEs): Personal protective equipment's (PPEs) shall be provided by Buying Utility as per requirement of the work.
- 1.8.2. BESSD will take all safety measures and ensure that personal protective devices are being used by his workers at the time of work.

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1.8.3. The BESSD shall also be responsible for safety of all workmen employed by them and they shall be responsible for payment of any compensation that may arise out of any accident, injury, or death of workers during the execution of contract. Buying Utility shall bear no liability whatsoever towards any violations by the BESSD in this regard.

1.8.4. In case of any accident during the work, it will be BESSD's responsibility to lodge FIR at Police Station immediately with written information to Buying Utility and make available best treatment to the injured including lodging of insurance claim.

1.8.5. Compensation for death/ injury in case of accident: In case of any accident during performance of work, BESSD shall be responsible for (i) payment of medical expenses as per actual in case of injury and (ii) Payment of funeral expenses @ Rs. 15,000/- plus expenditure towards sending the dead body to the home town of the deceased or the actual place of cremation.


1.8.6. The amount mentioned above shall be in addition to the compensation payable under the relevant provision of the Workmen's Compensation Act and rules framed thereunder or any other applicable laws as applicable from time to time. In case the BESSD does not pay it the above-mentioned amount, such amount shall be recovered by Buying Utility from any monies due or becoming due to the BESSD under the contract or any other on-going contract and passed on to the affected workman.

1.8.7. Failure to comply with rules for Employees Welfare, Safety Code or the provisions relating to report on accidents and to grant of maternity benefits to female Employees shall make the BESSD liable to pay to the corporation as damages an amount as fixed by Engineer-in-charge for each default or materially incorrect statement. The decision of the Engineer-in-charge in such matters based on reports from the Inspecting Officers as defined in the BESSD's Employees Regulation to these conditions shall be final and binding and deductions for recovery of such damages may be made from any amount payable to the BESSD.

#### 1.9. Theft/Damage by BESSD's Employees:

1.9.1. If the damage/theft is caused to the Buying Utility asset/property/office equipment/ Tools and plants by the technicians/ fitters deployed by the BESSD, then the BESSD shall bear the cost of repair or replacement as per direction of Engineer-in-Charge.

1.9.2. Utmost care has to be taken in operation and maintenance of Firefighting system equipment and its associated T&Ps/ materials including tools & tackles etc. Any loss or damage arising out of mishandling of the T&P/ materials, negligence and/ or because of carelessness or lack of knowledge of BESSD's employees shall be to SI's account. Buying Utility shall be at liberty to recover such damages from the BESSD

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out of outstanding dues, Contract Performance Guarantee, or any other means available with the Buying Utility.

#### 1.10. Conduct & discipline:

1.10.1. The employees deployed by the BESSD shall not at any time do, cause, or permit any nuisance in area of work in Buying Utility office and/or actual work site or do nothing which shall cause unnecessary disturbance or inconvenience to owners, tenants, or occupants of other properties near the work area and to the public generally. If any employee is found creating any nuisance, then necessary action as deemed fit shall be taken by the BESSD, immediately on receipt of such information from the Engineer-in-charge of Buying Utility or his authorized representative.

1.10.2. BESSD shall be responsible in case any of his employees or ex-employees creates unwanted situation unwanted shouting, raises slogans against anybody within the office premises or actual work site at any time during the currency of the Contract. This act shall be considered as breach of the Contract and shall be dealt with accordingly.

#### 1.11. Risk and Cost:

During the period of contract, if the BESSD fails to perform and/or rectify any defect pointed out to him the same shall be got done by Buying Utility at the risk and cost of BESSD and recovered from the Security Deposit or any other amount payable to the BESSD.

#### 1.12. Environmental Management

The BESSD shall stand comply with all requirements of "Environmental management system" i.e., ISO 14001:2015 and maintain the necessary records.