

Expression of Interest (EOI)

For

Registration of Strategic partners for Strategic Partnership (SP) with EESL to facilitate business in Consultancy assignment of Urja Bachat Sewa- उर्जा बचत सेवा (UBS)

EOI No.: EESL/CDP/2025-26/Services-02

Date of Issue: 26/09/2025

Last Date for Submission of Application: 07/10/2025 at 1100 Hrs

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INTRODUCTION

Energy Efficiency Services Limited (EESL) is a Super Energy Service Company (ESCO), which enables consumers, industries and governments to effectively manage their energy needs through energy efficient technologies. EESL is implementing the world's largest energy efficiency portfolio across sectors like lighting, buildings, industry electric mobility, smart metering, agriculture, etc. at an enormous scale. EESL's energy efficiency solutions have saved India over 47 billion kWh energy annually while reducing 36.5 million tons of carbon emission. Founded in 2009, EESL is a Joint Venture of four reputed public- sector undertakings National Thermal Power Corporation Limited (NTPC) , Power Finance Corporation Limited (PFC), REC Limited and POWERGRID Corporation of India Limited (PGCIL), under the Ministry of Power, Government of India. EESL focuses on energy efficient driven solution through innovative financial model.

EESL has designed a business model covering innovative EE technologies identified under GEF support program and services covering Energy Audit, GHG Accounting, Safety & Performance Audit, Water Audit, RE as a Service, Cooling as a Service, Lighting as a Service that are transparent, scalable, flexible, and can seamlessly embrace in a manner that incentivizes all stakeholders. The business model has the power to unlock demand in sectors where none has existed before. By deploying this business model, EESL drives large scale initiatives, creating a market for transformative, future-ready solutions.

EESL PROGRAMS –

1. UJALA – Unnat Jyoti by Affordable LEDs for All
2. SEAC – Super-Efficient Air-Conditioner Program
3. SLNP – Street Light National Program
4. NECP – Induction Cook Stove
5. NMRP – National Motor Replacement Programme
6. CONSULTANCY – Energy Audits of Government / Private Buildings
7. DEEP – Demonstration of Energy Efficiency Projects for BEE
8. SMNP – Smart Meter National Program

Energy Efficiency Services Limited (EESL) is at the forefront of implementing diverse energy efficiency projects across India. To further enhance its Consultancy endeavors, EESL is actively exploring strategic partners for facilitating business in Consultancy assignment of 'Urja Bachat Sewa' (SP) through a registration process. As part of this initiative, applications are currently being invited for Registration.

The role of the strategic partners is pivotal as they will be entrusted with the task of aggregating demand for Consultancy assignment from a wide array of potential customers for various projects undertaken by EESL. Upon successfully generating and closing leads, EESL remunerates the registered SP with a designated success fee.

EESL has executed energy efficiencies projects of LED Street Lighting project with centralized control system, solar street lighting project, Solar power project (Both ground mounted and rooftop), solar pump, building energy efficient project, energy audit, GHG accounting audit, smart metering project, Agriculture demand side pumps, E-mobility business etc. Our vision is to extend consultancy in these areas and work as PMC Strategic Partner for creating a project pipeline for Consultancy services covering Energy Audit, GHG Accounting, Safety & Performance Audit, Water Audit, RE as a Service, Cooling as a Service, Lighting as a Service, Value added services on Energy

efficiency / Project supervision / Bid processing and Industrial Energy Efficient technologies identified under Demonstration of Energy Efficiency Project (DEEP) and Promotion of Market Transformation in Energy Efficiency under MSME sector (PMTEE).

In line with its In-house expertise in promoting Energy efficiency business, EESL is particularly keen on encouraging participation from CPSUs/ Central Govt. Department/ Universities/ Smart Cities/ Urban local bodies etc. This initiative aims not only to socialize energy efficiency interventions but also to explore viable business opportunities within these communities.

Registration Steps:

Step 1: Registration through link provided on EESL website (<https://forms.office.com/Pages/ResponsePage.aspx?id=4zuZSuA8xEmW6SMYSZKx3XM7si1IdBVEgqutbltds3RUQU8wR1Y2UFRJQTFVMUE1S1FJVlNIRDNQRi4u>)

Step 2: Submission of requisite documents (in EESL prescribed formats) in physical form along with requisite Refundable Security Deposit

Step 3: Evaluation of applications by EESL and approval by the competent authority

Step 4: Letter of Registration to the selected strategic partners

Step 5: Definitive Agreement with the Registered Strategic Partner.

Step 6: Business Outreach by Strategic Partner as per SOW.

Enclosed:

1. Process Guidelines:

- A. Registration Procedure
- B. Scope of Work (SOW)

Annexure I

2. Outreach Models

Annexure II

3. Terms & Conditions

Annexure III

Strategic Partner here by abbreviated as "SP" in this document.

ANNEXURE I

A. REGISTRATION PROCEDURE

- All interested parties are required to fill registration form for registration via link provided on EESL's official website i.e. www.eeslindia.org.
- After having successfully registered in the above portal, parties should take the printout of the filled in form and submit it along with all the requisite documents mentioned in Annexure -1(a) as per EESL Prescribed format, which can be downloaded from EESL website, while doing the registration.
- The Program document is available on EESL website, and it will be understood that the document is read carefully, thoroughly before submitting the application and requisite documents.
- Documents of the strategic partners will be evaluated by EESL, and registration letters will be issued to the selected strategic partners.

B. SCOPE OF WORK

1. Strategic Partner (s) shall identify the potential Clients to enhance and tap the potential market for EESL consultancy services/technologies/projects/products.
2. Strategic Partner (s) shall create a market for EESL consultancy services/technologies/projects/products considering definitive agreement with EESL.
3. Strategic Partner will enable EESL to procure business for EESL as **project management consultant/providing consultancy services** relating to business being undertaken as ESCO, CAPEX, Hybrid Annuity, Lighting/Cooling/Energy Audits/Electric Vehicle Chargers etc. as a service model and/or create project pipeline various under business models i.e. Energy Savings service (ESCO), Capex mode, Hybrid Annuity Mode, Cooling as a Service (CaaS), Lighting as a Service (LaaS) etc
4. SP shall visit the site, prepare ground for preliminary discussion, arrange technical meetings, follow up for getting comfort letter, facilitate for contract execution, facilitate for payment realization against the submitted invoice etc.
5. In addition to the above, Strategic Partner (s) shall also support EESL in demand aggregation for Energy Efficient Technologies/Products/Projects and create lead on the same to get final orders on the same.
6. Strategic Partner (s) will work on the Success Fee Model basis. SP will facilitating EESL in B2B / G2G etc. services by obtaining Success Fee on completion of end-to-end sale/service transaction with End Consumer in phases based on milestone.

LIST OF DOCUMENTS TO BE SUBMITTED

ANNEXURE I (a)

1. GST Certificate
2. PAN Card
3. Demand Draft/NEFT/RTGS of Rupees One Lakh Only (as Security Deposit)
 - Original DD to be submitted
 - In case of NEFT/RTGS; transaction details/UTR No., date of transaction etc. to be submitted on your company's letter head)
4. To Whom It May Concern (on your Company Letterhead) Pg. No. - 21
5. Self-Declaration for Blacklisting (on your Company Letterhead) Pg. No. - 22
6. Two copies of Definitive Agreement (Rs.100/- on Stamp Paper) (After Registration) Pg. No. - 24 to 37
7. Non-Disclosure Agreement (Rs.100/- on Stamp Paper) Pg. No. - 38 to 40
8. PPP MII and Land Border Sharing Certificate Pg. No. - 41 to 44
9. Compliance Matrix / Checklist for Bidders Pg. No. - 45
10. EFT form (Authorized by Bank) Pg. No. - 46 to 47
11. Cancelled Cheque (your company name should be printed on cheque)

Note: All the above-mentioned documents must be submitted via registered below address. It is important to use the prescribed formats attached with this EOI for submitting requisite documents.

Addressed to: Head (CDP&BD)
Energy Efficiency Services Limited,
Ikon Tower,
3rd Floor, 24-C, Film City, Sector 16A,
Noida - 201301, Uttar Pradesh.

Model for Strategic Partner programme

(i) Success Fee Model

Table A:

S.No	Category	Final Order Value (excl. Taxes, cess & duties) (In INR Crores)	Payment Percentage of Order Value (excl. Taxes, cess & duties)
1	A	0.10 – 10	4%
2	B	More than 10 & upto 25	4.5%
3	C	Above 25	5%

The table above indicates that when Strategic Partner (s) generates business matching the specified amount in the table, the aforesaid percentage shall be paid to the Strategic Partner as a success fee, on a back-to-back basis.

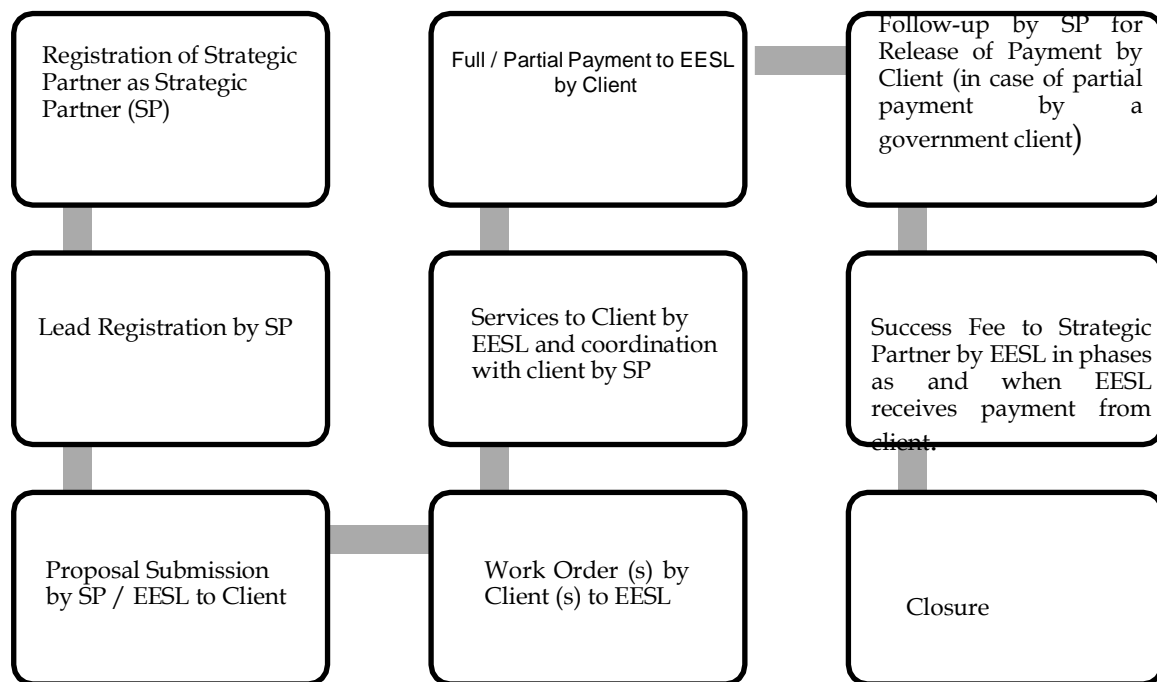
- Payment of success fees is contingent upon achievement of an outcome strictly in favor of event by Strategic Partner. The positive outcome encompasses successful and timely completion of activities by Strategic Partner related to Consultancy assignments to EESL on services as referred above with confirmation of an order in favor of EESL from End Consumer and/or execution of a Service Agreement between EESL & End Consumer, post-award co-ordination between EESL & End Consumer for delivery of service by EESL to End Consumer leading to receipt of complete payment as payment terms with End Consumer under various business models adopted by EESL.
- In the absence of a positive outcome as mentioned above, there is no obligation (whatsoever) for EESL to remit the success fees to Strategic Partner (s).
- Determination of pricing related to EESL's offer of energy efficiency services are dynamic in nature, which are subjected to periodic re-assessment by EESL based on the outcome of analysis / competitive based tendering process, cost factors, market trends & business scalability. EESL reserves the right to reject or cancel or modify or amend or the terms of such prices and fees as deemed fit, which will be duly communicated to Strategic Partner (s) from time to time.
- The pricing structure of various EESL's offered energy efficiency services/products/projects and details of various business models adopted by EESL, along with its associated success fee will be provided by EESL to Strategic Partner on back-to-back basis, upon execution of Definitive Agreement.
- In case of orders received from End Consumer, which is a Private Institution, EESL shall deliver the requisitioned energy efficient services only upon establishment of a secured payment security mechanism in favor of EESL or receipt of 100% (hundred percent) an advance payment against order value.

- f. In case of orders received from End Consumer, which is a Government Institution, EESL shall deliver the requisitioned energy efficiency services only upon establishment of a secured payment security mechanism in favor of EESL or receipt of payment against a Mobilization Advance as per the terms of the orders.
- g. For avoidance of doubt, it is clarified that Strategic Partner (s) is / are encouraged to extend its efforts in procuring orders within the specified timeline of the terms & conditions agreed in the Definitive Agreement.
- h. If the Strategic Partner arranges for a similar type of assignment* from the same client within three months of completing the original order, any new order issued in the name of EESL by the client during this period shall not be eligible for a success fee.

*Note: A similar type of assignment refers to a work order received from the same client for the same category of project, product, or service.

- i. The bidder(s) must compile all the documents specified in the EoI and submit/upload them as a single PDF file named after their company, such as '*biddercompanyname.pdf*'. The first page of the pdf shall be the compliance matrix / checklist for bidders, the format is enclosed at Attachment-7 on pg. 43. The link is available on EESL official website i.e. www.eeslindia.org. In case bidder(s) do not submit the bid as per desired format / single pdf, then their bid may be rejected.

Process Flow – Success Fee Model



TERMS & CONDITIONS

1. TERMS of SCOPE:

The Strategic Partner must compulsorily adhere to the following terms & conditions throughout the tenure of the contract.

- i. The performance of the Strategic Partner will be monitored by EESL's officers and/or nominated representatives by EESL from time to time.
- ii. Strategic Partner is required to mandatorily submit details of all its potential Leads in a specified format "Lead Capturing Form" provided by EESL, which shall also include all the activities to be undertaken by Strategic Partner for Lead generation and order confirmation.
- iii. EESL will maintain the record of all Leads being made available by Strategic Partner, wherein, if the same Lead is being approached by one or more Strategic Partner(s), the one who has submitted the Lead Capture Form first amongst other Strategic Partner(s) specifying the Lead shall be considered as a qualified Strategic Partner for order fulfillment.
- iv. Strategic Partner shall keep EESL's officers and/or nominated representatives at all times in all correspondences being undertaken by them with the End Consumer for establishment of records on correspondences / physical / hybrid- based meeting etc. which may lead to confirmation of an order in favor of EESL from End Consumer and/or execution of an Implementation Agreement between EESL & End Consumer. Such practice is essential to verify that the order is generated by the respective Strategic Partner.
In the absence of such records, the Lead generated by Strategic Partner may not be eligible for payment of Success Fee.
- v. The Strategic Partner will coordinate with the End Consumer in the timely implementation of EESL's offer of energy efficiency services/products/projects with mandatory realization of complete 100% payment (including payment of taxes, duties, cess octroi etc.) from the End Consumer. The concerned project team shall monitor the coordination with SPs.
- vi. EESL expects that the Strategic Partner will create a pipeline with the End Consumer having single business lead with a dedicated End Consumer of not be less than Rs. 10- Lakhs.
- vii. The Success Fees for Strategic Partner shall include all forms of expenses incurred towards lead development, TA/DA costs, office expenses, insurance etc.
- viii. At any time during the term of the Definitive Agreement, Strategic Partner shall not make or intend to make any form of false assurance, misrepresentations or any mis-leading promises about EESL's offer of energy efficiency services being offered by EESL to the End Consumer. Any such activity (if proven) will lead into termination of the Definitive Agreement executed between EESL and Strategic Partner, without prejudice to EESL's right to claim compensation or damages due to such activity of the Strategic Partner and other contractual action / measures, as applicable.
- ix. As the payment of Success Fees is subject to receipt of payment from End Consumer under various business models adopted by EESL, the Strategic Partner shall ensure obtaining necessary periodic debtor balance confirmation certificates from End Consumers for all payment milestones which are either due or not due as per the terms of the Definitive Agreement executed between EESL and Strategic Partner.

2. TERMS OF PAYMENT

1. No Advance Payment towards “Success Fees” shall be made by EESL to Strategic Partner.
2. Payment of “Success Fees” shall be payable in Indian Rupee (INR).
3. Strategic Partner shall raise tax invoice in a format compliant to the norms prescribed in the Indian Goods and Services Tax (GST) Act, 2017 (as Amendments thereof) for payment of “Success Fees” only after successful completion of activities by Strategic Partner as per scope of work related to EESL’s offered energy efficiency services/projects/products, lead generation with confirmation of an order in favor of EESL from the End Consumer and/or execution of an Implementation Agreement between EESL & End Consumer, post-award co-ordination between EESL & End Consumer for delivery/execution of services/projects/products by EESL to End Consumer leading to receipt of complete 100% payment from End Consumer under various business models adopted by EESL.
4. EESL shall pay success fee of 4-5% as mentioned in the table above to the Strategic Partner, after earning its required margins. The payment will be processed to Strategic Partner in phases after receipt of realization of payment from client.
5. Payment of Success Fees shall be processed by EESL against Tax Invoice from Strategic Partner only upon receipt of the following:
 - a. A duly signed copy of the original Tax Invoice.
 - b. Copy of duly attested documents by Strategic Partner related to purchase order in favor of EESL from End Consumer and/or execution of an Implementation Agreement between EESL & End Consumer, correspondences (e-mails / meeting records (if any) between Strategic Partner and End Consumer.
 - c. Copy of duly attested documents by Strategic Partner related to banking transaction (UTR No. / RTGS / NEFT / Cheque / Demand Draft) along with Payment Advice confirming receipt of complete 100% payment being made by End Consumer to EESL.
 - d. Copy of duly attested documents by Strategic Partner related to Registration Letter issued by EESL in favor of Strategic Partner

Note: Payment shall be released by EESL to Strategic Partner upon passing of GST-Input Tax Credit (GST-ITC) to EESL within the prescribed timeframe as specified under GST Act, 2017 (as Amendments thereof).

NOTE: If the Invoice is incomplete in any respect or if there is any non-compliance with relevant Terms & Conditions of LoR (Letter of Registration) and Definitive Agreement, the payment due date shall start from the date of submission of all necessary documents, provided all relevant terms and conditions of Letter of Registration (LoR) have been fulfilled.

3. APPLICABLE TAXES, DUTIES and LEVIES

3.1 Taxes are subject to Govt. Levies.

3.2 In-case of delay to achieve completion of milestones as per contract delivery schedule of supply/services either by EESL or the End Consumer, EESL shall not be liable to compensate for any increase in taxes and duties due to changes in rate or introduction of new tax or interpretation / Application of tax etc. whereas taxes at the actual rate shall be paid in case of decrease in taxes and duties due to change in rate or deletion of existing tax or

interpretation / application of taxes etc. in the event of late delivery after the contract delivery period.

4. Registration / Registration Criteria

The Strategic Partner who gives consent and commits to undertake the scope of work as sought in this Expression of Interest for registering as Strategic Partner with EESL, shall be required to comply as per the provisions given in Annexures (I, II & III). This shall be submitted on Strategic Partner's Letter Head in desired format failing which Strategic Partner shall not be considered for registration.

5. Eligibility and Qualification Criteria / Requirement:

Table - 1

QUALIFICATION OF THE BIDDER		
<p>Qualification of Strategic Partner(s) will be based on meeting the minimum pass/fail criteria specified below regarding the Bidder's Technical Experience and Financial QR as demonstrated by the Bidder's responses.</p> <p>Subcontractors' technical experience and financial resources shall not be taken into account in determining the Bidder's compliance with the qualifying criteria. Registration is allowed for an individual firm only (i.e., Sole bidder). Consortium/JVs not allowed.</p>		
Sr.	Qualifying Requirement	Document to be Submitted
1	<p>The Strategic Partner should be in existence from the last three years from the date of bid opening –</p> <p>(a) A firm registered/incorporated under the Companies Act, 1956 or Companies Act, 2013, and further amendment (s)</p> <p>OR</p> <p>(b) A registered partnership firm (registered under section 59 of the Partnership Act, 1932)</p> <p>OR</p> <p>(c) A limited liability partnership (under the Limited Liability Partnership Act, 2002)</p> <p>OR</p> <p>(d) A Society registered under Societies Registration Act, 1860</p> <p>OR</p> <p>(e) A Proprietorship firm</p> <p>(JV / Consortium not allowed)</p>	<p>(a) Copy of Certificate of Incorporation issued by the Registrar of Companies</p> <p>OR</p> <p>(b) A Registered Partnership Deed.</p> <p>OR</p> <p>(c) LLP Registration Certificate issued by competent Govt. Authority</p> <p>OR</p> <p>(d) Society Registration Certificate issued by Competent Govt. Authority along with Memorandum of Association highlighting relevant provision/ article number which highlights the objects relating to the business fields of this registration.</p> <p>OR</p> <p>(e) Self-Declaration of being a proprietor in your own format.</p>
2	The Strategic Partner should have valid PAN and GST Registration	Copy of PAN and GST Registration Certificate and Certificate of Incorporation (as applicable)
3	<p>PPP MII guidelines issued by Govt. of India shall be applicable for this tender. Only Class-I and Class-II Local Suppliers with minimum local content of 50% and 20% respectively, are eligible to bid in this tender in conformance with the order for "Public procurement (Preference to make in India) to provide for Purchase preference (linked with local content in respect of Power sector" issued vide ref no. A-1/2021-FSC-Part (5) GoI, MOP Dated 16.11.2021</p> <p>NOTE: - Only Class-I & Class-II local suppliers as defined in the above tender are eligible to take part in this bidding process.</p>	<p>The Bidder shall give a self-certification in his bid in the enclosed format at relevant Attachment of the EOI document, indicating the percentage of Local Content and certifying that the item offered meets the Local Content requirement for 'Class -I or Class-II local supplier' and shall give details of the location(s) at which value addition is made.</p> <p>Further, in case of tenders above Rs. 10 Cr, the 'Class-I or Class-II local supplier' shall provide a certificate from statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of Local Content as per the format at relevant Attachment of the EOI document</p>
4	Pursuant to Order No. F. No 6/18/2019-PPD dated-23-July-2020 from Department of Expenditure, Ministry of	Strategic Partner to submit a Declaration on Company's Letter Head as per relevant Attachment of

	<p>Finance, the applicant should be either of the following:</p> <ul style="list-style-type: none"> Not from a country which shares a land border with India <p>OR</p> <ul style="list-style-type: none"> Applicant from a country which shares a land border with India and registered with Competent Authority in accordance with order mentioned above. <p>The definition of "Bidder" from a country which shares a land border with India shall be as in paragraph 8 of the above-mentioned order. Further, all the guidelines mentioned in this above order shall be applicable to this Tender. The bidder shall carefully go through the same and ensure its eligibility as per the said order.</p>	the EoI Document.
Technical QR:		
1.1	<p>Strategic Partner (SP) should have successfully executed / completed 'Similar work' in the last 5 years, as on the originally scheduled date of bid opening (i.e., date of bid opening as per NIT) in DISCOMS (both private &/or Government Distribution Company) /Government Department/Public Sector Undertaking (PSU)/Urban Local Body (ULB) /any other Govt. Organization/Corporate.</p> <p>"Similar Work" means the SP must have at-least three (03) nos. skilled manpower (with Engineering/ Technical Background) on their company payroll with work experience of 10 years, 5 years and 2 years each in the area of Power Sector / Industry / Construction / Utilities.</p> <p>The work "executed" mentioned above means the bidder should have achieved the criteria specified above even if the total contract is started earlier and/or is not completed/ closed. However, the work executed /completed must include "Similar work" as above.</p>	CVs / Resume of Manpower to be furnished along with the registration form.
Financial QR:		
2.1	<p>Strategic Partner(s) should have an Average Annual Turnover (ATO) during the last 3 Financial Years of at least: ₹ 3.00 Lakh</p> <p>Note: It may be noted that the existence of Bidder for 1 FY will suffice the purpose. Accordingly, for calculation of ATO, the audited financial figures as available shall be considered, however, in the case of ATO for less than 3 years the financial figures for available years shall be averaged out for 3 years (i.e., total available Turnover shall be divided by 3) for Financial QR compliance.</p>	<p>Duly authorized copies of audited financials for preceding last three Financial Years are to be submitted by the bidder.</p> <p>ATO means revenue from operations.</p> <p>The annual turnover of any Strategic Partner will include realization out of sales of Goods and Services but excludes any tax levied (Direct or Indirect) by any enactment of the Government of India</p>
2.2	<p>The net worth of the Strategic Partner(s) in immediate last financial year should not be less than 100% of paid-up share capital or capital.</p> <p>Additionally, in case of Partnership/ Proprietorship/LLP, Networth may be considered negative in case closing capital of immediately preceding year is less than average closing capital of previous 3 financial years including immediate preceding year.</p> <p>Note: It may be noted that existence of Bidder for 1 FY will suffice the purpose. Accordingly, for calculation of Net</p>	Duly authorized copies of audited financials for preceding last three Financial Years are to be submitted by bidder.

	worth the audited financial figures as available shall be considered. (e.g., for considering net-worth calculations, if bidder is in existence for 2 Years' and Audited Financial Statements for both years are available then average of 2 years shall be considered. Similarly, if only one-year's Audited Financial Statements is available, the same will be considered for net-worth calculations). Same Philosophy shall be applicable for partnership firms also.	
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Table - 2

Sl. No.	Notes to Financial QR
1.	<p>Financial QR: The Strategic Partner shall also furnish documentary evidence/ declaration regarding financial re-structuring of the company, if any. If the opening of the bids or the ascertainment of qualification is carried out after 30th September, the bidder shall be required to submit the complete annual reports together with Audited statement of accounts of the company for the immediately preceding Financial Year except in cases where the Board of the Company/ Registrar of Companies has granted extension of time for finalization of accounts, for which the bidder has to submit requisite documentary evidence. In case of Bidder's failure to submit the same along with the Bid or subsequently pursuant to Clarification, the Bid shall be rejected.</p> <p><i>In case of proprietorship / partnership /LLP (as applicable as per sl.no-1 of Eligibility Criteria), ITR along with management signed accounts to be submitted, if audit is not required.</i></p> <p><i>In case of Proprietor / Partnership/LLP firm, where auditing of Balance Sheet is not required, the date of ITR (if extended) to be considered. Proof of extension from the Income Tax Department to be submitted by the bidder.</i></p>
2.	<p><u>In case of holding company:</u> - The holding subsidiary relationship should be in existence for at least one year as on the date of submission of the bids.</p> <ul style="list-style-type: none"> • In case bidder is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the bidder can be considered acceptable provided the bidder furnishes the following further documents on substantiation of its qualification: • Copies of the unaudited unconsolidated financial statements of the Bidder along with copies of the audited consolidated financial statements of the Holding Company with a letter of undertaking from holding company supported by Board pledging unconditional and financial support. Irrevocable in the format enclosed in Attachemnt-9 of Section-6, Forms & Procedures. • A certificate from the CEO/CFO of the holding company, stating that the unaudited consolidated financial statements from part of the Consolidated Annual Report of the Company. • In case a bidder does not satisfy the financial criteria, the holding company would be required to meet the stipulated turn over requirements, provided that the net worth of such holding company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the holding company. In such an event, the bidder would be required to furnish along with its bid, a letter of Undertaking from the holding company, supported by the Board Resolution, as per the format enclosed in the bid documents (Attachemnt-9 of Section-6, Forms & Procedures), pledging unconditional and irrevocable financial support for the execution of the Contract by the bidders in case of award. • In case the Bidder meets the requirement of Net worth based on the strength of its Subsidiary(ies) and/or Holding Company and/or Subsidiaries of its Holding Companies wherever applicable, the Net worth of the Bidder and its Subsidiary(ies) and/or Holding Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% of their total paid up share capital. However individually, their Net worth should not be less than 75% of their respective paid-up share capitals. • The supporting documents in support of the above Qualification Requirement should be submitted along with tender document, otherwise Techno-commercial offer submitted by the bidder is liable to be considered as non-responsive. • All the required documents must be properly annexed and submitted as mentioned above with necessary details in brief.

5.1 OTHER REQUISITE DOCUMENTS [For Opening Vendor Code]

A vendor code will be opened for Successful enrolled/registered Strategic Partner for making necessary registration in the ERP system adopted by EESL. The following requisite documents are required to submit along with documents required as per clause 5 of EOI –

1. Aadhar No.
2. Cancelled Cheque
3. EFT Form [Enclosed in Annexure 1b]

6. PERIOD OF REGISTRATION

The registration of strategic partners shall be valid for two years and may be extended by one year at EESL's sole discretion from the date of signing the Definitive Agreement with the Strategic Partner. The contract facilitated by the Strategic Partner (SP) for EESL will depend on the project's timeline and the contract with SP remain valid until the client makes complete 100% payment. The Definitive Agreement shall be co-terminus with the client's contract executed by EESL, based on the lead provided by the Strategic Partner.

The Strategic Partner may be required to resubmit audited financial statements of immediate preceding's financial year and any other document as deemed fit by EESL.

Further, assessment of the Strategic Partner (SP) shall be undertaken by EESL on half yearly basis based on the leads provided, wherein, in case of non-receipt of any confirmed order from any End Consumer, the registration shall be cancelled, and security deposit shall be forfeited by EESL. The registration fees shall be refunded in this case.

7. DISPUTE RESOLUTION

7.1 Any dispute, difference or controversy of whatever nature regarding the validity, Interpretation, Implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this agreement (whether during its pendency or post the term) between the parties, and so notified by either party to the other party (the "Dispute") shall be subjected to the dispute resolution procedure set out in this Clause.

7.2 Direct discussion between parties

The Parties agree that any dispute that may arise between them shall be first submitted for direct discussion between the parties. For this purpose, the notice of Dispute (the "Notice of Dispute") sent by one party to the other party under this agreement shall be considered as invitation for direct discussion, and it should specify a reasonable time and venue for the conducting of negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each party shall be represented by their representatives/officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order to have a meaningful discussion. At the discussion proceedings, the party that has given the notice of dispute shall present a (without prejudice) offer of settlement, which may form the starting point of discussions between the two parties during the proceedings. The direct discussion meeting shall be recorded by the project incharge from EESL and shall be held at EESL corporate office or any office directed by EESL.

7.3 Arbitration:

- (a) In the event that the parties are unable to resolve the Dispute through Direct Discussion under Clause 16, the parties shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996. The proceedings shall be adjudicated by a sole Arbitrator appointed mutually by the parties. Where

the parties are unable to agree on a sole arbitrator within 30 days of invocation of this clause, the parties shall subject themselves to arbitration by a sole arbitrator appointed and operating under the aegis and rules of the Delhi International Arbitration Centre.

- (b) The arbitration proceedings shall be conducted in the English language only.

8. FOR REGISTRATION, A REFUNDABLE SECURITY DEPOSIT of INR 1,00,000 (Rupees One Lakh Only) IN THE FORM OF DEMAND DRAFT [DD]/NEFT/RTGS-

A. Demand Draft [DD] in favor of Energy Efficiency Services Limited payable at New Delhi

B. Bank account details are as under for NEFT/RTGS:

Account Name: ENERGY EFFICIENCY SERVICES LIMITED

Bank Name: Bank of Baroda

Account No: 60010400000002

IFSC: BARB0CFSGUR

The refundable Security Deposit shall be valid for a period of 02 years and 03 months (claim period) from the date of execution of Definitive Agreement between Strategic Partner and EESL extendable to the ratio of the contract period. The same shall be released after completion of aforesaid period and all contractual obligations.

Definitive Agreement to be submitted within 07 Days from the date of issuance of Letter of Registration.

9. Subsequent to registration of the Strategic Partner in response to this 'enquiry', if it is found that the work is not being performed as per the defined Scope of Work or the same is not satisfactory owing to any reason of which we shall be the sole judge, we shall be entitled to cancel the contract/registration and recover the loss, if any, from the registered Strategic Partner reserving to ourselves the right to forfeit the security deposit, furnished by the Strategic Partner against the contract.
10. We reserve the right to accept or reject any agreement (including but not limited to business deals / proposals / leads as suggested by SP) in full or in part without assigning any reason thereof.
11. The Strategic Partner should not have been blacklisted by any Central / State Government or Public Sector Undertakings. If at any stage of registration process or during the currency of the contract, any suppression/ falsification of such information is brought to the knowledge, EESL shall have the right to reject the proposal or terminate the Definitive Agreement, as the case may be, without any compensation to the registration & forfeiture of Security Deposit/DD.
[Kindly fill and submit the attached self-declaration on Your Company's Letter Head]
12. Correspondence: Post registration, all correspondence by successful Strategic Partner shall be addressed to as brought out below:
- HEAD – BD / CDP / Consultancy for all issues pertaining to clarifications w.r.t commercial issues or requiring amendments on the terms and conditions of Letter of Registration in general.
13. Compliance with all Statutory Regulations:

- A. Compliance of all the statutory requirements as may be required w.r.t the activities to be performed to execute the scope of work under the subject Letter of Registration including the requirements under Contract Labor Acts, safety of the workmen deployed, etc., shall be the responsibility of the successful Strategic Partner including all the expenditure incurred for the same. This includes all the requirements w.r.t the workmen under Sub- contractor(s) also. The successful Strategic Partner shall submit the documentation to EESL, on a monthly basis, as required under the applicable statutory requirements.
- B. SAFETY COMPLIANCE:
 - a) Successful Strategic Partner, on whom letter of registration is placed, is to ensure all safety guidelines, rules and regulations, labor laws etc.
 - b) Successful Strategic Partner to indemnify EESL for any accident, injury met by its labor, employee or any other person working for him. EESL has no role to play in this matter.
 - c) EESL will not be responsible in case any accident/ mis-happenings with consultant employee or contract person and for any equipment damage or theft occurs and in no case EESL shall they pay for it.

14. EESL RESERVES THE RIGHT TO

- A. Cancel / withdraw the Registration Notice without assigning any reason whatsoever and in such a case, no applicant / intending applicant shall have any claim (monetary or otherwise- under any theory of law) arising out of such action.
- B. Delete, modify, rename etc. any of the codes, conditions, procedures etc. given in this Registration document.
- C. Reject any agreement on the basis of the unsatisfactory performance of the Strategic Partner in any ongoing job or any similar job in the last seven years or for furnishing false information/ declaration in the agreement.
- D. Withhold the issue of Registration document and also subsequently the requisite documents to any Registered Strategic Partner and also annul the Registration process without assigning any reasons whatsoever.
- E. Obtain confirmation from the principals, owner to verify the contents of the supporting documents submitted by the applicant.
- F. EESL reserves the right to call for additional information and/or check, verify all the information furnished in the agreement.
- G. EESL also reserves the right to inspect all premises / facilities to confirm the authenticity of information furnished/ capabilities mentioned in the agreement.
- H. EESL reserves the right to reject agreements on the basis of furnishing false information/ declaration in the agreement.
- I. EESL's decision shall be final on all matters.

15. Suspension of Business Dealings

- a) EESL reserves the right to take action against the registered Strategic Partner who fails to perform or indulge in malpractices, by suspending business dealings with them.
- b) Suspension could be in the form of 'Hold', 'De-listing' or 'Banning' the registered Strategic Partner.
- c) The Strategic Partner may be put on HOLD for a period of 6 months, for future Enquiries for specific works on the basis of one or more of the following reasons:
 - Registration Strategic Partner does not honor his own offer or any of its conditions within the validity period.
 - Registration Strategic Partner fails to respond against three consecutive enquiries of EESL.
 - After placement of order/award, Registration Strategic Partner fails to execute an order.
 - In case registered vendor does not get any business within six months after issuance of Registration letter then their Security Deposit will be forfeited.
- d) The registered Strategic Partner may be de-listed from the list of registered strategic partners for a period of 1 year on the basis of one or more of the following reasons:
 - Registered Strategic Partner tampers with registration procedure affecting ordering process or commits any misconduct which is contrary to business ethics.
- e) The registered Strategic Partner can be banned from doing any business with EESL for a period of 3 years on the basis of one or more of the following reasons:
 - Registered Strategic Partner is found to be responsible for submitting fake/ false/ forged documents, certificates, or information prejudicial to EESL's interest
 - Registered Strategic Partner is found to be involved in cartel formation.
 - The Registered Strategic Partner has indulged in malpractices or misconduct such as bribery, corruption and fraud, pilferage etc. which are contrary to business ethics.
 - The Registered Strategic Partner is found guilty by any court of law for criminal activity/ offences involving moral turpitude in relation to business dealings.
 - The Registered Strategic Partner is declared bankrupt, insolvent, has wound up or been dissolved, i.e., ceases to exist for all practical purposes.
 - Registered Strategic Partner is found to have obtained Official Company information/ documentation by questionable means.
 - Communication is received from the Ministries to ban the Strategic Partner from business dealings.
- f) Contracts already entered with a Registered Strategic Partner before the date of issue of order of 'HOLD' or 'DE-LISTING' shall not be affected.
- g) Once the order for suspension is passed, existing offers/new offers of the Registered Strategic Partner shall not be entertained.

- h) The above guidelines are not exhaustive but entail broad principles governing action against Registered Strategic Partner.
16. Restrictions on procurement from Strategic Partner of a country which shares a land border with India

Order No: F. No. 6/18/2019-PPD dated: 23-July-2020 from Department of Expenditure, Ministry of Finance, mentions that any Strategic Partner from a country which shares a land border with India will be eligible to agreement in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the Strategic Partner is registered with the Competent Authority as specified in the order.

“Strategic Partner from a country which shares a land border with India” for the purpose of the order means-

- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose beneficial owner is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or join venture where any member of the consortium or join venture falls under any of the above.

The above-mentioned order shall be applicable to this registration/enrolled process. The applicant shall carefully go through the above-mentioned order and ensure its eligibility in accordance with the same. Applicants should refer to the above-mentioned order for clarification over definitions and clauses as applicable.

17. Submission of Reports

The Registered Strategic Partner shall submit the report mentioned in the registration document or as requested by EESL.

18. Eligible SPs-

This Invitation for Strategic Partners (SPs), issued by the Employer is open to all firms including company(ies), Government owned Enterprises registered and incorporated in India as per Companies Act, 1956, barring Government Department as well as foreign Prospective Strategic Partners/MNCs not registered and incorporated in India and those Prospective Strategic Partners with whom business is banned by the Employer.

A Strategic Partner (SP) shall not have a conflict of interest. All prospective SPs found to have a conflict of interest shall be disqualified. A prospective Strategic Partner may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- (a) they have a controlling partner in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid

of another Prospective Strategic Partner, or influence the decisions of the Employer regarding this bidding process; or

(e) a Prospective Strategic Partner submits more than one bid in this bidding process, either individually [including bid submitted as an agent/authorized representative on behalf of one or more manufacturer(s) or through Licensee – Licensor route, wherever permitted as per the provision of Qualification Requirement for the Prospective Strategic Partners in Part – B, Section-4] or as a partner in a joint venture, except for alternative offers permitted under the RfP Documents. This will result in the disqualification of all such bids. However, this does not limit the participation of a Prospective Strategic Partner as a subcontractor in another bid, or of a firm as a subcontractor in more than one bid; or

(f) a Prospective Strategic Partner or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Plant and Installation Services and Facilities that are the subject of the bid; or

(g) a Prospective Strategic Partner (including its personnel or sub-contractors) has a business or family relationship with a member of a EESL's staff (or of the project implementing staff, or of a recipient of a part of the loan) who: are directly or indirectly involved in the preparation of the EOI documents or specifications of the contract, and/or the bid evaluation process of such contract; or would be involved in the implementation or supervision of such contract unless the authority inviting tenders shall be informed of the fact/ such relationship at the time of submission of the tender and the conflict stemming from such relationship has been resolved in a manner acceptable to the EESL throughout the procurement process and execution of the contract. EESL may in its discretion reject the tender or rescind the contract.; or

(h) A Prospective Strategic Partner or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Project Manager for the contract.

19. Agencies which participated in the previous EOI for the mentioned subject but were not selected for registration may participate again without resubmitting the empanelment fee of Rs. 1 lakh. They should provide details of the previously submitted payment along with supporting documents. If these agencies choose not to participate, they may request a refund of the empanelment fee from EESL.

TO WHOM IT MAY CONCERN

Dear Sir/ma'am,

We/I, _____ from M/s _____ have read and understood the Terms & Conditions mentioned in the registration form and support document(s) and hereby confirm and submit that we agree to all terms & conditions mentioned in the document of registration with Energy Efficiency Services Limited.

General Terms & Conditions:

All Registered Parties will:

1. Submit an undertaking to assure that they have not been blacklisted, embroiled in corrupt practices etc. [*format attached*]
2. Sign Non-Disclosure Agreement along with a non-circumvention clause preventing party to do any action which is detriment to the interest of EESL. [*will be signed at the time of award of registration letter*]
3. Not publicize this registration without written consent of EESL and not to use this registration for any purpose other than that mentioned.
4. Submit an undertaking to abide by the Rules prescribed under the Standard Operating Procedure of EESL for handling Strategic Partners.

We/I, _____ confirm all the information provided is correct and true to my knowledge. Any discrepancy found will lead to forfeiture of EBG and cancellation of the Strategic Partner registration.

Dated this ____ (day) of _____ (month), 2025

Signature & Seal
(Name of Person;

Designation) Place: ____

(To be submitted on Letter Head)
SELF-DECLARATION FOR BLACKLISTING

I, _____ from _____,
hereby certify and confirm that we or any of our promoter(s)/ directors(s) are not blacklisted/
barred/ convicted by any court of law for any criminal or civil offences/ declared ineligible by any
other entity of Government or by any entity of state government/ or Govt. of India or any local Self-
Government body or public undertaking in India for participation in future bids/ tender/ registration
for unsatisfactory performance, corrupt, fraudulent or any other unethical business practices or for
any other reason and from participating in Project/s.

And that No criminal/ vigilance case related to cheating, forgery, Criminal breach of trust, theft and
prevention of Corruption Act is pending in any court of law against the bidder.

We, further confirm that we are aware that our bid for the captioned Project would be liable for
rejection in case any material misrepresentation is made or discovered at any stage of the Registration
Process or thereafter during the contract period and the EBG or security deposit as applicable shall
stand forfeited without further intimation.

Dated this ____ (day) of _____ (month), 2025

Signature & Seal
(Name of Person; Designation)

Place: _____

(To be submitted on Letter Head)

**LIST OF BANKS ACCEPTABLE FOR SUBMISSION OF DEMAND DRAFT FOR
ADVANCE PAYMENTS, PERFORMANCE SECURITIES AND SECURITIES**

FOR DEED OF JOINT UNDERTAKING

SCHEDULED COMMERCIAL BANKS

SBI and Associates

Sl. No.	Name of Banks	Sl. No.	Name of Banks
1.	State Bank of India	5.	State Bank of Patiala
2.	State Bank of Bikaner and Jaipur	6.	State Bank of Travancore
3.	State Bank of Hyderabad		
4.	State Bank of Mysore		

Nationalized Banks

Sl. No.	Name of Banks	Sl. No.	Name of Banks
7.	Allahabad Bank	17.	Oriental Bank of Commerce
8.	Bank of India	18.	Punjab National Bank
9.	Bank of Maharashtra	19.	Punjab & Sind Bank
10.	Canara Bank	20.	Syndicate Bank
11.	Central Bank of India	21.	Union Bank of India
12.	Corporation Bank	22.	United Bank of India
13.	Dena Bank	23.	UCO Bank
14.	Indian Bank	24.	Bank of Baroda
15.	Vijaya Bank	25.	Andhra Bank
16.	Indian Overseas Bank		

Foreign Banks

Sl. No.	Name of Banks	Sl. No.	Name of Banks
26.	DBS Bank Ltd.	34.	Standard Chartered Bank
27.	Bank of America NA	35.	Societe Generale
28.	The Bank of Tokyo-Mitsubishi UFJ Limited.	36.	Barclays Bank
29.	BNP Paribas	37.	ABN Amro Bank N. V.
30.	Calyon Bank	38.	Bank of Nova Scotia
31.	Citi Bank N.A.	39.	Development Bank of Singapore
32.	Deutsche Bank A. G.	40.	Credit Agricole Corporate and Investment Bank
33.	The Hong Kong and Shanghai Banking Corporation Ltd.		

SCHEDULED PRIVATE BANKS

Sl. No.	Name of Banks	Sl. No.	Name of Banks
41.	ING Vysya Bank Ltd.	44.	Axis Bank Ltd.
42.	ICICI Bank Ltd.	45.	YES Bank
43.	HDFC Bank Ltd.	46.	Indus Ind Bank Ltd.

Other Public Sector Banks

Sl. No.	Name of Banks	Sl. No.	Name of Banks
7.	IDBI Ltd.	48.	IDFC Bank

**DEFINITIVE AGREEMENT FOR ENGAGEMENT OF STRATEGIC PARTNER UNDER
EESL's Urja Bachat Sewa Programme**

THIS DEFINITIVE AGREEMENT hereinafter referred to as "**Agreement**") is made on this [] (day) of [] (month) [2025] (year) "**Execution Date**", By and Between

Energy Efficiency Services Limited, a company incorporated under the provisions of the Companies Act, 1956, as a JV of PSUs of the Ministry of Power, Government of India and having its registered office at Ground Floor, CORE -III, Scope Complex, Lodhi Road, New Delhi -110003 (*hereinafter referred to as "EESL"*), which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, title, law and jurisdiction, executors, administrators, attorneys and assigns), referred of as the **First Party**.

AND

_____ and having its registered office at _____ (*hereinafter referred to as "Strategic Partner (SP)"*), which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, title, law and jurisdiction, executors, administrators, attorneys and assigns), referred of as the **Second Party**

"EESL" and "SP" are collectively referred to as "Parties" and individually as "Party".

WHEREAS

- a. EESL is a joint venture company of 4 Public Sector Undertakings - NTPC Limited, Powergrid Corporation of India Limited, Power Finance Corporation Limited and Rural Electrification Corporation Limited under the Ministry of Power (Government of India). EESL has been designated by the Government of India as the nodal implementing Strategic Partner for various energy saving initiatives and having been accorded substantial recognition for its work in this field. EESL promotes utilization of various energy saving products and is in the process of setting up a commercial collaboration with various entities and institutions. Duly, recognizing that energy efficiency interventions in buildings and retail provide the best Green House Gas (GHG) reduction benefits per unit of investments. EESL intends to collaborate with various stakeholders in the private retail and B2B market to enable energy efficiency to become a household name by providing business opportunities to the rural and urban entrepreneurs and institutions (including Non-Govt. autonomous Institutions, Voluntary Organizations, Civil Society Organizations, Not for Profit Companies, Charity Organizations, Registered Societies, Trusts, etc.) in propagating adoption of energy efficiency products C services across India through registration as a Strategic Partner under "EESL Urja Bachat Seva Programme" ("UBS").
- b. SP is a registered legal entity, which is having its operation within the applicable laws of India. SP has duly submitted its application along with a refundable security deposit of INR 1,00,000/- (rupees one lakhs) to EESL through submission of a valid instrument in form of Demand Draft/NEFT/RTGS bearing/UTR No. _____ drawn on / transferred through (bank name - _____), dated (____) with an intention to function as an extended outreach part of EESL in order to propagate adoption of energy efficiency products/ services/projects under the Programme.

- c. Accordingly, the present Agreement is being duly executed in order to fulfil the agreed terms of the collaboration between the Parties. Under the Programme, EESL shall provide marketing, sale / services, and training support to SP as specified in and subject to the terms and conditions laid down in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein the Parties agree as follows:

1. Definitions

- 1.1 “End Consumer” means an individual, a business entity or an institution that makes an upfront purchase of EESL Energy Efficient Products or Services from SP.
- 1.2 “Energy Efficient Services” means the services covered on consultancy / project pipeline creation on EE technologies identified under DEEP / PMTEE / GEF 6/ GEF5 project, authorized through EESL
- 1.3 “EESL Authorized Service Provider” means any entity which has been authorized by EESL and has been recognized as a Service provider by an explicit agreement.
- 1.4 “Leads” means business opportunities identified by the SP for the marketing/selling of EESL’s Energy Efficient Services.
- 1.5 “Success Fee” means the fee payable by EESL to the SP upon successful sale/execution of EESL’s energy efficient technology services to the End Consumer upon receipt of complete payment as payment terms with End Consumer under various business models adopted by EESL
- 1.6 “Strategic Partner” herein referred as “SP” shall be the facilitator of consultancy services/products/projects.

2. Scope of Work

- 2.1 Strategic Partner will have below method to propagate Energy Efficient Services to End Consumer under this Agreement:
 - (i) Facilitate EESL’s energy efficient services/products/projects to the End Consumer by obtaining a success fee on completion of end-to-end sale transaction with End Consumer. In such case, EESL shall submit a tax invoice directly in favor of End Consumer. The payment of success fee by EESL to SP shall be made only upon receipt of complete 100% payment from End Consumer.
 - SP shall visit the site, prepare ground for preliminary discussion, arrange technical meetings, follow up for getting comfort letter, facilitate for contract execution, facilitate for payment realization against the submitted invoice etc.

3. SP Qualification and Right to Market

- 3.1 Subject to EESL’s acceptance of SP’s registration application received in compliance with the terms and conditions of this Agreement.
- 3.2 For the avoidance of doubt, during the currency of this Agreement, the Strategic Partner

will not under any circumstances or situation, unless mutually agreed by the Parties as an exception, carry out any form of commercial partnership or undertake any business along with other Institutions/Companies for marketing of any form of energy efficiency product and/or services of similar type, nature, features or range etc. and shall only exclusively deal with energy efficiency services of EESL's expertise. The Parties hereby acknowledges that SP unequivocally agrees that it will not do any acts or omissions which could result in coercion to the terms of the Agreement.

- 3.3 The SP acknowledges that this Agreement does not bestow upon the SP any exclusive right to promote EESL's energy efficiency services and understands that there would be several other SPs of EESL that shall carry out same/similar works on different business models/categories. EESL shall provide equal opportunity or commercial treatment to all the SPs of a particular category under the Programme.

For the avoidance of doubt, SP shall be subjected to perform all acts & deeds related to promotion of services, lead generation and its management as per a pre-approved Standard Operating Procedure ("SOP") circulated by EESL to prevent any form of lead conflicts amongst various other SPs, which shall be purely based on the principle of "First Come First Serve" basis.

- 3.4 The Parties also agree that as both EESL and Strategic Partner are subjected to perform within the terms and conditions of the SOP, EESL shall reserve the right to transfer its own leads to one or many SPs based on the review of parameters related to volume, geographical presence, business growth etc. The Parties hereby acknowledges that the notified SOP shall undergo revisions based on the actual performance of the business engagement between the Parties during the term of the present Agreement.
- 3.5 The Parties agree that SP shall not in any case engage or permit or encourage any form of advertising, marketing, solicitation, sales calls or undertake any other promotion activities for which SP has not obtained a written permission from EESL.
- 3.6 The Parties hereby agree and acknowledge that EESL reserves the right, at its sole option and at any time (i) to add, change, modify or discontinue any services and (ii) to amend or modify SP's list of Leads during the term of the Agreement.
- 3.7 The SP represents, warrants and agrees to undertake adherence to all the directions issued by EESL from time to time towards restriction of marketing of EESL's energy efficient services to only such select categories of Leads which are duly mentioned in "Lead Management Form" and allowed by EESL.
- 3.8 The Parties hereby agree to sign a Non-Disclosure Agreement in recognition of the confidential nature and information developed or received during the term of the Agreement.
- 3.9 The Parties agree that in order to achieve the objectives laid under the Programme, SP shall be allowed to introduce new entrepreneurs or institutions, who wish to register with EESL as "New SP entity". EESL shall not be obligated to pay any form of fees or incentive

for the introduction of “New SP entity” by the SP, as mentioned herein. For avoidance of doubt, it is clarified that such “New SP entity” shall not be permitted to take-up marketing of energy efficient services on behalf of the SP unless they have successfully completed EESL’s SP registration process.

4. Relationships

- 4.1 The registered SP with EESL is not an agent or a legal representative of EESL for any purpose and has no authority to act for, bind, or commit on behalf of EESL, except as provided in this Agreement.
- 4.2 The registered SP with EESL shall not represent itself in any way as an employee, agent or branch of EESL. SP shall immediately change or discontinue any representation or business practice found to be misleading or deceptive by EESL upon notice from EESL.
- 4.3 SP shall indemnify EESL and its officers, directors, employees and agents against any and all costs, claims, losses, expenses (including without limitation reasonable legal fees) from all liabilities that may arise from any activity outside the purview of this agreement. EESL shall not be held responsible for any act that the SP may indulge in its personal capacity or on behalf of EESL without consent, outside its scope of work.

5. Project Term, Limitations Termination

- 5.1 The term period of this Agreement commences from “Execution Date” and shall remain in force for a period of 2 (two) years (“Term Period”).
- 5.2 Term of Agreement can be extended further by the mutual consent of both the Parties.
- 5.3 Without prejudice to any right or remedy, which EESL may have under this Agreement, EESL reserves the right to terminate this Agreement, without cause by giving 30 (thirty) days’ notice period. For the sake of clarity, such termination shall be without any liability to EESL, except for legitimate payments/amount payable to the SP, as per the agreed terms and conditions of this Agreement.
- 5.4 Each of the following events of circumstances, to the extent caused by a default of SP and if it is not cured within a period of 30 (thirty) days (“Cure period”), from the date of notice of default (the “Default Notice”) from EESL, shall be considered for the purpose of this Agreement as events of default of SP:

5.4.1 If SP is in breach of its obligations under this Agreement and this breach is not cured.

5.4.2 SP has by an act of commission or omission, created a circumstance that has an adverse effect on EESL, and SP has failed to compensate the EESL.

5.4.3 If SP fails to achieve the committed marketing of EESL’s energy efficient services/products/projects, during a period of not less than 6 (six) months.

- 5.5 As a consequence, to termination on account of a default by SP, leading to a premature termination of this present Agreement, EESL is entitled to forfeit the SP's security deposit.
- 5.6 If SP breaches any provision of this Agreement and if such breach is not remedied within a period of thirty (30) days after receipt of a default notice from EESL, EESL reserves the right to immediately terminate this Agreement, wherein, Sections 1, 2, 5, 6, 8 and 9 through 12 shall survive the termination of this Agreement.

Any right or legal obligation of either Party that by its express term or nature would reasonably extend for a period beyond the term of the Agreement, shall also survive the termination of the Agreement. For the avoidance of doubt, SP shall be liable to ensure that any Leads generated before receipt of the default notice, EESL shall process the payment commensurate to the marketing against Leads before receipt of such default notice, provided that lead is successfully converted into sales and 100 % payment credited to EESL account.

- 5.7 Upon expiration or notification of non-renewal or termination of this Agreement: (i) any interests in assistance, rebates, or similar benefits to SP shall automatically lapse, and (ii) all rights and licenses granted to SP shall terminate upon the effective date of the termination or expiration.
- 5.8 Neither Party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incidental to the termination of this Agreement by such Party which complies with the terms of the Agreement whether or not such Party is aware of any such damage, loss or expenses.
- 5.9 In the event of the expiry or earlier termination of this Agreement, the SP shall cease providing the services or carrying out the Activities and certify compliance with its obligations under this Agreement in relation to confidentiality.
- 5.10 In the event of expiry of the term or earlier termination of this Agreement, for whatever reason, all provisions intended to or capable of surviving termination shall survive and remain in force.

6. Strategic Partner (SP) project

- 6.1 This Programme consists of one participation level providing access to the available Marketing, Services and Training resources ("Promotional Materials").
- 6.2 EESL reserves the right, in its sole and absolute discretion, to modify or terminate the SP Programme, or ask for a change/modifications/additions/deletion in the Agreement with the SP upon thirty (30) days written notice at any time, without incurring any liability.
- 6.3 SP shall market the services and may use Promotional Materials supplied by EESL to do so only for such purposes, and within any applicable guidelines for such use.
- 6.4 SP shall gain and maintain sufficient technical knowledge of Energy Efficiency services within SP's organization and shall ensure that any employee representing it is adequately trained to do so accurately and/or support end users.
- 6.5 EESL shall not be liable to continue Energy Efficient services/products/projects for the entire period of

this Agreement and reserves the right to withdraw or add any product/service either for a specific period or indefinitely.

- 6.6 EESL reserves the right to discontinue providing the Energy Efficient Service(s), or otherwise render or treat as obsolete, any or all the Energy Efficient Services upon at least sixty (60) days prior written notice to the SP. SP may, in its discretion, within thirty (30) days of its receipt of such notice, notify EESL in writing of its intention to place a last time buy for any or all such Energy Efficient Services.
- 6.7 SP shall (i) obtain and maintain all necessary governmental and regulatory approvals and licenses to perform its obligations hereunder, (ii) comply with good business practices and all applicable laws and regulations (iii) bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Products to any location in compliance with all applicable laws and regulations prior to delivery thereof by EESL.
- 6.9 SP represents and warrants that neither this Agreement nor the performance of or exercise of rights hereunder is restricted by, in conflict with, requires registration or approval, affects EESL's proprietary rights under, or shall require any payment, indemnification or compulsory licensing under, any applicable law or regulation.

7. Intellectual Property Rights, Ownership and Title

7.1 EESL retains all right, title, and interest in its trademarks, copyrights, patents, designs, domain names, and any other intellectual and proprietary rights (*collectively referred to as "EESL's IP"*), including registrations, applications, renewals, and extensions of such rights.

7.2 Subject to the terms and conditions of this Agreement, EESL hereby grants to SP, and SP hereby accepts a revocable, limited, nonexclusive term license to use EESL's IP with respect to the Energy Efficient Products/Projects/ Services, only to the extent set forth by EESL.

7.3 SP acknowledges the following:

7.3.1 EESL owns all rights, titles and interests in and to EESL IP and EESL reserves the right to add or delete trademarks or modify these usage guidelines at any time, and EESL shall provide thirty (30) days prior written notice of any such modification or deletion.

7.3.2 SP shall acquire no interest in EESL's IP by virtue of this Agreement, its activities under it, or any relationship with EESL.

7.3.3 SP shall abide by EESL requirements for proper use of EESL's IP.

7.4 During the term of this Agreement and subject to SP's compliance with all the terms and conditions herein, SP may indicate to the trade and to the public that it is a EESL recognized and EESL registered SP entity.

7.5 Subject to SP's compliance with all the terms and conditions herein, SP may use EESL's IP, only (a) during the term of this Agreement, (b) solely to promote Energy Efficient Services and (c) only in strict accordance with applicable EESL guidelines and requirements, including, without

limitation, any trademark usage and quality control guidelines promulgated by EESL from time to time. EESL may withdraw the right to use the EESL IP at any time for any reason or without assigning any reason. SP shall not adopt or use EESL's IP, or any confusingly similar words or symbols, as part of its company name or in Promotional Materials or allow such marks or names to be used by others.

- 7.6 SP shall assist EESL in every proper way to evidence, record and perfect EESL's rights in all jurisdictions for EESL's IP. SP shall not otherwise use or register (or make any filing with respect to) any trademark, copyright, design or other IP (including domain name registrations) which are identical or similar to the EESL's IP or the subject matter of this Agreement anywhere in the world, during or after the term of this Agreement.
- 7.7 SP shall not contest anywhere in the world the use by or authorization by EESL of EESL's IP, including or any trademark, copyright, patents, design or other EESL's IP relevant to the subject matter of this Agreement or application or registration therefore, whether during or after the term of this Agreement.
- 7.8 SP shall comply with all applicable laws, rules and regulations of any competent authority in connection with its use of EESL's IP and the performance its other obligations under this Agreement.
- 7.9 SP may not use EESL's trademark in any materials that have not been approved by EESL.

All such materials shall be submitted to the e-mail ID <<**head-cdp@eesl.co.in**>> for EESL's approval before use by SP. Such materials shall be deemed to be approved, if EESL does not provide written notice of any objection within fourteen (14) days of receipt. SP may use the EESL name only while explaining or describing Energy Efficient Products and/or Services, and only in accordance with the EESL Trademark Usage Guidelines; it may not be used in any way that states or implies that SP is an official employee or representative of EESL or is authorized to make commitments on behalf of EESL.

- 7.10 Trademark Notice: Each time SP uses the trademark of EESL, the document, advertisement, sign, web site, or other place the marks appear must contain a trademark notice that states that the trade mark EESL belongs to EESL: "*@ 2021 EESL. All rights reserved. EESL@, are trademarks of EESL and may be registered in India and/or other countries and exclusively belong to EESL.*" or such other trademark notice as updated from time to time by EESL.
- 7.11 At the expiration or termination of this Agreement, SP shall immediately discontinue any use of EESL's IP or any other combination of words, designs, trademarks, trade names, copyrights, patents and/or design that would indicate that it is or was a SP.
- 7.12 The Parties understand and agree that (a) all goodwill associated with any of EESL's IP shall ensure exclusively to the benefit of EESL, (b) SP shall not take any action, and/or shall cease taking any action, that would reasonably be expected to disparage or diminish the value of EESL's IP and (c) upon any expiration or termination of this Agreement, no monetary value shall be attributable to any goodwill associated with the use by SP of EESL's IP.

8. Terms and Conditions.

- 8.1 Pursuant to the terms and conditions of this Agreement, SP is authorized to aggregate the demand for all EESL services/projects/products, unless restricted by EESL in writing and SP agree unequivocally and irrevocably, the restriction as mentioned herein is based on EESL's sole discretion and SP shall have no right of objection for placing such restriction by EESL. Further, SP agrees that the restriction put forth by EESL herein is for the overall benefit and sound management of the Programme herein and not to adopt any discrimination activity against the SP.
- 8.2 The pricing structure for EESL's Energy Efficient Services/Products/Projects, along with the associated success fee, will be communicated separately upon the successful registration and signing of this Agreement. Further, SP irrevocably agrees pricing structure communicated by EESL in pursuant to this Agreement and their periodic revisions based on the market conditions, without demur, whatsoever.
- 8.3 EESL shall communicate distinct success fees for various business models adopted by EESL, based on EESL's sole discretion, interests and market conditions.
For the avoidance of doubt, pricing structure and success fee mechanism(s) shall be based on commercial prudence and costing factor; and is not a device to take any undue advantage of the SP.
- 8.4 EESL's service prices and success fee are dynamic and subjected to periodic determination by EESL management based on the latest discovered prices, costing factors, marketing activities, business scalability plans and market trends etc. Any such alterations will be duly communicated by EESL to SP as and when necessary, through notification of a written order by EESL.
- 8.5 No form of advance payment against success fees shall be made to the SP by EESL and any such demand or request by the SP shall not be entertained or accepted by EESL. For avoidance of doubt, it is clarified that any such demand or request from SP may lead to de-registration and termination of the present Agreement.
- 8.6 EESL reserves all rights not expressly granted in this Agreement. Without limiting the foregoing, EESL explicitly reserves the non-exclusive right to make, have made, use, sell, offer for sale, perform, display, copy and create derivative works of the Products in all markets and territories.

9. SP Obligations and Restrictions.

- 9.1 SP shall maintain an office/co-working space which shall be opened and staffed during normal business hours and shall use its best efforts to promote and support Energy Efficient Services in India to a standard comparable to other similar products sold by SP. SP shall devote sufficient resources, including support and competent and informed staff, to fulfil its obligation under this Agreement. SP shall, among other things, demonstrate the use and application of Energy Efficient Services and provide post-work support, as and when required.
- 9.2 SP shall make commercially reasonable efforts to include the Energy Efficient Services/Products/Projects in marketing and promotional of Programs that SP intends to design and manage either through their own marketing teams or through its other channels.

- 9.3 SP shall not directly or indirectly market the EE Services to Leads not reserved by the SP. Notwithstanding anything contained in this clause, SP's performance shall be evaluated based on the performance parameter established by EESL under this Agreement.
- 9.4 Any software that is sold separately or any software or patent technology incorporated into or provided for use in Service, is not sold, but is licensed solely for the Lead's use and strictly in accordance with the associated EESL SOP, documentation and any other applicable use restrictions.
- 9.5 SP shall at all times during the term of the Agreement, (i) obtain and maintain all necessary governmental and regulatory approvals and licenses to perform its obligations hereunder, (ii) comply with good business practices and all applicable laws and regulations, including without limitation to the extent applicable the law and all applicable export laws, restrictions and regulations and (iii) bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Products and Services to any location in compliance with all applicable laws and regulations prior to delivery thereof by EESL.
- 9.6 SP shall make every effort to localize and translate for its staffs for undertaking sales and marketing of EESL's energy efficient products and/or services based on training resources made available by EESL to SP under the present Agreement.
- 9.7 SP shall not assist or permit any third party to: (i) disassemble, decompile or otherwise take-up reverse engineering of any product or proprietary document, or otherwise attempt to revise the business model, structure, algorithms or ideas underlying any Product or software (except and only to the extent this clause is expressly prohibited by applicable law), (ii) provide, lend, rent, lease or otherwise provide temporary access to a Product, (iii) take any action contrary to this Agreement, (iv) copy, modify or make derivative works of any Products or software, or combine any Product with any other software or product, (v) alter, obscure or remove any trademark, copyright or other proprietary designation or notice from any Product, (vi) modify, use or distribute the Product, software or any part thereof, except as expressly permitted in this Agreement or (vii) authorize, allow, or assist others (including, without limitation any customer) to do any of the foregoing. SP further agrees not to sublicense any of its rights under this Agreement.
- 9.8 SP represents and warrants that neither this Agreement nor the performance of or exercise of rights hereunder is restricted by, in conflict with, requires registration or approval, affects EESL's proprietary rights under, or shall require any payment, indemnification or compulsory licensing under, any law or regulation in India.

10. Books of Account

- 10.1 Proper books or records of accounts shall be kept by the SP and entries made of all such matters and transactions related to accounting of cost and material associated with marketing of EESL's energy efficient services.

10.2 EESL may (by duly authorized representative) at any reasonable time within normal business hours inspect the books of accounts of the SP and examine the details or prospects of the business.

10.3 SP shall prepare the accounts for submission to EESL within 3 months of the end of the financial year or other Accounting Period to which the accounts relate.

10.4 The accounts shall be signed by a duly authorized representative on behalf of both EESL and SP when signed, shall be binding on all.

11. Proprietary and Confidential Information.

11.1 Each party agrees that all documents, business models, algorithms, designs, know-how, ideas, and all business, technical and financial information it (as the "Receiving Party") obtains from the other party (the "Disclosing Party") are the confidential property of the Disclosing Party and its or suppliers ("Proprietary Information"). For clarity, all Products are deemed to be EESL's Proprietary Information. The Receiving Party agrees (i) to hold the Disclosing Party's Proprietary Information in strict confidence and take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to divulge any such Proprietary Information or any information derived therefrom to any third person (iii) not to make any use whatsoever at any time of such Proprietary Information except as necessary to perform its obligations or exercise its rights under this Agreement, (iv) not to remove or export from the India or re-export any such Proprietary Information or any direct product thereof, except in compliance with, and with all licenses and approvals required under applicable export laws and regulations, and (v) not to copy or reverse engineer any such Proprietary Information. Any Receiving Party employee given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing. Without granting any right or license, the Disclosing Party agrees that the foregoing clauses (i), (ii), (iii), and (v) shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (i) is or (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) becomes generally known to the public, or (ii) was properly in its possession or known by it without restriction prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to it by a third party without restriction or (iv) is independently developed by the Receiving Party without use of or reference to Disclosing Party's Proprietary Information. The Receiving Party may make disclosures required by court order provided the Receiving Party uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding, and any information so disclosed shall continue to be treated as Proprietary Information for all other purposes. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there may be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law. The Receiving Party shall notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. The provisions of this Section shall survive

for five (5) years beyond the expiration, non-renewal or termination of this Agreement.

- 11.2 Except as expressly set forth herein, this Agreement does not grant any license under any patents or other intellectual property rights owned or controlled by or licensed to EESL. The SP shall not have any right to independently create products and services similar to the Products unless authorized explicitly by EESL.

12. Compliance with Laws

The SP agrees to comply with all laws and regulations of India, that are applicable to the business that the SP transacts including anti-bribery and anti-corruption laws. The SP agrees to indemnify and hold EESL harmless for all liability or damage caused by SP's breach of this agreement or failure to comply with the terms of any provision hereof.

13. Indemnification

The Parties hereto expressly understand and agree that SP is an independent contractor in the performance of each and every part of this Agreement. SP is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith and is responsible for and shall indemnify EESL, and its directors, employees and subsidiaries from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of SP's activities or those of its employees or agents (including, without limitation, direct and indirect sub-resellers), including without limitation, providing unauthorized representations or warranties (or failing to effectively disclaim all warranties and liabilities on behalf of EESL) to its Customers or breaching any term, representation or warranty of this Agreement, or for violating any law of the land in pursuance of this Agreement.

14. Ownership

EESL shall retain title to its intellectual property rights in the Products, including without limitation any current patent applications. Except as expressly provided herein, each Party shall own and shall have the exclusive right to exploit all intellectual property rights owned or acquired by such Party.

15. Force Majeure

- 15.1 Except for the obligation to pay money properly due and owing either Party shall be excused from any delay or failure in performance under this Agreement caused by reason of force majeure.
- 15.2 For the purposes of this clause "force majeure" means the occurrence of an event or contingency beyond the reasonable control of the relevant Party including but not limited to failure of performance by the other Party due to acts of God earthquake, power failure, labor disputes, riots, legal consents and governmental requirements.
- 15.3 The Party whose performance is affected by the occurrence of the force majeure event shall give notice of such inability to perform to the other Party with details of the event and likely duration.

15.4 The Party whose performance is affected by the occurrence of the force majeure event undertakes during such period of suspension of its obligations to:

- keep the other fully informed of any developments.
- take such action as may be necessary to prevent, limit or mitigate any damage or loss which might arise or be incurred as a result of or in connection with such suspension.
- to use its best endeavors to avoid, limit, mitigate or remove the effect of such force majeure event.

15.5 If a Party is excused performance of substantially all of its obligations under this Agreement for a continuous period of six months, then the other Party may at any time after such period terminate this Agreement.

16. Notices

16.1 Any notice given in connection with this agreement must be in writing and may be served by hand or by leaving it at or sending it by registered recorded delivery or courier or email to the Party at the addresses set out at the beginning of this Deed (or to such other address as the recipient may notify to the other Parties for the purpose of the service of notices).

16.2 Such notice will be effectively served:

16.2.1 On the day of receipt, any hand delivered letter or fax message, or email is received on any Business Day before or during normal working hours;

16.2.2 On the following Business Day where any hand delivered letter or fax message, or email is received either on any Business Day after normal working hours or on any day which is not a Business Day; or

16.2.3 On the second Business Day following the day of posting of any registered recorded delivery or certified letter sent postage prepaid.

17. Miscellaneous

17.1 Neither this Agreement nor the licenses granted hereunder are assignable or transferable by SP (and any attempt to do so shall be void). An assignment by operation of law or a change of control (directly or indirectly) shall be defined as an assignment or transfer under this Agreement. EESL may assign and transfer this Agreement, and the licenses granted hereunder without restriction. The provisions hereof are for the benefit of the Parties only and not for any other person or entity.

17.2 Any notice, report, approval, authorization, agreement or consent to or requested of EESL required or permitted hereunder shall be in writing addressed to: EESL, Attention: No failure or delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any partial exercise of any right or power here under preclude further exercise.

If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable. This agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Delhi and the India without regard to conflicts of law's provisions thereof, and without regard to the UNICTRAL. This Agreement is the complete and

exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing, and any pre-printed or standard terms of any purchase order, confirmation or similar form, even if signed by the Parties after the effectiveness hereof, shall have no force or effect. That SP substantially prevailing Party in any action to enforce this agreement shall be entitled to recover its attorney's fees and costs in connection with such action. The Product (a) was developed at private expense and includes trade secrets and Confidential Information; (b) is a commercial item consisting of business model and commercial documentation. All rights not expressly granted are expressly reserved by EESL. SP is responsible for all acts and omissions of its affiliates or any person or entity whom SP is permitted under this Agreement to allow the use of or access to the Product. Nothing in this Agreement shall be construed as creating an employer- employee relationship, a Strategic partnership, or a joint venture between the Parties. SP agrees not to remove or export or re-export Product, except in compliance with, and with all licenses and approvals required under applicable export laws and regulations.

17.3 Variation: Amendments to this Agreement (including any schedules added to this Agreement after the date of this Agreement) shall not be effective unless in writing and signed by authorized signatories on behalf of both Parties.

17.4 Waiver: Neither Party shall have been deemed to have waived any right under this Agreement by reason of or failure or delay in exercising a right.

17.5 Entire Agreement: This Agreement contains the whole Agreement between the Parties relating to its subject matter and supersedes all previous written or oral agreements relating to it.

17.6 Assignment: The SP shall not be entitled to assign or transfer any right or obligation under this Agreement without the prior written consent of EESL.

17.7 Headings: The headings to the clauses in this Agreement are for ease of reference only and shall not affect their interpretation.

17.8 Severance: If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Parties shall seek to amend such provision in such reasonable manner as achieves the intention of the parties without illegality.

17.9 Further Assurance: At any time after the date of this agreement each of the Parties shall execute or procure the execution of such documents and do or procure the doing of such acts and things required for the purpose of giving the full benefit of all the provisions of this agreement.

17.10 Counterparts: This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement. Any Party may enter into this Agreement by signing any such counterpart.

Third Party Rights: No person who is not a party to this Agreement shall have any rights to enforce its provisions.

18. Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of India and the courts of Delhi shall have the exclusive jurisdiction to entertain any dispute or suit arising out of or in relation to this Agreement.

19. Dispute Resolution:

Any dispute or differences arising out of or touching this agreement if not resolved amicably within 30 days of raising such a dispute or difference shall be referred to the arbitration, of single arbitrator mutually agreed between the parties. In case the parties fail to agree upon single arbitrator then, either of the Party may approach a competent court for the appointment of the arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The decision of the arbitral tribunal shall be final and binding on the parties. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996. The language of arbitration shall be English, cost of arbitration shall be borne equally by the Parties (however, the successful claimant shall be entitled to costs as per provisions of Arbitration & Conciliation Act, 1996 and the venue (seat) of arbitration shall be New Delhi, India.

IN WITNESS WHEREOF and intending to be legally bound, the Parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

Signed by for and on behalf of EESL	Strategic Partner (to be signed only by the authorized signatory to whom authorization is given in Power of Attorney)
Name: Designation:	<Seal and Sign> Name: Designation:
Name and Signature of Witness-1	Name and Signature of Witness-2
Signature:	Signature:
Name:	Name:
Designation:	Designation:
Address:	Address:

CONTRACT AGREEMENT

Dated the __ day of __, 2025.

BETWEEN

Energy Efficiency Services Limited, New Delhi

[“EESL”] and

[“SP”]

NON-DISCLOSURE AGREEMENT

This Agreement is entered into as of the day of signing, by and between Energy Efficiency Services Limited, a company incorporated under the Companies Act 1956 and having its Registered Office at Energy Efficiency Services Limited, Ikon Tower, 3rd Floor, 24-C, Film City, Sector 16A, Noida – 201301, Uttar Pradesh (hereinafter referred as "EESL" and Mr./Ms./M/s X, having his/her/its Office at referred as Receiving Party)

EESL is considering engaging the services of X for the purpose of _____(PURPOSE).

WHEREAS, in the course of such activities it is also anticipated that EESL will disclose to X its proprietary and/or confidential information for the PURPOSE as set forth above;

NOW THEREFORE, the PARTIES hereto have entered into the following agreement ("AGREEMENT"):

1. For the purpose of this AGREEMENT "CONFIDENTIAL INFORMATION" shall mean any and all information and data, including but not limited to any kind of any product, service, process, invention, improvement or development carried on or used by EESL, discoveries, ideas, concepts, know-how (whether patentable or copyrightable or not), research, development, designs, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, computer programs, algorithms, marketing plans or techniques client list, consumer data, budgets, financials, costs, profits, prices, discounts, mark-ups, business strategies, marketing, tenders and any price sensitive information concerning EESL, whether or not labeled as "Confidential Information" and disclosed by EESL (EESL's own information or EESL's clients') in connection with the PURPOSE, irrespective of the medium in which such information or data is embedded. CONFIDENTIAL INFORMATION shall include any copies, abstracts, reports, work products or any derivatives made or derived there from by the Receiving Party as well as any or prototypes or part thereof.
2. All CONFIDENTIAL INFORMATION disclosed pursuant to this AGREEMENT:
 - a. shall be used exclusively for the PURPOSE of this AGREEMENT, and the Receiving PARTY shall be permitted to use CONFIDENTIAL INFORMATION disclosed to it pursuant to this AGREEMENT only for such sole PURPOSE AND FOR NO OTHER PURPOSE, unless otherwise expressly agreed to in writing by EESL;
 - b. shall not be distributed, disclosed, or disseminated in any way or form by the Receiving Party to anyone except its own employees, who have a reasonable need to know the CONFIDENTIAL INFORMATION and who are bound to confidentiality by their employment agreements or otherwise with the Receiving Party;
 - c. shall be treated by the Receiving Party with the same degree of care to avoid disclosure to any third party as is used with respect to the Receiving Party's own information of like importance which is to be kept confidential.

- d. shall remain the property of EESL.
 - e. shall not be disclosed to any other third party by the Receiving Party without the prior written approval from EESL.
 - f. shall not attempt to (1) reverse engineer (e.g., decompile, disassemble, reverse translate) any CONFIDENTIAL INFORMATION provided by or on behalf of EESL, (2) discover the source code of or trade secrets in any such CONFIDENTIAL INFORMATION, or (3) circumvent any technological measure that controls access to such CONFIDENTIAL INFORMATION in any manner whatsoever otherwise than as may be reasonably required for the PURPOSE.
3. The obligations as per PARAGRAPH 2 shall not apply, however, to any CONFIDENTIAL INFORMATION which:
- a. the Receiving Party can demonstrate, is already in the public domain or becomes available to the public through no breach by the Receiving Party of this AGREEMENT.
 - b. was in the Receiving Party's possession prior to receipt from EESL as proven by its written records.
 - c. is required to be disclosed by law or the rules of any governmental organization.
4. Nothing contained in the Agreement obligates EESL to disclose any CONFIDENTIAL INFORMATION to the Receiving Party. It is the sole discretion of EESL as to how much and what information will be disclosed by EESL to the Receiving Party.
5. The Receiving Party shall indemnify and hold harmless EESL and their directors, officers, employees, agents and representatives from and against all or any claims, damages, losses, liabilities or expenses (including, but not limited to, reasonable attorneys' fee and disbursements), arising out of a breach of this Agreement by the Receiving Party or their Officers, employees, agents or consultants.
6. Receiving Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement, and that in addition to the remedies provided in Article 5 of this Agreement and any other remedies available to it, EESL shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.
7. The Receiving Party confirms that EESL is disclosing Confidential Information on "as is" basis without any warranty or representation of any nature whatsoever. EESL shall therefore not be liable to the Receiving Party for any direct, indirect, special, consequential, incidental, or punitive damages or loss, regardless of the form of action or theory of liability (including, without limitation, actions in contract, warranty, negligence, or products liability) resulting from any defect in or use of any Information by the Receiving Party, even if the Receiving Party has been advised of the possibility of such damages or losses.
8. It is understood that no license or right of use or any other right in respect of the CONFIDENTIAL INFORMATION is granted or conveyed by this AGREEMENT. The disclosure of CONFIDENTIAL INFORMATION and materials shall not result in any obligation to grant the Receiving Party any such rights therein.
9. Receiving Party agrees that it shall treat CONFIDENTIAL INFORMATION disclosed under this Agreement as strictly confidential in perpetuity. The term of the Agreement shall be from the date of signing the Agreement. Either Party can terminate this Agreement by giving 30 days' written notice to the

other Party. However, Receiving Party's confidentiality obligation under this Agreement will survive in perpetuity

10. All CONFIDENTIAL INFORMATION disclosed pursuant to this AGREEMENT shall either be returned to EESL or be destroyed by the Receiving Party after termination of this AGREEMENT or upon the request of EESL. In case of destruction, the Receiving Party shall confirm in writing such destruction to EESL.
11. All disputes arising out of or in connection with the present AGREEMENT, including any question regarding its existence, validity or termination, shall be finally settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and under the Rules made thereunder. Parties will appoint a sole arbitrator with mutual concurrence. The seat of arbitration shall be New Delhi. The language to be used in the arbitration proceeding shall be English. Notwithstanding this provision, in the event of a breach or threatened breach of this Agreement by or anyone acting on behalf of the Receiving Party, EESL shall be entitled to seek any equitable relief, specific performance or any such applicable relief from any court of competent jurisdiction.
12. This AGREEMENT shall be subject to the laws in force in India and courts of New Delhi will have exclusive jurisdiction for any matter under this Agreement.
13. All notices, requests, demands and other communications under this agreement or in connection herewith shall be given to or made upon the respective parties as follows:

To EESL:

To X : M/s XXX

or to such other person or addresses as any of the Parties shall have notified to the others.

All notices, requests, demands and other communications given or made in accordance with the provisions of this Agreement shall be in writing by letter, fax or email.

14. If any term, clause or provision of this Agreement shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision of this Agreement and such an invalid term clause or provision shall be deemed to have been deleted from this Agreement.
15. This Agreement constitutes the entire Agreement between the Parties regarding the Confidential Information and supersedes all prior understandings, oral or written between them in respect of the Confidential Information.
16. Receiving party shall have no right to assign or otherwise transfer, in whole or in part, any of its rights or obligations under this Agreement without obtaining prior written consent from EESL.
17. The provisions of this Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by the Parties hereto. The requirement of written form can only be waived in writing.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed by their duly authorized representatives on the dates specified below.

Energy Efficiency Service Limited

xxxx

By: _____

By: _____

Title: _____

Title: _____

Certification by the Bidder as per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order)

We have read and understood the provisions of Order no. F.No.6/18/2019-PPD (Order Public Procurement no.1) dated 23/07/2020 regarding "Restriction under Rule 144(xi) of General Financial Rules" and F.No.6/18/2019-PPD (Order Public Procurement no.2) dated 23/07/2020 regarding "Exclusions from Restriction under Rule 144(xi) of General Financial Rules" issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India [hereinafter collectively "**DoE Order**"] and any subsequent modifications/ Amendments, if any.

Particularly, we, the Bidder, have read the clause regarding restrictions on procurement from a 'Bidder of a country which shares a land border with India' and on sub-contracting to contractors from such countries.

We certify that we, the bidder is not from such a country or, if from such a country, has been registered **as per provisions of the requisite Order/Circular/Document** with the Competent Authority and will not subcontract any work to a subcontractor/sub vendor from such countries unless such subcontractor/sub vendor fulfils all requirement in this regard and is eligible to be considered. *[Where applicable, evidence of valid registration by the Competent Authority shall be attached.]*

We further declare that any misrepresentation or submission of false/forged document/ information in this regard shall be dealt with as per the provisions of RfP Documents and/or EESL's policy and procedures.

Date:

Printed Name:

Place:

Designation:

Certificate from statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of Local Content, in line with PPP-MII order and MoP order, if applicable *Ito be submitted on the letter head of the issuer.*]

Dear Sir,

We have read and understood the provisions of "Public Procurement (Preference to Make in India) Order, 2017" dated 15/06/2017, its revision dated **16/09/2020** [hereinafter, "PPP-MII Order"] issued by **Department for promotion of Industry and Internal Trade (DPIIT)**, Ministry of Commerce and Industry, Government of India,

'Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content)' order dated 16/11/2021 issued by Ministry of Power [hereinafter, "MoP order"

and any subsequent modifications/ Amendments, if any.

In line with the provisions of the PPP-MII Order **and MoP Order**, M/s. [Enter the name of the Bidder] [hereinafter, "**Class-I Local Supplier**" or "**Class-II Local Supplier**" (strike off which is not applicable)] have submitted an Affidavit of self-certification to M/s. Energy Efficiency Services Limited [hereinafter, EESL] regarding Local Content in Goods/Services/Works to be supplied by the "**Class-I Local Supplier**" or "**Class-II Local Supplier**" (strike off which is not applicable) for "*Name of Work and SP*", wherein they have agreed to abide by the terms and conditions of the PPP-MII Order and MoP Order,

Further, in line with the PPP-MII Order, the statutory auditor or cost auditor of the company **(in the case of companies)** or a practicing cost accountant or practicing chartered accountant **(in respect of suppliers other than companies)** shall provide a certificate giving the percentage of Local Content in the Goods/Service/Works to be supplied by the "**Class-I Local Supplier**" or "**Class-II Local Supplier**" (strike off which is not applicable) for "*Name of work to be entered by bidder*"

Accordingly, we, the Statutory Auditor(s) / Cost auditor of the "**Class-I Local Supplier**" or "**Class-II Local Supplier**" (strike off which is not applicable) a practicing cost accountant or practicing chartered accountant [*choose as applicable*], certify that the Local Content as defined under the PPP-MII **and MoP Order**, in the Goods/Service/Works to be supplied by the "**Class-I Local Supplier**" or "**Class-II Local Supplier**" (strike off which is not applicable) for "*Name of work to be entered by bidder .*" is percentage [*specify the percentage of Local content*].

For and on behalf of,

Date:

<<Statutory Auditor's/ Cost auditor's/Cost accountant's/Chartered accountant's attestation>>
Firm Reg No. Membership No.

Note: This is a guiding format. In case the bidder submits the certificate in a format different from the above, the same may be considered provided it meets the intent and purpose, as may be ascertained by EESL.

Format for Affidavit of Self certification regarding Local Content in line with PPP-MII order and MoP Order, if applicable, to be provided on a non-judicial stamp paper of Rs. 100/-.
..... Name of the Tender.....;

Date:

I _____ S/ o, D/ o, W/o, _____ Resident
of _____ hereby solemnly affirm
and declare as under:

That I will agree to abide by the terms and conditions of the Public Procurement (Preference to Make in India) Order, 2017 of Government of India issued vide Notification No: P45021/2/2017 -BE-II dated 15/06/2017, its revision dated **16/09/2020** (hereinafter **PPP-MII order**),

'Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content)' order dated 16/11/2021 issued by Ministry of Power (hereinafter MoP order) and any subsequent modifications/Amendments, if any and

That the information furnished hereinafter is correct to the best of my knowledge and belief and I undertake to produce relevant records before the procuring entity/ EESL or any other Government authority for the purpose of assessing the local content of goods/services/works supplied by me for
.....

That the local content for all inputs which constitute the said goods/services/works has been verified by me and I am responsible for the correctness of the claims made therein.

That the 'Local Content 'as defined in the PPP-MII order and MoP order in the goods/services/works supplied by me for
....., ispercent (%).

That the goods/services/works supplied by me for.....
....., meet the 'Local Content' requirement as defined in the PPP-MII order **and MoP order for 'Class -I or Class - II local supplier'.**

That the value addition for the purpose of meeting the 'Local Content 'has been made by me at..... *(Enter the details of the location(s) at which value addition is made).*

That in the event of the local content of the goods/services/works mentioned herein is found to be incorrect and not meeting the prescribed Local Content criteria, based on the assessment of procuring agency (ies)/EESL/Government Authorities for the purpose of assessing the local content, action shall be taken against me in line with the PPP-MII order, **MoP order** and provisions of the Integrity pact/ Bidding Documents.

I agree to maintain the following information in the Company's record for a period of 8 years and shall make this available for verification to any statutory authority.

- i. Name and details of the Local Supplier
(Registered Office, Manufacturing unit location, nature of legal entity)
- ii. Date on which this certificate is issued
- iii. Goods/services/works for which the certificate is produced
- iv. Procuring entity to whom the certificate is furnished
- v. Percentage of local content claimed and whether it meets the Local Content prescribed for **'Class -I or Class -II local supplier'**
- vi. Name and contact details of the unit of the Local Supplier (s)
- vii. Sale Price of the product
- viii. Ex-Factory Price of the product
- ix. Freight, insurance and handling
- x. Total Bill of Material
- xi. List and total cost value of input used to manufacture the Goods/ to provide services/ in construction of works
- xii. List and total cost of input which are domestically sourced. Value addition certificates from suppliers, if the input is not in-house to be attached
- xiii. List and cost of inputs which are imported, directly or indirectly

For and on behalf of (Name of firm/entity)

Authorized signatory (To be duly authorized by the Board of Directors) <Insert Name, Designation and Contact No.>

Compliance Matrix/ CHECK – LIST FOR BIDDERS

Please ensure these major Terms & Conditions before submitting you bids in order to avoid REJECTION of your offer.

Sr. No.	Detail/Terms & Conditions	Applicable For	Attached		Reasons for non-compliance/ remarks
			Yes	No	
1	EMD/Security Deposit	Indian Bidders			
2	Attachment No.1	Indian Bidders			
3	Self-Declaration for Blacklisting as per Attachment No.2	Indian Bidders			
4	Certification by the Bidder per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order) (as per format in Attachment No. 5)	Indian Bidders			
5	CERTIFICATE REGARDING DECLARATION OF LOCAL CONTENT (As per Attachment No. 6)	Indian Bidders			
6	GST Registration Certificate and PAN Card Copy.	Indian Bidders			
7.	Technical Qualification Criteria CVs / Resume of Manpower to be furnished	Indian Bidders			
8	Financial Qualification Criteria Strategic Partner(s) should have an Average Annual Turnover (ATO) during the last 3 Financial Years of at least.: ₹ 3.00 Lakh Duly authorized copies of audited financials for preceding last three Financial Years are to be submitted by bidder.	Indian Bidders			
9	EFT Form	Indian Bidders			

E.F.T. Form
(TO BE RETURNED TO THE COMPANY)

To,
Energy Efficiency Services Limited ,
Noida

Dear Sir,

**REF: AUTHORISATION OF ALL OUR
PAYMENTS THROUGH
ELECTRONIC FUND TRANSFER
SYSTEM**

We, hereby authorize **Energy Efficiency Services Limited Ltd.**, to make all our payments through Electronic Fund Transfer System. The details for facilitating the payments are given below.

(TO BE FILLED IN CAPITAL LETTERS)

1. **NAME OF THE BENEFICIARY***

--

2. **VENDOR CODE**

--

3. **ADDRESS***

--

4. **TELEPHONE NO. (WITH STD CODE)**

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

5. **BANK PARTICULARS**

A) **BANK NAME***

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

B) **BANK TELEPHONE NO. (WITH STD CODE)***

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

C) **BRANCH ADDRESS***

--

D) **BANK FAX NO. (WITH STD CODE)**

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

E) **BRANCH CODE***

--	--	--	--	--	--	--	--	--	--

F) **9 DIGIT MICR CODE OF THE BANK BRANCH (ENCLOSE COPY OF A CANCELLED CHEQUE)***

--	--	--	--	--	--	--	--	--	--

G) **11 DIGIT IFSC CODE OF THE BANK BRANCH***

--	--	--	--	--	--	--	--	--	--	--	--

H) **BANK ACCOUNT NUMBER***

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

I) **BANK ACCOUNT**

SAVING	CURRENT	LOAN	CASH CREDIT	OTHERS
--------	---------	------	-------------	--------

TYPE (TICK ONE)*

--	--	--	--	--	--	--	--	--

IF OTHERS,

SPECIFY

6. PERMANENT ACCOUNT NUMBER (PAN)*

--	--	--	--	--	--	--	--	--	--

7. E-MAIL Address (for intimation regarding release of payments)

--

I/We hereby declare that the particulars given above are correct and complete. If the transaction is delayed or credit is not effected at all for reasons of incomplete or incorrect information, I/We would not hold the Company responsible.

DATE

*(AUTHORISED
SIGNATORY)

*Name:

OFFICIAL STAMP

BANK CERTIFICATION:

It is certified that above mentioned beneficiary holds a bank account no _____ with our branch and the Bank particulars mentioned above are correct.

*DATE

*Mandatory Fields

If Cancel cheque not available, In such case declaration from authorized signatory for the same required. Along with request letter.

(AUTHORISED
SIGNATORY)

*Authorization no.:
.....

*Name:

OFFICIAL STAMP

GENERAL CONDITIONS CONTRACT (GCC)		
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A. Contract and Interpretation

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

“Contract” means the Contract Agreement entered into between the EESL and the Implementing Partner, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.

“Contract Documents” means the documents listed in Article. 1.1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).

“GCC” means the General Conditions of Contract hereof.

“SCC” means the Special Conditions of Contract.

“Day” means calendar day of the Gregorian calendar.

“Month” means calendar month of the Gregorian calendar.

“Employer” means EESL, New Delhi and includes the legal successors or permitted assigns of the EESL.

“Project Manager” means the person appointed by the EESL in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the EESL.

“Contractor or Implementing Partner or successful Contractor” means the person(s) whose bid to perform the Contract has been accepted by the EESL and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Implementing Partner.

“Contractor or Implementing Partner’s Representative” means any person nominated by the Implementing Partner and approved by the EESL in the manner provided in GCC Sub-Clause 17.2 (Implementing Partner’s Representative and Construction Manager) hereof to perform the duties delegated by the Implementing Partner.

“Sub Contractor or Sub Implementing Partner,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly by the Contractor or Implementing Partner, and includes its legal successors or permitted assigns.

“Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

“Facilities” means the Plant and Equipment to be supplied and installed, as well as all the

Installation Services to be carried out by the Implementing Partner under the Contract.

“Plant and Equipment” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Implementing Partner under the Contract (including the spare parts to be supplied by the Implementing Partner under GCC Sub-Clause 7.3 here-of), but does not include Implementing Partner’s Equipment.

“Installation Services” means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Implementing Partner under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, Site preparation works (including the provision and use of Implementing Partner’s Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training of EESL’s Personnel etc.

“Contractor or Implementing Partner’s Equipment” means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Implementing Partner, but does not include Plant and Equipment, or other things intended to form or forming part of the Facilities.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site or site of EESL’s client.

“Effective Date” means the date from which the Time for Completion shall be determined as stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of Contract Agreement.

“Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the stipulations in the SCC and the relevant provisions of the Contract.

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed; and Commissioning has been attained as per Technical Specifications.

“Pre-commissioning” means the testing, checking and other requirement specified in the Technical Specifications that are to be carried out by the Implementing Partner in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.

Commissioning” means trial/initial operation of the Facilities or any part thereof by the Implementing Partner, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

“Guarantee Test(s)” means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional

Guarantees specified in the Technical Specifications in accordance with the provisions of GCC Sub Clause 25.2 (Guarantee Test) hereof.

Operational Acceptance” means the acceptance by the EESL of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Implementing Partner’s fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

Defect Liability Period” means the period of validity of the warranties given by the Implementing Partner commencing at Completion of the Facilities or a part thereof, during which the Implementing Partner is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

2. Contract Documents

2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

2.2 The Contract will be signed in three originals and the Implementing Partner shall be provided with one signed original and the rest will be retained by the EESL.

2.3 The Implementing Partner shall provide free of cost to the EESL all the engineering data, drawing and descriptive materials submitted with the bid, in at least five (5) copies to form a part of the Contract immediately after Notification of Award/ letter of Award.

2.4 Subsequent to signing of the Contract, the Implementing Partner at his own cost shall provide the EESL with at least five (05) true copies of Contract Agreement within thirty (30) days after signing of the Contract.

3. Interpretation

3.1 Language

3.1.1 Unless the Implementing Partner is a national of the EESL’s country and the EESL and the Implementing Partner agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.

3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GCC Sub-Clause 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of

reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

Words importing persons or parties shall include firms, corporations and government entities.

3.5 Inco terms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms.

Inco terms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.6 Construction of the Contract

3.6.1 The Contracts to be entered into between the EESL and the successful Contractor shall be as under :

- i) First Contract: For Ex-works (India) supply of plant and equipment and accessories by Contractor including mandatory spares and spares to be supplied during warranty
- ii) Second Contract: for providing all services i.e. loading, inland/air/shipment transportation for delivery at site, inland/air/shipment transit insurance, unloading, storage, handling at site, installation, insurance covers other than inland transit insurance, testing, commissioning and conducting Guarantee tests in respect of all the equipments supplied under the 'First Contract' and all other services including civil works, if any, as specified in the Contract Documents including sales tax and duties as asked in price bid in section IV. It will also cover cost for Repair and Maintenance and equipments and/or additional warranty, where ever asked for supplied under the 'First Contract' and all other services including civil works, if any, as specified in the Contract Documents. All items in second contract must be quoted including service tax.
- iii) Third Contract: For providing all services including Awareness programme for public/stake holders/workshops/printing brochure and other materials, Survey cost, Monitoring and verification cost, scrap disposal cost, arrangement of office at both sites and Statuary agencies cost including service tax.

In case, value of second contract viz transportation, insurance is lower or the supply cost includes transportation, insurance etc than three contract may be merged in two contract.

Arbitration: 1. Appointing authority for Arbitrator: CEO, EESL

2. The place of arbitration shall be: New Delhi

Prices are to be quoted as Firm during currency of contract. No price adjustment is allowed.

General:

- 1. In case of investment partner, A project manager is to be deputed from their side for co-coordinating activities.
- 2. Word Implementing Partner for any Project used in General Conditions of contract includes persons of Investment partner, executing and implementing agencies etc.
- 3. Notification of award means Letter of Intent and Letter of award

3.6.2 The award of separate Contracts shall not in any way dilute the responsibility of the Implementing Partner for the successful completion of the Scope of Work /Facilities as per Contract Documents and a breach in one Contract shall automatically be construed as a breach of the other Contract(s) which will confer

a right on the EESL to terminate the other Contract(s) also at the risk and the cost of the Implementing Partner.

3.6.3 Set -Off Clause:

Contractor irrevocably and unequivocally agrees that breach in this Contract shall constitute (deemed to be) a breach in other contracts entered by the Contractor with EESL (regardless of the scope of work) which will confer a right on EESL, among other rights available under the Contract or at law to terminate the other contracts at the risk and the cost of the contractor /Implementing Partner for the Project, for which awards have been made. For the avoidance of doubt, default in this Contract by the Contractor shall be a deemed default in other contract (awarded under separate RFPs) and EESL reserve the right to effectuate or avail all the remedies available under that contract.

3.7 Entire Agreement

Subject to GCC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the EESL and Implementing Partner with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.8 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party here to.

3.9 Independent Contractor or Implementing Partner

The Implementing Partner shall be an independent Implementing Partner performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties here to.

Subject to the provisions of the Contract, the Contractor or Implementing Partner shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub Contractor or Sub Implementing Partners engaged by the Implementing Partner in connection with the performance of the Contract shall be under the complete control of the Implementing Partner and shall at all times and for all purposes be deemed to be the employees of the Contractor Contractor and no relation of employer- employee or master-servant shall be understood to exist between the said manpower deployed or provided under this Agreement by the Contractor Contractor; and EESL, at any point in time. For the sake of clarity, employees of the Contractor Contractor and the Sub-Contractor of the Contractor Contractor in no case shall be treated as the employees of EESL at any point of time. Further nothing contained in the Contract or in any subcontract awarded by the Implementing Partner shall be construed to create any contractual relationship between any such employees, representatives or Sub Contractor or Sub Implementing Partners and the EESL.

Contractor and Contractor's sub-contractors shall always abide by all existing labour enactment and rules made thereunder, regulations, notifications and bye laws 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 Central Government or the local authority. Contractor shall keep EESL indemnified in case any action is taken against EESL If EESL is caused to pay or incur any cost or liability or expense as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor. EESL shall have the right to deduct any money due to the Contractor including the amount of performance security. EESL shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by EESL.

For the avoidance of doubt, Contractor shall indemnify EESL against any liability arising out of non-compliance of labour laws or any other law or any act of its employees during the deployment under this contract.

3.10 Joint Venture Agreement or Consortium

If the Implementing Partner is a joint venture or consortium of two or more firms, all such firms shall be jointly and severally bound to the EESL for the fulfilment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the joint venture or consortium.

The composition or the constitution of the joint venture or consortium shall not be altered without the prior written consent of the EESL.

EESL is not obligated to file its claim or initiate legal proceedings first against the Lead Contractor pursuant to the Joint Venture Agreement or Consortium. EESL as per its sole discretion; also reserve the right to initiate the legal proceeding against the non-lead Contractor (or against all the members) pursuant to the Joint Venture Agreement or Consortium.

3.11 Non-Waiver

3.11.1 Subject to GCC Sub-Clause 3.11.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.11.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.12 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.13 Country of Origin

“Origin” means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.

4. Notices

4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Coordination Procedure to be finalised pursuant to GCC Sub-Clause 17.2.3.1, with the following provisions.

4.1.1 Any notice sent by cable, telegraph, facsimile or shall be confirmed within two (2) days after despatch by notice sent by airmail/ post or special courier, except as otherwise specified in the Contract.

4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after despatch. In proving the fact of despatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

4.1.3 Any notice delivered personally or sent by telegraph, facsimile shall be deemed to have been delivered on date of its despatch.

4.1.4 Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

4.2 Notices shall be deemed to include any approvals, consents, instruction orders and certificates to be given under the Contract.

5. Governing Law

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

6. Settlement of Disputes

6.1 Following shall be the mechanism(s) for settlement of disputes:

6.2 Arbitration

In case the Contractor is a Public Sector Enterprise or a Government Department

In case the Contractor is a Public Sector Enterprise or a Government Department, the dispute shall be referred for resolution in Permanent Machinery for Arbitration (PMA) of the Department of Public Enterprise, Government of India. Such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law

Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

In case the Contractor is not a Public Sector Enterprise or a Government Department

Any dispute or differences arising out of or touching this Agreement if not resolved amicably within 30 days of raising such dispute or difference and subject to cure period as provided in the Agreement; shall be referred to the Arbitration, of single arbitrator mutually agreed between the Parties. In case the parties fail to agree upon single arbitrator then, either of the party may approach a competent court for the appointment of the arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any and all amendment thereunder. The decision of the arbitral tribunal shall be final and binding on the Parties. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and any and all amendment thereunder. The language of arbitration shall be English, cost of arbitration shall be borne equally by the Parties and the venue of arbitration shall be Delhi, India.

Notwithstanding any reference to the Arbitration herein,

Parties shall continue to perform their respective obligations under the Contract, except for the matter under dispute pursuant to Arbitration proceedings

B. Subject Matter of Contract

7. Scope of Facilities

7.1 Unless otherwise expressly limited in the Technical Specifications, the Implementing Partner's obligations cover the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Recommissioning and delivery) of the Plant and Equipment and the installation, completion, commissioning and performance testing of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Implementing Partner's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the EESL, as set forth in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement.

7.2 The Contractor or Implementing Partner shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically

mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare Parts if asked and warranty spares included in the Contract, the Implementing Partner agrees to supply spare parts required for the operation and maintenance of the Facilities. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the EESL and the Implementing Partner, and the price of such if asked spare parts shall be that given in Price Schedule which shall be added to the Contract Price. The price of such spare parts shall include the purchase price there for and other costs and expenses (including the Implementing Partner's fees) relating to the supply of spare parts. The prices of spares covered under the Price Schedule shall be kept valid for a period as specified in SCC.

7.3.1 The Contractor / Implementing Partner agrees that the spare parts recommended by him for 3 years operation and quoted in price Schedule shall be supplied by him at the same terms and conditions as are otherwise applicable to this Contract. Further, the Implementing Partner also agrees to supply spare parts required for the operation and maintenance of the Facilities as per provision of subsequent paragraphs of this Sub-Clause.

7.3.1.1 All the spares for the equipment under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable.

7.3.1.2 All the mandatory spares covered under the Contract shall be produced along with the main equipment as a continuous operation and the delivery of the spares will be effected along with the main equipment in a phased manner and the delivery would be completed by the respective dates for the various categories of equipment as per the agreed network. In case of recommended spares the above will be applicable provided the orders for the recommended spares have been placed with the Implementing Partner prior to commencement of manufacture of the main equipment.

7.3.1.3 The Implementing Partner will provide the EESL with the manufacturing drawings, catalogues, assembly drawings and any other document required by the EESL so as to enable the EESL to identify the recommended spares. Such details will be furnished to the EESL as soon as they are prepared but in any case not later than six months prior to commencement of manufacture of the corresponding main equipment.

7.3.1.4 To enable the EESL to finalise the requirement of recommended spares which are ordered subsequent to placement of order for main equipment/plant, in addition to necessary technical details, catalogue and such other information brought-out herein above, the Implementing Partner will also provide a justification in support of reasonableness of the quoted prices of spares which will, inter-alia, include documentary evidence that the prices quoted by the Implementing Partner to the EESL are not higher than those charged by him from other customers in the same period.

7.3.1.5 In addition to the spares recommended by the Implementing Partner, if the EESL further identifies certain items of spares, the Implementing Partner will submit the prices and delivery quotation for such spares within thirty (30) days of receipt of such request with a validity period of six (6) months for consideration by the EESL and placement of order for additional spares if

the EESL so desires.

7.3.1.6 The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.

7.3.1.7 The Contractor or Implementing Partner will provide the EESL with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/equipment covered under the Contract and will further ensure with his vendors that the EESL, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors.

7.3.1.8 The Contractor or Implementing Partner shall guarantee the long term availability of spares to the EESL for the full life of the equipment covered under the Contract. The Implementing Partner shall guarantee that before going out of production of spare parts of the equipment covered under the Contract, he shall give the EESL at least 2 years advance notice so that the latter may order his bulk requirement of spares, if it so desires. The same provision will also be applicable to Sub-Implementing Partners. Further, in case of discontinuance of manufacture of any spares by the Contractor and/or his Sub- Contractor or Implementing Partner, Implementing Partner will provide the EESL, two years in advance, with full manufacturing drawings, material specification and technical information including information on alternative equivalent makes required by the EESL for the purpose of manufacture/procurement of such items.

7.3.1.9 The prices of all future requirements of item of spares beyond 3 years operational requirement will be derived from the corresponding ex-works price at which the order for such spares have been placed by EESL as a part of mandatory spares or recommended spares, or from the rates of mandatory spares or recommended spares as quoted by/ negotiated with the Implementing Partner. Ex-works order price of future spares shall be computed in accordance with the price adjustment provisions covered under the main Contract excepting that the base indices will be counted from the scheduled date of Commissioning of the last equipment under the main project and there will be no ceiling on the amount of variation in the prices. The above option for procuring future recommended spares by the EESL shall remain valid for the period of 5 years from the date of Commissioning of the equipment.

7.3.1.10 The Implementing Partner will indicate in advance the delivery period of the items of spares, which the EESL may procure in accordance with above sub-clause. In case of emergency requirements of spares, the Contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule.

7.3.1.11 In case the Implementing Partner fails to supply the mandatory, recommended or long term spares in the terms stipulated above, the EESL shall be entitled to purchase the same from the alternate sources at the risk and the cost of the Implementing Partner and recover from the Implementing Partner, the excess amount paid by the EESL over the rates worked on the above basis. In the event of such risk purchase by the EESL, the purchases will be as per the Works and Procurement Policy of the EESL prevalent at the time of such purchases and the EESL at his option may include a representative from the Implementing Partner in finalising the purchases.

7.3.1.11 It is expressly understood that the final settlement between the parties in terms of relevant clauses of the Contract Documents shall not relieve the Implementing Partner of any of his obligations under the provision of long term availability of spares and such provisions shall continue to be enforced till the expiry of 5 years period reckoned from the scheduled date of

Commissioning of the Plant and Equipment unless other-wise discharged expressly in writing by the EESL. Further, the provisions pertaining to long term availability of spares shall be extended beyond 5 years applicability period mentioned hereinabove if so desired by the EESL and at the mutually acceptable escalation formula.

7.3.1.13 The Implementing Partner shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from de-fects in design, material and workmanship and shall further guarantee as under:

- (i) For 3 years operational spares (both mandatory and recommended)
 - a) For any item of spares ordered or to be ordered by the EESL for 3 years operational requirement of the plant which are manufactured as a continuous operation together with the corresponding main equipment/component, the Defect Liability Period will be twelve (12) months from the scheduled date of commercial operation of main equipment/ plant under the Contract. 'Commercial Operation' shall mean the conditions of operation in which the complete equipment covered under the Contract is officially declared by the EESL to be available for continuous operation at different loads up to and including rated capacity. Such declaration by the EESL, however, shall not relieve or prejudice the Implementing Partner any of his obligations under the Contract. In case of any failure in the original component/equipment's due to faulty designs, materials and workmanship, the corresponding spare parts, if any, supplied will be replaced without any extra cost to the EESL unless a joint examination and analysis by the EESL and the Implementing Partner of such spare parts prove that the defect found in the original part that failed, can safely be assumed not to be present in spare parts. Such replaced spare parts will have the same Defect Liability as applicable to the replacement made for the defective original part/component provided that such replacement for the original equipment and the spare replaced are again manufactured together. The discarded spare parts will become the property of the Implementing Partner as soon as they have been replaced by the Implementing Partner.
 - b) For the item of spares ordered or to be ordered by the EESL for 3 years operational requirement of the plant, which with the written approval of the EESL, are not manufactured as a continuous operation will be warranted for 7000 hrs of trouble free operation if used within a period of eighteen (18) months reckoned from the date of delivery at site. However, if such spare parts are put to use after eighteen (18) months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of thirty six (36) months from the scheduled date of Commissioning of equipment/plant covered under the contract or 7000 hrs of trouble free operation after such spares are put in service, whichever is earlier.
 - c) For long term requirement

For item of spares that may be ordered by the EESL to cover requirements beyond 3 years of Initial Operation of the plant, the warranty will be till the expiry of 7000 hrs of trouble free operation if used within a period of eighteen (18) months from the date of delivery at site. For item of spares that may be used after eighteen (18) months from the

date of delivery at site, the warranty period will be 12 months from the date they are put to use or 7000 hrs of trouble free operation, whichever is earlier. In any case the defect liability of spares will expire at the end of forty eight (48) months from the date of their receipt at site.

- (ii) The Defect Liability of spares covered in para (b) & (c) above, that are not used within 18 months from the respective date of the delivery at Site will, however, be subject to condition that all such spares being stored/maintained/preserved in accordance with Implementing Partner's standard recommended practice, if any, and the same has been furnished to the EESL.

8. Time for Commencement and Completion

8.1 The Implementing Partner shall commence work on the Facilities from the date of Notification of Award and without prejudice to GCC Sub-Clause 26.2 hereof, the Implementing Partner shall thereafter proceed with the Facilities in accordance with the time schedule specified in Appendix 4 (Time Schedule) to the Contract Agreement or / and as mentioned in special conditions of contract.

8.2 The Implementing Partner shall attain Completion of the Facilities (or of a part where a separate time for Completion of such part is specified in the Contract) within the time stated in the SCC or within such extended time to which the Implementing Partner shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.

9. Contractor or Implementing Partner's Responsibilities

9.1 The Contractor or Implementing Partner shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.

9.2 The Contractor or Implementing Partner confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests if applicable) provided by the EESL, and on the basis of information that the Contractor or Implementing Partner could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as at the date twenty-eight (28) days prior to bid submission. The Implementing Partner acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3 The Implementing Partner shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor or Implementing Partner's and Sub Contractor or Implementing Partner's personnel and entry permits for all imported Implementing Partner's Equipment. The Implementing Partner shall acquire all other permits, approvals and/or licenses that are not the responsibility of the EESL under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.

9.4 The Implementing Partner shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out. The laws will include all national, provincial, municipal or other laws that affect the performance of the Contract and bind upon the Implementing Partner. The Implementing Partner shall indemnify and hold harmless the EESL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or Implementing Partner

or its personnel, including the Contractor or Sub Implementing Partners and their personnel, but without prejudice to GCC Sub Clause 10.1 hereof.

9.5 Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 3.13 (Country of Origin).

10. EESL's Responsibilities

10.1 The EESL shall ensure the accuracy of all information and/or data to be supplied by the EESL as described in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract, except when otherwise expressly stated in the Contract.

10.2 The EESL shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement. The EESL shall give full possession of and accord all rights of access thereto on or before the date(s) specified in Appendix 6.

10.3 The EESL shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the EESL to obtain them in the EESL's name, are necessary for the execution of the Contract (they include those required for the performance by both the Implementing Partner and the EESL of their respective obligations under the Contract), including those specified in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement.

10.4 If requested by the Implementing Partner, the EESL shall use its best endeavours to assist the Implementing Partner in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Implementing Partner or Subcontractor or Implementing Partners or the personnel of the Contractor or Implementing Partner or Sub Contractor or Implementing Partners, as the case may be, to obtain.

10.5 Unless otherwise specified in the Contract or agreed upon by the EESL and the Implementing Partner, the EESL shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts other materials and facilities ; and shall perform all work and services of whatsoever nature, to enable the Implementing Partner to properly carry out Pre commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement at or before the time specified in the program furnished by the Contractor or Implementing Partner under GCC Sub- Clause 18.2 (Program of Performance) hereof and in the manner there-upon specified or as otherwise agreed upon by the EESL and the Contractor or Implementing Partner.

10.6 The EESL shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.

10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the EESL save those to be incurred by the Implementing Partner with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.

C. Payment

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement.

11.2 The Contract Price shall be adjusted in accordance with provisions of Appendix-2 (Price Adjustment) to the Contract Agreement, if applicable. It will be mentioned in SCC.

11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 (Unforeseen Conditions) hereof, the Implementing Partner shall be deemed to have satisfied itself as to the hereof, correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

11.4 If the payment of any amount under this Agreement is disputed (by EESL), then the entire undisputed element of that amount shall be paid and the said disputed element shall be dealt with in accordance with the arbitration procedure set forth under the Agreement. EESL shall identify the specific cause of the disagreement.

12. Terms of Payment

12.1 The Contract price shall be paid as specified in Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix 1.

12.2 No payment made by the EESL herein shall be deemed to constitute acceptance by the EESL of the Facilities or any part(s) thereof.

12.3 The currency or currencies in which payments are made to the Implementing Partner under this Contract shall be specified in Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contract.

13. Securities

13.1 Issuance of Securities

The Implementing Partner shall provide the securities specified below in favour of the EESL at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Implementing Partner shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the currency or currencies of the contract, with a initial validity of up to ninety (90) days beyond the schedule date of Completion of the Facilities in accordance with GCC Clause 24. However, in case of delay in completion of facilities under the package, the validity of the security shall be extended by the period of such delay.

13.2.2 The security shall be in the form of an unconditional bank guarantee as per the proforma provided in Section VII (Forms and Procedures)- Form of Advance Payment Security. The Advance payment Security shall be reduced pro rata every three (3) months after First Running Account Bill/Stage Payment under the Contract based on the value of equipment/facilities received. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance corresponding to cumulative value of the respective equipment Facilities supplied and

received as per a certificate issued by the Project Manager and the balance of 25% released after ninety (90) days beyond the Completion of those Facilities. It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Implementing Partner's responsibility and liabilities under the Contract including in respect of the Facilities for which the reduction in the value of security is allowed.

13.3 Contract Performance Security

13.3.1 The Implementing Partner shall, within twenty-eight (28) days of the Notification of Award, provide securities for the due performance of the Contract for three percent (3%) of the Contract Price of all the Contracts, with an initial validity upto ninety (90) days beyond the end of scheduled Defect Liability Period of the last equipment covered under the package. If the EESL accepts to enters into 'Second Contract' and/or 'Third Contract' with the Assignee of a foreign Implementing Partner, pursuant to GCC Sub-Clause 3.6, the said Assignee, in addition to the Contract Performance Securities to be provided by the foreign Implementing Partner for three percent (3%) of the value of all the Contracts i.e. First Contract, Second Contract and Third Contract, shall provide within twenty eight (28) days of the Notification of Award, separate Contract Performance Security(ies) equivalent to three percent (3%) of the value of Contract(s) entered into with the Assignee, for the due performance of Contract, with a intial validity up to ninety (90) days beyond the end of Scheduled Defect Liability period of the last equipment covered under the package. However, in case of delay in completion of the defect liability period, the validity of all the contract performance securities shall be extended by the period of such delay. Further, EESL reserves the right to terminate the Contract at the risk and cost, as applicable, of the Contractor in case Contractor has not submitted the Contract Performance Guarantee within the stipulated timelines. This right of termination shall be without prejudice to EESL's rights and remedies available in Contract or at law

13.3.2 The performance security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the EESL, and shall be in the form of unconditional bank guarantee provided in Section-VII (Forms and Procedures)-Form of Performance Security of the bidding documents.

13.3.3 Unless otherwise stipulated in SCC, the security shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate time for Completion is provided, twenty one (21) months after Completion of the Facilities or where relevant part thereof, or fifteen (15) months after Operational Acceptance of the Facilities (or the relevant part thereof), whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Implementing Partner shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Implementing Partner immediately after its expiration, provided, however, that if the Implementing Partner, pursuant to GCC Sub-Clause 27.10, is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount agreed upon or as specified in the SCC.

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Implementing Partner shall bear and pay all taxes, duties, levies and charges assessed on the Implementing Partner, its Sub Implementing Partners or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GCC Sub-Clauses 14.1 above, the EESL shall bear and promptly reimburse all

customs and import duties, if imposed in future, on the Plant and Equipment including Type Test and mandatory spares supplied from abroad and specified in Price Schedule (and on spare parts to be supplied from abroad and specified in Schedule, when awarded) and that are to be incorporated into the Facilities, by the law of the country where the Site is located. However, if the plant and equipment are shipped in Shipper's containers, then the custom duty levied on the cost of empty containers shall be borne and paid/reimbursed by the Implementing Partner. The EESL shall also bear and pay/reimburse to the Implementing Partner/Assignee of Foreign Implementing Partner (if applicable) Sales Tax (but not the surcharge in lieu of Sales Tax), Local Tax including Entry Tax / Octroi (if applicable) in respect of direct transactions between the EESL and the Implementing Partner, if imposed on the Plant and Equipment including Type Test and Mandatory Spares manufactured within the EESL's country and specified in Price (and also on locally supplied spares quoted when awarded) to be incorporated in the Facilities, by the law of country where the site is located. For this purpose, the Ex-works price if quoted in foreign currency and so incorporated in the contract, shall be converted to Indian Rupees as per the TT buying exchange rates established by State Bank of India prevailing on the actual date of Ex-works (India) despatch.

All taxes, duties and levies on works contract, if any, shall be to the Implementing Partner's account and no separate claim in this regard will be entertained by the EESL.

14.3 If any tax exemptions, reductions, allowances or privileges is available to the Implementing Partner in the country where the Site is located, the EESL shall use its best endeavours to enable the Implementing Partner to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (7) days prior to the last date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 14.4). If any rates of Tax are increased or de-creased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Implementing Partner in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there-from, as the case may be, in accordance with GCC Clause 36 (Change in Laws and Regulations) hereof. However, these adjustments would be restricted to direct transactions between the EESL and the Contractor/assignee of Foreign Implementing Partner (if applicable). These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Implementing Partner/assignee and also not applicable on the bought out items despatched directly from sub-vendor's works to site.

D. Intellectual Property

15. Copyright

15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the EESL by the Implementing Partner herein shall remain vested in the Implementing Partner or, if they are furnished to the EESL directly or through the Implementing Partner by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. The EESL shall however be free to reproduce all drawings, documents and other material furnished to the EESL for the purpose of the contract including, if required, for operation and maintenance of the facilities.

16. Confidential Information

16.1 The EESL and the Implementing Partner shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor or Implementing Partner may furnish to its SubContractor or Implementing Partner(s) such documents, data and other information it receives from the EESL to the extent required for the Sub Contractor or Implementing Partner(s) to perform its work under the Contract, in which event the Implementing Partner shall obtain from such SubContractor or Implementing Partner(s) an undertaking of confidentiality similar to that imposed on the Implementing Partner under this GCC Clause 16.

16.2 The EESL shall not use such documents, data and other information received from the Implementing Partner for any purpose other than the operation and maintenance of the Facilities. Similarly, the Implementing Partner shall not use such documents, data and other information received from the EESL for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which

- (a) now or hereafter enters the public domain through no fault of that party.
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
- (c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GCC Clause 16 shall survive termination, for what-ever reason, of the Contract.

E. Work Execution

17. Representatives

17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the EESL shall appoint and notify the Implementing Partner in writing of the name of the Project Manager. The EESL may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Implementing Partner without delay. The EESL shall take reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager shall represent and act for the EESL at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Implementing Partner

to the EESL under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's representative & Construction Manager

17.2.1 If the Implementing Partner's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Implementing Partner shall appoint the Implementing Partner's Representative and shall request the EESL in writing to approve the person so appointed. If the EESL makes no objection to the appointment within fourteen (14) days, the Implementing Partner's Representative shall be deemed to have been approved. If the EESL objects to the appointment within fourteen (14) days giving the reason therefor, then the Implementing Partner shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The Implementing Partner's Representative shall represent and act for the Implementing Partner at all times during the currency of the Contract and shall give to the Project Manager all the Implementing Partner's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the EESL or the Project Manager to the Implementing Partner under the Contract shall be given to the Implementing Partner's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Implementing Partner shall not revoke the appointment of the Implementing Partner's Representative without the EESL's prior written consent, which shall not be unreasonably withheld. If the EESL consents thereto, the Implementing Partner shall appoint some other person as the Implementing Partner's Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1

17.2.3 The Implementing Partner's Representative may, subject to the approval of the EESL (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Implementing Partner's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the EESL and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Implementing Partner's Representative.

17.2.3.1 Notwithstanding anything stated in GCC Sub-clause 17.1 and 17.2.1 above, for the purpose of execution of contract, the EESL and the Implementing Partner shall finalise and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Co-ordination Procedure.

17.2.4 From the commencement of installation of the Facilities at the Site until Operational Acceptance, the Implementing Partner's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Implementing Partner and shall be present

at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. When-ever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

17.2.5 The EESL may by notice to the Implementing Partner object to any representative or person employed by the Implementing Partner in the execution of the Contract who, in the reasonable opinion of the EESL, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.3. The EESL shall provide evidence of the same, whereupon the Implementing Partner shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Implementing Partner is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1 Contractor or Implementing Partner's Organization

The Implementing Partner shall supply to the EESL and the Project Manager a chart showing the proposed organization to be established by the Implementing Partner for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Implementing Partner shall promptly inform the EESL and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within twenty-eight (28) days after the date of notification of award of Contract, the Implementing Partner shall prepare and submit to the Project Manager a detailed program of performance of the Contract, made in the form of PERT Network and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commission the Facilities, as well as the date by which the Implementing Partner reasonably requires that the EESL shall have fulfilled its obligations under the Contract so as to enable the Implementing Partner to execute the Contract in accordance with the program and to achieve Completion and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Implementing Partner shall accord with the Time Schedule included in Appendix 4 (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Implementing Partner shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor or Implementing Partner shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 (Program of Performance) above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall also indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Implementing Partner's actual progress falls behind the program referred to in GCC Sub-Clause 18.2 (Program of Performance), or it becomes apparent that it will so fall behind, the Implementing Partner shall, at the request of the EESL or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2 (Time for Commencement and Completion), any extension thereof entitled under GCC Sub-Clause 40.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the EESL and the Implementing Partner.

18.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Forms and Procedures of the Contract Documents.

If agreed between the EESL and the Implementing Partner, the Implementing Partner may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

18.6 Maintenance of Records of Weekly Progress Review meeting at Site

The Contractor shall be required to attend all weekly site progress review meetings organised by the 'Project Manager' or his authorised representative. The deliberations in the meetings shall inter alia include the weekly program, progress of work (including details of manpower, tools & plants deployed by the Contractor vis-a-vis agreed schedule), inputs to be provided by Employer, delays, if any and recovery program, specific hindrances to work and work instructions by Employer. The minutes of the weekly meetings shall be recorded in triplicate in a numbered register available with the Project Manager or his authorised representative. These representative and the Contractor and one copy of the signed records shall be handed over to the Contractor.

19. Subcontracting

19.1 Appendix 5 (List of Approved SubImplementing Partners) to the Contract Agreement specifies major items of supply or services and a list of approved Sub-Implementing Partners against each item, including vendors. Insofar as no SubImplementing Partners are listed against any such item, the Implementing Partner shall prepare a list of SubImplementing Partners for such item for inclusion in such list. The Implementing Partner may from time to time propose any addition to or deletion from any such list. The Implementing Partner shall submit any such list or any modification thereto to the EESL for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the EESL for any of the SubImplementing Partners shall not relieve the Implementing Partner from any of its obligations, duties or responsibilities under the Contract.

19.2 The Implementing Partner shall select and employ its SubImplementing Partners for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.

19.3 For items or parts of the Facilities not specified in Appendix 5 (List of Approved SubImplementing Partners) to the Contract Agreement, the Implementing Partner may employ such SubImplementing Partners as it may select, at its discretion.

20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Implementing Partner shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Implementing Partner shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Implementing Partner by or on behalf of the EESL.

20.1.2 The Implementing Partner shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the EESL, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the EESL and shall be treated in accordance with GCC Clause 39 (Changes Originating from Implementing Partner).

20.3 Approval/Review of Technical Documents by Project Manager, where ever applicable

20.3.1 The Implementing Partner shall prepare (or cause its SubImplementing Partners to prepare) and furnish to the Project Manager the documents listed in Appendix 7 (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GCC Sub-Clause 18.2(Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Implementing Partner with its approval endorsed thereon or shall notify the Implementing Partner in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

20.3.4 If the Project Manager disapproves the document, the Implementing Partner shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Implementing Partner shall make the required modification(s), and upon resubmission with the required modifications the document shall be deemed to have been approved.

The procedure for submission of the documents by the Implementing Partner and their approval by the Project Manager shall be discussed and finalised with the Implementing Partner.

20.3.5 If any dispute or difference occurs between the EESL and the Implementing Partner in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Adjudicator for determination in accordance with GCC Sub-Clause 6.1 (Adjudicator) hereof. If such dispute or difference is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Implementing Partner shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Implementing Partner's view on the dispute and if the EESL has not given notice under GCC Sub-Clause 6.1.2 hereof, then the Implementing Partner shall be reimbursed by the EESL for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Implementing Partner, shall not relieve the Implementing Partner of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Implementing Partner shall not depart from any approved document unless the Implementing Partner has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 (Change in the Facilities) shall apply to such request.

21. Procurement

21.1 Plant and Equipment

Subject to GCC Sub-Clause 14.2, the Implementing Partner shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.

21.2 EESL-Supplied Plant, Equipment, and Materials

If Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement provides that the EESL shall furnish any specific items of machinery, equipment or materials to the Implementing Partner, the following provisions shall apply:

21.2.1 The EESL shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Implementing Partner at the time specified in the program furnished by the Implementing Partner, pursuant to GCC Sub-Clause 18.2 (Program of Performance), unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Implementing Partner shall inspect the same visually and notify

the Project Manager of any detected shortage, defect or default. The EESL shall immediately remedy any shortage, defect or default, or the Implementing Partner shall, if practicable and possible, at the request of the EESL, remedy such shortage, defect or default at the EESL's cost and expense. After inspection, such item shall fall under the care, custody and control of the Implementing Partner. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or defect or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Implementing Partner and its obligations of care, custody and control shall not relieve the EESL of liability for any undetected shortage, defect or default, nor place the Implementing Partner under any liability for any such shortage, defect or default whether under GCC Clause 27 (Defect Liability) or under any other provision of Contract.

21.3 Transportation

21.3.1 The Implementing Partner shall at its own risk and expense transport all the Plant and Equipment and the Implementing Partner's Equipment to the Site by the mode of transport that the Implementing Partner judges most suitable under all the circumstances.

Packing Material

The Contractor shall ensure that all the plant and equipment are suitably packed and protected to prevent damage or deterioration during its transportation to site, handling and storage at site till the time of its installation. The ownership of all such packing material (except empty shipper's containers on which the customs duty has been paid by the Contractor) shall stand transferred to the Employer upon dispatch of the plant and equipment and endorsement of dispatch documents in favour of the Employer.

21.3.2 Unless otherwise provided in the Contract, the Implementing Partner shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the Implementing Partner's Equipment.

21.3.3 Upon despatch of each shipment of the Plant and Equipment and the Implementing Partner's Equipment, the Implementing Partner shall notify the EESL by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the Implementing Partner's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Implementing Partner shall furnish the EESL with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Implementing Partner shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Implementing Partner's Equipment to the Site. The EESL shall use its best endeavors in a timely and expeditious manner to assist the Implementing Partner in obtaining such approvals, if requested by the Implementing Partner. The Implementing Partner shall indemnify and hold harmless the EESL from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment and the Implementing Partner's Equipment to the Site.

21.4 Customs Clearance

The Implementing Partner shall, at its own expense, handle all imported Plant and Equipment and Implementing Partner's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the EESL's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of

the EESL, the EESL shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance due to fault of the EESL, the Implementing Partner shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation

22.1 Setting Out/Supervision/Labour

22.1.1 Bench Mark: The Implementing Partner shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the EESL.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Implementing Partner shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the EESL, the expense of rectifying the same shall be borne by the EESL.

22.1.2 Implementing Partner's Supervision: The Implementing Partner shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Implementing Partner shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.1.3 Labour:

- (a) The Implementing Partner shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Implementing Partner is encouraged to use local labor that has the necessary skills.
- (b) Unless otherwise provided in the Contract, the Implementing Partner shall be responsible for the recruitment, transportation, accommodation and catering of all labor, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- (c) The Implementing Partner shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located.
- (d) The Implementing Partner shall at its own expense provide the means of repatriation to all of its and its SubImplementing Partner's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Implementing Partner defaults in providing such means of transportation and temporary maintenance, the EESL may provide the same to such personnel and recover the cost of doing so from the Implementing Partner.
- (e) The Implementing Partner shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its SubImplementing Partners.

- (f) The Implementing Partner shall, in all dealings with its labor and the labor of its SubImplementing Partners currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

22.2 Contractors Implementing Partner's Equipment

22.2.1 All Contractors or Implementing Partners' Equipment brought by the Implementing Partner onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Implementing Partner shall not remove the same from the Site without the Project Manager's consent that such Implementing Partner's Equipment is no longer required for the execution of the Contract.

22.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Implementing Partner shall remove from the Site all Equipment brought by the Implementing Partner onto the Site and any surplus materials remaining thereon.

22.2.3 The EESL will, if requested, use its best endeavours to assist the Implementing Partner in obtaining any local, state or national government permission required by the Implementing Partner for the export of the Implementing Partner's Equipment imported by the Implementing Partner for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.3 Site Regulations and Safety

The EESL and the Implementing Partner shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Implementing Partner shall prepare and submit to the EESL, with a copy to the Project Manager, proposed Site regulations for the EESL's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.4 Opportunities for Other Implementing Partners

22.4.1 The Implementing Partner shall, upon written request from the EESL or the Project Manager, give all reasonable opportunities for carrying out the work to any other Implementing Partners employed by the EESL on or near the Site.

22.4.2 If the Implementing Partner, upon written request from the EESL or the Project Manager, makes available to other Implementing Partners any roads or ways the maintenance for which the Implementing Partner is responsible, permits the use by such other Implementing Partners of the Implementing Partner's Equipment, or provides any other service of whatsoever nature for such other Implementing Partners, the EESL shall fully compensate the Implementing Partner for any loss or damage caused or occasioned by such other Implementing Partners in respect of any such use or service, and shall pay to the Implementing Partner reasonable remuneration for the use of such equipment or the provision of such services.

22.4.3 The Implementing Partner shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other Implementing Partners. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Implementing Partner and other Implementing Partners and the workers of the EESL in regard to

their work.

22.4.4 The Implementing Partner shall notify the Project Manager promptly of any defects in the other Implementing Partners' work that come to its notice, and that could affect the Implementing Partner's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Implementing Partner.

22.5 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Implementing Partner shall immediately carry out such work.

If the Implementing Partner is unable or unwilling to do such work immediately, the EESL may do or cause such work to be done as the EESL may determine is necessary in order to prevent damage to the Facilities. In such event the EESL shall, as soon as practicable after the occurrence of any such emergency, notify the Implementing Partner in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the EESL is work that the Implementing Partner was liable to do at its own expense under the Contract, the reasonable costs incurred by the EESL in connection therewith shall be paid by the Implementing Partner to the EESL. Otherwise, the cost of such remedial work shall be borne by the EESL.

22.6 Site Clearance

22.6.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Implementing Partner shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Implementing Partner's Equipment no longer required for execution of the Contract.

22.6.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Implementing Partner shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.

Disposal of Scrap

The Contractor shall with the agreement of the Employer promptly remove from the site any 'Scrap' generated during performance of any activities at site in pursuance of the Contract. The term 'Scrap' shall refer to scrap / waste / remnants arising out of the fabrication of structural steel work and piping work at the project site in the course of execution of the contract and shall also include any wastage of cables during the termination process while installing the cables.

The ownership of such Scrap shall vest with the Contractor except in cases where the items have been issued by the Employer from its stores for their installation only without any adjustment to the Contract Price. The removal of scrap shall be subject to the Contractor producing the necessary clearance from the relevant authorities (Custom, Excise etc.), if required by the law, in respect of disposal of the scrap. The liability for the payment of the applicable taxes/duties shall be that of the Contractor. Harmful scrap shall be disposed as per environmental statutory or other guidelines at contractor or implementing partner own cost.

The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal/disposal of scrap. The Indemnity Bond shall be furnished by Contractor as per proforma enclosed in Section-VII (Forms and Procedure) as Form No. 14. Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the scrap to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer.

However, scrap generated in say replacement of pumps (i.e. old pumps as scrap) or any other scrap which is owned by EESL as per contract agreement, the same shall be disposed by EESL and EESL will get the payment. Contractor or Implementing Partner will co-ordinate with EESL and the agency picking up the scrap, for scrap disposal.

22.7 Watching and Lighting

The Implementing Partner shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

22.8 Work at Night and on Holidays

22.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the EESL, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Implementing Partner shall immediately advise the Project Manager, provided that provisions of this GCC Sub-Clause 22.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.8.2 Notwithstanding GCC Sub-Clauses 22.8.1 or 22.1.3, if and when the Implementing Partner considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the EESL's consent thereto, the EESL shall not unreasonably withhold such consent.

23. Test and Inspection

23.1 The Implementing Partner shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the Contract.

23.2 The EESL and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the EESL shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Implementing Partner is ready to carry out any such test and/or inspection, the Implementing Partner shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Implementing Partner shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the EESL and the Project Manager (or their designated representatives) to attend the test and/or inspection.

23.4 The Implementing Partner shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the EESL or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the

Implementing Partner may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Implementing Partner to carry out any test and/or inspection not required by the Contract, provided that the Implementing Partner's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Implementing Partner's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Implementing Partner shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to the Adjudicator for determination in accordance with GCC Sub-Clause 6.1 (Adjudicator).

23.8 The Implementing Partner shall afford the EESL and the Project Manager, at the EESL's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Implementing Partner a reasonable prior notice.

23.9 The Implementing Partner agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the EESL or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Implementing Partner from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Implementing Partner carrying out any test and/or inspection required under the Contract. The Implementing Partner shall give a reasonable notice to the Project Manager whenever any such part of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Implementing Partner shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any part of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the EESL, and the Time for Completion shall be reasonably adjusted to the extent that the Implementing Partner has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Implementing Partner,

been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Implementing Partner shall so notify the EESL in writing.

24.2 Within seven (7) days after receipt of the notice from the Implementing Partner under GCC Sub-Clause 24.1, the EESL shall supply the operating and maintenance personnel specified in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement, required for Precommissioning of the Facilities or any part thereof.

Unless otherwise specified in the Technical Specifications, the EESL shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the EESL and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters, if so specified in Appendix 6 (Scope of Works and Supply by the EESL)/ Technical Specifications, have been provided by the EESL in accordance with GCC Sub-Clause 24.2, the Implementing Partner shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning.

24.4 As soon as all works in respect of Precommissioning are completed and, in the opinion of the Implementing Partner, the Facilities or any part thereof is ready for Commissioning, the Implementing Partner shall commence Commissioning as per procedures stipulated in Technical Specifications, and as soon as Commissioning is satisfactorily completed, the Implementing Partner shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within fourteen (14) days after receipt of the Implementing Partner's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Forms and Procedures section in the bidding documents, stating that the Facilities or that part thereof have reached Completion as at the date of the Implementing Partner's notice under GCC Sub-Clause 24.4, or notify the Implementing Partner in writing of any defects and/or deficiencies.

If the Project Manager notifies the Implementing Partner of any defects and/or deficiencies, the Implementing Partner shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Implementing Partner's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as at the date of the Implementing Partner's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Implementing Partner in writing of any defects and/or deficiencies within seven (7) days after receipt of the Implementing Partner's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Implementing Partner of any defects and/or deficiencies within fourteen (14) days after receipt of the Implementing Partner's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Implementing Partner's repeated notice under GCC Sub-Clause 24.5, or if the EESL makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Implementing Partner's notice or repeated notice, or as of the EESL's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Implementing Partner shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the EESL will undertake such completion and deduct the costs thereof from any monies owing to the Implementing Partner.

24.8 Upon Completion, the EESL shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning, Guarantee Test and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be completed by the Implementing Partner as per procedures detailed in the Technical Specifications.

The EESL shall, unless otherwise specified in Appendix 6 (Scope of Works and Supply by the EESL)/ Technical Specifications, supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning of the Facilities.

25.2 Guarantee Test (where ever applicable)

25.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Implementing Partner after Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Contract Documents. The Implementing Partner's and Project Manager's advisory personnel shall attend the Guarantee Test. The EESL shall promptly provide the Implementing Partner with such information as the Implementing Partner may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).

25.2.2 If for reasons not attributable to the Implementing Partner, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the EESL and the Implementing Partner, the Implementing Partner shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC Sub-Clause 25.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met;
or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Implementing Partner within the period from the date of Completion specified in the SCC or any other agreed upon period as specified in GCC Sub-Clause 25.2.2 above, but successful Completion of the Facilities has been achieved; or
- (C) the Implementing Partner has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and

(d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Implementing Partner may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Bidding Documents or in another form acceptable to the EESL in respect of the Facilities or the part thereof specified in such notice as at the date of such notice.

25.3.3 The Project Manager shall, after consultation with the EESL, and within forty five (45) days after receipt of the Implementing Partner's notice, issue an Operational Acceptance Certificate.

25.3.4 If within forty five (45) days after receipt of the Implementing Partner's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Implementing Partner in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as at the date of the Implementing Partner's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Implementing Partner shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Implementing Partner guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Implementing Partners shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.

26.2 If the Implementing Partner fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion), the Implementing Partner shall pay to the EESL liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC. Once the "Maximum" is reached, the EESL may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Implementing Partner's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion). The Implementing Partner shall have no further liability whatsoever to the EESL in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Implementing Partner from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Implementing Partner under the Contract.

Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Implementing Partner to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Clause 18 (Program of Performance) shall not render the Implementing Partner liable for any loss or damage thereby suffered by the EESL.

27. Defect Liability (which may also be referred as 'Warranty' mentioned elsewhere in the document)

27.1 The Implementing Partner warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.

27.2 The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Implementing Partner, the Implementing Partner shall promptly, in consultation and agreement with the EESL regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Implementing Partner shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Implementing Partner shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the EESL
- (b) operation of the Facilities outside specifications provided in the Contract.
- (c) Normal wear and tear.

27.3 The Implementing Partner's obligations under this GCC Clause 27 shall not apply to

- (a) any materials that are supplied by the EESL under GCC Sub- Clause 21.2 (EESL-Supplied Plant, Equipment and Materials), are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein.
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the EESL or any matters for which the Implementing Partner has disclaimed responsibility herein.
- (c) any other materials supplied or any other work executed by or on behalf of the EESL, except for the work executed by the EESL under GCC Sub-Clause 27.7.

27.4 The EESL shall give the Implementing Partner a notice stating the nature of any such defect

together with all available evidence thereof, promptly following the discovery thereof. The EESL shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

27.5 The EESL shall afford the Implementing Partner all necessary access to the Facilities and the Site to enable the Implementing Partner to perform its obligations under this GCC Clause 27.

The Implementing Partner may, with the consent of the EESL, remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the EESL may give to the Implementing Partner a notice requiring that tests of the defective part of the Facilities shall be made by the Implementing Partner immediately upon completion of such remedial work, whereupon the Implementing Partner shall carry out such tests.

If such part fails the tests, the Implementing Partner shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests in character shall in any case be not less than what has already been agreed by the EESL and the Implementing Partner for the original equipment/part of the Facilities.

27.7 If the Implementing Partner fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the EESL may, following notice to the Implementing Partner, proceed to do such work, and the reasonable costs incurred by the EESL in connection therewith shall be paid to the EESL by the Implementing Partner or may be deducted by the EESL from any monies due to the Implementing Partner or claimed under the Performance Security. After due assessment EESL shall specify the reasonable time in writing to remedy such defect or any damage to the Facilities caused by such defect which shall be more than 15 days.

27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the EESL because of any of the aforesaid reasons. Upon correction of the defects in the Facilities or any part thereof by repair/ replacement, such repair/replacement shall have the Defect Liability Period extended by a period of twelve (12) month from the time such replacement/ repair of the Facilities or any part thereof.

27.9 Except as provided in GCC Clauses 27 and 33 (Loss of or Damage to Property / Accident or Injury to Workers/Indemnification), the Implementing Partner shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Implementing Partner.

27.10 In addition, the Implementing Partner shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified in the SCC. Such obligation shall be in addition to the defect liability specified under GCC Sub-Clause 27.2.

28. Functional Guarantees

28.1 The Implementing Partner guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement, subject to and upon the conditions therein specified.

28.2 If, for reasons attributable to the Implementing Partner, the guaranteed level of the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Implementing Partner shall, within a mutually agreed time, at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet such Guarantees. The Implementing Partner shall notify the EESL upon completion of the necessary changes, modifications and/or additions, and shall seek the EESL's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the EESL may at its option, either

- (a) Reject the Equipment and recover the payments already made, or
- (b) Terminate the Contract pursuant to GCC Sub-Clause 42.2.2 and recover the payments already made, or
- (c) Accept the equipment after levy of liquidated damages in accordance with the provisions specified in Appendix-8(Functional Guarantees) to the Contract Agreement.

28.3 In case the EESL exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 28.2, up to the limitation of liability specified in the Appendix-8 (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Implementing Partner's guarantees under GCC Sub-Clause 28.2, and the Implementing Partner shall have no further liability whatsoever to the EESL in respect thereof. Upon the payment of such liquidated damages by the Implementing Partner, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Indemnity for Infringement of Intellectual Property and General Indemnity

Patent Indemnity:

29.1 The Implementing Partner shall, subject to the EESL's compliance with GCC Sub-Clause 29.3, indemnify and hold harmless the EESL and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the EESL may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Implementing Partner or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Implementing Partner, pursuant to the Contract Agreement.

29.2 General Indemnity:

Contractor agrees to indemnify and keep indemnified, defend and hold harmless EESL and its officers, directors, employees, representatives and agents from and against any and all losses, liabilities, claims, damages, obligations, litigations, suits, actions, judgements, costs, expenses and / or otherwise including but not limited to those from third parties or liabilities of any kind howsoever suffered or claimed against EESL, (including, without limitation, reasonable attorneys' fees), awarded by court of law or other competent governmental authority or arbitral tribunal or tribunal of competent jurisdiction arising before, during or after completion of services or deliverable (scope of work), which result from, arise in connection with or are related in any way of actions or claims initiated or preferred by third parties or statutory / regulatory authorities, arising out of or in connection with and not limited to:

- (i) The Contractor's breach of the representations and warranties specified in this Contract;
- (ii) Acts or omissions of, negligence, or misconduct by the Contractor; or
- (iii) The fault or negligence of the Contractor, its officers, employees, agents, subcontractors and/or representations resulting in loss or damage or injury to property or assets or injury to persons or death;
- (iv) Use of server, machine, equipment or other hardware or Materials or Program and other hardware and software systems, provided by the Contractor directly and/or indirectly and includes non-compatibility of software or hardware in any manner;
- (v) Defective supplies or servers or other machine parts or materials or program not replaced as contemplated in this Contract;

29.3 If any proceedings are brought or any claim is made against the EESL arising out of the matters referred to in GCC Sub-Clause 29.1 or 29.2, the EESL shall promptly give the Implementing Partner a notice thereof, and the Implementing Partner may at its own expense and in the EESL's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Implementing Partner fails to notify the EESL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the EESL shall be free to conduct the same on its own behalf. Unless the Implementing Partner has so failed to notify the EESL within the twenty-eight (28) day period, the EESL shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The EESL shall, at the Implementing Partner's request, afford all available assistance to the Implementing Partner in conducting such proceedings or claim, and shall be reimbursed by the Implementing Partner for all reasonable expenses incurred in so doing.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or wilful misconduct or fraud or any criminal misappropriation,

- (a) the Implementing Partner shall not be liable to the EESL, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, or , loss of production, , provided that this exclusion shall not apply to any obligation of the Implementing Partner to pay Liquidated Damages to the EESL and
- (b) the aggregate liability of the Implementing Partner to the EESL, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Implementing Partner to indemnify the EESL with respect to patent infringement or general indemnity or as specified in SCC.

G. Risk Distribution

31. Transfer of Ownership

31.1 Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the EESL when the Plant and Equipment are reached at site.

31.2 Ownership of the Implementing Partner's Equipment used by the Implementing Partner and its SubImplementing Partners in connection with the Contract shall remain with the Implementing Partner or its SubImplementing Partners.

31.3 Ownership of any Plant and Equipment in excess of the requirements for the Facilities shall revert to the Implementing Partner upon Completion of the Facilities or at such earlier time when the EESL and the Implementing Partner agree that the Plant and Equipment in question are no longer required for the Facilities, provided quantity of any Plant and Equipment specifically stipulated in the Contract shall be the property of the EESL whether or not incorporated in the Facilities.

31.4 Disposal of surplus material

Ownership of any Plant and Equipment in excess of the requirements for the Facilities (i.e. surplus material) shall revert to the Contractor upon Completion of the Facilities and Guarantee Test or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Facilities, provided quantity of any Plant and Equipment specifically stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities. The Contractor shall remove from the site such surplus material brought by him in pursuance of the Contract, subject to the Contractor producing the necessary clearance from the relevant authorities (Customs, Excise etc.), if required by law, in respect of re-export or disposal of the surplus material locally. The liability for the payment of the applicable taxes/ duties, if any, on the surplus material so re-exported and/or disposed locally shall be that of the Contractor.

The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal / disposal of surplus material. The Indemnity Bond shall be furnished by contractor as per proforma enclosed in Section-VII (Forms and Procedure) as Form No. 14. Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the surplus material to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer.

31.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk, of loss or damage thereto shall remain with the Implementing Partner pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant and Equipment are incorporated.

31.5 In case of two/three Contracts entered into between the EESL and the Implementing Partner as per GCC Sub-Clause 3.6 or where the EESL hands over his equipment to the Implementing Partner for executing the Contract, then the Implementing Partner shall at the time of taking delivery of the Equipment through Bill of Lading or other despatch documents furnish Trust Receipt for Plant, Equipment and Materials and also execute an Indemnity Bond in favour of the EESL in the form acceptable to EESL for keeping the equipment in safe custody and to utilise the

same exclusively for the purpose of the said Contract. Proforma for the Trust Receipt and Indemnity bond. The EESL shall also issue a separate Authorisation Letter to the Implementing Partner to enable him to take physical delivery of plant, equipment and materials from the EESL.

32 Care of Facilities

32.1 The Implementing Partner shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 (Completion of the Facilities) or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Implementing Partner shall also be responsible for any loss or damage to the Facilities caused by the Implementing Partner or its SubImplementing Partners in the course of any work carried out, pursuant to GCC Clause 27 (Defect Liability). Notwithstanding the foregoing, the Implementing Partner shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Implementing Partner's temporary facilities by reason of

- (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced Implementing Partner could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 (Insurance) hereof.
- (b) any use or occupation by the EESL or any third party (other than a SubImplementing Partner) authorized by the EESL of any part of the Facilities.
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the EESL, or any such matter for which the Implementing Partner has disclaimed responsibility herein,

the EESL shall pay to the Implementing Partner all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Implementing Partner the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the EESL requests the Implementing Partner in writing to make good any loss or damage to the Facilities thereby occasioned, the Implementing Partner shall make good the same at the cost of the EESL in accordance with GCC Clause 39 (Change in the Facilities). If the EESL does not request the Implementing Partner in writing to make good any loss or damage to the Facilities thereby occasioned, the EESL shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the EESL shall terminate the Contract pursuant to GCC Sub-Clause 42.1 (Termination for EESL's Convenience) hereof, except that the Implementing Partner shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as at the date of termination.

32.3 The Implementing Partner shall be liable for any loss of or damage to any Implementing Partner's Equipment, or any other property of the Implementing Partner used or intended to be used for

purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 (with respect to the Implementing Partner's temporary facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2(b) and (c) and 38.1.

32.3 With respect to any loss or damage caused to the Facilities or any part thereof or to the Implementing Partner's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.

33 Loss of or Damage to Property; Accident or Injury to workers; Indemnification

33.1 Subject to GCC Sub-Clause 33.3, the Implementing Partner shall indemnify and hold harmless the EESL and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Implementing Partner or its Sub-Implementing Partners, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the EESL, its Implementing Partners, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the EESL that might subject the Implementing Partner to liability under GCC Sub-Clause 33.1, the EESL shall promptly give the Implementing Partner a notice thereof and the Implementing Partner may at its own expense and in the EESL's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Implementing Partner fails to notify the EESL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the EESL shall be free to conduct the same on its own behalf. Unless the Implementing Partner has so failed to notify the EESL within the twenty-eight (28) day period, the EESL shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The EESL shall, at the Implementing Partner's request, afford all available assistance to the Implementing Partner in conducting such proceedings or claim, and shall be reimbursed by the Implementing Partner for all reasonable expenses incurred in so doing.

33.3 The EESL shall indemnify and hold harmless the Implementing Partner and its employees, officers and Sub-Implementing Partners from any liability for loss of or damage to property of the EESL, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Implementing Partner.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34 Insurance

34.1 To the extent specified in Appendix 3 (Insurance Requirements) to the Contract Agreement, the Implementing Partner shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the EESL, who should not Unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Implementing Partner's or SubImplementing Partner's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Implementing Partner's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Implementing Partner's liability in respect of any loss or damage occurring during the Defect Liability Period while the Implementing Partner is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the EESL's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Implementing Partner or its SubImplementing Partners (whether or not owned by them) in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) EESL's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said Appendix 3.

34.2 The EESL shall be named as co-insured under all insurance policies taken out by the Implementing Partner pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and EESL's Liability Insurances, and the Implementing Partner's SubImplementing Partners shall be named as co-insured's under all insurance policies taken out by the Implementing Partner pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and EESL's Liability Insurances. All insurers' rights of subrogation against such co-insured's for losses or claims arising out of the performance of the Contract shall be waived under such policies.

34.3 The Implementing Partner shall, in accordance with the provisions of Appendix 3 (Insurance Requirements) to the Contract Agreement, deliver to the EESL certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the EESL by insurers prior to cancellation or material modification of a policy.

34.4 The Implementing Partner shall ensure that, where applicable, its SubImplementing Partner(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such SubImplementing Partners are covered by the policies taken out by the Implementing Partner.

34.5 The EESL shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in Appendix 3 (Insurance Requirements) to the Contract Agreement.

34.6 If the Implementing Partner fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the EESL may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Implementing Partner under the Contract any premium that the EESL shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Implementing Partner. If the EESL fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Implementing Partner may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the EESL under the Contract any premium that the Implementing Partner shall have paid to the insurer, or may otherwise recover such amount as a debt due from the EESL. If the Implementing Partner fails to or is unable to take out and maintain in effect any such insurances, the Implementing Partner shall nevertheless have no liability or responsibility towards the EESL, and the Implementing Partner shall have full recourse against the EESL for any and all liabilities of the EESL herein.

34.7 Unless otherwise provided in the Contract, the Implementing Partner shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Implementing Partner as per the procedure outlined in GCC Sub- Clause 34.8 below. The EESL shall give to the Implementing Partner all such reasonable assistance as may be required by the Implementing Partner. With respect to insurance claims in which the EESL's interest is involved, the Implementing Partner shall not give any release or make any compromise with the insurer without the prior written consent of the EESL. With respect to insurance claims in which the Implementing Partner's interest is involved, the EESL shall not give any release or make any compromise with the insurer without the prior written consent of the Implementing Partner.

34.8 (i) wherever total damages/loss of equipment/material, would occur, the Implementing Partner will be entitled to payment of all payments received from the underwriters except the following amounts:

- (a) The amount paid to the Implementing Partner under the Contract in respect of equipment/material damaged/lost (excluding the pro-rata initial advance) but including the entire amount of escalation, if any, already paid to the Contractor.

- (b) Custom Duties and other taxes and duties which have already been paid by the EESL.

In the event the claim money settled, is less than the total of the amount in a & b above, then the entire claim money settled will be retained by the EESL and the Implementing Partner will forthwith pay the EESL the short fall amount between the claim money and the total of amounts as per a & b mentioned above.

Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment.

- (II) In case of damage to any equipment/material during any stage, the Implementing Partner upon rectification of the damaged equipment to the satisfaction of the EESL shall be paid to the extent of full claims settled by the underwriters.

35 Unforeseen Conditions

35.1 If, during the execution of the Contract, the Implementing Partner shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced Implementing Partner on the basis of reasonable examination of the data relating to the Facilities (including any data as to boring tests) provided by the EESL, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Implementing Partner determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Implementing Partner shall promptly, and before performing additional work or using additional Plant and Equipment or Implementing Partner's Equipment, notify the Project Manager in writing of

- a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen.
- b) the additional work and/or Plant and Equipment and/or Implementing Partner's Equipment required, including the steps which the Implementing Partner will or proposes to take to overcome such conditions or obstructions.
- c) the extent of the anticipated delay.
- d) the additional cost and expense that the Implementing Partner is likely to incur.

On receiving any notice from the Implementing Partner under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the EESL and Implementing Partner and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Implementing Partner, with a copy to the EESL, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Implementing Partner in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the EESL to the Implementing Partner as an addition to the Contract Price.

35.3 If the Implementing Partner is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).

36 Change in Laws and Regulations

36.1 If, after the date seven (7) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Implementing Partner and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Implementing Partner has thereby been affected in the performance

of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the EESL and the Implementing Partner/Assignee of Foreign Implementing Partner (if applicable). These adjustment shall not be applicable on procurement of raw materials, intermediary components etc. by the Implementing Partner/Assignee of Foreign Implementing Partner and shall also not be applicable on bought out items despatched directly from sub-vendor works to site. Further, no adjustment of the Contract Price and/or payment or reimbursement of taxes, duties or levies shall be made on account of variation in or withdrawal of Deemed Export benefits. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix 2 to the Contract Agreement.

37 Force Majeure

37.1 “Force Majeure” shall mean any event beyond the reasonable control of the EESL or of the Implementing Partner, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).

37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.

37.5 No delay or non performance by either party hereto caused by the occurrence of any event of Force Majeure shall

- a) constitute a default or breach of the Contract
- b) (subject to GCC Sub-Clauses 32.2, 38.3 and 38.4) give rise to any claim for damages or additional cost or expense occasioned thereby

If and to the extent that such delay or non performance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute shall be resolved in accordance with GCC Clause 6.

37.7 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the EESL to make payments to the Implementing Partner herein.

38 War Risks

38.1 "War Risks" shall mean any of the following events occurring or existing in or near the country (or countries) where the Site is located:

- a) war, hostilities or warlike operations (whether a state of war is declared or not), invasion, act of foreign enemy and civil war
- b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts, and
- c) any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war.

38.2 Notwithstanding anything contained in the Contract, the Implementing Partner shall have no liability whatsoever for or with respect to

- a) destruction of or damage to Facilities, Plant & Equipment, or any part thereof
- b) destruction of or damage to property of the EESL or any third party
- c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the EESL shall indemnify and hold the Implementing Partner harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant and Equipment or Implementing Partner's Equipment or any other property of the Implementing Partner used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the EESL shall pay the Implementing Partner for

- a) any part of the Facilities or the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the EESL)
- b) replacing or making good any Implementing Partner's Equipment or other property of the Implementing Partner so destroyed or damaged so far as may be required by the EESL, and as may be necessary for completion of the Facilities,
- c) replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment or any part thereof.

If the EESL does not require the Implementing Partner to replace or make good any such destruction or damage to the Facilities, the EESL shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1 (Termination for EESL's Convenience).

38.4 Notwithstanding anything contained in the Contract, the EESL shall pay the Implementing Partner for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Implementing Partner shall as soon as practicable notify the EESL in writing of any such increased cost.

38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Implementing Partner, the Implementing Partner shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its SubImplementing Partners' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute will be resolved in accordance with GCC Clause 6.

38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3, the rights and obligations of the EESL and the Implementing Partner shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3, except that the Implementing Partner shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as of the date of termination.

H. Change in Contract Element

39.1 Changes in the Facilities

39.1.1 The EESL shall have the right to propose, and subsequently require, that the Project Manager order the Implementing Partner from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called "Change"), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Implementing Partner may from time to time during its performance of the Contract propose to the EESL (with a copy to the Project Manager) any Change that the Implementing Partner considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The EESL may at its discretion approve or reject any Change proposed by the Implementing Partner.

39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Implementing Partner in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3.

39.2 Changes Originating from EESL

If the EESL proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Implementing Partner a "Request for Change Proposal," requiring the Implementing Partner to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- a) brief description of the Change
- b) effect on the Time for Completion
- c) estimated cost of the Change
- d) effect on Functional Guarantees (if any)

e) effect on any other provisions of the Contract.

39.2.2 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the rates and prices of any change are in the Contract, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.3 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Implementing Partner under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Implementing Partner may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the EESL accepts the Implementing Partner's objection, the EESL and the Implementing Partner shall agree on specific rates for valuation of the change.

39.2.4 Upon receipt of the Change Proposal, the EESL and the Implementing Partner shall mutually agree upon all matters therein contained including agreement on rates if such rates are not available in the Contract or if the limit of 15% set forth in Clause 39.2.3 has been exceeded. Within fourteen (14) days after such agreement, the EESL shall, if it intends to proceed with the Change, issue the Implementing Partner with a Change Order.

If the EESL is unable to reach a decision within fourteen (14) days, it shall notify the Implementing Partner with details of when the Implementing Partner can expect a decision.

If the EESL decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Implementing Partner accordingly.

39.2.5 If the EESL and the Implementing Partner cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the EESL may nevertheless instruct the Implementing Partner to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Implementing Partner shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

39.3 Changes Originating from Implementing Partner

39.3.1 If the Implementing Partner proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Implementing Partner shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.4 and 39.2.5

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Implementing Partner has delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a) any Change in the Facilities as provided in GCC Clause 39 (Change in the Facilities)
- b) any occurrence of Force Majeure as provided in GCC Clause 37 (Force Majeure), unforeseen conditions as provided in GCC Clause 35 (Unforeseen Conditions), or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2
- c) any suspension order given by the EESL under GCC Clause 41 (Suspension) hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
- d) any changes in laws and regulations as provided in GCC Clause 36 (Change in Laws and Regulations) or
- e) any default or breach of the Contract by the EESL, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement, or any activity, act or omission of any other Implementing Partners employed by the EESL or
- f) any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Implementing Partner.

40.2 Except where otherwise specifically provided in the Contract, the Implementing Partner shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion (at EESL's discretion whether to levy LD), together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the EESL and the Implementing Partner shall agree upon the period of such extension. In the event that the Implementing Partner does not accept the EESL's estimate of a fair and reasonable time extension, the Implementing Partner shall be entitled to refer the matter to the Arbitration, pursuant to GCC Sub-Clause 6.2 (Arbitration).

40.3 The Implementing Partner shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

41 Suspension

41.1 EESL may, by notice to the Implementing Partner, order the Implementing Partner to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Implementing Partner shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities or continuity of the project or for the continuity of essential SLAs/activity's) under the project) until ordered in writing to resume such performance by the Project Manager/ EESL.

If, by virtue of a suspension order given by the Project Manager/EESL other than by reason of the Implementing Partner's default or breach of the Contract, the Implementing Partner's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Implementing Partner may give a notice to the Project Manager requiring that the EESL shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of the suspended obligations from the Contract.

If the EESL fails to do so within such period, the Implementing Partner may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 (Change in the Facilities) or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1 (Termination for EESL's Convenience).

41.2 If

- a) the EESL has failed to pay the Implementing Partner any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Implementing Partner may give a notice to the EESL that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the EESL to remedy the same, as the case may be. If the EESL fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within sixty (60) days after receipt of the Implementing Partner's notice or
- b) the Implementing Partner is unable to carry out any of its obligations under the Contract for any reason solely attributable to the EESL, including but not limited to the EESL's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities; then the Implementing Partner may by fourteen (14) days' notice to the EESL suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Implementing Partner's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Implementing Partner as a result of such suspension or reduction shall be paid by the EESL to the Implementing Partner in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Implementing Partner's default or breach of the Contract.

41.4 During the period of suspension, the Implementing Partner shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Implementing Partner's Equipment, without the prior written consent of the EESL. Additionally, implementing Partner shall not remove any deliverable already installed. Also, implementing partner shall be obligated to install the deliverable or complete the work as per the scope for which directions have been issued by EESL.

42 Termination

42.1 Termination for EESL's Convenience

42.1.1 The EESL may at any time terminate the Contract for any reason by giving the Implementing Partner a notice of termination that refers to this GCC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Implementing Partner shall either immediately or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the EESL may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the EESL pursuant to paragraph (d)(ii) below
- (c) remove all Implementing Partner's Equipment from the Site, repatriate the Implementing Partner's and its Sub Implementing Partners' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition.
- (d) In addition, the Implementing Partner, subject to the payment specified in GCC Sub-Clause 42.1.3, shall
 - (i) Deliver to the EESL the parts of the Facilities executed by the Implementing Partner up to the date of termination
 - (ii) to the extent legally possible, assign to the EESL all right, title and benefit of the Implementing Partner to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the EESL, in any subcontracts concluded between the Implementing Partner and its Sub Implementing Partners
 - (iii) deliver to the EESL all non-proprietary drawings, specifications and other documents prepared by the Implementing Partner or its Sub Implementing Partners as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the EESL shall pay to the Implementing Partner the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Implementing Partner as of the date of termination
- (b) the costs reasonably incurred by the Implementing Partner in the removal of the Implementing Partner's Equipment from the Site and in the repatriation of the Implementing Partner's and its Sub Implementing Partners' personnel.
- (c) any amounts to be paid by the Implementing Partner to its Sub Implementing Partners in connection with the termination of any subcontracts, including any cancellation charges.
- (d) costs incurred by the Implementing Partner in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2
- (e) the cost of satisfying all other obligations, commitments and claims that the Implementing Partner may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor or Implementing Partner's Default

42.2.1 The EESL, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Implementing Partner, referring to this GCC Sub-Clause 42.2:

- (a) if the Implementing Partner becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Implementing Partner is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Implementing Partner takes or suffers any other analogous action in consequence of debt.
- (b) if the Implementing Partner assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43 (Assignment).
- (c) if the Implementing Partner, in the judgement of the EESL has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

"corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the EESL and includes collusive practice among Contractors (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the EESL of the benefits of free and open competition.

42.2.2 If the Implementing Partner

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GCC Sub-Clause 41.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the EESL to proceed
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Clause 18 (Program of Performance) at rates of progress that give reasonable assurance to the EESL that the Implementing Partner can attain Completion of the Facilities by the Time for Completion as extended

then the EESL may, without prejudice to any other rights it may possess under the Contract, give a notice to the Implementing Partner stating the nature of the default and requiring the Implementing Partner to remedy the same. If the Implementing Partner fails to remedy or to take steps to remedy

the same within fourteen (14) days of its receipt of such notice, then the EESL may terminate the Contract forthwith by giving a notice of termination to the Implementing Partner that refers to this GCC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Implementing Partner shall, either immediately or upon such date as is specified in the notice of termination,

cease all further work, except for such work as the EESL may specify in the notice of termination, or any work required to leave the Site in a clean and safe condition

- (a) terminate all subcontracts, except those to be assigned to the EESL pursuant to paragraph (d) below
- (b) deliver to the EESL the parts of the Facilities executed by the Implementing Partner up to the date of termination.
- (c) to the extent legally possible, assign to the EESL all right, title and benefit of the Implementing Partner to the Works. and to the Plant and Equipment as at the date of termination, and, as may be required by the EESL, in any subcontracts concluded between the Implementing Partner and its Sub Implementing Partners.
- (d) deliver to the EESL all drawings, specifications and other documents prepared by the Implementing Partner or its Sub Implementing Partners as at the date of termination in connection with the Facilities.

42.2.4 The EESL may enter upon the Site, expel the Implementing Partner, and complete the Facilities itself or by employing any third party. The EESL may, to the exclusion of any right of the Implementing Partner over the same, take over and use with the payment of a fair rental rate to the Implementing Partner, with all the maintenance costs to the account of the EESL and with an indemnification by the EESL for all liability including damage or injury to persons arising out of the EESL's use of such equipment, any Implementing Partner's Equipment owned by the Implementing Partner and on the Site in connection with the Facilities for such reasonable period as the EESL considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the EESL thinks appropriate, the EESL shall give notice to the Implementing Partner that such Implementing Partner's Equipment will be returned to the Implementing Partner at or near the Site and shall return such Implementing Partner's Equipment to the Implementing Partner in accordance with such notice. The Implementing Partner shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Sub-Clause 42.2.6, the Implementing Partner shall be entitled to be paid the Contract Price attributable to the Facilities executed as at the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due to the EESL from the Implementing Partner accruing prior to the date of termination shall be deducted from the amount to be paid to the Implementing Partner under this Contract.

42.2.6 If the EESL completes the Facilities, the cost of completing the Facilities by the EESL shall be

determined.

If the sum that the Implementing Partner is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the EESL in completing the Facilities, exceeds the Contract Price, the Implementing Partner shall be liable for such excess.

If such excess is greater than the sums due to the Implementing Partner under GCC Sub-Clause 42.2.5, the Implementing Partner shall pay the balance to the EESL, and if such excess is less than the sums due to the Implementing Partner under GCC Sub-Clause 42.2.5, the EESL shall pay the balance to the Implementing Partner.

The EESL and the Implementing Partner shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Notice by Contractor or Implementing Partner

42.3.1 If

(a) the EESL has failed to pay the Implementing Partner any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms and Procedures of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Implementing Partner may give a notice to the EESL that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the EESL to remedy the same, as the case may be. If the EESL fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Implementing Partner's notice.

43. Assignment

43.1 The Implementing Partner shall not, without the express prior written consent of the EESL, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Implementing Partner shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

44. Bankruptcy

If the Contractor shall become bankrupt or have a receiving order made against him or compound with his creditors, or being a corporation commence to be wound up, not being a voluntary winding up for the purpose only of amalgamation / reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the Owner will be at liberty :

to terminate the contract forthwith by notice in writing to the liquidator or receiver or to any person in whom the contract may become vested & to act in the manner provided in GCC clause 42 entitled "Termination" as though the last mentioned notice has been the notice referred to in such clause and the equipment and materials have been taken out of the contractor's hands.

to give such liquidator, receiver or other person, the option of carrying out the contract subject to his providing a guarantee, for the due and faithful performance of the contract up to an amount to be determined by the Owner.

45. Contractor Performance & Feedback and Evaluation System

The Employer has a right to evaluate 'Contractor Performance', wherein during the execution of contract performance of contractor shall be evaluated on a continuous basis at regular intervals under the heads such as but not limited to a) Financial Status; b) Project Execution & Project Management Capability; c) Engineering & QA Capability and d) Claims and Disputes.

In case the performance of the contractor is found unsatisfactory on any of the above four parameters, the contractor shall be considered ineligible for participating in future tenders for a period as may be decided by the Employer in line with the relevant provision of Policy and Procedure for withholding and Banning of Business Dealings, as applicable.

46. Fraud Prevention Policy

The contractor along with their associate/collaborator/sub-contractors/sub-vendors/consultants/service providers shall strictly adhere to the Fraud Prevention Policy of EESL displayed on its tender website www.eeslindia.org

The Contractor along with their associate/collaborator/sub-contractors/sub-vendors/consultants/service providers shall observe the highest standard of ethics and shall not indulge or allow anybody else working in their organisation to indulge in fraudulent activities during execution of the contract. The contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.

47. Audit:

EESL reserves the right to audit, at its expense, Contractors accounts and document pertaining to scope of work under this contract in each six (6) month period after providing reasonable written notice of at least fifteen (15) days. The audit shall be conducted without distributing the day to day work the Contractor and shall be focused and limited to the document, accounts or information pertaining to activities under this Contract.