

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 CESL 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 CESL 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:



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- 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 CESL 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 CESL 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 CESL 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 CESL)
- 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 CESL, 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 CESL does not require the Implementing Partner to replace or make good any such destruction or damage to the Facilities, the CESL 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 CESL's Convenience).

38.4 Notwithstanding anything contained in the Contract, the CESL 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 CESL 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 Sub Implementing 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 CESL 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 CESL 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 CESL (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 CESL 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 CESL

If the CESL 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 CESL accepts the Implementing Partner's objection, the CESL and the Implementing Partner shall agree on specific rates for valuation of the change.

39.2.4 Upon receipt of the Change Proposal, the CESL 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 CESL shall, if it intends to proceed with the Change, issue the Implementing Partner with a Change Order.

If the CESL 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 CESL 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 CESL 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 CESL 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 is 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 CESL 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 CESL, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the CESL) to the Contract Agreement, or any activity, act or omission of any other Implementing Partners employed by the CESL 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, 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 CESL and the Implementing Partner shall agree upon the period of such extension. In the event that the Implementing Partner does not accept the CESL's estimate of a fair and reasonable time extension, the Implementing Partner shall be entitled to refer the matter to the Adjudicator, pursuant to GCC Sub-Clause 6.1 (Adjudicator).

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 The CESL/ Project Manager 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) until ordered in writing to resume such performance by the Project Manager/ CESL.

If, by virtue of a suspension order given by the Project Manager/CESL 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 CESL 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 CESL 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 CESL's



Convenience).

41.2 If

- a) the CESL 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 CESL that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the CESL to remedy the same, as the case may be. If the CESL 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 fourteen (14) 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 attributable to the CESL, including but not limited to the CESL'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 CESL 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 CESL 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 CESL.

42 Termination

42.1 Termination for CESL's Convenience

42.1.1 The CESL 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 CESL 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 CESL pursuant to paragraph (d)(ii) below



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- (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 CESL 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 CESL 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 CESL, in any subcontracts concluded between the Implementing Partner and its Sub Implementing Partners
 - (iii) deliver to the CESL all non-proprietary drawings, specifications and other documents prepared by the Implementing Partner or its SubImplementing 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 CESL 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 SubImplementing Partners' personnel.
- (c) any amounts to be paid by the Implementing Partner to its SubImplementing 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 CESL, 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



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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 CESL 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 CESL and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the CESL 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 CESL 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 CESL that the Implementing Partner can attain Completion of the Facilities by the Time for Completion as extended

then the CESL 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 CESL 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 CESL 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

- (a) terminate all subcontracts, except those to be assigned to the CESL pursuant to paragraph (d) below
- (b) deliver to the CESL 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 CESL 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 CESL, in any subcontracts concluded between the Implementing Partner and its SubImplementing Partners.
- (d) deliver to the CESL all drawings, specifications and other documents prepared by the Implementing Partner or its SubImplementing Partners as at the date of termination in connection with the Facilities.

42.2.4 The CESL may enter upon the Site, expel the Implementing Partner, and complete the Facilities itself or by employing any third party. The CESL 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 CESL and with an indemnification by the CESL for all liability including damage or injury to persons arising out of the CESL'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 CESL considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the CESL thinks appropriate, the CESL 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 CESL 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 CESL completes the Facilities, the cost of completing the Facilities by the CESL 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 CESL 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 CESL, and if such excess is less than the sums due to the Implementing Partner under GCC Sub-Clause 42.2.5, the CESL shall pay the balance to the Implementing Partner.

The CESL 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 Termination by Contractor or Implementing Partner

42.3.1 If

(a) the CESL 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 CESL that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the CESL to remedy the same, as the case may be. If the CESL 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, or

(b) the Implementing Partner is unable to carry out any of its obligations under the Contract for any reason attributable to the CESL, including but not limited to the CESL's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities which the CESL is required to obtain as per provision of the Contract or as per relevant applicable laws of the country,

then the Implementing Partner may give a notice to the CESL thereof, and if the CESL has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Implementing Partner is still unable to carry out any of its obligations under the Contract for any reason attributable to the CESL within twenty-eight (28) days of the said notice, the Implementing Partner may by a further notice to the CESL referring to this GCC Sub-Clause 42.3.1, forthwith terminate the Contract.

42.3.2 The Implementing Partner may terminate the Contract forthwith by giving a notice to the CESL to that effect, referring to this GCC Sub-Clause 42.3.2, if the CESL becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if 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 CESL takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Implementing Partner shall immediately

(a) cease all further work, except for such work as may be necessary for the 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 CESL pursuant to paragraph (d)(ii)



(c) remove all Implementing Partner's Equipment from the Site and repatriate the Implementing Partner's and its SubImplementing Partner's personnel from the Site

(d) In addition, the Implementing Partner, subject to the payment specified in GCC Sub-Clause 42.3.4, shall

(i) deliver to the CESL 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 CESL all right, title and benefit of the Implementing Partner to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the CESL, in any subcontracts concluded between the Implementing Partner and its SubImplementing Partners

(iii) deliver to the CESL all drawings, specifications and other documents prepared by the Implementing Partner or its SubImplementing Partners as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the CESL shall pay to the Implementing Partner all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss or damage sustained by the Implementing Partner arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Implementing Partner pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Implementing Partner that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, any or all Plant and Equipment acquired (or subject to a legally binding obligation to purchase by the Implementing Partner and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the CESL to the Implementing Partner, account shall be taken of any sum previously paid by the CESL to the Implementing Partner under the Contract, including any advance payment paid pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement.

43. Assignment

43.1 The Implementing Partner shall not, without the express prior written consent of the CESL, 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



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Serial No : 1318433

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 in place an established 'Contractor Performance & Feedback System' against which the contractor's performance during the execution of contract shall be evaluated on a continuous basis at regular intervals. In case the performance of the contractor is found unsatisfactory on any of the following four parameters, the contractor shall be considered ineligible for participating in future tenders for a period as may be decided by the Employer.

Financial Status

Project Execution & Project Management Capability

Engineering & QA Capability

Claims & Disputes.

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.



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User ID : deepak.mittal
Serial No : 1318433

SECTION-4

Scope of Work/Supplies, Qualifying Requirements, Terms & Conditions, Technical Specifications & Special Conditions of Contract

NOTE: THE TERMS & CONDITIONS STIPULATED HEREIN (I.E., IN SECTION-4) WILL SUPERSEDE ANY CONTRADICTORY/SIMILAR/OVERLAPPING TERMS & CONDITIONS IN ANY OTHER SECTION/PART OF THE TENDER.

PART-A: General Information

Name of the Work: "Design, Engineering, Supply, Construction, Erection, Testing, Commissioning and O&M of 242 kW (tentative) Solar PV based Electric Carport and rooftop Power Plant with 762 kWh (tentative) Lithium based Battery Energy Storage System having 05 years Plant O&M at Leh, UT of Ladakh, India".

NIT/Bid Document No.: CESL/06/2021-22/BESS/212207023

dated 30.07.2021

BIDS ARE TO BE SUBMITTED AS FOLLOWS:

Envelope 1, 2 and 3 will appear online in dynamic form. No Manual/Hard Copy of documents need to be submitted for these envelopes apart from below mentioned documents.

Envelope 1 (Pre-Qualifying documents) should contain following:

- a. **Physical copy to be submitted before Closing Date & Time AND Scanned copy to be uploaded on the E-Procurement portal/website, and details to be entered therein, during bid submission:** Bidding Document Cost in the form of Banker's Cheque/Demand Draft/Pay Order drawn in favour of "Convergence Energy Services Limited", payable at New Delhi, OR copy(ies) of the relevant documents/certificates, etc. in case exemption is sought.
- b. Letter of the bidder submitting the bid in the form as stipulated in the bid document i.e., as per Bid Form as **Attachment-1** of section - 6, Forms & Procedures. **(Scanned Copy to be uploaded at E-tendering portal)** Duly filled and Signed by authorized signatory.
- c. Bid Security Declaration duly notarized on Rs. 100/- stamp paper as per **Attachment-2** of Section-6, Forms & Procedures. **(To be submitted in hard copy/ manually in the tender-box on and before Technical E-Bid Opening Date & Time. Scanned Copy to be uploaded at E-tendering portal.)**
- d. Power of attorney to sign the bid as **Attachment-3** of section 6, Forms & Procedure. Bidders to use their own format. **(Scanned Copy to be uploaded at E-tendering portal)**.
- e. Certificate regarding acceptance of important terms and conditions as per ITB clause 4.6 as **Attachment-4**. Format enclosed in section 6. **(Scanned Copy to be uploaded at E-tendering portal)** Duly filled and Signed by authorized signatory.
- f. Form of acceptance of CESL fraud prevention policy and declaration as per **Attachment- 7** of section 6, Forms & Procedure. **(Scanned Copy to be uploaded at E-tendering portal)** Duly filled and Signed by authorized signatory.
- g. NEFT/RTGS Bank details as per **Attachment-10** of section-6, forms and procedure. **(Scanned Copy to be uploaded at E-tendering portal)** Duly filled and Signed by authorized signatory.
- h. Self-Declaration for not been blacklisted by Central/State/UT Government or any Public sector entities duly signed and stamped at company's Letter Head. **(Scanned Copy to be uploaded at E-tendering portal)**.
- i. Self-Declaration regarding "Restrictions on procurement from a Bidder of a country which shares a land border with India" as per **Attachment-11** of Section-6, Forms & Procedure **(Scanned Copy to be uploaded while submitting application online on E-tendering portal)**.

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NIT/Bid Document No.: CESL/06/2021-22/BESS/212207023 dated 30.07.2021

SECTION-4
(Technical & SCC)

Page 1 of 54

- j. Self-Declaration duly signed and stamped at company's Letter Head for not being under debar list/undergoing debarment period on account of breach of the code of integrity under Rule 175(1)(i)(h) of the General Financial rules for giving false declarations of local content. (Scanned Copy to be uploaded at E-tendering portal. Bidder shall clearly mention tender reference number and date of signing the self-declaration **(Scanned Copy to be uploaded at E-tendering portal)**).
- k. Certificate regarding Declaration of Local Content as per **Attachment-12** of Section-6, Forms & Procedure **(Scanned Copy to be uploaded at E-tendering portal)**.
- l. Certificate Regarding Compliance Of Meity Notification Vide File No. 1(10)/2017-Cles Dt. 02.07.18 as per **Attachment 13** of Section-6, Forms & procedures Duly filled Signed by authorized signatory

Envelope-II, i.e., Techno-Commercial Proposal of the Bid Should Contain (scanned copies of) the following:

- i. Deviation statement as per attachment 5 of section - 6, Forms & Procedure.
NOTE: CESL reserves the right to consider or disregard deviations, and reject bids in case of non-compliance. Bids containing material deviations from or reservation to the terms and conditions and specifications mentioned in the Tender will be treated as non-responsive and will not be considered further.
- ii. Compliance to Technical Specification Defined at **Bid response sheet 1 to 3** with supporting Documents.
- iii. Techno-commercial bid as indicated in bid document, i.e., **documentary evidences regarding bidder's qualifications to perform the Contract, as required per the Qualifying Requirements (Attached at Annexure-III)**.
- iv. One complete set of RfP documents and subsequent amendments (if any), duly signed and stamped on each page.

Envelope 3 i.e. Price Bid (to be filled-up online):

Since the tender is to be carried through e-tendering mode, price bid is to be filled on e-tender portal only and bidders are requested **not to submit the price bid in Hard Copy at CESL along with the documents. The same will not be entertained.**

- a. Price Bid in the format prescribed in the tender document - only for illustration **purpose (prices are to be filled on E-tender portal only)**.

Opening & further processing of the bids:

Since the bids are to be submitted through E-tendering mode, the prices are to be filled on e-tender portal only and bidders are requested not to submit the price bid in hard copy at CESL along with the documents. The same will not be entertained.

Initially, Envelope - I containing documents as stated above will be opened electronically. Envelope-II will be opened on the same day of only those bidders who have submitted EMD and requisite documents in Envelope-I.

Envelope-III (Price Bid) shall be opened subsequently subject to acceptance of Techno-Commercial Bid. Opening date will be intimated to all those bidders, who are found technically & commercially acceptable to CESL.

Price-Bid of the technically disqualified bidders will not be opened.

The opened Price Bids shall be evaluated as per the criteria set out in the Tender and the award(s) of Contract shall be recommended accordingly.

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**NTT Bid Document No.: CESL/06/2021-22/BESS/212207023 dated
30.07.2021**

SECTION-4
(Technical & SCC)

Page 2 of 54

PART-C: Scope of Work

Signature :-
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 NT Bid Document No.: **CESL/06/2021-22/BESS/212207023** dated
30.07.2021

SECTION-4
(Technical & SCC)

Page 3 of 54

PROJECT NAME: "Design, Engineering, Supply, Construction, Erection, Testing, Commissioning and O&M of 242 kW (tentative) Solar PV based Electric Carport and rooftop Power Plant with 762 kWh (tentative) Lithium based Battery Energy Storage System having 05 years Plant O&M at Leh, UT of Ladakh, India".

1. About Us:

CONVERGENCE ENERGY SERVICES LIMITED (<https://www.convergence.co.in/>)

In November 2020, a new subsidiary was formed by CESL -Convergence Energy Services Limited (CESL), which will focus on the development of renewable energy, electric mobility etc. with the ultimate objective of discovering business models around a convergence of the various initiatives of the company. The concept of Convergence has been initiated with the objective of providing solar energy-based innovative financing to promote energy efficient agriculture pump sets, cook-stoves, efficient domestic and street lighting in an affordable and sustainable manner. This development in particular follows trends in the energy sector – currently undergoing disruptive changes due to technological advancements, the low cost of solar power, increased variable renewable energy, the onset of electric mobility along with rapid fall in battery prices.

CESL is a wholly owned subsidiary of Energy Efficiency Services Limited (EESL), which itself is a joint venture of CPSUs of Ministry of Power, Govt. of India. Moving forward, all the projects related to deployment of electric vehicles and charging stations, solar power, renewables, carbon credits and other related matters shall be carried out by CESL.

2. PROJECT BACKGROUND

Convergence Energy Services Limited is a wholly owned subsidiary of EESL (a JV of PSUs under Ministry of Power). As a constant commitment to serve the nation, CESL has been working very closely with UT of Ladakh to meet the goal of Carbon Neutrality set by Hon'ble PM commitment in 2020. Under the aegis of vision pertaining to Carbon Neutral Ladakh, CESL has signed a MoU with UT of Ladakh to initiate various kinds of green and sustainable initiatives elaborated below:

- Development on sustainable micro and mini grid in the UT of Ladakh.
- Development a unique innovative model of Solar Carport (current activity)
- Providing various solutions to UT of Ladakh pertaining to Green transportation areas etc.

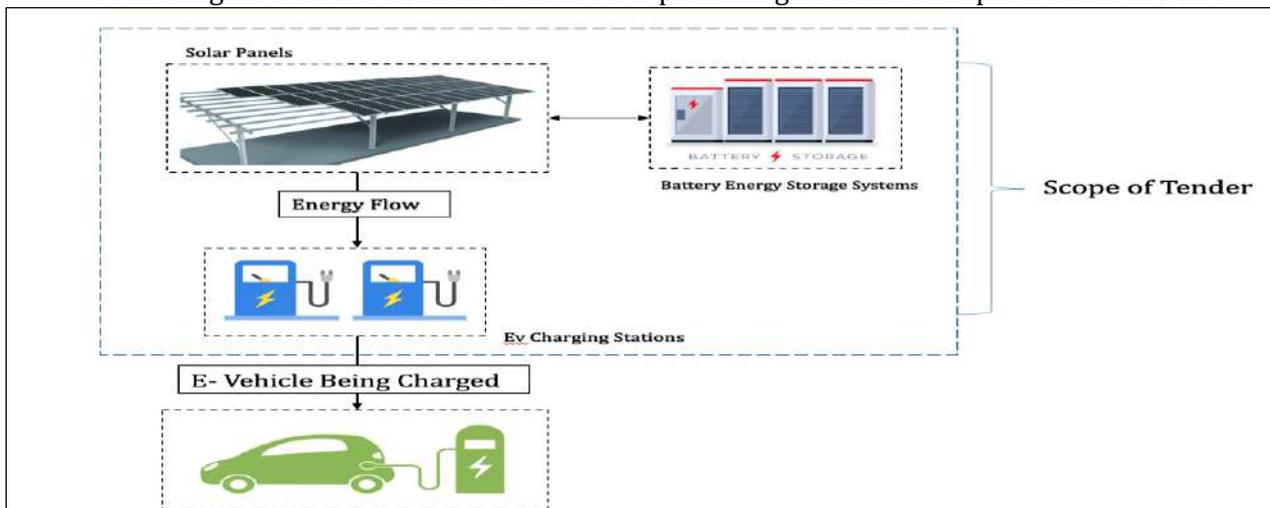


Figure 1- Project Description

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