

**CONVERGENCE ENERGY SERVICES LIMITED**

Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003.

**CONTRACTS DEPARTMENT  
OPEN TENDER**

**SECTION-1  
DETAILED INVITATION FOR BIDS (IFB)  
FOR**

**Name of Work:** - Selection of bus operator for Procurement, Supply & Maintenance of 4,675 Electric Buses and development of allied electric and civil infrastructure on Dry lease under National E-Bus Program (NEBP) Phase-II.

**NIT/Bid Document No.:** CESL/06/2022-23/ebuses/GC-dry-lease/222301013

Dated 04.01.2023

CESL invites E-bids from interested bidders for the aforesaid work(s) under Single-stage Two-envelope Bidding Process **THROUGH E-TENDERING\***. For details about the IFB, please refer to the details that follow. Any amendment(s)/corrigendum/clarification(s) with respect to this Tender shall be uploaded on the E-Procurement website only. The bidders should keep themselves updated by regularly visiting the E-Procurement website of CESL for any amendment/corrigendum/ clarification in regard to this Tender.

For & on Behalf of CESL

**\*The bids for E-tenders will be submitted online on the web site <https://cesl.eproc.in>. Oral, telephonic, telegraphic bids or those submitted in hard copies/physical form will not be entertained. In case, anything to the contrary is mentioned anywhere in the Tender, the same should be ignored.**

**NIT/Bid Document No.:** CESL/06/2022-23/ebuses/GC-dry-lease/

**222301013 Dated 04.01.2023**

**SECTION-1  
(IFB)**

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Signature :-  
3f230925376d906b693d11a3e692c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd953300d5a9acfe13705fcafc3cd691a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



## **BID DETAILS**

NIT/Bid Document No.	CESL/06/2022-23/e buses/GC-dry-lease/222301013 Dated 04.01.2023																				
Bidding Document Cost	INR 25,000/- (Rupees Twenty Five Thousand Only) Non-Refundable and Non-adjustable).																				
Earnest Money Deposit	<p>The Bidder shall submit a bid security for different lots for the amounts given in the table below:</p> <table><tr><td>Lot Type</td><td>Number of buses</td><td>Amount in Crore (INR)</td></tr><tr><td>Lot-1 12m Low Floor AC Bus (Type-I)</td><td>2400</td><td>17.47</td></tr><tr><td>Lot-2 12m Low Floor Non-AC Bus (Type-I)</td><td>1500</td><td>10.13</td></tr><tr><td>Lot-3 9m Standard Floor AC Bus (Type-I)</td><td>125</td><td>0.72</td></tr><tr><td>Lot-4 12m Standard Floor Non-AC Bus (Type-II)</td><td>200</td><td>1.68</td></tr><tr><td>Lot-5 12m Standard Floor Non-AC Bus (Type-III)</td><td>450</td><td>4.61</td></tr></table> <p>(EMD to be valid up to 225 days from the date of techno-commercial bid opening)</p>			Lot Type	Number of buses	Amount in Crore (INR)	Lot-1 12m Low Floor AC Bus (Type-I)	2400	17.47	Lot-2 12m Low Floor Non-AC Bus (Type-I)	1500	10.13	Lot-3 9m Standard Floor AC Bus (Type-I)	125	0.72	Lot-4 12m Standard Floor Non-AC Bus (Type-II)	200	1.68	Lot-5 12m Standard Floor Non-AC Bus (Type-III)	450	4.61
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Lot-5 12m Standard Floor Non-AC Bus (Type-III)	450	4.61																			
Document Sale Date & Timing, i.e., Last date & time for downloading RfP from website	From 04.01.2023 to 20.02.2023 (up to 1400 IST)																				
Online Bid Submission Period	From 04.01.2023 to 20.02.2023 (up to 1430 IST)																				
Pre-Bid Meeting	<p>On 11.01.2023 at 15:00 Hrs IST through video Conferencing Meeting link: <a href="https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTlkODlkYjltNmY1YS00ZTViLWJhNDMtNjYwNjUwNmE5YWEw%40thread.v2/0?context=%7b%22Tid%22%3a%224a993be3-3ce0-49c4-96e9-23324992b1dd%22%2c%22Oid%22%3a%22b85c8853-f74a-4781-8e87-60c3fe118d09%22%7d">https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTlkODlkYjltNmY1YS00ZTViLWJhNDMtNjYwNjUwNmE5YWEw%40thread.v2/0?context=%7b%22Tid%22%3a%224a993be3-3ce0-49c4-96e9-23324992b1dd%22%2c%22Oid%22%3a%22b85c8853-f74a-4781-8e87-60c3fe118d09%22%7d</a></p> <p><b>Note:</b></p> <ul style="list-style-type: none"><li><i>Bidder shall ensure at their end that the device from which bidder is attending the online meeting is configured appropriately (if required).</i></li><li><i>CESL shall not be responsible for any issue arising on this context.</i></li></ul> <p><b>All the queries shall be sent well in advance as mentioned in Annexure-A.</b></p>																				
Techno-commercial E-bid Opening Date & Time	20-02-2023 at 1500 hrs. IST, online, at following address: - Convergence Energy Services Limited Core-3, 2 <sup>nd</sup> Floor,																				

**NIT/Bid Document No.:** CESL/06/2022-23/e buses/GC-dry-lease/

**222301013 Dated 04.01.2023**

Signature :-  
312309251760d06be93d1123e092c67d46, ST=DELHI, OID.2.5.4.17=11000  
3. OID.2.5.4.65=6ec3cd953300d5a9acfe13705fcac3cd091a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**SECTION-1  
(IFB)**

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	SCOPE Complex, Lodhi Road, New Delhi-110003
Bid Validity Duration	<b>180 days</b> from the date of opening of techno-commercial bid
Bid Documents Sections in this Tender	Section-2 – Information to Bidders (ITB). Section-3 – General Conditions of Contract (GCC). Section-4 – Technical Specification and Special Conditions of Contract (SCC).-Including Volume-I, Volume-II and Volume-III Section-5 – Measurement and Verification. Section-6 – Forms & Procedures.
Contact Person(s) for Technical Queries (copy of the query to be marked to Contracts Dept. as well)	Sh. Kalyan Reddy (Consultant-SIU) Smt. Archana Chauhan (AM-Technical) Convergence Energy Services Ltd E-mail- <a href="mailto:kreddy@eesl.co.in">kreddy@eesl.co.in</a> <a href="mailto:achauhan1@eesl.co.in">achauhan1@eesl.co.in</a>
Contact Person(s) for Tender-related Queries	Sh. Ashim Bhattacharya (CGM-Contracts), Sh. Mahendra Singh (Engineer– Contracts), Sh. Md Arif (Executive Officer – Contracts) Convergence Energy Services Ltd. E-mail: <a href="mailto:abhattacharya@eesl.co.in">abhattacharya@eesl.co.in</a> <a href="mailto:msingh@eesl.co.in">msingh@eesl.co.in</a> <a href="mailto:cesl.arif@gmail.com">cesl.arif@gmail.com</a>
RfP to be addressed to	CGM (Contracts) Convergence Energy Services Limited. Core-3, 2 <sup>nd</sup> Floor, SCOPE Complex, Lodhi Road, New Delhi-110003

1.0 All the bids must be accompanied by Bid Document Cost, Earnest Money Deposit & PMC Cost, as mentioned above. **Bids not accompanying the Bidding Document Cost, Earnest Money Deposit & PMC, or those accompanied by these instruments of inadequate value, shall not be entertained and in such cases, the bids shall not be opened.**

The bid Document fee and Earnest Money Deposit and must reach the following address in a sealed envelope superscribed “**EMD and Bidding Document Fee for. CESL/06/2022-23/ebuses/GC-2/222309007** dated 21.09.2022 “before the submission date & time mentioned above.

CGM -Contracts (CESL),  
Convergence Energy Services Limited  
Core-3, 2<sup>ND</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

The details of the instruments of Bidding Document Cost (DD/BG, etc. as applicable) have to be entered online in relevant fields/columns of the module while submitting the E-bid. It must be ensured by the bidder that the original instruments towards Bidding Document Cost and EMD are received by CESL before opening time of the techno-commercial bids for verification of the details of the same as given online by the bidder. Failure to comply with this would render the bid liable for rejection and the bid will not be opened online. CESL will not be responsible for any delay, loss or non-receipt of Bidding/RfP Document Cost or EMD sent by post/courier.

**Any relaxation/exemption sought by bidders shall only be considered in accordance with relevant clauses Section-2 (ITB) regarding submission of EMD and Bidding Document Cost and shall be subject to fulfilment of conditions defined in the said clauses.** Since all the conditions explained in the

**NIT/Bid Document No.:** CESL/06/2022-23/ebuses/GC-dry-lease/

**222301015 Dated 04.01.2023**

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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

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said clauses for seeking exemption from submission of Bidding Document Cost & EMD are self-explanatory, bidders should ascertain about their fulfilment of all conditions and submit their bid accordingly. If at any stage, it is found that false information is furnished or non-compliance of any of the conditions defined at the said clauses, the bid/offer shall be considered as non-responsive and would not be considered for further evaluation. Bidder seeking exemption from submission of the Bidding Document Cost and the EMD has to mandatorily submit/upload the scanned copy of their valid original registration certificate(s) as asked for in the relevant, clause along with other relevant documents as part of their online bid.

2.0 CESL reserves the right to cancel / withdraw the IFB without assigning any reason whatsoever and in such a case, no bidder / intending bidder shall have any claim arising out of such action.

3.0 The subject procurement will be done through e-tendering. The NIT is available on the website <https://cesl.eproc.in> or could be viewed after following the link of 'e-Tendering' on CESL's website's Home Page, i.e., <http://convergence.co.in> from where the bidders registered with CESL (registration process is explained at the Home Page) will be able to download the Tender documents and submit their bids online. The Tender submission, Tender closing and opening will be done electronically and online.

**NOTE: CESL has appointed M/s. C1 India Pvt. Ltd., NOIDA as implementation agency for carrying out e-Procurement. Also, as per IT ACT 2000, use of Digital Signature Certificate (DSC) is mandatory for participating in the E-tendering process. New bidders should register on the website <https://cesl.eproc.in> by payment of one-time registration fee of Rs. 5,000/- through DD in favour of "Convergence Energy Services Limited".**

*Bidders are requested to visit "e-Tendering" section at CESL website, [www.convergence.co.in](http://www.convergence.co.in) for instructions and registration on E-tendering portal.*


#### **Steps for Registration on CESL's E-Procurement Portal**

- (i) Open portal by entering URL <https://cesl.eproc.in> in internet explorer.
- (ii) Download and read 'System Requirement Manual' and Registration Manual from our e-tendering portal <https://cesl.eproc.in>
- (iii) Click on 'Login/Sign Up' link and then Registration link for new registration.
- (iv) Fill all mandatory fields and click on submit button.
- (v) Login with the user id and password you have created. You will be redirected to a page where you have to enter your challenge phrase which is received in your registered email id.
- (vi) Register your class-III Signing and Encryption Digital Signature Certificate (DSC).
- (vii) Fill all mandatory fields of Common Info form and upload scan copy of your DD (in favour of "Convergence Energy Services Limited", Delhi) in PDF format of INR 5,000/- and click on save and send the original DD to CESL, Delhi office, Covering Letter on your letter head pad and print out of page regarding registration of approval (automatically generated on screen).
- (viii) Also read the instructions given under E-tendering link available at home page of CESL website [www.convergence.co.in](http://www.convergence.co.in) .

**Note:** Online registration shall be done on e-tendering website, i.e., <https://cesl.eproc.in> & in general, activation of registration may take 24 hours subject to the submission of original DD. It is sole responsibility of the bidder to register in advance.

**NIT/Bid Document No.:** CESL/06/2022-23/euses/GC-dry-lease/

222301015 Dated 04.01.2023

Signature :-  SERIALNUMBER=850e5bfa925f3eab09fc82f9c  
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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

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### A. Digital Signature Certificate:

It is mandatory for all the bidders to have class-III Digital Signature Certificate (DSC) with signing and Encryption certificate (in the name of person who will sign the BID) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link [www.cca.gov.in](http://www.cca.gov.in) ) to participate in e-tendering of CESL.

### B. CESL Global Support Telephones and e-mail id

Contact Details: +91-124-4302033/36/37, +91-8826814007  
[ceslsupport@clindia.com](mailto:ceslsupport@clindia.com), [sandeep.bhandari@clindia.com](mailto:sandeep.bhandari@clindia.com)

**NIT/Bid Document No.:** CESL/06/2022-23/e buses/GC-dry-lease/

222301015 Dated 04.01.2023

Signature :-  
31f30625d76d9b6b93d11a3e09c67d46, ST=DELHI, OID.2.5.4.17=11000  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

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(IFB)

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## **SECTION-2**

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 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467195

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Signature :-  
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 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467195

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Signature :-  
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 3320b37480628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467185

## SECTION-2

# INSTRUCTIONS TO THE BIDDER (ITB) / CONSORTIUM OF BIDDERS

Name of Work: -: Request for Proposal Selection of bus operator for Procurement, Operation and Maintenance of 5,690 Electric Buses and development of allied electric and civil infrastructure on Gross Cost Contracting (GCC) under National E-Bus Program (NEBP)--1Phase

NIT/Bid Document No.: CESL/06/2022-23/e buses/GC-2/222309007

Dated 21.09.2022

**NOTE: THE TERMS & CONDITIONS STIPULATED IN SECTION-4 WILL SUPERSEDE ANY CONTRADICTION/SIMILAR/OVERLAPPING TERMS & CONDITIONS IN ANY OTHER SECTION/PART OF THE TENDER**

### A. The Bidding Documents

#### 1.1 The bidding documents include the following

Section-1	Invitation for Bids (IFB)
Section-2	Instructions to Bidder / Consortium of Bidders
Section-3	General Conditions of Contract
Section-4	Special Conditions of Contract explaining in detail technical specifications, scope of work for supply/supply and installation & Commissioning/Consultancy, drawings, documents in support of bidder's qualifications (Qualifying Requirement), and Online Price Bid format.
Section -5	Measurement and Verification
Section-6	Forms and Procedure Attachment 1: Format of Bid Form Attachment 2: Format for submitting BG format in lieu of EMD Attachment 3: Format of Power of Attorney. Attachment 4: Format for certificate acceptance of Important terms and Conditions. Attachment 5: Format for Deviations statement. Attachment 6: Format for Submission of Contract Performance Guarantee (CPG) Attachment 7: forms of Acceptance of Fraud Prevention Policy. Attachment 8: Not Applicable Attachment 9: Performa of Letter of undertaking. Attachment 10: Format for RTGS/NEFT payments. Attachment 11: Declaration of Quoted states. Attachment 12: Duly Compliance Matrix Attachment 13: Declaration of Local Content.

The bidder is expected to examine all the instructions, forms, terms, specifications and other information in the bidding documents. Failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the bidder's risk and may result in rejection of bid.

### Definitions

In the "Bid / Tender / Contract Document" as herein defined where the context so admits, the following words and expression will have the following meaning:

1. "Affiliate" shall mean a company that either directly or indirectly
  - i) controls or
  - ii) is controlled by or
  - iii) is under common control with
- a Bidding Company (in the case of a single company) and "control" means ownership by one company
2. "B.I.S" shall mean specifications of Bureau of Indian Standards (BIS);
3. "Bid / Tender" shall mean the Techno Commercial and the Price Bid submitted by the Bidder along with all documents/credentials/attachments, formats, etc., in response to this Bid Document, in accordance with the terms and conditions hereof.
4. "Bidder / Tenderer" shall mean Bidding Company submitting the Bid. Any reference to the Bidder

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
30130b2151/e buses/GC-2/222309007, O=DELHI, OU=5, C=IN  
352db3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No. : 1467185

NIT/Bid Document No.: CESL/06/2022-23/e buses/GC dry lease/222301013 Dated 04.01.2023

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includes Bidding Company including its successors, executors and permitted assigns jointly and severally, as the context may require”;

5. “Bid Security” shall mean the unconditional and irrevocable bank guarantee/ demand draft to be submitted along with the Bid by the Bidder under ITB Clause 2.4 of this Bid;
6. “Bidding Company” shall refer to such single/consortium company that has submitted the Bid in accordance with the provisions of this Bid;
7. “Bid Deadline” shall mean the last date and time for submission of Bid in response to this Bid as specified in Bid Information Sheet and as specified in ITB Clause 3.2 of this Bid document including all amendments thereto;
8. “Bid Document” shall mean all Definitions, Sections, Layouts, Drawings, Photographs, Formats & Annexures etc. as provided in this bid including all the terms and conditions hereof.
9. “Chartered Accountant” shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act, 1949;
10. “Competent Authority” shall mean Managing Director (MD) of himself and/or a person or group of persons nominated by MD for the mentioned purpose herein;
11. “Company” shall mean a body incorporated in India under the Companies Act, 1956;
12. "Contract" means the agreement entered into between the Employer and the Contractor, as recorded in the Contract Form signed by the parties, including all the attachments and appendices thereto and all documents incorporated by reference therein;
13. "Contract Price / Contract Value" shall mean the sum accepted or the sum calculated in accordance with the prices accepted in Bid and/or the Contract rates as payable to the Contractor for the entire execution and full completion of the Work (Price for Supply, Transportation (including loading, unloading and transfer to Site), Insurance including change order.
14. “Completion of Work” means that the Project/Works have been completed operationally and structurally and Commissioning has been attained as per Technical Specifications.
15. “Commissioning” means successful operation of the Project/Works by the Contractor, for the purpose of carrying out Guarantee Test(s).
16. “Contract Document” shall mean collectively the Bid Document, Design, Drawings, and Specifications, Annexures, agreed variations, if any, and such other documents consisting the bid and acceptance thereof;
17. “Contractor’s Equipment” means all plant, Works, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Works that are to be provided by the Contractor, but does not include plant and equipment, or other things intended to form or forming part of the Works.
18. “Day” means calendar day;
19. “Defect Liability Period” means the period of validity of the warranties given by the Contractor (commencing at Completion of the Project/Works, during which the Contractor is responsible for defects with respect to the Project/Works.
20. “Employer” or “CESL” shall mean Convergence Energy Services Limited, New Delhi.
21. “Eligibility Criteria” shall mean the Eligibility Criteria as set forth in Section 3: Technical & Special Conditions of Contract of this BID;
22. “Engineer-in-Charge” shall mean the person designated from time to time by the Employer and shall include those who are expressly authorized by him to act for and on his behalf for operation of this Contract;
23. “Effective Date” means the date from which the Time for Completion shall be determined;
24. “GCC” means the General Conditions of Contract contained in this section;
25. “GHI” shall mean Global Horizontal Irradiation.
26. "Goods" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Works by the Contractor under the Contract but does not include Contractor’s Equipment;
27. “Guarantee Test(s)” means the test(s) specified in the Technical Specification to be carried out to ascertain whether the Project/Works is able to attain the functional requirements specified in the Technical Specifications.
28. “The Government” means the Government of India.
29. "IEC" shall mean specifications of International Electro-Technical Commission;
30. "CESL" shall mean Convergence Energy Services Limited;
31. “Mobilization” shall mean establishment of adequate infrastructure by the Contractor at Site comprising of construction equipment’s, aids, tools tackles, offices with facilities such as power, water, communication etc. including manpower comprising of Engineers, supervising personnel and an adequate strength of skilled, semi-skilled and un-skilled workers, who with the so established infrastructure shall be in a position to commence execution of Work at site(s), in accordance with the agreed Time Schedule of Completion of Work.

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 3f10b2151/employee@nclia.co.in/O=DELHI, OU=CESL, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467195

32. "O&M/ AMC" shall mean Operation & Maintenance (O& M)/ Annual Maintenance Contract (AMC) of the supplied equipment's;
33. "Parent Company" shall mean a company that holds paid-up equity capital directly or indirectly in the Bidding Company, as the case may be;
34. "Price Bid" shall mean separate Envelope, containing the Bidder's Quoted Price as per the format prescribed in Section-4 (Technical & Special Conditions of Contract) of this BID;
35. "Qualified Bidder" shall mean the Bidder(s) who, after evaluation of their Techno Commercial Bid as per Eligibility Criteria set forth in Section 3: Technical& Special Conditions of Contract of this BID stand qualified for opening and evaluation of their Price Bid;
36. "SNA" shall mean State Nodal Agency.
37. "SCC" means the Special Conditions of Contract.
38. "Statutory Auditor" shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or under the provisions of any other applicable governing law;
39. "Services" means all those services ancillary to the supply of the Works, to be provided by the Contractor under the Contract; e.g. transportation(including loading, unloading and transfer to Site) and provision of marine or other similar insurance, inspection, expediting, Site preparation works (including the provision and use of Contractor's Equipment and the supply of all civil, structural and construction materials required),installation./Pre-commissioning, commissioning, carrying out guarantee tests, operations, maintenance, the provision of operations and maintenance manuals, training of Employer's personnel and one or two persons from the beneficiaries groups are imparted trainings etc.
40. "Successful Bidder(s) / Contractor(s)" shall mean the Bidder(s) selected by Employer pursuant to this Bid i.e. on whom award is made. They are also called as implementing partner which includes Consultants also.
41. "Site" means the Land and other places upon which the Works are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site. The details of the Site are as contained in Section 3: Technical& Special Conditions of Contract of this BID.
42. "Sub-Contractor" means any person or firm or Company (other than the Contractor) to whom any part of the Work has been entrusted by the Contractor, with the written consent of the Engineer-in-Charge, and the legal representatives, successors and permitted assigns of such person, firm or company.
43. "Standards" shall mean the standards mentioned in the technical specification of the goods and equipment utilized for the Work or such other standard which ensure equal or higher quality and such standards shall be latest issued by the concerned institution like Bureau of Indian standards(BIS), MNRE, etc.
44. "Time for Completion" means the time within which Completion of the Project/Works is to be attained in accordance with the stipulations in the SCC and the relevant provisions of the Contract;
45. "Work" means the "Goods" to be supplied and installed, as well as all the "Services" to be carried out by the Contractor under the Contract;
46. "Wp" shall mean Watt Peak.
47. Third Parties means to which employer has awarded some work and consultant may be required to co-ordinate with third parties as per scope of work.
48. Agreed Remuneration means the fee to which consultant is entitled as per their quoted and agreed price according to the contract.
49. Consultant: The consultant shall be the professional undertaking or the professional individual named in the contract who is appointed by the employer to perform the services.

### Interpretations

1. Words comprising the singular shall include the plural & vice versa
2. An applicable law shall be construed as reference to such applicable law including its amendments or re-enactments from time to time.
3. A time of day shall save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
4. Different parts of this contract are to be taken as mutually explanatory and supplementary to each other and if there is any differentiation between or among the parts of this contract, they shall be interpreted in a harmonious manner so as to give effect to each part.
5. The table of contents and any headings or sub headings in the contract has been inserted for case of reference only & shall not affect the interpretation of this agreement.

## 1.2 Clarification on Bidding Documents

A prospective Bidder requiring any clarification to the bidding documents may notify the CESL in writing or by post or by telex or telefax) at the CESL's mailing address indicated below. The CESL will respond in writing to any request for clarification or modification of the bidding documents that it receives no later than ten (10) days

Signature :-  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
 3f1d0215176c0b0e93d1a3e0d3c7d0b, ST=DELHI, OU=CESL, O=CESL  
 352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No. : 1467185

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- iii. 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 & Procedure.
- iv. Power of attorney to sign the bid as attachment 3 of section - 6, Forms & Procedure. Bidders to use their own format.
- v. Certificate regarding acceptance of important terms and conditions as per ITB clause 4.6 as attachment 4 of section – 6 (Forms & Procedures).
- vi. Form of acceptance of CESL fraud prevention policy as per attachment 7 of section-6 (Forms & Procedures).

Envelope-II i.e. Techno commercial Proposal of the bid, to be submitted in 2<sup>nd</sup> inner sealed envelope, shall comprise of: (This envelope appear ONLINE in dynamic form in case of e tenders)

- i. Deviation statement as per attachment 5 of section - 6, Forms & Procedures.
- ii. Techno-commercial bid as indicated in bid document. Documentary evidence regarding bidder's qualifications to perform the contract as required in qualifying Requirement.

Envelope-III should contain Price Bid, to be submitted in 3<sup>rd</sup> inner sealed envelope, shall comprise of: (In case of e tender Price bid is to be submitted ONLINE)

- i. Price Bid in the format prescribed in the tender document.

The entire three separately sealed envelopes will then be placed in one outer envelope, sealed and marked properly and submitted to the CESL office on or before the deadline for submission of the bid. Every envelope (3 inner and 1 outer) should be superscripted with Bid/RfP number and date, content of envelope i.e. bid security/price bid etc , name of work and Bid opening date.

Copy of Bid/RfP should be a complete document and should be bound as a volume separately. The document should be page numbered and appropriately flagged and contain the list of contents with page numbers. The deficiency in documentation may result in the rejection of the Bid. All pages of the bid are to be signed by the authorized signatory (authorized through power of attorney) and must be having official seal of the bidder.

Bids not accompanied by cost of tender documents/ Bid Security Fees or EMD etc. shall be out-rightly rejected and treated as non-responsive. Further, their price-bid will be not be opened.

For tenders received in unsealed/unstapled/open condition or without any superscription, resulting in opening of tender before due date, the risk and responsibility of losing confidentiality shall rest with the tenderer (applicable for manual tender only)

## 2.2 Cost of Bid/ RfP

The Bidder or Consortium of bidders shall bear all costs associated with the preparation and submission of its Bid/RfP, including cost of presentation for the purposes of clarification of the bid, if so desired by the CESL. CESL will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

## 2.3 Language of Bids

The proposal prepared by the bidder/consortium of bidders and all correspondence and documents relating to the Bid/RfP exchanged by the bidder/consortium of bidders and CESL, shall be written in English language, provided that any printed literature furnished by the bidder/consortium of bidders may be written in another language so long the same is accompanied by an English translation in which case, for purposes of interpretation of the bid, the English translation shall govern.

## 2.4 Bid Security/Earnest Money Deposit (EMD) (To be submitted Offline before bid submission time)

Amount of Bid Security: Bid Security/Earnest Money deposit as mentioned in Section I is to be submitted.

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
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332fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
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The bidder shall furnish, as part of its bid, a bid security in a separate envelope (ITB Clause 2.1). The bid security shall, at the bidder's option, be in the form of a Banker's cheque, Demand Draft in favor of "Convergence Energy Services Limited" or a bank guarantee as per format in section VI. Bid security/EMD shall remain valid for a period of 45 days beyond the original bid validity period. If there is any extension in bid validity period, then CESL may ask the bidder to extend the validity of bid security.

Any bid not accompanied by an acceptable bid security, shall be rejected by CESL as being non-responsive and returned to the bidder without being opened. The bid security of a consortium must be in the name of all the partners in the consortium submitting the bid. If lead partner is mentioned in case of consortium, then bid security can be in the name of lead partner.

The bid securities of unsuccessful bidders will be returned as promptly as possible after the award is made to lowest evaluated technically acceptable bidder.

The bid security of the successful bidder will be returned when the bidder has signed the contract agreement, and has furnished the required performance security.

Please note that:

1. Following benefits will be given to Start ups and MSEs in this tender: -

All MSEs notified as per GFR 2017 clause no. 1.10.4 and as notified below shall be exempted from payment of Tender Document Fee and Bid Security/ Earnest Money Deposit. For claiming this exemption, MSE must, along with their offer, provide proof of their being registered as MSE (indicating the terminal validity date of their registration) for the item tendered, with any agency mentioned in the notification of Ministry of MSME, indicated below: -

- (a) District Industries Centers;
- (b) Khadi and Village Industries Commission;
- (c) Khadi and Village Industries Board;
- (d) Coir Board;
- (e) National Small Industries Corporation;
- (f) Directorate of Handicraft and Handloom;
- (g) Udyog Aadhar Memorandum issued by Ministry of MSE; or
- (h) Any other body specified by the Ministry of MSME.

1. For claiming the above exemption for Start-ups, a valid certificate of Start-up recognized by 'Department of Industrial Policy & Promotion (DIPP)' along with Business eligibility certificate or any other document issued by Govt/Recognized institute is required in support of product/ service item being tendered.
2. **Purchase Preference to MSEs:** Subject to meeting terms and conditions stated in the tender document including but not limiting to prequalification criteria, 25% of the total quantity of the tender is earmarked for MSEs registered with above mentioned agencies/bodies for the tendered item. Out of the 25% target of annual procurement from micro and small enterprises 4% & 3% shall be earmarked for procurement from micro and small enterprises owned by Scheduled Caste (SC) & Scheduled Tribe (ST) entrepreneurs & Women entrepreneurs respectively. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L1 price 4% & 3% sub targets so earmarked shall be met from other MSEs.

Type of tender	Price quoted by MSE	How the tender shall be finalized
Can be split	L1	Full Order on MSE subject to tender evaluation condition
Can be split	Not L1 but within L1+15%	25% order on MSE subject to matching L1 price
Cannot be split	L1	Full Order on MSE
Cannot be split	Not L1 but within L1+15%	Full Order on MSE subject to matching L1 price

- 2.1 Where the tendered quantity can be split:** In a bid, if prices quoted by participating Micro and Small Enterprises (MSEs) fall within the price band of L1+15%, such MSE shall also be allowed to supply 25% of the total tendered quantity by bringing down their prices to L1 prices. In case of more than one such MSE (L1+15%) the supply shall be shared proportionately (to tendered quantity), subject to the

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3f10b2151e6d0b9311a3e0d3c7d1b, O=D, C=IN  
352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
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Serial No. : 1467185



**2.2 Where the tendered quantity cannot be split/divide:** In case of tender item is non-split able or non-dividable, etc.: MSE quoting price within price band L1+15% may be awarded for full/complete supply of total tendered value to MSE, considering spirit of Public Procurement Policy, 2012 for enhancing the Govt. Procurement from MSE.

- a. In case of proprietary MSE, proprietor(s) shall be SC /ST
- b. In case of partnership MSE, The SC/ST partners shall be holding at least 51% shares in the enterprise.
- c. In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

- a. In case of proprietary MSE, proprietor(s) shall be Women
- b. In case of partnership MSE, The Women partners shall be holding at least 51% shares in the enterprise.
- c. In case of Private Limited Companies, at least 51% share shall be held by Women promoters.

3. For relaxing the PQ/QR conditions regarding prior turnover and prior experience for MSEs and start-ups, the prior turnover and prior experience will be as under subject to their meeting of quality and technical specifications: -

Category of tender	Past experience	Average Turn Over	Award Philosophy
Can be split as per tender conditions	25% of total experience as required for general bidders	25% of total ATO as required for general bidders	<p><b>(a)</b> If MSE is L1, order will be given as per split criteria in order of ranking as defined in the tender document which could be greater than 25%. The treatment for award will be same for MSE as general bidder.</p> <p><b>(b)</b> If MSE is other than L1 bidder, then the split criteria as per tender condition will be followed subject to price matching with L1 bidder in order of ranking treating the MSE bidder(s) at par with the general bidder. In such event also, order(s) going to MSE bidder(s) could be greater than 25%. If order(s) going to MSE bidder(s) is/are less than 25% after the matching of rates with L1 bidder by adopting the tender split criteria, then the clause of purchase preference for award to MSE bidder(s) up to 25% of the tendered quantity subject to matching L1 rates will be followed to make the total quantity going to MSE bidder(s) @ 25%; provided</p>

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3713021516, emailprotection@delhi.nic.in, O=D, ST=DELHI, OU=, C=IN, 4.1.7=11000  
ntNo/CESL/06/2022-23/abuses/GC-dry-lease/22/  
User ID :- a.bhattacharya  
E-mail :- a.bhattacharya

			<p>the rates are within L1+15% range. In such cases, remaining quantity after award of 25% to MSE bidder(s) shall be distributed amongst other eligible bidders in the pre-declared split ratio. If order(s) going to MSE bidder(s) is less than 25% and also MSE bidder(s) not meeting the condition of purchase preference clause i.e. quoted rates not within L1+15% range, then the order(s) quantity going to MSE bidder(s) in such cases shall be less than 25% which will be in line with the tender conditions.</p> <p>(c) If MSE is in the range of L1+15% and not getting the order after splitting and award is going to all non MSE bidder(s), then in such event 25% will be awarded to MSE bidder(s) who fall in the range of L1+15% subject to price matching and remaining 75% will be awarded as per the tender conditions to general bidders subject to matching L1 rates.</p> <p>(d) If after splitting MSE bidder(s) are getting order for more than or equal to 25%, then other MSE bidder(s) will not be awarded any work under purchase preference clause even if they fall in the range of L1+15%. However, they will be considered for award of work as any other general bidder as per tender conditions subject to matching of rates in order of ranking.</p> <p>(e) If MSE bidder is a single resultant vendor, then the quantity that would be considered for award to such bidder will be as defined in the pre-declared split ratio to L-1 bidder in the tender condition; provided the quoted rates of the bidder are found reasonable by CESL. However, CESL</p>
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332db3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
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Serial No : 1467185



			reserves the right to award 100% quantity to such MSE bidder provided the MSE bidder has got ATO which is corresponding to the cumulative applicability for 100% order value. In case, where ATO of the MSE bidder is less than what is required for 100% cumulative order value, then work may be awarded to such MSE bidder in proportion to the ATO. For exp: If ATO of MSE bidder is 56% of the cumulative ATO requirement of 100% order value, then maximum 56% work may be awarded to the MSE bidder. However, in such case CESL reserves the right to award appropriate quantity based on the existing requirement and such decision will be taken by CESL which will be binding on the bidder. CESL may take consent from the bidder for award of such quantity (which is over and above the quantity to be allotted to L-1 bidder as per pre-declared split ratio) before award.
Cannot be split as per tender conditions	25% of total experience as required for general bidders	85% of total ATO as required for general bidders	<p>(a) If MSE is L1, 100% order will be given to MSE.</p> <p>(b) If MSE is within the range of L1 + 15%, 100% order will be given to MSE subject to price matching with L1 bidder.</p> <p>(c) If MSE is not L1 and not in range of L1 + 15%, no work will be given to MSE.</p>

4. Start-ups are also covered under 25% purchase preference from procurement basket of MSEs as defined in point (3) above, provided that participating Start-ups submit all the relevant documents pertaining to MSEs as defined in point (1) above and documents for start-ups as defined in point (2) above.

# whereas, startup means an entity, incorporated or registered in India:

- i Not prior to seven years, however for Biotechnology Startups not prior to ten years,
- ii With annual turnover not exceeding INR 25 crore in any preceding financial year, and
- iii Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation
- iv Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence. Provided also that an entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 7 years and for biotechnology startups 10 years from the date of incorporation/ registration.

Note: For Start-up firms, Gazette Notifications dated: 17-Feb-2016, G.S.R. 180 (E), and subsequently issued notifications will be considered.

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 332b3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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NOTES: -

- a) In case where tender quantity can be split and MSE bidder is already getting order more than 25% of the tender value, no additional purchase preference is required to be given in that tender.
- b) In case MSE bidder is already getting for less than 25% of the tender quantity, purchase preference to this and other MSE vendor (together) shall be given only up to the differential quantity to make total as 25% to MSE vendor subject to L1+15% and price matching.
- c) Public Procurement policy is meant for procurement of goods produced and services rendered by Micro and Small Enterprises. The preference to MSEs is not applicable for works contracts where supply of goods not produced by MSEs is also involved.
- d) The eligibility of MSE bidders for any other benefits/relaxations for MSE bidders indicated in Tender documents shall be as indicated in the above "Tender conditions for Benefits/Preference for Micro & Small Enterprises (MSEs)."
- e) If bidder submits EMD/bid security fees and also MSE certificate along with the offer, then the bidder will be treated as general bidder and no relaxation will be given to such bidders pertaining to MSE's.
- f) The registration certificate must be valid as on bid closing date of the tender. Bidder shall ensure validity of certificate in case bid closing date is extended. The MSEs who have applied for registration or renewal of registration with any of the above agencies/bodies, but have not obtained the valid certificate till the end date of bid submission, are not eligible for any exemption/preference and will not be considered. Such offers will be treated as offers received without EMD and out rightly rejected.
- g) Traders, resellers, distributors and agents will not be considered for availing benefits under PP Policy 2012 for MSEs.

## 2.5 Power of Attorney

Power of Attorney as attachment 3 in first envelope: A power of attorney duly authorized by a notary public, indicating that the person(s) signing the bid has/have the authority to sign the bid and thus the bid is binding upon the bidder during the full period of its validity in accordance with ITB clause 2.10.

## 2.6 Certificate Regarding Acceptance of Important Conditions

Certificate Regarding Acceptance of Important Conditions as attachment 4 is to be submitted in first envelope.

No deviation, other than mentioned in Deviation statement, is permitted by the CESL, to the provisions of the bidding documents listed in ITB sub-clause 4.6. The Bidders are advised that while making their bid proposals and quoting prices, these conditions may appropriately be taken into consideration. Bidders are required to furnish a certificate indicating their compliance to the provisions relating to the clauses listed in ITB sub-clause 4.6 in Attachment 4. Attachment 4 for acceptance of important conditions duly signed and stamped by the bidder is to be furnished in a separate sealed first envelope/Online. Any bid not accompanied by such certificate in a separate sealed first envelope/such certificate Online shall be rejected by the CESL and returned to the Bidder without being opened.

## 2.7 Deviations,

Deviations, if any, from the terms and conditions of bidding documents or technical specifications shall be listed only in Attachment 5 to the bid. The Bidder shall also provide the additional price, if any, for withdrawal of the deviations. However, the attention of the bidders is drawn to the provisions of ITB sub-clause 4.6 regarding the rejection of bids that are not substantially responsive to the requirements of the bidding documents.

Bidders may further note that except for the deviations listed in Attachment 5, the bid shall be deemed to comply with all the requirement in the bidding documents and the bidders shall be required to comply with all such requirements of bidding documents and technical specifications without any extra cost to the CESL irrespective of any mention to the contrary, anywhere else in the bid, failing which the bid security of the bidder may be forfeited.

At the time of award of contract, if so desired by the CESL, the bidder shall withdraw these deviations listed in Attachment-5 at the cost of withdrawal stated by him in his bid. In case the bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated in the bid, his bid will be rejected and bid security forfeited.

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Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
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## 2.8 Bid prices

Unless otherwise specified in the technical specifications, bidders shall quote for the entire facilities on a “single responsibility” basis such that the total bid price covers all the contractor’s obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation, survey cost, monitoring and verification cost and completion of the facilities including supply of mandatory spares or spares to be supplied during warranty (if any). This includes all requirements under the contractor’s responsibilities for testing, pre -commissioning and commissioning of the facilities and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the General Conditions of Contract and Technical Specification.

Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding documents. If a Bidder wishes to make a deviation to the provisions of the bidding documents, such deviations shall be listed in Attachment 5 of its bid. The bidder shall also provide the additional price, if any, for withdrawal of the deviations, pursuant to ITB sub-clause 2.7.

Bidders shall give a breakdown of the prices in the manner and detail called for in the price schedules.

## 2.9 Price Basis

Price basis of the price quoted shall be on F.O.R (Free on Road) destination basis for site. Price mentioned in the quotation must be firm. Hence prices in Letter of Award shall be firm and not subject to escalation till the execution of the complete order and its subsequent amendments accepted by the bidder even though the completion / execution of the order may take longer time than the delivery period specified and accepted in the Letter of Award.

Statutory variation in applicable taxes & duties (other than excise duty) shall only be on account of Employer in case bidder has shown the rates of present taxes in their bid and other prices quoted by the Bidder shall be fixed during the Bidder’s performance of the Contract and not subject to variation on any account. Even in case prices asked in Bid price Schedule are quoted as inclusive of taxes, tax rates shall be shown separately. Bidders shall quote all prices in Indian Rupees only.

## 2.10 Period of Validity of Bid

Bids shall remain valid for a period of 90 days after the closing date prescribed by the CESL for the receipt of bids. A bid valid for a shorter period may be rejected by the CESL as being non responsive. In exceptional circumstances, the CESL may solicit the bidder’s consent to an extension of the bid validity period. The request and response thereto shall be made in writing thro’ letters/ e-mails .If the bidder accepts to prolong the period of validity, the bid security/EMD shall also be suitably extended. A bidder may refuse the request for Bid Validity Extension without forfeiting its bid security. A bidder granting the request will not be required nor permitted to modify its bid.

## 2.11 Format and Signing of Bid

The original copy of the bid, consisting of the documents listed in ITB sub-clause 1.1 shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to bind the bidder to the contract. The authorization shall be indicated by written power of attorney accompanying the bid and submitted as Attachment 3 to the bid under ITB sub-clause 2.5. All pages of the bid, except for un-amended printed literature, shall be initialed by the person or persons signing the bid.

Any interlineations, erasures or overwriting shall only be valid if they are initialed by the signatory to the bid.

## 2.12 Contents of the RfP/Bid

The Bidder or consortium of bidders is expected to examine all instructions, forms, terms & conditions and scope of work in the RfP/bid documents. Failure to furnish all information required or submission of an RfP/bid document not substantially responsive to the RfP/bid document in every respect will be at the bidder’s risk and may result in the rejection of the RfP/bid.

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f140b2151/employee311a3e00c700b, ST=DELHI, OU=7.5.4.1=1000,  
3327b3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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CESL shall have the right to reject the proposal or terminate the contract, as the case may be, without any compensation to the tenderer & forfeiture of bid security/EMD/CPG.

## 2.17 Contact details of the Bidder or Consortium of bidders

Bidder or Consortium of bidders who wants to receive CESL's response to queries should give their contact details to CESL. The Bidder or Consortium of bidders should send their contact details in writing at the CESL's contact address.

## 2.18 Inspection / Checking / Testing

All materials / Equipment manufactured by the bidder/consortium of bidders against the Letter of Award shall be subject to inspection, check and/or test by the CESL or his authorized representative at all stages and place, before, during and after the manufacture. All these tests shall be carried out in the as per technical specifications and bidder shall submit the relevant test reports. If upon delivery the material / equipment does not meet the specification, the materials / equipment shall be rejected and returned to the bidder for repairs / modification etc. or for replacement. In such cases all expenses including the to-and-fro freight, repacking charges, any other costs etc. shall be to the account of the bidder.

## 2.19 Removal of Rejected Goods and Replacement

If upon delivery, whether inspected and approved earlier or otherwise, the material/equipment is not in conformity with the specification, the same shall be rejected by CESL or duly authorized representative and notification to this effect will be issued to the bidder normally within 7 days from the date of receipt of the material at the work/site/office.

The bidder shall arrange removal of the rejected items within 15 days from the date of notification. In the event, the bidder fails to lift the materials within the said 15 days, CESL shall be at liberty to dispose off such rejected items in any manner as it may deemed fit. All expenses incurred on storage, disposal etc. shall be recoverable from the bidder.

## 2.20 Access to Bidders Premises

CESL and/or its authorized representative shall be provided access to bidder and/or his sub- bidder's premises, at any time during the pendency of the Order, for expediting, inspection, checking, etc. of work, if it is felt by CESL.

## 2.21 Taxes, Levies and Duties

Prices of items shall be quoted as per instruction contained in SCC. However, in general, prices shall be inclusive of sales tax, transportation, insurance, levies, service tax and any other duties payable including entry tax/octroy etc, (wherever applicable) on FOR destination/site basis. All taxes and duties shall be clearly indicated. Bidder is to arrange on its own to deliver the material at site. No road permit is provided by CESL.

For hiring of consultant/consultancy work also service tax shall be quoted exclusive of basic price. However, rates of such taxes consider while preparing the offer should invariably be mention in the offer so that any variation in taxes (except excise duty) can be paid as actual.

## 2.22 Terms of Payment

The payment will be made by CESL to the bidder in accordance with the terms and conditions specified in section 4 of special conditions of contract of tender document/agreed upon during negotiation and reproduced in Letter of Award.

## 2.23 Delivery Schedule

Time will be the essence of order and no variation shall be permitted in the delivery time/delivery schedule mentioned in the order unless agreed by CESL without levy of LD. Tentative time schedule is enclosed in the RfP/ bid document. Delivery of the equipment/material described shall be deemed to constitute acceptance of this order and terms and conditions by the bidder at the price specified.

## 2.24 Source of Supply

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
301302151/employee@nita.co.in, O=DELHI, OU=7.5.4.17=1000  
3320374806285, E=a.bhattacharya@nita.co.in, C=IN  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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The bidder shall ensure that the indigenous capacity is utilized to the fullest extent possible in execution of this order. Where the imports are unavoidable, all such items shall be imported by the bidder in time against his own import license without affecting the contractual delivery schedule.

## 2.25 Patent Indemnity

Royalties and fees for patents covering material/equipment or processes used in executing the work shall be to the account of the bidder. The bidder shall satisfy all demands that may be made at any time for such royalties and fees and he alone shall be liable for damages, infringement and shall keep CESL indemnified in that regard in the event of any equipment/ material or part there of supplied by the bidder is involved in any suit or other proceedings held to constitute infringement and its used is enjoyed, the bidder shall, at his own expenses, either procure for CESL the right to continue the use of such equipment/material replace it with a non-infringing material / equipment or modify it so it become non- infringing.

Tenderer shall agree to indemnify the CESL or/and hold it/them harmless from against all claims, liability, loss, damage or expense including counsel fees arising from or by reasons of an action or claimed trade mark patent or copyright infringement or any litigation based thereon with respect to any part of the quoted items and such obligation shall survive acceptance of and payment for the items.

## 2.26. Force Majeure

Bidder shall not be considered in default if delay in delivery occurs due to causes beyond his control such as acts of God, natural calamities, civil wars, strikes, fire, frost, floods, riot. Only those causes which have duration of more than 7 days shall be considered cause of force/ calendar majeure. A notification to this effect duly certified by local chamber of commerce/ statutory authorities shall be given by the bidder to CESL by registered/speed post letter. In the event of delay due to such causes, the delivery schedule will be extended for a length of time equal to the period of force majeure or at the option of CESL, the order may be cancelled. Such cancellation, would be without any liability whatsoever on the part of CESL. In the event of such cancellation, the bidder shall refund any amount advanced or paid to the bidder by CESL and deliver back any materials issued to him by the Purchaser and release facilities, if any provided by the Purchaser.

## 2.27 Limitation of Liability

Except in cases of criminal negligence or willful misconduct, the Implementing Partner shall not be liable to the CESL, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Implementing Partner to pay liquidated damages to the CESL and the aggregate liability of the Implementing Partner to the CESL, 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 CESL with respect to patent infringement or as specified in SCC.

## 2.28 Statutory Compliance/ Certification regarding Cyber Security Products

A certificate (in the format at Attachment-13 of Section-6) is to be submitted by the bidders that the items offered meet the definition of domestically manufactured/produced Cyber Security Products as per MeitY notification vide File no. 1(10)/2017-CLES dt. 02.07.18. The above certificate shall be on Company's letterhead and signed by Statutory Auditor or Cost Auditor of the Company

## C. Submission of Bids

### 3.1 Sealing and Marking of Bids

The Bidder shall seal the original copy of the bid in envelope duly marking the envelopes as "ORIGINAL BID". All envelopes must be super-scribed with name of work, RfP No., envelope no., content of envelope and date and bid opening date. The envelopes shall then be sealed in an outer envelope which should also be super scribed with name of work, RfP/ bid document no./package no. and date and bid opening date.

### 3.2 Deadline for submission of bids

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f10b215176d0b0e9341a3e0d3c7d0b, ST=DELHI, OU=CESL, O=CESL,  
352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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Bids must be received by the CESL at the address specified as under and the bids will be opened at the same address as per timings stated in IFB and as repeated below.

CGM (Supply Chain Management),  
Convergence Energy Efficiency Limited,  
C/o Floor 2<sup>nd</sup>, Core 3  
Scope Complex, Lodhi Road,  
New Delhi-110003  
Email: abhattacharya@eesl.co.in

Date of submission of bids: As mentioned in Section I

Date of bid opening: As mentioned in Section I

Bids must be received at the address specified above but no later than the time and date stated as above. In the event of the specified date for submission of bids being declared a holiday for the CESL, the bids will be received up to the appointed time on the next working day.

The CESL may, at its discretion, extend this deadline for submission of bids by amending the bidding documents in accordance with ITB Sub-Clause 1.3, in which case all rights and obligations of CESL and bidders will thereafter be subject to the deadline as extended.

No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB Clause 2.10. Withdrawal of a bid during this interval may result in the bidder's forfeiture of its bid security, pursuant to ITB Sub-Clause 2.4.

### 3.3 Late Bids:

Any bid received by the CESL after the bid submission deadline prescribed by the CESL, pursuant to ITB Clause 3.1& 3.2, will be rejected and returned in unopened condition.

## D. Bid Opening and Evaluation

### 4.1 Bid Opening Process

The CESL will open all bids in the presence of bidders' representatives who choose to attend the opening at the time, on the date and at the place specified in the NIT. Bidders' representatives shall sign a format as proof of their attendance. In the event of the specified date for the opening of bids being declared a holiday for the CESL, the bids will be opened at the appointed time on the next working day.

Bidders' names, bid prices, discounts, the presence or absence of requisite bid security and other such details as the CESL, at its discretion, may consider appropriate, will be announced at the opening. Late bids pursuant to ITB clause 3.2, and/or bids not accompanied by the "Certificate regarding acceptance of important conditions" as per Attachment-4 in a separate sealed envelope pursuant to ITB sub-clause 2.6, and/or bids not accompanied by requisite bid security in a separate sealed envelope pursuant to ITB clause 2.4, will be rejected and returned unopened to the bidder.

Bids that are not opened and read out at bid opening will not be considered for further evaluation, regardless of the circumstances.

The CESL will prepare minutes of the bid opening.

### 4.2 Clarification on Bids

During bid evaluation, the CESL may, at its discretion, ask the bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted. The address for communication will be same as ITB clause 1.2.

### 4.3 Preliminary Examination of Bids.

The CESL will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3013002151/60000093011a, o=CESL, ou=DELHI, ou=2.5.4.17=11000  
3320b37480628d5, ou=CHIEF GENERAL MANAGER, o=ENERGY EFFICIENCY SE  
RVICES LIMITED, c=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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#### 4.4. Arithmetical errors rectification process

Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between sub totals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of errors, its bid will be rejected and the bid security will be forfeited in accordance with ITB Sub-Clause 2.4.

The CESL may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the bidder in Attachment 4 to its bid, and that does not prejudice or affect the relative ranking of any bidder as a result of the technical and commercial evaluation, pursuant to ITB clauses 4.7 and 4.8.

#### 4.5. Preliminary Evaluation

Prior to the detailed evaluation, the CESL will determine whether each bid is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionality's or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the bidding documents, the CESL's rights or the successful bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other bidders who are presenting substantially responsive bids.

#### 4.6. Acceptance of Important Condition

No deviation, whatsoever, is permitted by the CESL to the provisions relating to the following clauses (Important Conditions). Party is to submit the following as attachment 4 in envelope 1:

Governing Laws	-	Clause 7 of ITB
Settlement of Disputes	-	Clause 17 of ITB
Terms of payment	-	Clause 1.0 of SCC
Performance Security	-	Clause 5.9 of ITB
Taxes and Duties	-	Clause 8 of ITB
Completion Time Guarantee	-	Clause 9 of ITB
Defects Liability	-	Clause 10 of ITB
Functional Guarantee	-	Clause 11 of ITB
Patent Indemnity	-	Clause 2.25 of ITB
Limitations of Liability	-	Clause 2.27 of ITB
Statutory Compliance/ Certification regarding Cyber Security Products	-	Clause 2.28 of ITB
Project information, Estimation, Assumptions and conditions for Evaluation	-	As per Tables in price bid

Bidders are required to furnish a certificate as per Attachment 4, indicating their compliance to the provisions of the above clauses in a separate sealed envelope. In case the certificate as per Attachment-4 duly signed and stamped by the bidder, is not furnished along with the bid in a separate sealed envelope, the bid shall be rejected and returned to the bidder without being opened

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
30130b2151/60b0e93011a3e00c700b51f0d0f017=1000  
3320b37480628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

At the time of award of contract, if so desired by the CESL the bidder shall withdraw the deviations listed in attachment 5 at the cost of withdrawal stated by him, in his bid. In case the bidder does not withdraw the deviations proposed by him in attachment 5 to his bid, if any; at the cost of withdrawal stated in his bid, his bid will be rejected and security will be forfeited.

The CESL's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by the CESL, and may not subsequently be made responsive by the bidder by correction of the nonconformity.

#### 4.7. Technical Evaluation

The CESL will carry out a detailed evaluation of the bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the bidding documents. In order to reach such a determination, the CESL will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following factors:

- a) Overall completeness and compliance with the technical specifications and drawings; deviations from the technical specifications as identified in Attachment 5 to the bid; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness.
- b) Achievement of specified performance criteria by the facilities as per scope of work
- c) Type, quantity and long-term availability warranty spare parts and also mandatory and recommended spare parts and maintenance services
- d) Any other relevant factors, if any, listed in the tender document, or that the CESL deems necessary or prudent to take into consideration.

#### 4.8. Commercial Evaluation

The comparison shall be of the FOR site price of domestically manufactured plant and equipment including type test charges, if any and mandatory spares, warranty spares plus applicable sales tax & duties as well duties and taxes paid/payable on components and raw materials incorporated or to be incorporated in the plant and equipment including mandatory spares/warranty spares plus the cost of loading, unloading, local transportation, insurance covers, installation and commissioning, civil work other services required under the contract including service tax and surcharge, if any plus any survey cost, monitoring and verification cost, distribution cost, scrap disposal cost, annual maintenance cost, any services as per scope of work, administrative charges and statutory agencies cost including service tax and surcharge, if any. The CESL's comparison will also include the costs resulting from application of the evaluation procedures described in ITB sub-clause 4.9. However, the price of recommended spare parts or optional spares or services, if asked in the bid, shall not be considered for evaluation of bids.

The CESL's evaluation of a bid will take into account, in addition to the bid prices indicated in price schedules in section 4 along with the corrections pursuant to ITB sub-clause 4.3, the following costs and factors that will be added to each bidder's bid price in the evaluation using pricing information available to the CESL, in the manner and to the extent indicated in ITB sub-clause 4.9 and in the technical specifications:

- a) The cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the technical specifications as identified in Attachment 5 to the Bid.
- b) Compliance with the time schedule called for and evidenced as needed in a milestone schedule provided in the bid.
- c) The functional guarantees of the facilities offered as per scope of work.
- d) The extra cost of work, services, facilities etc, required to be provided by the CESL of third parties.

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
301302151/employee301302151/DELHI, O=D=11000  
332b3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

#### 4.9. Evaluations of Deviations:

Pursuant to ITB Sub-Clause 4.8, the following evaluation methods will be followed:

##### a) Technical and Commercial Deviations

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 5 to the bid will be used if necessary. If such a price is not given in Attachment-5, the CESL will make its own assessment of the cost of such a deviation for the purpose of ensuring fair comparison of bids.

##### b) Time schedule (program of performance)

The plant and equipment covered by this bidding are required to be transported/ shipped and installed, and the facilities are to be completed within the period as mentioned below.

Completion of all facilities/work: As per year/months in SSC.

The above date will be the effective date specified in the contract agreement. Bidders are required to base their prices on the time schedule or, where no time schedule is given, on the completion date(s) given above. No credit will be given for earlier completion.

The master network and the key milestone dates will be discussed with the successful bidder and agreed upon in pre-award discussion before issuance of Letter of Award. Engineering drawing and data submission schedule shall also be discussed and finalized before the issuance of Letter of Award.

After the Letter of Award, the contractor shall plan the sequence of work manufacture, supply, installation to meet the above stated dates of successful completion of facilities and shall ensure all work, manufacture, shop testing, inspection and shipment of the equipment in accordance with the required sequence.

##### c) Functional Guarantees of the facilities

Bidders shall state the functional guarantees (e.g. performance, efficiency, consumption) of the proposed facilities in response to the technical specifications. In case a minimum (or a maximum, as the case may be) level of functional guarantees is specified in the technical specifications for the bids to be considered responsive, bids offering plant and equipment with such functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

##### d) Work, services, facilities etc., to be provided by the CESL

Where bids include the undertaking of work or the provision of services or facilities by the CESL in excess of the provisions allowed for in the bidding documents, the CESL shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

#### 4.10. Illustrative Method of Evaluation

	Any Bidder (INR)
1. Quoted bid price without taxes and duties (After considering arithmetical errors)	
i) Ex works including Excise duty price including Type test Charges/Lab Test charges + inland transportation including inland Transit insurance etc. For equipment and spares	N1
ii) Prices for dismantling and/or installation	N2
iii) Prices for additional Warranty, if any	N3
iv) Total Price	N(N1+N2+N3)

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1f0b2151/employee@allahabad.org, OU=51 DELHI, O=P=11000  
3320b3748b628d5, E=a.bhattacharya@allahabad.org, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185



## 2. Taxes and Duties

i)	CST/VAT	T1
ii)	Service Tax	T2
iii)	Total	T(T1+T2)

## 3. Cost Compensation

i)	Technical Cost Compensation	TCC
ii)	Commercial Cost Compensation	CCC
iii)	Total	TCC+CCC

## 4. Adjustments for Functional Guarantees

X

## 5. Final Evaluated Bid Price

N+T+TCC+CCC+X

### 4.11. Contacting the Employer

Subject to ITB Clause 20, no Bidder shall contact the Employer on any matter relating to its bid, from the time of the opening of bids to the time the contract is awarded.

Information relating to the examination, evaluation and comparison of bids and recommendations for the award of contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid.

## E. Award of Contract

### 5.1. Post qualification

In the absence of pre-qualification, the CESL will determine to its satisfaction whether the bidder selected as having submitted the lowest evaluated responsive bid/or bidder giving highest return to CESL, as the case may be, as mentioned in special condition of contract is qualified to satisfactorily perform the contract in terms of the qualifying requirements stipulated in IFB/NIT and section 3.

The determination will take into account the bidder's financial, technical and production capabilities, in particular its contract, work in hand, future commitments and current litigation. It will be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder in RfP forms in section IV to the bid, as well as such other information as the CESL deems necessary and appropriate.

An affirmative determination will be a prerequisite for award of the contract to the bidder. A negative determination will result in rejection of the bidder's bid, in which event the CESL will proceed to the next lowest evaluated bid/next bid giving highest return to CESL to make a similar determination of that bidder's capabilities to perform satisfactorily.

The capabilities of the vendors and subcontractors proposed in section 3, if permitted, to the bid to be used by the lowest evaluated bidder or bidder giving highest return to CESL as per SCC will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subcontractor without any change to the bid price.

The Employer reserves the right to assess the capacity and capability of the bidder/ his collaborator to satisfactory execute the contract. Such assessment shall include but not be limited to the evaluation of adequacy of facilities, services, resources, design / engineering capability and financial capability

### 5.2. Award criteria

Subject to ITB Clause 5.5, the CESL will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and to be the lowest evaluated technically acceptable bid or bid offering highest return to CESL as the case may be as per tender documents and special conditions of contract, further provided that the Bidder is determined to be qualified to perform the contract satisfactorily.

Signature :-  
Subject: CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f130b215176c0b0e93d1a3e0a0c7d0b, ST=DELHI, OU=CESL, O=CESL,  
332fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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The mode of contracting with the Successful Bidder will be as per stipulation briefly indicated below:

- The above Contracts will contain a cross-fall breach clause specifying that breach of one Contract will constitute breach of the other Contract which will confer a right on the Employer to terminate the other Contract also at the risk and the cost of the Contractor

The CESL reserves the right to vary the quantity of any of the spares and maintenance equipment upto +/- 20% and/or delete any items of spares altogether at the time of Award of Contract. Successful bidder, on whom award is made, is to supply this quantity variation at same price and terms and conditions of contract.

CESL reserves the right to make minor additions/alterations/modifications to the quantity of the items to the extent of +/- 20% in the Letter of Award. The bidder shall supply such quantities also at the same rate as originally agreed to and incorporated in the Letter of Award. However CESL may increase this quantity, if required.

The CESL reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby assigning any reason thereof and incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the CESL's action.

Prior to the expiration of the period of bid validity, the CESL will notify the successful bidder in writing by issuing Letter of Intent or Letter of Award either through telefax/ scanned e-mail or through registered/speed post/couriered letter, that its bid has been accepted. The letter of award will constitute the formation of the contract. In case, bidder does not return the duplicate copy of LOA with duly signed and acceptance within 10 days, then the LOA will be deemed to be accepted by the successful bidder, on whom award is made.

Upon the successful bidder's furnishing of the performance security pursuant to ITB Clause 5.9, the CESL will promptly notify each unsuccessful bidder and will discharge its bid security.

## 5.7. Cancellation

CESL reserves the rights to cancel the order in the part or in full by giving one week advance notice thereby if-

- The bidder fails to comply with any of the terms of the order.
- The bidder becomes bankrupt or goes in to liquidation.
- The bidder makes general assignment for the benefit of the creditors and any receiver is appointed for the property owned by the bidder.

## 5.8. Modifications

This order constitutes an entire agreement between the parties hereto. Any modifications to this Order shall become binding only upon the same being confirmed in writing duly signed by both the parties.

### Signing the Contract Agreement

At the same time as the CESL notifies the successful Bidder that its bid has been accepted, the CESL will send the bidder the contract agreement provided in the bidding documents, incorporating all agreements between the parties.

Within twenty-one (21) days of receipt of the contract agreement, the successful bidder shall sign and date the contract agreement and return it to the CESL. Contract agreement will contain agreement on stamp paper, bid documents and bidder's offer etc.

## 5.9. Performance security

Within twenty-eight (28) days after receipt of the letter of award, the successful bidder shall furnish the performance security for three percent (03%) of the contract price or as specified in tender documents and in the form provided in the section "Forms and Procedures" of the bidding documents or in another form acceptable to the CESL.

In case Joint Deed(s) of Undertaking by the Contractor along with his associate(s)/collaborator(s) form part of the Contract, then, unconditional Bank Guarantee(s) from such associate(s)/collaborator(s) for amount(s) specified in Bid

Failure of the successful Bidder to comply with the requirements of ITB Clause 5.7 or Clause 5.8 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the CESL may make the award to the next lowest evaluated bidder or call for new bids.

## 5.10. Corrupt or Fraudulent practices:

The CESL requires that bidders observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the CESL: defines, for the purposes of this provision, the terms set forth below as follows:

a. i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

ii) "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;

b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract of the CESL.

## 5.11 Ineligibility for Future Tenders

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f130b21516e0b0e93d1a3e0a0c7d0b, ST=DELHI, OU=CESL, O=CESL,  
352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467195

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Notwithstanding the provisions specified in ITB sub clause 2.4 and ITB sub clause 5.7 and 5.8, if a bidder after having been issued and letter of award, either does not sign the contract agreement pursuant to ITB clause 5.7 or does not submit an acceptable performance security pursuant to ITB clause 5.9, such bidder may be considered ineligible for participating in future tenders of CESL for a period as may be decided by the CESL.

Successful bidder is to submit interchangeability certificate for its product supplied for replacement during warranty and maintenance period and even when it is purchased from open market. In case due to change in technology, the supplied product is not available during warranty/ maintenance period than the improved version of product can be used in warranty/ maintenance period with same or improved technical parameters or the combination thereof after written communication of Engineer in Charge at same cost& terms and conditions. Successful Bidder, on whom letter of award has been placed, has also to confirm that the prices of improved version of product is not lesser than the original product or its parts in comparison.

Note: Special Terms and Conditions will prevail upon the instruction to Bidders.

## 6.0 Liquidated Damages

In case of any delay in the execution of the order beyond the stipulated time schedule including any extension permitted in writing, CESL reserves the right to recover from the bidder a sum equivalent to 0.5% of the value of the delayed equipment installation/unexecuted portion of work for each week of delay and part thereof subject to a maximum of 5% of the total value of the contract.

Alternatively, CESL reserves the right to purchase and distribute equipment/ material from elsewhere at the sole risk at the cost of successful bidder/contractor and recover all such extra cost incurred by CESL in procuring the material from resources available including EMD/Bid Security/encashment of Bank Guarantee or any other sources etc. Further, if any extra cost is incurred by CESL due to delay in work completion by the party beyond the completion time as per P.O./L.O.A., the same shall also be recovered from party's invoice/EMD/BGs etc.

Alternatively, CESL may cancel the order completely or partly without prejudice to his right under the alternatives mentioned above.

## 7.0 Governing Law

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.

## 8.0 Tax and Duties

8.1 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.

8.2 Notwithstanding above Sub-Clause 8.1 above, the CESL 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 CESL 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 CESL and the Implementing Partner, if imposed on the Plant and Equipment including Type Test and Mandatory Spares manufactured within the CESL'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) dispatch.

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 CESL.

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1302151/employee311a3e00c5/dlr\_51/DELHI, O=D/CS-4/1/1000  
332fb3/48b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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8.3 If any tax exemptions, reductions, allowances or privileges is available to the Implementing Partner in the country where the Site is located, the CESL shall use its best endeavors to enable the Implementing Partner to benefit from any such tax savings to the maximum allowable extent.

8.4 For the purpose of the Contract, it is agreed that the Contract Price specified in 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 Sub-Clause 8.4). 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. However, these adjustments would be restricted to direct transactions between the CESL 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 dispatched directly from sub-vendor's works to site.

## 9.0 Completion Time Guarantee:

If the Successful bidder, on whom award is made/Implementing Partner/Consultant fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under ITB Clause 2.23, the Successful bidder, on whom award is made/Implementing Partner/Consultant shall pay to the CESL 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 CESL may consider termination of the Contract.

Such payment shall completely satisfy the Successful bidder, on whom award is made/Implementing Partner/Consultant obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under ITB Clause 2.23. The Implementing Partner shall have no further liability whatsoever to the CESL in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Successful bidder, on whom award is made/Implementing Partner/Consultant from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Implementing Partner under the Contract.

## 10.0 Defect Liability

10.1 The Successful bidder, on whom award is made/Implementing Partner/Consultant 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, wherever applicable.

10.2 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 CESL 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 defector of any damage to the Facilities arising out of or resulting from any of the following causes:

- Improper operation or maintenance of the Facilities by the CESL
- Operation of the Facilities outside specifications provided in the Contract.
- Normal wear and tear.

Signature :-  
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301302151/cn=ashim bhattacharya/dn=c, o=CESL, ou=DELHI, ou=7.5.4.17=1000,  
332b3748b628d5, ou=CHIEF GENERAL MANAGER, o=ENERGY EFFICIENCY SE  
VICES LIMITED, c=IN  
User ID : a.bhattacharya  
Serial No : 1467185

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10.3 The CESL shall give the Successful bidder, on whom award is made/Implementing Partner a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The CESL shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

10.4 The CESL shall afford the Implementing Partner all necessary access to the Facilities and the Site to enable the Implementing Partner to perform its obligations.

The Implementing Partner may, with the consent of the CESL, 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.

10.5 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 CESL 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 CESL and the Implementing Partner for the original equipment/part of the Facilities.

10.6 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 CESL may, following notice to the Implementing Partner, proceed to do such work, and the reasonable costs incurred by the CESL in connection therewith shall be paid to the CESL by the Implementing Partner or may be deducted by the CESL from any monies due to the Implementing Partner or claimed under the Performance Security.

10.7 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 CESL 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.

10.8 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 ITB Clause 10.2 or as specified in SCC.

## 11.0 Functional Guarantees

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

11.2 If, for reasons attributable to the Implementing Partner, the guaranteed level of the Functional Guarantees specified in 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 CESL upon completion of the necessary changes, modifications and/or additions, and shall seek the CESL's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the CESL may at its option, either

- Reject the Equipment and recover the payments already made, or
- Terminate the Contract and recover the payments already made, or
- Accept the equipment after levy of liquidated damages in accordance with the provisions specified in the Contract Agreement.

## 12.0 Inspections and Tests

12.1. Inspection of Goods: The Employer or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Employer. (SCC and the Technical Specifications shall specify what inspections and tests the Employer requires and where they

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352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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12.9 It shall be the obligation of the Contractor to train and familiarize the designated person by the Employer in regard to the operation manual and drawings.

15.3 make such changes, modifications, and/or additions to the Goods or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with SCC Clause 2;  
OR

15.4 pay liquidated damages to the Employer with respect to the failure to meet the contractual guarantees.

15.5 The Employer shall notify the Contractor in writing of any claims arising under this warranty.

15.6 Upon receipt of such notice, the Contractor shall, within the period of 15 days and with all reasonable speed, repair or replace the defective Goods or parts thereof, free of cost at the ultimate destination. The Contractor shall take over the replaced parts/goods at the time of their replacement. No claim whatsoever shall lie on the Employer for the replaced parts/goods thereafter. In the event of any correction of defects or replacement of defective material during the Warranty period, the Warranty for the corrected or replaced material shall be extended to a further period.

15.7 If the Contractor, having been notified, fails to remedy the defect(s) within 15 days, the Employer may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Employer may have against the Contractor under the Contract. The performance guarantee and liquidated damaged be entitled to be recovered without prejudice to other rights of the Employer.

## 16.0. Termination for Default

16.1 The Employer may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Contractor, terminate the Contract in whole or part:

16.2 if the Contractor fails to deliver any or all of the Goods and complete the Work within the period(s) specified in the Contract within any extension thereof granted by the Employer pursuant to GCC Clause 20; or

16.3 if the Contractor fails to perform any other obligation(s)/duties under the Contract.

16.4 If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

16.5 In the event the Employer terminates the Contract in whole or in part, pursuant to GCC Clause 22.1, the Employer may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Contractor shall be liable to the Employer for any excess costs for such similar Goods or Services. However, the Contractor shall continue the performance of the Contract to the extent not terminated.

## 17.0. Settlement of Disputes

### 17.1 Adjudicator

17.1.1 If any dispute of any kind whatsoever shall arise between the CESL and the Implementing Partner in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities—whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the Adjudicator, with a copy to the other party.

17.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the CESL or the Implementing Partner within fifty-six (56) days of such reference, the decision shall become final and binding upon the CESL and the Implementing Partner. Any decision that has become final and binding shall be implemented by the parties forthwith.

17.1.3 Should the Adjudicator resign or die, or should the CESL and the Implementing Partner agree that the Adjudicator is not fulfilling its functions in accordance with the provisions of the Contract; another retired Judge of High Court/Supreme Court of India shall be jointly appointed by the CESL and the Implementing Partner as adjudicator under the Contract. Failing agreement between the two within twenty eight (28) days, the new retired judge of High Court/Supreme Court of India shall be appointed as the Adjudicator under the Contract at the request of either party by the Appointing Authority specified in the SCC. The adjudicator shall be paid fee plus reasonable expenditures incurred in the execution of its duties as adjudicator under the contract. This cost shall be divided equally between the CESL and the Implementing Partner.

### 17.2 Arbitration

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1302151/employee3111a3e0d3c7d1b, ST=DELHI, OU=CESL, O=CESL  
352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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Serial No : 1467185

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17.2.1 If either the CESL or the Implementing Partner is dissatisfied with the Adjudicator's decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to it, then either the CESL or the Implementing Partner may, within fifty-six (56) days of such reference, give notice to the other party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

17.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Sub-Clause 17.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after completion of the Facilities.

17.2.3 Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

17.2.4 The CESL and the Implementing Partner shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for arbitrator designated in the SCC.

17.2.5 If one party fails to appoint its arbitrator within forty-two (42) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator.

17.2.6 If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in ITB Clause 7 (Governing Law) and a substitute shall be appointed in the same manner as the original arbitrator.

17.2.7 Arbitration proceedings shall be conducted (i) in accordance with the rules of procedure designated in the SCC, (ii) in the place designated in the SCC, and (iii) in the language in which this Contract has been executed.

17.2.8 The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from such enforcement.

17.2.9 The arbitrator(s) shall give reasoned award.

17.3 Notwithstanding any reference to the Adjudicator or arbitration herein,

- the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree
- the CESL shall pay the Implementing Partner any monies due to the Implementing Partner.

## 18.0 MSME Bidder

Are you registered as MICRO, SMALL or MEDIUM Enterprise under MSMED Act 2006?

If YES,

A) Please indicate relevant category with copy of documentary proof issued by the concerned authorities:

B) Does your firm fall under MSE's owned by SC/ST Entrepreneurs. If so, enclose a copy of documentary evidence:

IN ADDITION TO ABOVE FOLLOWING WILL ALSO BE APPLICABLE FOR CONSULTANCY/PROJECT MANAGEMENT CONTRACT SERVICES.

## 19.0 THIRD-PARTY CONSULTANCY SERVICES

The Employer (CESL) is obliged, at its own expense, to make the necessary provision for the performance of those services by third parties commissioned by it, as described in Special Conditions of Contract

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1302151/employee311a3e0d37d1b, ST=DELHI, OU=CESL, O=CESL  
352fb3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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20.5.2 The Consultant shall specify and provide respective contact data to the Employer - for an individual at the Consultant's place of business who can be reached at any time in cases of emergency or crisis as well as a deputy of the Consultant. The Consultant shall notify the Employer without delay of any change of elected person or their contact data.

## 21.0 INDEPENDENCE OF THE CONSULTANT

21.1 The Consultant undertakes that neither the Consultant nor any enterprise associated with the Consultant shall bid for the Project as manufacturer, supplier, or building contractor. This prohibition also applies to any bidding for any further consulting services, insofar as such consulting services might lead to a restriction of competition or a conflict of interests. Any violation of this stipulation may lead to the immediate cancellation of this Contract and require the reimbursement of any and all costs incurred by the Employer up to the time of such violation as well as compensation for any and all losses and damages incurred by the Employer as a result of such cancellation.

## 22.0 COMMENCEMENT AND COMPLETION

22.1.1 The Consultant shall begin performing the Services on the prescribed date on which execution of the Contract shall take place, but not earlier than and without undue delay after the Contract has come into force. The Consultant shall deliver the Services in accordance with the time schedule in the bid [Time Schedule for the Performance of the Services defined in SCC], and shall complete the Services within the Completion Period, subject to any further extensions to this Contract accorded by employer.

22.1.2 In relation to optional services (if any), the Consultant shall commence delivery of the optional services not earlier than upon receipt of notification from the Employer,

22.1.3 Any change to the time schedule [Time Schedule for the Performance of the Services] due to a reasonable request by either party shall be mutually agreed upon in writing.

## 23.0 FORCE MAJEURE

In addition to Force Majeure defined in clause 2.26, following will also be applicable for consultancy work.

23.1 In the event of Force Majeure, the contractual obligations, as far as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one party to the Contract receives notification of the Force Majeure event from the other party within two weeks after its occurrence and both the parties agree for that to be a force majeure. Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded.

23.2 In the event of Force Majeure, the Consultant shall be entitled to an extension of the Contract equal to the delay caused by such Force Majeure. If the performance of the Services is rendered permanently impossible by the Force Majeure, both parties to this Contract shall be entitled to terminate the Contract on mutual agreement basis only.

23.3 In case of suspension or termination of the Contract due to Force Majeure, the Services performed up to the time of the Force Majeure and all necessary expenditure (which is evidenced) of the Consultant arising from the discontinuing of the Services shall be invoiced on the basis of contractual prices subject to employer agreement with the work. Neither party shall make any further claims.

## 24.0 SUSPENSIONS OR TERMINATION

24.1 The Employer may fully or partially suspend the Services or terminate this Contract after serving written notice of at least 30 days. In this event, the Consultant must immediately take all measures necessary to ensure that the Services are discontinued and the expenditure minimized. The Consultant shall hand over all reports, drafts and documents to be drawn up by the date in question to the Employer. In case of termination Force majeure shall apply mutatis mutandis.

24.2 If the Consultant fails to meet its contractual obligations without sufficient reason; in accordance with the Contract; or on time, the Employer may serve a notice upon the Consultant and request it to duly perform its Services. If the Consultant fails to remedy the performance deficit within a period of 21 days of having been called upon to do so by the Employer, the Employer shall be entitled, after this period has elapsed, to terminate the Contract by written notice.

24.3 If the termination of the Contract is due to a default on the part of the Consultant, the Consultant shall be entitled to demand the Agreed Remuneration for the Services performed until the date of termination but not yet remunerated. The Employer shall be entitled to demand compensation for the direct damages caused by the default.

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
301302151/employee@nita-services/DIR\_51/DELHI, O=D-5.4.17=11000  
3321b3748b628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

NIT/R/D Document No. CES/06/2022-23/euses/GC dry lease/222301013 Dated 04.01.2023

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## 25.0 REMUNERATION OF THE CONSULTANT

The Consultant shall receive the remuneration agreed in the Special Conditions and bid price schedule for performing the Services owed under this Contract, subject to the conditions listed therein and the conditions below.

## 26.0 TERMS OF PAYMENT

Except where otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

- (a) Advance payment, due within 30 days of award of Contract upon presentation of an invoice against equivalent advance bank guarantee, if mentioned in SCC.
- (b) Payments based on deliverables as per tender/SCC or as agreed upon in amendments.
- (c) The final payment shall be made after the Services have been performed in full and confirmation had been provided by the Employer to that Consultant.

## 27.0 METHOD OF PAYMENT

Payment shall be made according to the conditions set out in the Special Conditions or as agreed upon.

## 28.0 INSURANCE AGAINST LIABILITY AND DAMAGES

The Consultant is advised to take out insurance for the period of the Contract, on the terms specified in the Special Conditions, including, but not limited to, the following:

- a) Professional liability insurance;
- b) Personal liability insurance;
- c) Equipment insurance covering loss of or physical damage to all equipment acquired, used, provided or paid for by the Employer within the context of this Contract; and
- d) Motor vehicle third party liability insurance and motor vehicle comprehensive insurance for the vehicles acquired in connection with this Contract.

CESL 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 CESL shall pay for it.

In case of any contradiction in ITB and SCC, then SCC will prevail.

## LIST OF ACRONYMS

EMD: Earnest Money Deposit  
EoI: Expression of Interest  
SCC: Special Conditions of Contract  
INR: Indian Rupees  
IST: Indian Standard Time  
LED: Light Emitting Diodes  
LoI: Letter of Intent  
LoA: Letter of Acceptance  
MoU: Memorandum of Understanding  
MoP: Ministry of Power  
RECL: Rural Electrification Corporation Ltd  
CESL: Energy Efficiency Services Ltd  
CESL : Convergence Energy Services Ltd  
O&M: Operation & Maintenance  
RfP: Request for Proposal  
R&M: Repair & Maintenance  
SD: Security Deposit  
CPG: Contract Performance Guarantee  
FTL: Fluorescent Tube Light  
SVL: Sodium Vapor Lamp

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1302151/employee311a3e00c7000, ST=DELHI, OU=CESL, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467195



PMA: Project Management Agency

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9,  
30130b21517e60b0e9301a3e00ce7000, ST=DELHI, OU=C-17=1000,  
30130b21517e60b0e9301a3e00ce7000, ST=DELHI, OU=C-17=1000,  
3320b37480628d5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467185

NIT/B/D Document No. CES/06/2022-23/buses/CC dry lease/222301013 Dated 04.01.2023

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## SECTION-3

### GENERAL CONDITIONS OF CONTRACT (GCC)



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c  
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3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcdfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

GENERAL CONDITIONS CONTRACT (GCC)		
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Signature :- ASHIM BHATTACHARYA, SERIALNUMBER=850e5b7da925f3eab09fc82f9c3f1306215f76d9b6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
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 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
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Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c  
3f1306215f76d6b6e93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcdfc3cdb91a53d22468abb  
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RVICES LIMITED, C=IN  
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Serial No : 1467105

## 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 CESL 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 CESL, New Delhi/Noida and includes the legal successors or permitted assigns of the CESL.

“Project Manager” means the person appointed by the CESL 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 CESL.

“Contractor or Implementing Partner” means the person(s) whose bid to perform the Contract has been accepted by the CESL 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 CESL 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 or indirectly by the Implementing Partner, and includes its legal successors or permitted assigns.

“Adjudicator” means the person or persons named as such in the SCC to make a decision on or to settle any dispute or difference between the CESL and the Implementing Partner referred to him or her by the parties pursuant to GCC Sub-Clause 6.1 (Adjudicator) hereof.

“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 Con-tract.

“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 CESL'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.

“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/intial operation of the Facilities or any part thereof by the Implementing Partner, which operation is to be carried out by the Con tractor 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 CESL 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 CESL.

2.3 The Implementing Partner shall provide free of cost to the CESL 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 CESL 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 CESL’s country and the CESL 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 CESL and the successful bidder shall be as under :

- i) First Contract: For Ex-works (India) supply of plant and equipment and accessories by bidder 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.

All the above Contracts will contain a cross-fall breach clause specifying that breach of one Contract will constitute breach of the other Contracts which will confer a right on the Employer to terminate the other Contracts also at the risk and the cost of the contractor /Implementing Partner for the Project, for which awards have been made.

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 adjudicator: MD, CESL

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-ordinating activities.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9b91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

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 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 CESL to terminate the other Contract(s) also at the risk and the cost of the Implementing Partner.

### **3.7 Entire Agreement**

Subject to GCC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the CESL 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 not be deemed to be employees of the CESL, and 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 CESL.

### **3.10 Joint Venture 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 CESL 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 consent of the CESL.

### **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



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## 6.1 Adjudicator

6.1.1 If any dispute of any kind whatsoever shall arise between the CESL and the Implementing Partner in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities—whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the Adjudicator, with a copy to the other party.

6.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the CESL or the Implementing Partner within fifty-six (56) days of such reference, the decision shall become final and binding upon the CESL and the Implementing Partner. Any decision that has become final and binding shall be implemented by the parties forthwith.

6.1.3 Should the Adjudicator resign or die, or should the CESL and the Implementing Partner agree that the Adjudicator is not fulfilling its functions in accordance with the provisions of the Contract; another retired Judge of High Court/Supreme Court of India shall be jointly appointed by the CESL and the Implementing Partner as adjudicator under the Contract. Failing agreement between the two within twenty eight (28) days, the new retired judge of High Court/Supreme Court of India shall be appointed as the Adjudicator under the Contract at the request of either party by the Appointing Authority specified in the SCC. The adjudicator shall be paid fee plus reasonable expenditures incurred in the execution of its duties as adjudicator under the contract. This cost shall be divided equally between the CESL and the Implementing Partner.

## 6.2 Arbitration

6.2.1 If either the CESL or the Implementing Partner is dissatisfied with the Adjudicator's decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to it, then either the CESL or the Implementing Partner may, within fifty-six (56) days of such reference, give notice to the other party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

6.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub-Clause 6.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after completion of the Facilities.

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

6.2.3 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**

6.2.4 In all other cases, any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

6.2.5 The Employer and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for arbitrator designated in the SCC.

6.2.6 If one party fails to appoint its arbitrator within forty-two (42) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator.

6.2.7 If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in GCC Clause 5(Governing Law) and a substitute shall be appointed in the same manner as the original arbitrator.

6.2.8 Arbitration proceedings shall be conducted in accordance with The Arbitration and Conciliation Act, 1996 and its subsequent thereof. The venue of arbitration shall be New Delhi.

6.2.9 The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration panel, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from such enforcement.

6.2.10 The arbitrator(s) shall give reasoned award.

Notwithstanding any reference to the Adjudicator or arbitration herein,

the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree

the Employer shall pay the Contractor any monies due to the Contractor.

**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 CESL, as set forth in Appendix 6 (Scope of Works and Supply by the CESL) 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 CESL 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.



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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

7.3.1.3 The Implementing Partner will provide the CESL with the manufacturing drawings, catalogues, assembly drawings and any other document required by the CESL so as to enable the CESL to identify the recommended spares. Such details will be furnished to the CESL 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 CESL 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 CESL 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 CESL 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 CESL and placement of order for additional spares if the CESL 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 CESL 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 CESL, 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 CESL 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 CESL 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 CESL, two years in advance, with full manufacturing drawings, material specification and technical information including information on alternative equivalent makes required by the CESL 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 CESL 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 CESL 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 CESL may procure in accordance with above sub-clause. In case of emergency requirements of spares, the Con-tractor 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 CESL 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 CESL over the rates worked on the above basis. In the event of such risk purchase by the CESL, the purchases will be as per the Works and Procurement Policy of the CESL prevalent at the time of such purchases and the CESL 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 par-ties 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 CESL. Further, the provisions pertaining to long term availability of spares shall be ex-tended beyond 5 years applicability period mentioned hereinabove if so desired by the CESL 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 CESL 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 CESL to be available for continuous operation at different loads up to and including rated capacity. Such declaration by the CESL, 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 CESL unless a joint examination and analysis by the CESL 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.



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- b) For the item of spares ordered or to be ordered by the CESL for 3 years operational requirement of the plant, which with the written approval of the CESL, 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 CESL 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 CESL.

## 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.



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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) provided by the CESL, 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 CESL 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 CESL 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. CESL's Responsibilities

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

10.2 The CESL 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 CESL) to the Contract Agreement. The CESL 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 CESL 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 CESL to obtain them in the CESL's name, are necessary for the execution of the Contract (they include those required for the performance by both the Implementing Partner and the CESL of their respective obligations under the Contract), including those specified in Appendix 6 (Scope of Works and Supply by the CESL) to the Contract Agreement.

10.4 If requested by the Implementing Partner, the CESL 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 CESL and the Implementing Partner, the CESL 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 CESL) 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 CESL and the Contractor or Implementing Partner.

10.6 The CESL 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 CESL 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.

#### **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 CESL herein shall be deemed to constitute acceptance by the CESL 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**



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Serial No : 1467105

### 13.1 Issuance of Securities

The Implementing Partner shall provide the securities specified below in favour of the CESL 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 an 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 ten percent (10%) of the Contract Price of all the Contracts, with an initial validity up to ninety (90) days beyond the end of scheduled Defect Liability Period of the last equipment covered under the package. If the CESL accepts to enter 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 ten percent (10%) 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 ten percent (10%) of the value of Contract(s) entered into with the Assignee, for the due performance of Contract, with an initial 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.

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 CESL, 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 CESL 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 CESL 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 CESL and the Implementing Partner, if imposed on the Plant and Equipment including Type Test and Mandatory Spares manufactured within the CESL'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 CESL.

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 CESL 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 decreased, 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 CESL 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.



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RVICES LIMITED, C=IN  
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## D. Intellectual Property

### 15. Copyright

15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the CESL by the Implementing Partner here in shall remain vested in the Implementing Partner or, if they are furnished to the CESL 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 CESL shall however be free to reproduce all drawings, documents and other material furnished to the CESL for the purpose of the contract including, if required, for operation and maintenance of the facilities.

### 16. Confidential Information

16.1 The CESL 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 Sub Contractor or Implementing Partner(s) such documents, data and other information it receives from the CESL 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 Sub-Contractor or Implementing Partner(s) an undertaking of confidentiality similar to that imposed on the Implementing Partner under this GCC

#### Clause 16.

16.2 The CESL 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 CESL 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



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd95530d5a9acffe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## 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 CESL shall appoint and notify the Implementing Partner in writing of the name of the Project Manager. The CESL 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 CESL 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 CESL 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 CESL 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 CESL in writing to approve the person so appointed. If the CESL makes no objection to the appointment within fourteen (14) days, the Implementing Partner's Representative shall be deemed to have been approved. If the CESL 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 CESL 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 CESL's prior written consent, which shall not be unreasonably withheld. If the CESL 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 CESL (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 CESL and the Project



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
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3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



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 CESL 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 CESL may by notice to the Implementing Partner object to any representative or person employed by the Implementing Partner in the ex-ecution of the Contract who, in the reasonable opinion of the CESL, 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 CESL 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 Con-tractor 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 CESL 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 CESL 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 CESL 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 CESL 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 ex-tended period as may otherwise be agreed upon between the CESL 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 CESL 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 Sub Implementing 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 Sub Implementing Partners are listed against any such item, the Implementing Partner shall prepare a list of Sub Implementing 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 CESL for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the CESL



for any of the Sub Implementing 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 Sub Implementing 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 Sub Implementing Partners) to the Contract Agreement, the Implementing Partner may employ such Sub Implementing 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 CESL.

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 CESL, 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 CESL 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 Sub-Implementing 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 CESL 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 CESL has not given notice under GCC Sub-Clause 6.1.2 hereof, then the Implementing Partner shall be reimbursed by the CESL 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 CESL-Supplied Plant, Equipment, and Materials



Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9b91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

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

21.2.1 The CESL 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 CESL shall immediately remedy any shortage, defect or default, or the Implementing Partner shall, if practicable and possible, at the request of the CESL, remedy such shortage, defect or default at the CESL'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 default 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 CESL 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 CESL 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 CESL 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 CESL shall use its best endeavours 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 CESL 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 CESL'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 CESL, the CESL 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 CESL, 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 CESL.

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 CESL, the expense of rectifying the same shall be borne by the CESL.

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.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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- (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 CESL 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 endeavours to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Sub-Implementing Partners.
- (f) The Implementing Partner shall, in all dealings with its labor and the labor of its Sub-Implementing 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 Contractor,s 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 CESL 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 CESL 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 CESL, with a copy to the Project Manager, proposed Site regulations for the CESL'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 CESL or the Project Manager, give all reasonable opportunities for carrying out the work to any other Implementing Partners employed by





the CESL on or near the Site.

22.4.2 If the Implementing Partner, upon written request from the CESL 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 CESL 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 CESL 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 CESL may do or cause such work to be done as the CESL may determine is necessary in order to prevent damage to the Facilities. In such event the CESL 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 CESL is work that the Implementing Partner was liable to do at its own expense under the Contract, the reasonable costs incurred by the CESL in connection therewith shall be paid by the Implementing Partner to the CESL. Otherwise, the cost of such remedial work shall be borne by the CESL.

## 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 CESL as per contract agreement, the same shall be disposed by CESL and CESL will get the payment. Contractor or Implementing Partner will co-ordinate with CESL 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 CESL, 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 CESL's consent thereto, the CESL 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.



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23.2 The CESL and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the CESL 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 CESL 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 CESL 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 CESL and the Project Manager, at the CESL'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 CESL 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 CESL, 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 CESL in writing.

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

Unless otherwise specified in the Technical Specifications, the CESL shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre commissioning 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 CESL 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 CESL)/ Technical Specifications, have been provided by the CESL in accordance with GCC Sub-Clause 24.2, the Implementing Partner shall commence Pre commissioning of the Facilities or the relevant part thereof in preparation for Commissioning.

24.4 As soon as all works in respect of Pre commissioning 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,



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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 CESL 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 CESL'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 CESL will undertake such completion and deduct the costs thereof from any monies owing to the Implementing Partner.

24.8 Upon Completion, the CESL 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 CESL shall, unless otherwise specified in Appendix 6(Scope of Works and Supply by the CESL)/ 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 CESL 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 CESL and the Implementing Partner, the Implementing Partner shall be deemed to have fulfilled its obligations with respect to the Functional



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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 CESL 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 CESL, 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



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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 Partner 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 CESL 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 CESL 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 CESL 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 CESL.

## **27. Defect Liability**

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 CESL 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 CESL
- (b) operation of the Facilities outside specifications provided in the Contract.
- (c) Normal wear and tear.



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

- (a) any materials that are supplied by the CESL under GCC Sub- Clause 21.2 (CESL-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 CESL 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 CESL, except for the work executed by the CESL under GCC Sub-Clause 27.7.

27.4 The CESL 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 CESL shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

27.5 The CESL 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 CESL, 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 CESL 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 CESL 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 CESL may, following notice to the Implementing Partner, proceed to do such work, and the reasonable costs incurred by the CESL in connection therewith shall be paid to the CESL by the Implementing Partner or may be deducted by the CESL from any monies due to the Implementing Partner or claimed under the Performance Security.

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 CESL 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



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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 CESL upon completion of the necessary changes, modifications and/or additions, and shall seek the CESL's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the CESL 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 CESL 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 CESL 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. Patent Indemnity**

29.1 The Implementing Partner shall, subject to the CESL's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the CESL 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 CESL 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



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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 If any proceedings are brought or any claim is made against the CESL arising out of the matters referred to in GCC Sub-Clause 29.1, the CESL shall promptly give the Implementing Partner a notice thereof, and the Implementing Partner may at its own expense and in the CESL'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 CESL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the CESL shall be free to conduct the same on its own behalf. Unless the Implementing Partner has so failed to notify the CESL within the twenty-eight (28) day period, the CESL shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The CESL 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.

29.3 The CESL shall indemnify and hold harmless the Implementing Partner and its employees, officers and Sub-Implementing Partners 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 Implementing Partner 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 arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the CESL.

### **30. Limitation of Liability**

30.1 Except in cases of criminal negligence or wilful misconduct,

- (a) the Implementing Partner shall not be liable to the CESL, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Implementing Partner to pay liquidated damages to the CESL and
- (b) the aggregate liability of the Implementing Partner to the CESL, 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 CESL with respect to patent infringement or as specified in SCC.

### **G. Risk Distribution**



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### 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 CESL 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 Sub Implementing Partners in connection with the Contract shall remain with the Implementing Partner or its Sub Implementing 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 CESL 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 CESL 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 CESL and the Implementing Partner as per GCC Sub-Clause 3.6 or where the CESL 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 CESL in the form acceptable to CESL 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 CESL shall also issue a separate Authorisation Letter to the Implementing Partner to enable him to take physical delivery



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of plant, equipment and materials from the CESL.

## 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 Sub Implementing 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 CESL or any third party (other than a Sub Implementing Partner) authorized by the CESL 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 CESL, or any such matter for which the Implementing Partner has disclaimed responsibility herein,

the CESL 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 CESL 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 CESL in accordance with GCC Clause 39 (Change in the Facilities). If the CESL does not request the Implementing Partner in writing to make good any loss or damage to the Facilities thereby occasioned, 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 lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the CESL shall terminate the Contract pursuant to GCC Sub-Clause 42.1 (Termination for CESL'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 CESL 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 CESL, its Implementing Partners, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the CESL that might subject the Implementing Partner to liability under GCC Sub-Clause 33.1, the CESL shall promptly give the Implementing Partner a notice thereof and the Implementing Partner may at its own expense and in the CESL'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 CESL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the CESL shall be free to conduct the same on its own behalf. Unless the Implementing Partner has so failed to notify the CESL within the twenty-eight (28) day period, the CESL shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The CESL 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 CESL 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 CESL, 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 CESL, who should not Unreasonably withhold such approval.

#### **(a) Cargo Insurance During Transport**



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Covering loss or damage occurring while in transit from the Implementing Partner's or Sub Implementing 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 CESL'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 Sub Implementing 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) CESL'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 CESL 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 CESL's Liability Insurances, and the Implementing Partner's Sub Implementing 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 CESL'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 CESL 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 CESL by insurers prior to cancellation or material modification of a policy.

34.4 The Implementing Partner shall ensure that, where applicable, its Sub Implementing 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 Sub Implementing Partners are covered by the policies taken out by the Implementing Partner.



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34.5 The CESL 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 CESL 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 CESL shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Implementing Partner. If the CESL 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 CESL 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 CESL. 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 CESL, and the Implementing Partner shall have full recourse against the CESL for any and all liabilities of the CESL 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 CESL 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 CESL'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 CESL. With respect to insurance claims in which the Implementing Partner's interest is involved, the CESL 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 CESL.

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 CESL and the Implementing Partner will forth-with pay the CESL 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 CESL shall be paid to the extent of full claims settled by the underwriters.

## 35 Unforeseen Conditions



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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 CESL, 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 CESL 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 CESL, 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 CESL 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 CESL 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 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



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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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Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9-  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

- (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



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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.



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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)



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(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 : 1467105

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](http://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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Serial No : 1467105

## SECTION 4

### MOST IMPORTANT:

- (1) Any further information/notice/amendment, etc. in respect of this Tender shall be uploaded/made available only on CESL's E-Procurement portal/website, (<https://cesl.eproc.in>), and no separate information/notice shall be released either to any firm individually or through Press advertisement for the corrigendum/addendum/amendment, etc. The interested firms are, therefore, advised to regularly keep visiting and checking the e-Procurement portal/website for any further/forthcoming/last-minute information/notice/ development/amendment/clarification regarding the subject Tender.
- (2) The Bidders are advised to submit their bids well on time preferably one hour prior to bid closing time to cater to possible system slow down/requirement of assistance by bidders etc.. CESL shall not be responsible for late/non-submission of bids due to above scenario during the closing minutes of the tender, through every effort will be made to keep the portal fully functional at all times during the bidding process.
- (3) The Terms & Conditions Stipulated herein (i.e., in Section-4) supersedes any contradictory/similar/overlapping Terms & Conditions in any other Section/Part of the Tender.

**Name of Work: Selection of bus operator for Procurement, Supply & Maintenance of 4,675 Electric Buses and development of allied electric and civil infrastructure on Dry lease under National E-Bus Program (NEBP) Phase-II**

**NIT/Bid Document No.:** CESL/06/2022-23/ebuses/GC-dry-lease/222301013

**Dated** 04.01.2023

### Envelope-I should contain

1. 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/NEFT/RTGS drawn in favour of "Convergence Energy Services Limited", payable at New Delhi,  
OR  
Document/certificate in support of exemption from payment of Bidding Document Cost. In case, exemption is sought. (Note: Medium enterprises are not eligible for exemption.)
2. Letter of the bidder submitting the bid in the form as stipulated in the bid document i.e., as per **Bid Form as per Attachment-1** of Section-6, Forms & Procedures. (Scanned Copy to be uploaded at E-tendering portal).
3. 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:  
**Bid Security Fee/Earnest Money Deposit** as **Attachment-2** by Banker's Cheque / Demand Draft /Insurance Surety Bonds drawn in favor of "Convergence Energy Services Limited"  
Or  
in the form of Bank Guarantee as per prescribed format in section 6.  
Or  
Document/certificate in support of exemption from payment of Bid Security Fee/Earnest Money Deposit. In case, exemption is sought. (Note: Medium enterprises are not eligible for exemption.)
4. Notarized **Power of attorney to sign** the bid on Stamp Paper as **Attachment-3** of Section-6, Forms & Procedure. Bidders to use their own format. (Scanned Copy to be uploaded at E-tendering portal).



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3320b37d8b6c8c00=CONEG ENERGY SERVICES LIMITED, CN=ENERGY EFFICIENCY SE  
User ID : a.bhattacharya  
Page No : 1467105

**NIT/Bid Document No.:** CESL/06/2022-23/ebuses/GC-dry-lease/222301013  
**Dated** 04.01.2023

**SECTION-4**  
**(IFB)**

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5. **Certificate regarding acceptance of important terms and conditions** as per ITB clause 4.6 as **Attachment-4** of Section-6, Forms & Procedure. (Scanned Copy to be uploaded at e-tendering portal)
6. **Form of acceptance of EESL's fraud prevention policy and declaration** as per **Attachment- 7** of Section-6, Forms & Procedure. (Scanned Copy to be uploaded at E-tendering portal).
7. **Proforma of Letter of Undertaking** as per Attachment-8 of Section-6. (Scanned Copy to be uploaded at E-tendering portal).
8. **NEFT/RTGS Bank details** as per **Attachment-9** of Section-6, Forms and Procedure. (Scanned Copy to be uploaded at E-tendering portal).
9. **Self-Declaration of Quoted Lots** as per Attachment -10 (Scanned Copy to be uploaded at E-tendering portal).
10. **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. Bidder shall clearly mention tender reference number and date of signing the self-declaration. (Scanned Copy to be uploaded at E-tendering portal).
11. Duly Filled **Compliance Matrix/ CHECK – LIST FOR BIDDERS** as per **Attachment-12** of Section - 6, Forms & Procedure. (Scanned Copy to be uploaded at E-tendering portal).
12. **Self-Declaration regarding “Restrictions on procurement from a Bidder of a country which shares a land border with India”** as per **Attachment-13** of Section-6, Forms & Procedure (Scanned Copy to be uploaded while submitting application online on E-tendering portal).
13. **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. Bidder shall clearly mention tender reference number and date of signing the self-declaration (Scanned Copy to be uploaded at E-tendering portal).
14. **Undertaking** on all counts to be provided by the Bidder, including requesting **to disclose anything related that is under litigation of subjudice.** (Scanned Copy to be uploaded at E-tendering portal).
15. Certificate regarding **Declaration of Local Content** as per **Attachment-14** of Section-6, Forms & Procedure. (Scanned Copy to be uploaded at E-tendering portal).
16. Certificate Regarding **Compliance of Meity Notification** Vide File No. 1(10)/2017-Cles Dt. 02.07.18 as per **Attachment-15** of Section-6, Forms & procedures Duly filled Signed by authorized signatory. (Scanned Copy to be uploaded at E-tendering portal).
17. **Self-Declaration regarding not being debarred / blacklisted from any GoI agency** at the time of bid submission and/or until such time financial bid is opened or until such time LoAs are issued. (Scanned Copy to be uploaded at E-tendering portal).
18. Self-Attested & duly filled **Check List to Envelope –I** as per **Attachment-E1** of Section - 6, Forms & Procedure. (Scanned Copy to be uploaded at E-tendering portal).
19. **PMC cost** as per clause C (f) of Vol. I of Section-4 of tender document. (Scanned Copy to be uploaded at E-tendering portal).

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 User ID : a.bhattacharya  
 Date : 04/01/2023  
 Time : 14:67:105

**MT/Bid Document No. : CESL/06/2022-23/ebuses/GC-dry-lease/222301013**  
**Dated 04.01.2023**

**SECTION-4**  
**(IFB)**

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**Envelope-II, i.e., Techno-Commercial Proposal of the bid should contain the following:**  
(Scanned Copy to be uploaded at E-tendering portal).

- i. **Deviation Statement** (as per **Attachment-5** of Section-6, Forms & procedures).

**NOTE:** CESL reserves the right to consider or disregard deviations, and reject bids in case of non-compliance. Bids containing deviations from or reservations to the Terms & Conditions and specifications mentioned in the Tender will be treated as non-responsive & will not be considered further.

- ii. Self-Attested copies of GST Certificate, PAN and Aadhar card.
- iii. Covering Letter of the bidder, enclosing Techno-commercial bid as indicated in bid documents, i.e., documentary evidences regarding bidder's eligibility and qualifications to perform the Contract, as required per the Eligibility Conditions/Criteria, Qualifying Requirements and Bid Evaluation Criteria. All the documents should be self-attested by the authorized representative of the bidder.
- iv. One complete set of the tender document along with all its subsequent amendments (if any, effected)}, duly signed and stamped on each page by the bidder.
- v. Self-Attested & duly filled **Check List to Envelope –II** as per **Attachment-E2** of Section - 6, Forms & Procedure. (Scanned Copy to be uploaded at E-tendering portal).

**Envelope-III should contain Price Bid (to be filled-up online)**

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.

- i. Price Bid Sheet Format is prescribed at ANNEXURE- D in the Tender document – only for illustration purpose (prices are to be filled on E-tender portal only).

**Opening & Further Processing of the Bids**

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

Documents found in Envelope-II shall be scrutinized by CESL w.r.t. the Qualifying Requirements and Bid Evaluation Criteria.

Envelope-III (Price Bid) shall be opened electronically subsequently, subject to acceptance of Techno-Commercial Bid. Price Bid opening date will be intimated to only those bidders, who are found technically & commercially acceptable by CESL. Price-Bid of the techno-commercially disqualified bidders will not be opened and the EMD submitted by them shall be returned on approval of the Competent Authority.

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. EMD of the unsuccessful bidders shall be returned after receiving approval of the Competent Authority for award of Contract(s). EMD of the successful bidders shall be returned only on receipt of the CPG by CESL as per the provision of the LOA/Contract (as the case may be).

For & on Behalf of CESL  
Contracts Department

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3320b37d8b9c8c1, OU=CHIEF, GENERAL MANAGER, N=FINANCIAL EFFICIENCY DE  
User ID : a.bhattacharya  
Phone No : 1467105

**MT/Bid Document No. : CESL/06/2022-23/euses/GC-dry-lease/222301013**  
Dated 04.01.2023

**SECTION-4  
(IFB)**

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**Volume 1 – Instructions to Bidders**

**Request for Proposal  
for  
Selection of Bus Contractor for  
Procurement, Supply and Maintenance of  
4675 Electric Buses and the Development of Allied  
Electric and Civil Infrastructure on a Dry Lease  
Basis under National E-Bus Program (NEBP) –  
Tender 2**

***THE TERMS AND CONDITIONS OF THIS SECTION (VOL 1)  
WILL PREVAIL IN CASE OF INCONSISTENCY WITH ANY  
OTHER PART OF THIS TENDER.***



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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## 1. Aim and Objectives

Convergence Energy Services Limited (CESL) aims to augment public sector bus fleet with a view to strengthening, modernizing and greening public transport in India. An increase in the number of ebuses on Indian roads will help to enhance economic development, local production, air pollution, GHG reductions and employment. Crucially, changing to eBuses will reduce fossil fuel import bills. To this end, CESL on behalf of State Transit Authorities (also referred to as Authorities or State Transport Corporations in this Tender), is floating a tender for “*Selection of Bus Contractor for Procurement, Supply and Maintenance of 4675 buses*”. Buses shall be fully built electric buses (eBuses) of 9m and 12m length and allied electrical & civil Infrastructure under Dry Lease Model (the “Project”).

## 2. Background

India is at the cusp of an e-mobility revolution. The Government of India (GoI) is moving towards accelerated adoption of EVs to cut down its fuel import bills, carbon emissions and air pollution. It has announced a target to reach 30% EV adoption by 2030.

Convergence Energy Services Limited (CESL), a 100% subsidiary of EESL recently discovered the lowest ever prices for the biggest ever tender of 5450 electric buses in 5 cities through a Grand Challenge method under the FAME subsidy program. The rates discovered are 31% lower than diesel and 18% lower than CNG without subsidy. This was achieved by aggregating demand and floating a unified tender with standardized parameters and contract terms.

Based on the success of Grand Challenge, CESL has been requested by NITI Aayog and MoRTH to scale up the model and to play the role of program manager to deploy 50,000 eBuses under a national Bus Program. The National Electric Bus Program (NEBP) will seek to aggregate demand from bus transport agencies and conduct tendering on an aggregated basis. CESL will also support the creation of infrastructure to operate 50,000 eBuses in a phased procurement manner across Indian cities.

This Tender is the result of demand aggregated by CESL through an Expression of Interest (EOI) floated by CESL inviting STUs to provide their demand. Participating Public Transport Agencies (PTAs) including State Road Transport Undertakings (SRTUs) have submitted their demand by DO No. Secttt/2924 dated 25.08.2022, TL7/843(3)/2022-23-MED Dated 20.12.22 and vide letter no. ML1/003748/22 on Dated-07.11.2022. 3 PTAs have expressed their demand for the States of Delhi, Telangana and Kerala. The agencies will be leasing eBuses under the NEBP under a unified tender with CESL as Program Manager. These letters are made available on the tendering site should Bidders wish to confirm actual demand.

Further, this Tender has been floated after CESL has conducted due diligence as per the EOI, and terms and conditions of the proposed dry lease model have been discussed with STUs.

### 2.1. About CESL

Convergence Energy Services Limited (CESL) is a 100% owned subsidiary of Energy Efficiency Services Limited (EESL), under the administration of Ministry of Power, Government of India headquartered at New Delhi. CESL focuses on electric mobility and carbon credits and is the implementing agency for a national target of 50,000 eBuses in India.



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Serial No : 1467105

### 3. Summary of Scope of Work

This RFP has been created for the deployment of 9m and 12m electric buses on a Dry Lease Model through the National Electric Bus Program. Dry Lease Agreement will be signed between the Selected Bidder and the participating Authority. The Dry lease Period for Lots with Type-I\* buses shall be 12 years and Type-II\* and Type-III\* buses shall be for 10 years.

Lot	Bus Type	Dry Lease Period
Type-I* buses		
Lot 1	12m Low Floor AC Bus	12 years
Lot 2	12m Low Floor Non-AC Bus	12 years
Lot 3	9m Standard Floor AC Bus	12 years
Type-II*buses		
Lot 4	12m Standard Floor Non-AC Bus	10 years
Type-III* buses		
Lot 5	12m Standard Floor Non-AC Bus	10 years

\*Type I, II and III definitions as per AIS: 052

#### A. Scope of Work of the Selected Bidder(s):

- a) The Bidder shall procure finance for, and at its sole cost and expense, the Procurement, Supply and Maintenance of the Buses as per the Procurement/Deployment Schedule provided hereto for providing the services in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the terms and conditions of this Agreement.
- b) Selected Bidder(s) will supply buses, conforming to the Specifications and Standards, in accordance with the provisions of this RFP, under Dry Lease model with a minimum fleet availability factor of 95% throughout the lease period.
- c) Bidder(s) shall Maintain the Buses in accordance with the terms and conditions of this Lease Agreement at their own cost.
- d) Selected Bidder(s) will be responsible for Maintenance of Buses, including engaging all manpower as may be required to be deployed by it for implementation of the Project dry lease model in accordance with the provisions of this RFP.
- e) Selected Bidder(s) will be responsible for providing driver training to a pool of drivers provided by the Authority. Additionally, the bidders(s) will undertake capacity building training and workshops for the Operations and Maintenance of the Buses and Maintenance Depots and other infrastructure. The cost of trainings and capacity building workshops shall be borne by the bidder(s). The Bidder must estimate training costs for a minimum of 5 workshops during the contract period.
- f) Selected Bidder(s) will be responsible for setting up of Bus Maintenance Facilities at depots and downstream infrastructure beyond HT metering level (6/11/22/33/66 KV) provided at the depot site by the Authority, including cost of charging equipment, required necessary transformer and other civil cost for installation of required charging infrastructure for day- to-day operations and maintenance of the buses. Separate metering at LT/HT level for ancillary load for administration and maintenance activities performed by the bidder and sub-metering for Authority related activities will be set up at each depot site.
- g) Selected Bidder shall maintain eBuses with a minimum of 25% women staff at the depots and 25% women



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Serial No : 1467105

workforce at the plants. Bidder shall ensure appropriate safety conditions to enable this. Bidders may work with the STCs to encourage women drivers wherever possible.

- h)** Dry Lease bids to be exclusive of electricity cost. For absolute clarity, the Authority will be responsible for payment of electricity charges for the operation of buses. The cost of any electricity consumed on account of the use of any other equipment, plant and machinery at the Maintenance Depot (apart from the Charging Infrastructure) shall be payable by the Bidder.
- i)** The cost of any electricity consumed on account of (i) charging of the Buses requiring electricity in excess of the Allowed Power Consumption; (ii) the use of any other equipment, plant and machinery at the Maintenance Depot (apart from the Charging Infrastructure); and (iii) the Operations and Maintenance of the Maintenance Depot, shall be payable by the Bidder.
- j)** Selected Bidder(s) shall set up operations for parking and charging facilities at Depot or other locations as provided by the Authority as per the depot locations provided in the table below. The bidder shall procure, install and operate 180kW/240kW chargers for the dry lease period in the ratio of **1 charger per 3 buses**.
- k)** Charging shall be fast charging – and technical specifications are contained in Volume 3 of this Tender “*Technical Specifications for Type-I buses, Type- II buses and Type-III buses*”.
- l)** Bidder has to provide comprehensive insurance for buses and depot infrastructure.

#### Depot details for Delhi

#### For Type-I Buses

S. No	Depot Name	Type of buses	Bus Parking Capacity
1	Bawana	12m AC Low Floor	189
2	Ghumman Hera-I	12m AC Low Floor	137
3	Kharkhari Nahar	12m AC Low Floor	169
4	Dwarka -II	12m AC Low Floor	169
5	East Vinod Nagar	12m AC Low Floor	161
6	Rohini-III	12m AC Low Floor	169
7	Rohini-IV	12m AC Low Floor	150
8	Shadipur	12m AC Low Floor	157
9	Nangloi	12m AC Low Floor	150
10	IP Depot	12m AC Low Floor	195
11	Peeragarhi	12m AC Low Floor	117
12	Rajghat -I	12m AC Low Floor	195
13	Dichaon Kalan	12m AC Low Floor	117
14	Hari Nagar-I & II	12m AC Low Floor	493
15	Central Workshop Okhla	12m AC Low Floor	306
16	Vasant Vihar	12m AC Low Floor	404
17	GT Karnal Road	12m AC Low Floor	156
18	Kanjawala -I	12m AC Low Floor	150
19	Sarojini Nagar	12m AC Low Floor	130
20	Narela	12m AC Low Floor	156
21	Nand Nagri	12m AC Low Floor	156
22	Sriniwas Puri	12m AC Low Floor	169



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23	Dwarka -8	12m AC Low Floor	169
24	Gazipur	12m AC Low Floor	150
25	Keshopur	12m AC Low Floor	156
26	Ambedkar Nagar	12m AC Low Floor	169
27	Tehkhand	12m AC Low Floor	169

#### Depot Details for Kerala

S. No	Depot Name	Type of buses	No of buses
<b>Type-I Bus Services</b>			
1	Ernakulam	9m AC Standard Floor	50
2	Kozhikode	9m AC Standard Floor	25
3	Thrissur	9m AC Standard Floor	25
4	Palakkad	9m AC Standard Floor	25
<b>Type -II Bus Services</b>			
5	Ernakulam	12m Non-AC Standard Floor	50
6	Kozhikode	12m Non-AC Standard Floor	50
7	Trivandrum	12m Non-AC Standard Floor	200
<b>Type -III Bus Services</b>			
8	Kozhikode	12m Non-AC Standard Floor	100
9	Thrissur	12m Non-AC Standard Floor	25
10	Palakkad	12m Non-AC Standard Floor	25
11	Trivandrum	12m Non-AC Standard Floor	100
12	Ankamali	12m Non-AC Standard Floor	100
13	Kannur	12m Non-AC Standard Floor	25
14	Kollam	12m Non-AC Standard Floor	25
15	Malappuram	12m Non-AC Standard Floor	25
16	Thodupuzha	12m Non-AC Standard Floor	25

#### Depot Details for Telangana

S.No	Deport Name	Type Of Buses	Bus Parking Capacity
1	Falaknuma	12M Low Floor Non AC	125
2	Kacheguda	12M Low Floor Non AC	55
3	Mehdipatnam	12M Low Floor Non AC	45
4	Musheerabad	12M Low Floor Non AC	65
5	Rajendranagar	12M Low Floor Non AC	50
6	Bandlaguda	12M Low Floor Non AC	25
7	Dilsukhnagar	12M Low Floor Non AC	25
8	Hayatnagar-1	12M Low Floor Non AC	25
9	Hayatnagar-2	12M Low Floor Non AC	100
10	Ibrahimpattanam	12M Low Floor Non AC	100
11	Midhani	12M Low Floor Non AC	50



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12	HCU	12M Low Floor Non AC	125
13	Jeedimetla	12M Low Floor Non AC	30
14	Kukatpally	12M Low Floor Non AC	75
15	Medchal	12M Low Floor Non AC	110
16	Miyapur-2	12M Low Floor Non AC	60
17	Chengicherla	12M Low Floor Non AC	30
18	Cantonment	12M Low Floor Non AC	75
19	Hakimpet	12M Low Floor Non AC	105
20	Kushaiguda	12M Low Floor Non AC	40
21	Raniganj	12M Low Floor Non AC	85
22	Uppal	12M Low Floor Non AC	100

- m)** Bidder shall quantify its GHG emissions from eBus manufacturing for all three Scopes – 1, 2, and 3 as per the international defacto standard GHG Protocol. Bidder shall demonstrate efforts to reduce such emissions over the deployment period, including if necessary, purchase offsets. Should offsets be purchased, then they must use an internationally recognized methodology and ensure that the offset project is located in India.
- n)** Buses shall be enabled with a uniform ITMS that is integrated between STUs, CESL/Central Agency, vehicles and contractors. Bidders shall support integration with existing or newly installed ITMS by the respective Authority including testing, debugging and calibration of ITMS and its data.
- o)** The Selected Bidder(s) shall enter into a Management Services Agreement with CESL for the payment of service fees defined as Project Management Charges (PMC). Such Charges and Fees, together with their milestones are defined in scope of CESL clause (f).

#### B. Scope of Work of the Authority:

- a)** Authority shall provide adequate vacant land at the depot, free from encumbrances, along with road connectivity and right of way, upstream infrastructures including civil/electrical work and electric connection at available HT metering level (6/11/22/33 KV connection) and all requisite licence/permissions for set-up and operation of maintenance depots, charging infrastructure, and parking of buses. The Authority shall hand over peaceful and unencumbered possession of maintenance depots to the contractor.

The following minimum depot infrastructure shall be provided by Authority:

- Adequate parking area (minimum 150 sq.m per bus including basic depot requirements, such as parking, workshops, staff amenities, administrative block, etc.) for parking of buses allocated to the depot.
  - Depots with civil infrastructure facilities that include adequate space for office, security booths, medical facility and rest room for drivers, canteen, spare parts store, workshop sheds (for washing facilities, maintenance / service pits @ 2 pits per 50 buses). No additional charges use of depot space for parking of buses or use of facilities will be levied on the bidder.
  - Boundary wall: 2 m height with 0.6M railing.
  - Provision for sanitary installations, external services connections, internal electrical connections, power wiring, telephone conduits, computer conduits, streetlight, signage, and septic tank.
- b)** In case the Authority is unable to provide the above basic minimum specs, the Authority shall allow the same to be developed by the Bidder and its cost shall be reimbursed by the Authority on actuals. Further, at the discretion of



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the Authority, the Bidder shall be given additional time for the development of such basic depot infrastructure that is not provided by the Authority.

- c) The Authority shall pay the Contractor a monthly fee per bus (“Per bus Fee” or “PB Fee”) without any delay, calculated on the basis of the total number of buses supplied by the Contractor in fulfilment of the Contractors obligations under this Agreement.
- d) The Authority shall operate buses using in-house or contracted staff deployed as drivers and conductors on required routes and schedules in accordance with the provisions of the Agreement. The Authority shall reserve the right to modify operational routes and schedules based on their operational requirements.
- e) Authority shall implement and adopt a uniform ITMS that is integrated between STUs, CESL/Central Agency, vehicles and Contractors. If the ITMS is not ready at the time of signing of the Agreement, the Authority shall remain obligated to adopt a uniform ITMS whenever it is ready.
- f) Authority is liable for electricity consumption costs incurred for the operation of buses measured at the aggregated level of consumption at individual charging point subject to specified energy efficiency limit. The permissible power consumption shall be 0.85 kWh/km for 9 m non-AC buses; and 1.1 kWh/km for 12m non-AC buses; 1.3 kWh/km for 12m AC buses for Type-I buses, and 0.9 kWh/km for 12 m Type-II and Type-III buses, tried annually to account for seasonal variations. Reconciliation of electricity consumption over and above agreed efficiency level will be done annually between Bidder and STU.
- g) Authority shall provide depot space for minimum of 50<sup>1</sup> buses per depot, including opportunity charging infrastructure. In case depots are to be shared by more than one contractor, the Authority shall ensure segregated and adequate allocation of space for parking, setting up charging infrastructure and maintenance facilities to the bidders. Separate metering and/or submetering for activities of different contractors shall be set up by the Authority. In other words, the Authority shall find a mutually agreeable solution to manage the compliance obligations of all the selected Bidders.
- h) Authority shall inform CESL upon issuing of the Letter of Award – a template of which will be provided by CESL – and signing of the NEBP Dry Lease Agreement.
- i) The Authority shall on or before the Lot COD of the first Lot of Buses, deposit in the Escrow Account a sum equal to 2 (two) months’ estimated Fees payable to the Contractor as a revolving fund and for this purpose, the Authority shall replenish with its own resources, any deficit that may arise in maintaining such balance of funds. Details are provided in **Article 27** of Dry Lease Agreement. This requirement shall remain a Condition Precedent to the NEBP Dry lease Agreement.
- j) In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event. Asset redeployment shall be allowed while termination is in process.

### C. Scope of CESL

- a) CESL plays the role of a Program Manager for deploying electric buses under the NEBP.

Roles are as follows:

- i. Aggregate demand from STUs/Authorities through Expression of Interest (EoI) subscription
- ii. Detailed assessment of technical and commercial preparedness of the recipient cities



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- iii. Ensuring availability of adequate and appropriate land with access to utility infrastructure with the STUs which could be offered as depots
  - iv. Assisting STUs in review of existing bus operations and planned deployment of buses over next 10-15 years
  - v. Assessment of various route lengths and minimum annual assured kms
  - vi. Review existing eBus policies and various incentives to promote eBuses and charging facilities
  - vii. Assessment of financial strength of the STUs and ability to make regular payments
  - viii. Assessment of existing owning and operating cost of buses
  - ix. Design an appropriate mix of business models as needed by STCs/States: Based on the assessment of various cities, alternative models need to be analyzed including Gross Cost Contract (GCC), Dry Lease Model, Net Cost Contract (NCC), un-bundled (bus supply and operation by separate entities) and other appropriate model(s) to be finalized
  - x. Design of the NEBP program, its rules and allocation methods;
  - xi. Standardization of parameters and contract terms through consultation with subscribing STUs/ transit agencies
  - xii. Designing of robust payment security mechanism: Design robust payment security mechanism based on the assessment of the financial and credit strength of STUs
  - xiii. Increased competition: Designing conditions to increase the universe of eligible bidders through encouraging collaboration between OEMs, contractors, financiers; domestic and foreign financial institutions; infrastructure service companies and financial investors such that there is adequate competition;
  - xiv. Manage a consultative process: Facilitate consultations amongst stakeholders to evaluate alternative business models, arrive at common standard technical specifications and commercial terms to help design bankable and attractive structure
  - xv. Designing and implementing a transparent and fair competitive bid process
  - xvi. Capacity Building: As eBuses deployment on PPP is a new and innovative concept, it is important to develop institutional capacity of relevant STUs to help them understand and implement the contract efficiently.
  - xvii. Design and drafting of bid documents, agreements and other documentation.
  - xviii. Finalization of the technical specifications for buses suitable for the participating STUs
  - xix. Floating of RfP/tender to select bidders (OEM/ Contractors) for eBus deployment
  - xx. Discovery of GCC prices and communicate the same to STUs.
  - xxi. Assist STUs and the winning bidder to finalize the Dry Lease agreement
  - xxii. Design initiatives to increase employment, diversity of workforce
  - xxiii. Design initiatives to support India's ambitious Nationally Determined Contribution.
  - xxiv. Development of carbon credits
- b) CESL or an independent third party hired by CESL will be the centralized agency for prototype testing on category basis and city specific basis (in collaboration with participating Authorities) to ensure timely commencement of operations.
- c) CESL shall have the right to prepare and monetize the carbon assets from the NEBP. CESL shall register the project for carbon credits under Clean Development Mechanism (CDM) and/or voluntary market mechanisms as considered appropriate. CESL shall decide the preparation pathway most suited for availing carbon credits. The Authority shall extend support to CESL for the project preparation and registration under CDM and/or Voluntary market mechanisms. The revenues shall be split in equal parts (i.e. 50-50) between the Authority and the Bidder, less CESL registration and costs (including third party costs) incurred for preparation of the Carbon Asset payable to CESL, unless otherwise decided in writing. Authorities and/or Bidders shall inform CESL should they wish

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to **not** avail carbon credits.

- d) CESL role will end with the deployment of the last bus in the participating cities.
- e) CESL recognizes concerns from OEMs and potential investors/bidders, and industry, around the financial health of STUs/STCs and the resultant risk of payment default to the Bidder. In response and to support the development of an ecosystem for electric buses and public transport, CESL has submitted a proposal to MoRTH for the creation of a payment security fund to protect Bidders/contractors in the unlikely event that STCs default on their payments. At the time of writing this Tender, such payment security fund – called PRAPT or Payment Reserve for Advancing Public Transport – is under consideration by MoRTH and other agencies of the Government of India. Once finalized and operational, Bidders/Contractors may approach MoRTH or CESL since they would be eligible to benefit from PRAPT or any other payment security fund in place at the time.
- f) CESL will charge Project Management Charges (PMC) from the Bidder(s) in each lot. A PMC of ₹41,000 plus GST as applicable per bus shall be charged to the selected bidder (s). This includes an upfront fee of ₹11,000 plus GST as applicable per bus to be paid at the time of bid submission by all the bidders. Balance payment is required to be paid by the successful bidders as per the milestones defined in clause (f).

Activity	PMC Fee	Remarks
At the time of <b>Bid Submission</b> by all the bidders	Upfront ₹11,000 per bus + GST (18%)*	For unsuccessful Bidders, refund (including GST) will be made after deduction of 2% (plus GST) of the upfront payment. Refunds will be made no more than 90 days from the successful allocation of lots to winning bidders.

\*Bidders to submit PMC fee at the time of bid submission for maximum buses allocated to L1 in the particular lot.

All bidders shall pay the Upfront Fee before the submission of Bids through NEFT/RTGS only, as per the CESL banking details given below and include the Receipt copy in the Envelope-I. CESL will reject the bid in case of non-payment of upfront fee.

Account Name:	<b>Convergence Energy Services Limited</b>
Account Number:	<b>000705051799</b>
Account type:	<b>Current</b>
Bank Name & Branch:	<b>ICICI Bank, New Delhi Branch</b>
IFSC Code:	<b>ICIC0000007</b>
MICR Code:	<b>110229002</b>

- g) CESL will enter into a Management Services Agreement with the winning Bidder and will raise invoices for PMC charges to successful bidder as per the milestone defined below. GST will be extra as applicable.

Milestone	Activity completed	PMC fee	Remarks
1st	Upon execution or the issue of supply order/LoA from STU to selected bidder, whichever is earlier.	₹10,000 per bus +GST	1/3rd of the balance fees (₹30K) for the overall awarded quantity



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2nd	Upon signing of the Dry Lease Agreement (DLA) by STU with selected bidders the awarded quantity.	₹10,000 per bus +GST	1/3rd of the balance fees (₹30K) for the overall awarded quantity
3rd	Upon delivery of Buses as per Deployment plan (Payment to be made as per actual deployed quantity)*	₹10,000 per bus +GST	1/3rd of the balance fees (₹30K) for the overall awarded quantity

\*The 3rd milestone payment to be made upon buses gets deployed which may be multiple times in a FY.

Payment of invoices raised by the CESL shall be made within 30 days of invoicing date else an interest charges @ 18% p.a. will be charged on delayed payment from the due date.

For further details on each Party's scope, please refer to the Volume 2, containing the Dry Lease Agreement, to be signed between Authority and Selected Bidder(s).

- Scope of Selected Bidder(s): Please refer to the Dry Lease Agreement for detailed scope of work of the Selected Bidder(s)
- Scope of Authority: Please refer to the Dry Lease Agreement for detailed scope of work of the Authority.

#### 4. Brief Description of the bidding process

This Section 4 of RFP comprises of three volumes:

- Instructions to Bidders (Volume I)
- Dry Lease Agreement (Volume II)
- Technical Specifications (Volume III)

The Bidder is expected to examine all Instructions to Bidders, Data Sheet, Annexures, Standard and Specifications and Dry Lease Agreement in the RFP Document and to furnish with its Proposal all information or documentation as is required by the RFP Document.

The key points of bidding process are:

**Bidding process:** CESL has adopted a single-stage, three-envelope process (referred to as the "Bidding Process") for selection of the Bidder for award of the Project. Under this process, a Bid shall be invited under three envelopes. Along with the Bid, the Bidder shall pay to CESL a sum of INR 25,000/- towards bid-document fees. Eligibility in terms of MSE status, EMD/ Bid Documents fees submission etc will be first determined on the basis of Envelope 1 and qualification of the Bidder will be subsequently examined based on the details submitted under second envelope (Technical Bid) with respect to eligibility and qualifications criteria prescribed in Section 6 of this RFP. The "Bidder", which expression shall, unless repugnant to the context, include the members of the Consortium. The Financial Bid as the third envelope shall be opened of only for those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

#### **Evaluation and Allocation Process**

Bids will be evaluated based on the INR per bus monthly fee quoted by the Bidders for each lot. Quantities that may be



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awarded against each Lot are presented in the table below. Please refer to Clause 9 of this RFP for further details on award of contract and the evaluation process.

Lot	Bus Type	Number of buses	Award of Contract*
Type-I* buses			
Lot 1	12m Low Floor AC Bus	2400	L1:L2:L3 (50:30:20) =1200:720:480
Lot 2	12m Low Floor Non-AC Bus	1500	L1:L2:L3 (50:30:20) =750:450:300
Lot 3	9m Standard Floor AC Bus	125	L1-125
Type-II** buses			
Lot 4	12m Standard Floor Non-AC Bus	200	L1-200
Type-III*** buses			
Lot 5	12m Standard Floor Non-AC Bus	450	L1-450

**Due Diligence and site visit:** Bidders are encouraged to examine and familiarize themselves fully about the nature of assignment/project, local conditions, availability of necessary materials, applicable laws and regulations, and any other matters considered relevant by them before submitting the bid. Bidders are encouraged to visit the depots where possible. Any comments shall be sent in writing and will be addressed by CESL during the Pre-Bid Meeting.

**Acknowledgement by bidder:** It shall be deemed that by submitting the bid, bidder has made a complete and careful evaluation of RFP, received all relevant information from CESL, accepted risk of inadequacy, error or mistakes provided in RFP, acknowledged no conflict of interest, agreed to be bound by undertakings provided by it under and in terms hereof. CESL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

**Cost of bid:** Bidders shall be responsible for all the costs associated with the preparation of their eligibility, submission and participation in the bid process. CESL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the bidding process.

**Bid Currency:** All prices quoted in the Bid shall be quoted in Indian Rupee(s) (INR)

**Bid Validity:** Bid shall remain valid for a period of 180 days from bid due date. CESL reserves the right to reject a bid as non-responsive if such bid is valid for a period of less than bid validity period and CESL shall not be liable to send an intimation of any such rejection to such bidder.

In exceptional circumstances, prior to expiry of the original bid validity period, CESL may request the bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. A bidder may refuse the request without forfeiting their bid security. A bidder agreeing to the request will not be permitted to modify his bid but will be required to extend the validity of his bid security/EMD for the period of the extension, and in compliance with RFP terms in all respects. The price as per the bid shall be valid for the entire duration of the contract when awarded within the bid validity period.

**Number of Bids by Bidder:** No bidder, its associate or any of consortium members or their associates shall submit more than one bid submission and price bid per Lot pursuant to this RFP. Any bidder applying individually as single bidder or a part of a group of bidders applying as a consortium shall not be entitled to submit another bid either individually or



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as members of another consortium, directly or indirectly through an associate of any other bidder, as the case may be, in the same lot. If a bidder submits or participates in more than one bid in this manner, such bids shall be disqualified and rejected. The term “Associate(s)” is defined in this RFP. For clarity, a bidder can participate as a single bidder or part of a consortium in any other lot under the tender.

*The aforementioned clause would not restrict OEM(s) to have MoU(s) with multiple financial aggregators participating as single bidders in this bid.*

**Price Bid:** The bidder needs to meet the eligibility criteria provided to qualify in the RFP. Bidder would be required to quote the rate in INR per bus per month as per the contract conditions specified in this RFP. Price bid of the bidders fulfilling the eligibility and qualification criteria shall be opened. The Bidder with the lowest and responsive price bid as per clause 9, shall be considered as preferred bidder for award of the Project.

**Quotations:** Bidders should quote their rates in figures and numbers in the unit of Indian Rupees per kilometer, specified in the e-tender by carefully punching in the appropriate field. All prices quoted in the Bid shall be quoted in Indian Rupee(s) (INR). All taxes & charges necessary to affect the procurement and services for Maintenance of Electric Buses such as Goods & Service Tax (GST) etc. under the project should be included in the unit rate quoted by the bidder. **It** is presumed that the quoted rate is inclusive of GST and/or other charges stated above, and no variation whatsoever will be allowed subsequently.

At present, GST on stage carriage services of electric buses is NIL, and the unit rate quoted by the bidder is exclusive of GST. In case GST on the unit rate quoted is imposed after the bid submission date, the same shall be borne by the Authority in accordance with the applicable GST rates.

All Bids shall be submitted through the e-tendering system and Bidders shall take utmost care while quoting rates and other charges, if any. No subsequent variation in the rates quoted in the price bid will be allowed whatsoever. Issues such as error and misunderstandings, internet troubles and so on will not be entertained.

Bidders are advised to submit bids well in advance of the closing time.

## 5. Earnest Money Deposit (EMD) / Bid Security

- a) Bidder shall furnish a separate bid security for the captioned work. It shall be provided from scheduled banks only, in form of irrevocable bank guarantee/ account payee demand draft in favour of CESL payable at New Delhi.

Account Name: Convergence Energy Services Limited  
Account Number: 000705051799  
IFSC Code: ICIC00000007  
MICR Code: 110229002  
Customer ID: 578807920

- b) Bidders may submit EMD and Performance Security in the form of Insurance Surety Bonds.

<b>Lot Type</b>	<b>Number of buses</b>	<b>Amount in Crore (INR)</b>
<b>Lot-1 12m Low Floor AC Bus (Type-I)</b>	2400	<b>17.47</b>



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<b>Lot-2 12m Low Floor Non-AC Bus (Type-I)</b>	<b>1500</b>	<b>10.13</b>
<b>Lot-3 9m Standard Floor AC Bus (Type-I)</b>	<b>125</b>	<b>0.72</b>
<b>Lot-4 12m Standard Floor Non-AC Bus (Type-II)</b>	<b>200</b>	<b>1.68</b>
<b>Lot-5 12m Standard Floor Non-AC Bus (Type-III)</b>	<b>450</b>	<b>4.61</b>

- c) If a Bidder opts to bid for more than one Lot, then the EMD requirement for the Bidder would be the cumulative EMD requirement for all the lots being bid for.
- d) EMD of the successful bidder will be returned after furnishing the applicable Contract Performance Bank Guarantee (CPBG) to the STU, and the STU confirms the same to CESL and all dues to CESL are paid. CESL will hold the proportionate EMD to the extent of future PMC payments and the same will be released after clearing of PMC charges to CESL. If the EMD cannot be split, then the successful bidder needs to deposit the EMD/BG to CESL for the balance PMC recoverable amount from the successful bidder before release of the original EMD. The EMD will be forfeited by CESL if the dues are not cleared by the successful bidder as per due dates.
- e) EMD paid by the Bidder is liable to be forfeited if the Bidder withdraws or amends or impairs or derogates from the bid in any respect or engages in any fraudulent practices within the period of validity of bid after the bid due date.
- f) No interest will be payable by CESL on the Earnest Money Deposit.
- g) If the successful bidder fails to furnish the performance security as specified in the Dry Lease Agreement, then the Earnest Money deposit (EMD) shall be liable to be forfeited by CESL, in addition to any other actions as per terms and conditions stipulated in the bid-documents.
- h) EMD of all unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity date and latest by the 15th day of signing of the Dry Lease Agreement between the Authority and the Successful Bidder.
- i) The Bid Security of a Bidder shall be forfeited in the following events:
  - i. If a bidder withdraws/modifies/changes the bid during the period of bid validity
  - ii. In the case of a successful bidder, if the bidder fails to sign the Dry Lease Agreement for any default on their part within the stipulated time as specified by CESL.
  - iii. Successful bidder fails to furnish the required performance security within stipulated time as per the terms and conditions mentioned in RFP
  - iv. Successful bidder fails to furnish the required adjustable security deposit within stipulated time in accordance with RFP terms set forth herein.
  - v. In case of a fraudulent offer and involved in fraudulent or corrupt practice as per RFP terms.
  - vi. In the event, bidder, after the issue of communication of acceptance of his bid by CESL, fails/refuses to start/execute the work as herein the bidder shall be deemed to have abandoned the work/contract and such an act shall amount to and be construed as the bidder's calculated and willful breach of contract, the cost and consequences of which shall be to the sole account of the bidder and in such an event that CESL shall have full right to claim damages thereof in addition to the forfeiture of the Bid security deposited as per terms of



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this bid documents.

- vii. In case of occurring of any other event as may be specifically stated in the RFP document.
- j) Where Bidder is bidding with its holding company, then the EMD may be provided by the Bidder's holding company.
- k) EMD may be provided by more than one bank.
- m) If a bidder fails to submit EMD in its bid then it's bid shall be considered non-responsive and rejected and shall not be taken up for further evaluation.**

## 6. Qualification and Eligibility Criteria

SN	General Eligibility	Details of the Documents submitted by bidder(s)
(A)	(B)	(C)
G1	<p>Bidders may be any of the following types of entities:</p> <ul style="list-style-type: none"> <li>(i) OEMs or</li> <li>(ii) Operating subsidiary of OEM or</li> <li>(iii) Financial aggregator or Operator (that is not necessarily related to an OEM)</li> </ul> <p>An OEM or an Operating subsidy of an OEM can participate in the bid as a single bidder.</p> <p>Bidders may also be a Consortium of maximum 3 (three) members led by a lead bidder.</p> <p>In case the lead bidder is a Financial Aggregator or Operator, then the OEM or OEMs subsidiary shall enter into a tripartite agreement with the STU for the complete duration of the contract.</p> <p>The OEM is also required to cover all applicable warranties of battery and technologies for the entire duration of the contract.</p> <p>Name of consortium members to be indicated clearly in the consortium agreement (which is required to be submitted in the bid) including name of lead and non-lead members.</p>	<p>In the case of a Consortium, then a consortium agreement, clearly mentioning lead and non-lead members</p> <p>Self-declaration to be provided on letter head of lead bidder with sign and stamp from competent authority.</p>
G2	<p>The OEM (as single bidder or in consortium) shall be a registered bus manufacturer with bus manufacturing facilities in India under applicable laws</p>	<p>Self-declaration of Manufacturing Facility address and production capacity in India, Office Address,</p> <p><i>Self-declaration to be provided on letter head of company (OEM) with sign and stamp from competent authority</i></p> <p>License to Manufacture buses</p>



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	Bidder or/and all members of the Consortium must be either:	
G3	A company incorporated in India under or prior to the Companies Act, 1956 (as amended or re-enacted or restated, and including the Companies Act, 2013 as notified from time to time) OR	Copy of Certificate of Incorporation, Memorandum and Article of the association of the bidder should be submitted
	A Trust/Society/Financial Institute/Alternative Investment Fund (AIF) registered with competent authority i.e. Reserve Bank of India (as defined in Section 45I(c) of Chapter IIIB of the RBI Act, 1934) or Security Exchange Board of India (SEBI) OR	Copy of Registration certificate from RBI or under section 4A of the Companies Act 1956
	Similar International Financial Institutions registered with applicable regulators abroad but also registered / licensed to conduct business in India OR	In addition, GST number and PAN card for the FI must also be submitted.
	Partnership firm registered under the Indian Partnership Act OR	Copy of registered Partnership Deed should be submitted
	An LLP incorporated under Limited Liability Partnership Act, 2008/Companies Act 2013 OR	Copy of Certificate of Incorporation, and Registration Certificate of the bidder should be submitted
	A registered proprietary firm in India	Copy of sales tax/GST registration, EPF registration, Shops and Establishment Dept. registration certificate, as may be applicable, should be submitted
G4	The Bidder/s or its parent/subsidiary/sister concern, (any member of consortium) shall not have been blacklisted or barred from carrying out its business by any Regulator / Government Authority/Court of Law, or proved to have indulged in serious fraudulent practices by a Court of Law or an independent Commission of Inquiry in India or abroad at the time of due date of submission or at any stage during the bid evaluation process till the issuance of LoA.	A notarized certificate of non-blacklisted status in respect of the participating bidder/consortium members is required to be provided.
	OEM should have completed testing and certification requirement under Central Motor Vehicle Rules 1989 (CMVR) of at least one (1) of tendered product i.e. 7m, 9m or 12m Electric Bus (100% battery operated) from the designated testing center in India. i.e., CMVR type-approval, homologation certificate.  Additionally, it shall also provide any certification that it has obtained for its vehicles or parts tested at reputed institutes like Central Institute of Road Transport, Pune/Central Power Research Institute, Bangalore/ ARAI	Type-approval certificate and homologation certificate from a recognized testing agency (ARAI/ICAT/CIRT/ VRDE or other) of at least one model (mini, midi or standard) of electric buses at the time of bidding.  Homologation certificate of the buses to be deployed under this RFP shall be submitted at the time of delivery of



G5	or at any other Govt. recognized/reputed Institute/Laboratory.	buses to the respective STU/Authority.
G6	Provide certificate of compliance for indigenization of xEV parts of eBus as per details provided in clause 22.  Certification from approved testing agencies like ARAI/ICAT/CIRT etc. of against components/localization	Self-certification for compliance of indigenization to be provided at the time of bidding.  Final certificate complying with clause 22 as applicable to be submitted at the time of delivery of buses.

Only the Bids of the Bidder meeting above Eligibility Criteria shall be considered for assessment of next stage of assessment of Qualification Criteria.

SN	Financial Qualifications	Details of the Documents submitted by bidder(s)																		
(A)	(B)	(C)																		
F1	<p>Bidder should have Minimum Average Annual Turnover (MAAT), during the last 3 years ending on the relevant date. The financial years which will be considered are 2021-22, 2020-21, 2019- 20 should be equal to or more than the threshold defined below for each lot:</p> <table border="1"> <thead> <tr> <th>Lot</th><th>Bus Type</th><th>MAAT Requirement (INR Crore)</th></tr> </thead> <tbody> <tr> <td>Lot-1</td><td>12m Low Floor AC Bus</td><td>136.51</td></tr> <tr> <td>Lot-2</td><td>12m Low Floor Non-AC Bus</td><td>79.11</td></tr> <tr> <td>Lot-3</td><td>9m Standard Floor AC Bus</td><td>11.21</td></tr> <tr> <td>Lot-4</td><td>12m Standard Floor Non-AC Bus</td><td>26.21</td></tr> <tr> <td>Lot-5</td><td>12m Low Floor Non-AC Bus</td><td>72.09</td></tr> </tbody> </table> <p><i>Please note Minimum Average Annual Turnover (MAAT) is defined as the Revenue from Operations. In case of consortium, combined turnover of the consortium members will be considered.</i></p> <p><i>If the Bidder opts to bid for more than one Lot, then the MAAT requirement for the Bidder is the cumulative the</i></p>	Lot	Bus Type	MAAT Requirement (INR Crore)	Lot-1	12m Low Floor AC Bus	136.51	Lot-2	12m Low Floor Non-AC Bus	79.11	Lot-3	9m Standard Floor AC Bus	11.21	Lot-4	12m Standard Floor Non-AC Bus	26.21	Lot-5	12m Low Floor Non-AC Bus	72.09	Annual Report (audited balance sheet and profit & loss account of the relevant period i.e. the financials of last 3 years.
Lot	Bus Type	MAAT Requirement (INR Crore)																		
Lot-1	12m Low Floor AC Bus	136.51																		
Lot-2	12m Low Floor Non-AC Bus	79.11																		
Lot-3	9m Standard Floor AC Bus	11.21																		
Lot-4	12m Standard Floor Non-AC Bus	26.21																		
Lot-5	12m Low Floor Non-AC Bus	72.09																		



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	<p><i>MAAT requirement for all the Lots being bid for.</i></p> <p><i>Relaxation for Micro &amp; Small Enterprises (MSEs) in MAAT required provided as per policy.</i></p> <p><i>In case Audited Financial statement of FY 2021-22 is not available then Bidder may alternatively provide Audited Financial statements of FY 2018-19, FY-2019-20, FY-2020-21. In this case, Avg. ATO for the Financial year FY 2018-19, FY-2019-20, FY-2020-21 shall be considered.</i></p>	
F2	<p>(i) The net worth of the Bidder firm (manufacturer or principal of authorized representative) should not be negative on 'The Relevant Date' and also,</p> <p>(ii) should not have eroded by more than 30% (thirty percent) in the last three years, ending on 'The Relevant Date'.</p> <p>In case of a consortium, this condition is to be fulfilled by all the members individually.</p>	Annual Report (audited balance sheet and profit & loss account of the relevant period i.e. the financials of last 3 years.

*Aggregating the credentials of any Associate of the Bidder for the purpose of meeting the revenue/ATO shall be permitted.*

(A)	(B)	(C)
T1	<p><b>Manufacturing qualifications</b></p> <p>OEM/OEM subsidiary participating as a single bidder or as a member of a consortium should have manufactured and delivered at least 25 electric buses or 1000 CNG buses to date in India or abroad.</p>	<p><b>License of manufacturing buses</b></p> <p>Proof of sale (including no. of units sold, customer name and date of supply) and proof of delivery</p>

### 6.1. Associate (Parent / Subsidiary / Sister Concern) Criteria

In evaluating the Qualifications Criteria of the Bidder herein above, aggregating the financial and technical capability of any Associates of the Bidder for the purpose of meeting the respective Qualifications Criteria required of the Bidder shall be permitted.

For the purpose hereof, the word "Associate" shall mean, in relation to the Bidder, a firm which controls the Bidder (i.e. Parent/Holding Company) or is controlled by the Bidder (i.e. subsidiary), or is under the common control with the Bidder (i.e. sister concern).

1. As used here, the expression "control" means, with respect to bidding firm, which is a company,
  - i. the ownership of common shareholders, directly or indirectly (i.e., together with one or more of its subsidiaries/Holding companies), of at least 50% of the voting shares/shareholding of the firm in question,

OR

  - ii. the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their



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- shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
2. As used here, the expression “control” means, with respect to bidding firm, which is a partnership, the rights of common partners to at least 50% of the profits of the firm in question.
  3. In case the bidding firm is a Proprietorship, the expression “control” shall mean,
    - i. holding of at least 50% of the voting shares by the Proprietor in the company from which it is taking Associate credit and /or
    - ii. status as a Partner in the Partnership firm from which is taking credit with at least 50% share in the profits of such Partnership firm. (In the event of any confusion or dispute, the provisions of Companies Act 2013, appropriately applied in context, shall prevail)

Any claims of credit from Associate firm must be accompanied by a certificate by a registered chartered accountant clearly explaining how the Associate firm meets the above definition of the Associate firm.

## 7. Bidding Condition for Single bidder/Consortium and Formation of SPV

### 7.1. Single Bidder

If the Bid is by a Single Bidder, then the Bid needs to be presented by a registered Bus Manufacturer (Original Equipment Manufacturer for Buses (OEM) or Operating subsidiary of the OEM.

All Bidders must meet all the prescribed qualifications mentioned in this document. Sub-contracting specific tasks by Single Bidder to experienced / qualified sub-contractors is not restricted.

### 7.2. Consortium

Consortium is permitted to participate in bidding process. Maximum number of consortium members is limited to 3 (Three) members, with respective qualifications and role as provided for in bidding conditions for single bidders and consortiums.

- a) Any member can be the lead of a consortium. However, an OEM or OEM’s Operating Subsidiary to be a member of consortium to qualify.. The following consortium members are permitted.
  - i. OEM or OEM’s Operating Subsidiary
  - ii. Financial Aggregator
- b) An individual Bidder (OEM/OEM subsidiary/Financial Aggregator) cannot be represented more than once in the same Lot, either as a single bidder or part of a consortium. However, a bidder can participate independently as a single bidder or as part of a consortium in any other Lot.
- c) Bidders bidding as consortiums must clearly identify the lead member and non-lead member and their respective roles in the consortium agreement.
- d) In case the lead bidder is not the OEM/OEM’s subsidiary, the OEM/OEM’s subsidiary is required to stay in the contract for the complete duration of contract as mentioned in DLA. The OEM is also required to cover all applicable warranties of battery and technologies for the entire duration of the contract.
- e) If any member of the consortium wishes to be replaced, this may be permitted provided:
  - They are not an OEM or OEM Operating Subsidiary
  - They have received due consent from the relevant STU
- f) Exit of lead member from any consortium shall not be permitted at any stage
- g) The role and responsibility of any member must be commensurate with the technical/financial capabilities that



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such member is contributing towards meeting the qualification criteria. Each consortium member is liable to contribute resources in terms of knowledge, skills and trained manpower commensurate with its role and responsibilities during the agreement period.

### 7.3. Special Purpose Vehicle Company (SPV)

Where the Bidder is a single entity, they may choose (optional) to form an / multiple appropriate Special Purpose Vehicle(s), incorporated under the Indian Companies Act 2013 (the “SPV”), to execute the DLA and implement the Project. In the interest of clarity, multiple SPVs may be formed with a single STU. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- a. Members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have an equity share holding of at least 38% (thirty-eight per cent) of the paid up and subscribed equity of the SPV; the Lead Member shall hold equity share capital not less than 38% (thirty-eight per cent) until the end of the contract. The nomination(s) shall be supported by a Power of Attorney, signed by all the other members of the Consortium.
- b. The SPV shall at no time undertake or permit any Change in Ownership except in accordance with the provisions; and that the Selected Bidder/ Consortium Members, together with its/their Associates, shall hold not less than
  - (i) 51% (fifty-one per cent) of its issued and paid-up Equity on the date of this Agreement and a period of [3] (three) years from the date of Commercial Operations Date (COD); and
  - (ii) 26% (twenty-six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Term; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty-six per cent) of the issued and paid-up Equity till the end of contract period. The shareholders of the SPV (Consortium members), with prior approval from the Authority and in line with the Dry Lease Agreement, can disinvest/sell off their respective equity stake, partially subject to limits prescribed above, after completion of first [3] three years of the contract period, to any interested party having eligibility and qualification similar to the selected bidder.
- c. Any non-compliance with the provision hereof by the successful bidder with regards to shareholding requirement during the contract period, and failure to remedy such non-compliance within 30 (thirty) days from the date of Authority’s notice in this regard shall constitute a contractor(s) event of default, which shall entitle the Authority to terminate this agreement in accordance with the provisions hereof.
- d. Notwithstanding the provisions of above, the successful bidder shall further ensure, that in the event it has been selected for the Project on the strength of the technical and or financial capabilities of its/any of the associates, the said associate shall remain an associate of the successful bidder, for at least first three years of contract period.

### 8. Conflict of Interest

A Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- a. The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its



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Member or an Associate thereof (or any shareholder thereof) having a shareholding of not more than 25% (twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub- clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- b. a constituent of such Bidder is also a constituent of another Bidder; or
- c. such Bidder, its member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any Associate thereof; or
- d. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- e. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- f. such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- g. Such Bidder or any Associate thereof has appointed any official of the Authority, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 1 years from the date of award of the Project to that Bidder.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- h. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Dry Lease Agreement. In the event any such adviser is engaged by the Selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the



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Contract Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Contract Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Contract Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

## 9. Evaluation and Allocation Process

Aggregated demand is shown as below as per Lots and demand received from STCs.

Authority/ STU	City	Lot-1 (Type-I)	Lot-2 (Type-I)	Lot-3 (Type-I)	Lot-4 (Type-II)	Lot-5 (Type-III)	Total
		12m Low Floor AC Bus	12m Low Floor Non-AC Bus	9m Standard Floor AC Bus	12m Standard Floor Non-AC Bus	12m Standard Floor Non-AC Bus	
Delhi Transport Corporation	Delhi	2400					2400
Kerala State Road Transport Corporation	Kerala		-	125	200	450	775
Telangana State Road Transport Corporation	Telangana		1500		-	-	1500
<b>Grand Total</b>		2400	1500	125	200	450	<b>4,675</b>

CESL shall appoint successful bidders in the following manner:

- Bids will be evaluated independently for each Lot, depending on the INR per bus monthly rate quoted by the Bidders
- A list of all responsive, eligible, and qualified bids will be prepared ranking the Lowest Bidder (L1) up to the Highest Bidder (H1) for each lot. ("Rank List"). The Bidder quoting the Lowest Price (L1 Bidder) shall be considered the "Preferred Bidder" for each Lot.
- The allocation in each lot will be as follows (subjected to price matching)

Lot	Bus Type	Number of buses	Buses awarded to bidders
Lot 1 (Type-I)	12m Low Floor AC Bus	2400	L1:L2:L3 (50:30:20) =1200:720:480
Lot 2 (Type-I)	12m Low Floor Non-AC Bus	1500	L1:L2:L3 (50:30:20)=750:450:300



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Lot 3 (Type-I)	9m Standard Floor AC Bus	125	L1 – 125 buses
Lot 4 (Type-II)	12m Standard Floor Non-AC Bus	200	L1 – 200 buses
Lot 5 (Type-III)	12m Standard Floor Non-AC Bus	450	L1 - 450 buses

- d. Subsequently, CESL shall call the Second Lowest Bidder (L2) for discussions and request to carry out the scope of work as per the RFP at the Lowest Price at which the First Bidder (L1) is considered for award (Price Matching).
- e. In case the L2 bidder agrees to match the Lowest Price (L1), they shall be considered the “Second Preferred Bidders” and be eligible for award of remaining 30% of the total quantity of the lot.
- f. In the event that Second Lowest Bidder (L2) does not agree to match the price of the First Preferred Bidder (L1) but subsequent lowest bidders (L3/L4/L5 etc.) do agree to match the price of the First Preferred Bidder, they shall be considered the “Second Preferred Bidders”.
- g. In case none of bidders agree to match the price of First Preferred Bidder (L1), the entire lot may be recommended to be awarded to L1, at the sole discretion of CESL based on their eligibility criteria as defined in the tender document.
- h. CESL retains right to negotiate with the bidder(s). CESL also does not bind itself to accept the preferred bid before or after the negotiations and it reserves the right to accept or reject any bid, in whole or in part.
- i. Upon opening of the Price bids, in case Price quoted by Lowest Bidder is found seriously unbalanced by CESL in relation to the market rate or its internal estimate or Good Industry Practice, CESL shall be entitled to solicit, at its sole discretion, detailed price analysis for any or all items specified in Price Bid, from the said bidder to demonstrate the internal consistency of those prices.
- j. CESL, after negotiation, shall declare the Preferred Bidder(s) as successful bidder(s) if it's/their bid(s) is/are most favourable as per the provisions of RFP and shall suggest to STCs to enter into DLA with the Successful Bidder(s).
- k. After the financial evaluation of the bids received, CESL shall notify the successful bidders on their minimum allocation of quantity (of buses) and the prices discovered thereof.
- l. If there is only one Bidder for a particular lot, CESL shall deem this a “poor response”. CESL shall discuss with STUs and proceed to recommend award of 100% quantity subject to approval of the STU.

## 10. Preparation and Submission of Technical Bid and Price Bid

### 10.1. Format and Signing of Bid

- a. The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those bids that are received online in the required formats and complete in all respects and Bid Security, cost of bid document, Power of Attorney (POA) and Joint Bidding/ Consortium Agreement etc. as specified in the RFP are received in hard copies.
- b. The Bid shall be typed and signed in **indelible blue ink** by the authorized signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.
- c. All pages of the Bid shall be serially numbered, and Bid shall comprise of index mentioning the details of all the



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appendices and annexures and other documents submitted by the Bidder.

## 10.2. Documents comprising Technical and Financial Bid

The Bidder shall submit the Technical Bid & Financial Bid online through CESL's e-procurement portal comprising of the following documents along with supporting documents as appropriate:

### 1. Technical Bid:

- i. **Deviation Statement** as per the format at **Attachment-5** of Section-6.
- ii. **Scanned Copy to be uploaded:** Covering Letter of the bidder, enclosing Techno-commercial bid as indicated in bid documents, i.e., documentary evidence regarding bidder's general eligibility qualification requirement to perform the Contract, as required per the Eligibility Conditions/Criteria, Qualifying Requirements and Bid Evaluation Criteria, and Details of Service Provider team structure as per mentioned in section 5.
- iii. One complete set of RfP documents and subsequent amendments (if any), duly signed and stamped on each page.

### 2. Price bid:

Format is prescribed at ANNEXURE- D in the Tender document (online only)

The Bidder shall submit all the documents mentioned physically.

The Bidder shall not mention the Financial Bid i.e., the Bid Price, anywhere in the Technical Bid. In the case, the Bidder mentions the same, the Bid will be rejected.

## 11. Quantity variation clause:

Bidders may note that the quantity of Buses awarded to them is subject to +/- 20% variation within one year from date of opening of technical bids.

### Other requirements

- a. Bidders shall ensure that any number mentioned in the bid shall be followed by words in relation to such numerical format of the number, and in the event there is a conflict in the numerical and word format of the number, the number provided in words shall prevail.
- b. **Format and Signing of Bid:** The Bidder shall provide all the information sought under this RFP. CESL will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- c. Uploaded bid documents shall be signed by the authorized signatory of the bidder on each page. In case of a Consortium, this signature shall be that of the authorized signatory and shall bind the bidder to the contract. The signed pages shall be scanned and uploaded at designated places. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the bid shall be initialed by the person(s) signing the bid. Each page of the Bid must be numbered at the right-hand top corner.
- d. The Bid must be properly signed by the authorized signatory (the "Authorized Signatory") as detailed below:
  - I. By the proprietor, in case Bidder is a proprietary firm; or
  - II. By a duly authorized person holding the Power of Attorney, in case bidder is either a limited company or a



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corporation or an LLP or a Partnership Firm.

- e. In case of the bidder being company incorporated under Indian Companies Act 1956/ 2013, the power of attorney shall be supported by a board resolution in favour of the person vesting power to the person signing the bid.
- f. All prices and other information having a bearing on the price shall be written both in figures and words in the prescribed bid form. In case of discrepancy, the price given in words shall be considered

## 12. Rejection of Bid

- 12.1. CESL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by CESL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification by CESL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 12.2. CESL reserves the right to reject any Bid and appropriate the Bid Security or take other administrative action if:
  - a. at any time, a material misrepresentation is made or uncovered, or
  - b. the Bidder does not provide, within the time specified by CESL, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/rejected, then CESL reserves the right to annul the Bidding Process and invites fresh Bids.

- 12.3. A bid can be rejected by CESL without any further correspondence, as non-responsive, if,
  - a. Technical and/or price bid is not submitted online in the manner as prescribed is not in conformity with the terms and provisions
  - b. Technical and/or price bid is not submitted /incomplete submitted in the bid-forms.
  - c. Price Bid submitted in physical form shall be considered nonresponsive and rejected.
  - d. Non submission of bid security (EMD) and RFP fees or EMD do not conform to the provisions set forth in this RFP
  - e. In case of fraudulent bid and involved in corrupt practice.
  - f. Each bidder shall submit only one bid. A bidder who submits or participates in more than one bid under this RFP will be disqualified.
  - g. Misleading or false representation in the forms, statements and attachments submitted under this Tender/RFP.
  - h. Record of poor performance such as abandoning the work, rescinding of contract for which the reasons are attributable to the non-performance of the bidder or consistent history of litigation awarded against the applicant or financial failure due to bankruptcy.
  - i. Debarred or terminated or blacklisted in India by Central Govt. organization / State Govt. organization/any Municipal Corporation / ULBs etc. In this regard, the relevant provisions of Clause 3.5 “Debarment of Suppliers” of Manual of Procurement of Goods (Updated June 2022) issued by Department of Expenditure, Ministry of Finance, GoI shall be applicable.
  - j. CESL may disqualify a Bidder from participation in the Bidding Process if it is found that the Bidder or any



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of its Associates/Affiliates has had any of their contracts terminated by any central, state, or local government or government instrumentality for breach of such contract by the Bidder or any of its Associates/Affiliates, and that such termination has not been set aside or stayed by a competent judicial authority.

- k. CESL may disqualify a Bidder from participation in the Bidding Process, if the Bidder or any of its Associates/Affiliates has been categorized as a willful defaulter by any lender, in accordance with applicable laws.
- l. CESL reserves the right to seek information and evidence from the Bidders with respect to their continued eligibility at any time during the Bidding Process and each Bidder undertakes to promptly provide all of the information and evidence requested by CESL.
- m. If any of the directors, partners or the proprietor has a criminal history or has been convicted by any court of law for any of the offenses under any Indian laws.
- n. If, any criminal proceeding is pending in any court of law in India against any of the directors, partners, or a proprietor and if any such proceeding culminates into conviction
- o. In the event of bidder making an effort to influence CESL in its decisions on bid evaluation, bid comparison or selection of the successful bidder
- p. Bidders may specifically note that while evaluating the Bid, if it comes to CESL's knowledge expressly or implied, that some Bidders may have compounded in any manner whatsoever or otherwise joined to form an alliance resulting in distorting competitive price discovery or delaying the processing of Bid then the Bidders so involved are liable to be disqualified for this contract as well as future bids/contracts.
- q. **Predatory Pricing/Abnormally high price.** In case the Price Bid of the Lowest Bidder is found to be unrealistically lower or unrealistically higher than internal estimate/benchmark or market rate or Good Industry Practice, CESL reserves the right to seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bid document. If, after evaluating the price analyses, CESL determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, or the price is found to be abnormally higher than CESL's internal benchmark, then the Bid/Proposal may be rejected as non-responsive and will not be considered any further for award.
- r. **Cartel Formation/Pool Rates.** It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. In case of evidence of cartel formation, CESL may carry out detailed cost analysis by associating experts if necessary, and if the same is established, suitable administrative actions can be resorted to by CESL such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms.

### 13. Signing of Dry Lease Agreement

The Successful bidder(s) are required to execute the Dry Lease Agreement as per the timelines defined within this tender document, as per the terms and conditions as specified in Volume 2. Dry Lease Agreement of the RFP and any additional terms may be considered necessary by the Parties at the time of finalization. Such agreement shall also have all correspondence (to be discussed and agreed upon separately) between Authority and the successful bidder and additional clauses and/or provisions that further explain or clarify provisions of this RFP, or certain provisions which Parties may be required to include as per law or being a publicly owned institution, as per its practices.



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The signing of the Dry Lease Agreement shall be completed within reasonable time of the issuance of the Letter of Acceptance to the Successful Bidder.

#### **Expenses for the Dry Lease Agreement**

All incidental expenses of execution of the Dry Lease Agreement shall be borne by the Successful Bidder.

#### **14. Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration immediately after they are opened and until such time CESL makes official intimation of award/ rejection to the bidders. While the bids are under consideration, bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the bidding documents, from contacting by any means, CESL and/ or their employees/representatives on matters related to the bids under consideration.

#### **15. Confidentiality and Proprietary data**

Information relating to the examination, clarification, evaluation and recommendation for the bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising CESL in relation to, or matters arising out of, or concerning the bidding process. CESL will treat all information, submitted as part of the bid, in confidence and will require all those who have access to such material to treat the same in confidence. CESL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or CESL or as may be required by law or in connection with any legal process.

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority.

Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

#### **16. Fraudulent and Corrupt practices**

- 16.1.** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, CESL may reject a Bid without being liable in any manner whatsoever to the Applicant if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 16.2.** Without prejudice to the rights of CESL under Clause a) hereinabove, if a Bidder is found by CESL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by CESL during a period of 2 (two) years from the date such Bidder is found by CESL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case



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may be.

**16.3.** For the purposes of this clause, the following terms shall have the meaning hereinafter respectively assigned to them:

***“corrupt practice”*** means

- The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the bidding process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of CESL who is or has been associated in any manner, directly or indirectly, with the bidding process or the LOA or has dealt with matters concerning the contract or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of CESL, shall be deemed to constitute influencing the actions of a person connected with the bidding process); or
- Engaging in any manner whatsoever, whether during the bidding process or after the issue of the LOA or after the execution of the contract, any person in respect of any matter relating to the project or the LOA or the contract or otherwise, who at any time has been or is a legal, financial or technical adviser of CESL in relation to any matter concerning the project;
- ***“fraudulent practice”*** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process.
- ***“coercive practice”*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process.
- ***“undesirable practice”*** means (i) establishing contact with any person connected with or employed or engaged by CESL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- ***“restrictive practice”*** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

**17. Indigenization requirement:**

Bidder should comply indigenization of components as mentioned in Table 1 of Clause 22. This needs to be certified by the authorized testing agency.

**18. Inspection and Procurement schedule:**

The procurement of bus further after the award of contract shall be subject to prototype approval by CESL who may wish to subcontract this task to specialists. A team from CESL and participating Authority will visit contractor’s plant to inspect bus manufacturing at various stages as inspection and delivery schedule at the cost of the contractor to check compliance with RFP bus specifications. It will carry out a detailed inspection and trial of the prototype bus to ensure compliance with RFP specifications including particularly bus battery capacity and range, quality of the bus and workmanship. Bidder should provide testing certificates as stated above with the Technical Bid which will comply the statutory requirements as stipulated in Motor Vehicles Act, 1988 /Central Motor Vehicle Rules including the CMVR Type Approval of the Electric bus offered at the time of delivery of vehicle.



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The Authority will also carry out a test trial of the prototype bus operation systems to measure its performance in terms of battery capacity, battery range as well to ensure the compatibility of the charging requirement of electric bus with subsisting bus schedule. In case of any non-compliance in the final prototype bus, remedial work shall be immediately carried out by the contractor at its own risk and cost. In the event of contractor not being able to showcase a prototype bus meeting RFP specification within 60 days beyond the stipulated date of prototype delivery, then, it shall be considered an event of default by the contractor leading to annulment of the award of contract and termination of the agreement

A detailed tentative timeline for the procurement is provided hereunder:

<b>S.No</b>	<b>Details</b>	<b>Timeline</b>
1	Closing of bids <b>(T0)</b>	T0
2	Completion of technical Evaluation <b>(T1)</b>	T0 + 15 Days
3	Opening of Financial Bids received by CESL and declaration of L1 <b>(T2)</b>	T0 + 20 Days
4	Price Matching <b>(T3)</b>	T0 + 25 Days
5	Sharing of prices with States and acknowledgement <b>(T4)</b>	T0 + 28 Days
6	Approval of Prices <b>(T5)</b>	T4 + 6 Weeks
8	Issuance of LoA by the STU/Authority to successful bidder(s) <b>(T6)</b>	T5 + 1 Week
9	Submission of performance security and signing of Dry Lease agreement <b>(T7)</b>	T6 + 4 Weeks
10	Financial closure by the bidder, completion of conditions precedent and handover of depots by the STU/Authority <b>(T8)</b>	T7 + 8 Weeks
11	Prototype testing and approval of the same CESL/centralized testing agency, First Bus on Road <b>(T9)</b>	T8 + 12 Weeks

Detailed city wise deployment plan is presented in the table below.

State/cities	D1 =T9+ 12 Months	D2 = D1 + 12 Months
Delhi	1200	1200
Kerala	450	325
Telangana	750	750

## 19. Governing Law and Jurisdiction

The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

CESL in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- Suspend and/ or cancel the bidding process and/ or amend and/ or supplement the bidding process or modify the dates or other terms and conditions relating thereto.
- Consult with any Bidder in order to receive clarification or further information.
- Retain any information and/ or evidence submitted to CESL by, on behalf of, and/ or in relation to any Bidder;



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and/ or

- iv. Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Bid/ Eligibility and Qualification Submission, the Bidder agrees and releases CESL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.

## 20. Force Majeure

“Force Majeure” or “Force Majeure Event” shall mean, save and except as expressly provided otherwise, occurrence in India of any Non-Political Event, Indirect Political Event and Political Event, as defined in Article 29 of Dry Lease Agreement.



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## 21. Indigenization and Component wise manufacturing and origin information

**Table 1 – Compliance for indigenization of xEV parts of eBus**

S No.	Item Description
1	HVAC
2	Electric Compressor
3	Power and control Wiring harness along with connectors
4	MCB/Circuit breakers/ electric safety device
5	AC Charging Inlet: Type 2
6	DC Charging Inlet CCS2 / CHAdeMO
7	DC charging inlet BEVC DC 001
8	Traction Battery Pack
9	Wheel rim integrated with hub motor
10	DC – DC Convertor
11	Electronic Throttle
12	Vehicle Control Unit
13	On Board Charger
14	Traction Motor
15	Traction Motor Controller/ inverter
16	Instrument Panel
17	Lighting : Headlamp, Tail Lamp, Indicators, Interior Lamp, Flasher etc.
18	Body Panel

**Note : Traction Battery pack** to be assembled domestically, for which battery cells and associated thermal and battery management system may be imported.

**Table 2 – Component wise Manufacturing and Origin Information**

S No	Item Description	Domestic Value Addition	Level
1	Vehicle Control Unit	More than 25%	Tier 1
2	Traction Motor	More than 25%	Tier 1
3	Traction Motor controller/ Inverter	More than 25%	Tier 1
4	HVAC	More than 50%	Tier 1
5	Electric Compressor	More than 50%	Tier 2
6	Power Control wiring harness along with connectors	More than 50%	Tier 2
7	MCB /Circuit breakers/Electric safety device	More than 50%	Tier 2
8	AC charging inlet type 2	More than 50%	Tier 2
9	DC charging inlet CCS2.0	More than 25%	Tier 1
10	Traction Battery Pack	More than 25%	Tier 1
11	Wheel rim integrated with hub motor	More than 50%	Tier 2
12	DC -DC converter	More than 25%	Tier 1
13	Electronic Throttle	More than 25%	Tier 2
14	Instrument Panel	More than 25%	Tier 1
15	On Board Charger	More than 50%	Tier 2



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16	Lightening: Headlamp, Tail Lamp, Indicators, Interior Lamp, Flasher etc.	More than 75%	Tier 2
17	Body Panel	100%	Tier 2
18	Brake System including ABS	More than 50%	Tier 1
19	Electric Vacuum Pump for brake booster	More than 50%	Tier 2
20	Steering system including electric/hydraulic assist system, electric pump	More than 75%	Tier 2
21	Switches/ selection knobs	More than 75%	Tier 2
22	Chassis	100%	Tier 2
23	Reverse parking alert system (RPAS)	More than 75%	Tier 2
24	Protection device as per AIS 075	100%	Tier 2
25	Vehicle Alarm system as per AIS 076	More than 25%	Tier 1
26	Vehicle location tracking system	More than 75%	Tier 2
27	Body control module	More than 50%	Tier 1
28	Axles	More than 25%	Tier 1
29	Suspension/ shocker absorber	More than 25%	Tier 1
30	Horn	More than 75%	Tier 3
31	Tires	100%	Tier 3
32	Windshield	75%	Tier 3
33	Wipers	More than 50%	Tier 3
34	Seats (Passenger & Driver)	100%	Tier 3
35	Ignition Key/ Button	100%	Tier 3
36	Parking brake	100%	Tier 3
37	Windows	100%	Tier 3
38	Door locks and hinges	100%	Tier 3
39	Main mirror & rear-view mirror	100%	Tier 3
40	Safety belt	100%	Tier 3
41	Air bags, if any	More than 50%	Tier 3
42	Bumper	100%	Tier 1
43	Infotainment system if any	More than 25%	Tier 1
44	Wheel rim	More than 75%	Tier 3
45	Battery Cell, associated thermal and battery management system	More than 25%	Tier 1
46	Battery Thermal Management System	More than 25%	Tier 1

**Note:** Basis the above table each Bidder has to ensure >50% domestic value Addition at vehicle level along with above mentioned norms to be certified by ICAT/ARAI/CIRT or any other testing agency notified under Rule 12 of the CMVR

*Formula: {[Ex-Factory Price (Net of GST)- Import Content]/Ex-factory Price (Net of GST)} \*100*

Import Content: Sum of FOB Value of all imported components or materials in the final product including import duties.

OEM should submit the certification from the testing agency for compliance to the above-mentioned table. Semiconductor and related components, Vehicle Control Unit, Reverse parking alert system (RPAS), Body Control Module, Vehicle Location Tracking System exempted from calculation for Domestic Value Content. Commodity items, Tires (Natural Rubber, SBR, Carbon Black) exempted from calculation for Domestic Value Content.



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**Annexure-D**

**Price Bid Format**

(Produced here for illustration purpose: to be filled-up ONLINE only)

**Name of Work: Selection of bus contractor for Procurement, Operation and Maintenance of 4,675 Electric Buses and development of allied electric and civil infrastructure on Dry Lease Model under National E-Bus Program (NEBP).**

1. Price Bid Format for Lot-1- (Department of Transport, Delhi) -2400 nos.

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	12m Low Floor AC-Type-I	Per Month Per Bus	1			

2. Price Bid Format for Lot-2-(Telangana)-1500 Nos.

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	12m Low Floor Non-AC -Type-I	Per Bus Per Month	1			

3. Price Bid Format for Lot-3 (Kerala)-125 Nos.



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Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	<b>9m standard floor-AC (Intra-city)</b>	<u>Per Bus</u> <u>Per</u> <u>Month</u>	1			

4. Price Bid Format for Lot 4 (Kerala –200 Nos.

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	<b>12m Standard Floor Non-AC - Type-II</b>	Per bus per month	1			

5. Price Bid Format for Lot-5 (Kerela - 450 Nos.).

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	<b>12m standard floor- Non-AC (Inter-city)-Type-III</b>	Per Bus Per Month	1			



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**6. Price Format for Lot- (XXXXXX CITY Nos. XXXX) \***

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	Optional-1	Per Month Per Bus	1			

**7. Price Format for Lot- (XXXXXX CITY Nos. XXXX) \***

Sr No	Description of Bus	UoM	Qty	Unit Rate (In Rs.) Exclusive of GST	Total Cost exclusive of GST (IGST/ CGST /SGST/ UGST) (in Rs.) on F.O.R. destination basis (in figure)	Total Cost exclusive of GST (IGST/ CGST/SGST/ UGST) (in Rs.) on F.O.R. destination basis (in words)
	1	2	3	4	5=3*4	6
1	Optional-2	Per Month Per Bus	1			

**\*Note: Price bid format for Serial no-6 and 7 shall be used only for future upcoming cities with quantities or any other bus specifications which shall be communicated by CESL through appropriate amendment/corrigendum. In case, no upcoming requirement arise, then these two lots 68 and 7) need not be selected for quoting of price. In case of any doubt the bidder is advised to seek clarification during the Pre-bid Stage.**

**Notes applicable to above Table:**

Base price per unit exclusive of GST(IGST/CGST/SGST/UGST) (in Rs.) on F.O.R Destination basis is per bus Fee quoted



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcdfc3c9b91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

1. Prices once quoted shall remain firm, and only subject to escalation as per Fee Revision clauses in Volume II: Dry Lease Agreement till completion/execution of the contractual assignments/work and till the Contract's validity's extension, if any.
2. Income tax, TDS etc. will be applicable as per existing government policies.
3. CESL has the right to accept or reject any bid or part without assigning any reason.

I/we have read all the terms and conditions of the Tender/IFB/NIT and the Annexure(s) thereto and agree to accept and abide by the same in total. The above quotation has been prepared after taking into account all the terms and conditions of the Tender/IFB/NIT.

(SEAL)

Dated

Signature of Tenderer or their authorized representative

Name and Address of Tenderer:

.....

Phone no.....

Fax No. ....



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcdfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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Annexure  
(Refer to para-4 of amendment no-2 to RfP)

**(Declaration for GST Percentage by the Bidder)**

Ref. NIT/BID Document No.:.....

Description: .....

To,  
CGM (SCM)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor,  
SCOPE Complex, Lodhi Road, New Delhi-110003

Subject: Declaration for the GST percentage by the bidder

Ref. above Tender, I/we (on behalf of M/s..... ) hereby certify that I/we, have quoted  
..... percentage of GST in the above-referred Tender.

Reference GoI Letter vide..... Dated .....

Signature of bidder with stamp & Address

**(\*bidder has to mandatorily submit the declaration as above. The bid shall be evaluated on the basis of this declaration. Providing false information may lead to technically non-responsiveness of the bid)**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcdfc3c91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**Volume 2 – NEBP Draft Dry Lease Agreement**

**Procurement and Maintenance  
of  
Electric Buses**

**DRY LEASE AGREEMENT**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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## Part I Preliminary



Signature :-  
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User ID : a.bhattacharya  
Serial No : 1467105

## DRY LEASE AGREEMENT

THIS DRY LEASE AGREEMENT ("**Agreement**") is entered into on this {the ..... day of....., 20.....}<sup>1</sup>

### BETWEEN

- 1 **THE [GOVERNOR] OF [•]** represented by [•], and having its offices at [•] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One **Part**;

### AND

- 2 {\*\*\*\*\* Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the "**Contractor**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other **Part**.

### WHEREAS:

- (A) Convergence Energy Services Limited (CESL), a subsidiary of EESL recently discovered lowest ever prices for the biggest ever tender of 5,450 (five thousand four hundred and fifty) electric buses in 5 (five) cities through Grand Challenge under FAME India Scheme Phase-II. The rates discovered are 31% (thirty one percent) less than diesel and 18% (eighteen percent) less than compressed natural gas without subsidy. This was achieved by aggregating the demand and floating a unified tender with standardized parameters and contract terms.
- (B) Based on this outcome, CESL has been requested by NITI Aayog and Ministry of Road Transport and Highways to scale up the model and to play the role of Program Manager to deploy 50,000 (fifty thousand) electric vehicles under a "National Electric Bus Program" ("**NEBP**").
- (C) Subsequently, CESL floated an Expression of Interest ("**EoI**") for public transport agencies including State Road Transport Undertakings ("**SRTU**") on date 12<sup>th</sup> July 2022. Accordingly, 5 (five) entities had submitted demand for procurement of eBuses on a dry lease model under a unified tender with CESL — a Program Manager for inviting proposals from qualified parties for supply, operation and maintenance of eBuses .
- (D) Based on the request made by the state transport authorities, the Program Manager invited bids through its request for proposal -----, and as amended on [•] (the "**Request for Proposals**" or "**RFP**") from bidders for undertaking the Project.
- (E) After evaluation of the bids received, the Program Manager accepted the bid of the {selected bidder/ Consortium} (the "**Selected Bidder**") for the city of [•] (on behalf of the Authority)

---

<sup>1</sup> \$The provisions in curly parenthesis and blank spaces shall be retained in the draft Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder and other post-bid particulars.





and issued a Letter of Award No. .... dated ..... (hereinafter called the “LOA”) to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.

- (F) In accordance with the terms of the RFP, the Selected Bidder has since promoted and incorporated the Contractor as a limited liability company under the Companies Act 2013 and has requested the Program Manager and the Authority to accept the Contractor as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement for undertaking the Project.
- (G) By its letter dated ....., the Contractor has also joined in the said request of the Selected Bidder to the Program Manager and the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Contractor has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- (H) The Program Manager and Authority have agreed to the said request of the Selected Bidder and the Contractor, and the Parties have accordingly agreed to enter into this Agreement with the Contractor for supply, operation and maintenance of Buses, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:



Signature :-  
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## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;



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- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to a day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday and public holiday) on which banks in are generally open for business;
- (l) any reference to a month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) any reference to a “**quarter**” shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (s) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;



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 RVICES LIMITED, C=IN  
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- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (z) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority and/or the Program Manager shall be provided free of cost and in three copies, and if the Authority and/or the Program Manager is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### 1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

### 1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided



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 Serial No : 1467105

elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b).

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.



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## Part II Scope of the Agreement



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



## ARTICLE 2 SCOPE OF THE AGREEMENT

### 2.1 Scope of the Agreement

The scope of the Agreement (the “**Scope of the Agreement**”) shall mean and include, during the Contract Period:

- (a) design, manufacture, procurement and supply of buses conforming to the Specifications and Standards set forth in Schedule B (the “**Buses**”) and in accordance with the provisions of this Agreement;
- (b) maintenance of Buses in accordance with the provisions of this Agreement;
- (c) develop, equip, manage and maintain the Maintenance Depots on the Depot Sites specified in Schedule-A, in accordance with the provisions of this Agreement.
- (d) procurement and installation of the Charging Infrastructure at the Maintenance Depots and at terminal/other charging locations specified by Authority for charging of the Buses.



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## ARTICLE 3 AWARD OF CONCESSION

### 3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby awards to the Contractor the right to design, manufacture, procure, supply and maintain the Buses, install, operate and maintain the Charging Infrastructure and develop, equip, operate and maintain the Maintenance Depots (the “**Concession**”) for a period commencing on and from the Appointed Date and ending on the date (i) falling 12 (twelve) years after the Scheduled COD (as the same may be extended in accordance with the terms of this Agreement); (the “**Contract Period**”), and the Contractor hereby accepts the Concession and agrees to implement the same as its obligation subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Contractor to:
- (a) Design, manufacture, procure, and supply the Buses in accordance with Applicable Laws, Applicable Permits, the Specifications and Standards, the Designs and Drawings and the provisions of this Agreement;
  - (b) Maintain the Buses in accordance with Applicable Laws, Applicable Permits, Good Industry Practices and the provisions of this Agreement;
  - (c) Access Right of Way, access and licence in respect of the Depot Sites for performing its Maintenance Obligations in accordance with the provisions of this Agreement;
  - (d) Undertake the Fit Out Works and operate and maintain the Maintenance Depots in accordance with the provisions of this Agreement;
  - (e) Install, operate and maintain the Charging Infrastructure in accordance with the provisions of this Agreement;
  - (f) Perform and fulfil all of the Contractor’s obligations under and in accordance with this Agreement;
  - (g) Save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Contractor under this Agreement;
  - (h) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement nor transfer, sub-lease, sub-licence or part possession of the Maintenance Depots and the real estate related thereto including the Depot Site, save and except as expressly permitted by this Agreement;



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## ARTICLE 4 CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1 Save and except as provided in Articles 4, 7, 8, 9, 10, 13.4, 13.6, 16.5, 21, 29, 30, 35, 37, 39 and 42, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant a waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

- (a) handed over to the Contractor unencumbered and vacant possession and Right of Way to those Maintenance Depots that are required to be handed over prior to the Appointed Date, in accordance with the provisions of Clause 10. [●];
- (b) procured all Authority Applicable Permits as specified in Schedule- C;
- (c) subject to Clause 4.1.3(b), executed the Escrow Agreement;
- (e) subject to Clause 4.1.3(c), executed the Substitution Agreement;
- (f) if not already provided as on the date of this Agreement, the Authority shall, within 30 (thirty) days from the date of this Agreement, submit the Deployment Plan to the Contractor in accordance with Clause 16.5.
- (g) Availability of upstream infrastructure as defined by clause 6.1(a) including power availability for charging of buses.

Provided that upon request in writing by the Authority, the Contractor may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2. For the avoidance of doubt, the Contractor may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.3 The Conditions Precedent required to be satisfied by the Contractor shall be deemed to have been fulfilled when the Contractor shall have:

- (a) on, or prior to, the date of this Agreement, provided the Performance Security to the Authority pursuant to Article 9;
- (b) executed the Escrow Agreement;
- (c) executed the Substitution Agreement;



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- (d) delivered to the Authority {from the Consortium Members, their respective}<sup>2</sup> confirmation, in original, of the correctness of their representations and warranties set forth in sub-clauses (k), (l) and (m) of Clause 7.1;
- (e) procured all the Contractor Applicable Permits specified in Schedule-C required for the procurement of the Buses and the Fit Out Works, unconditionally or if subject to conditions, then, to the extent relevant, comply with all such conditions, such that the Contractor Applicable Permits are and shall be kept in full force and effect as may be required under Applicable Laws;
- (f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Contractor;
- (g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Contractor, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (h) complied with its obligations as set out in Clause 13.4; and
- (i) delivered to the Authority a legal opinion from the legal counsel of the Contractor with respect to the authority of the Contractor to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Contractor, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing, with a copy to the Program Manager, on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied. For the avoidance of doubt, the Contractor shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority and the Program Manager of the occurrence of the Appointed Date.

## 4.2 Satisfaction of the Conditions Precedent

- (a) Unless otherwise specified, the Contractor and the Authority shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within 60 (sixty) days from the date of this Agreement (the “**Scheduled CP Satisfaction Date**”).
- (b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the Scheduled CP Satisfaction Date due to:

<sup>2</sup> Drafting Note – Delete if not applicable.

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- (i) a Force Majeure Event;
- (ii) a Change in Law;
- (iii) in case of the Contractor, undue delay by the relevant Government Authority in granting any Contractor Applicable Permit, despite the Contractor having applied for such Contractor Applicable Permit within the specified timelines, on payment of the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
- (iv) delay by the other Party in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the Scheduled CP Satisfaction Date for the affected Party shall be extended on a day-for-day basis for the period of such delay.

- (c) Each Party shall cooperate and use its reasonable efforts to assist the other Party in satisfying its Conditions Precedent.

#### **4.3 Damages for delay by the Authority**

- (a) In the event that the Authority does not procure fulfilment or waiver of the Conditions Precedent set forth in Clause 4.1.2 by the Scheduled CP Satisfaction Date (as the same may be extended in accordance with the provisions of Clause 4.2(b) above), or, within the time period specified for the fulfilment of such Condition Precedent, the Authority shall pay to the Contractor Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay beyond the Scheduled CP Satisfaction Date (as the same may be extended in accordance with the provisions of Clause 4.2(b) above) until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security. If the Authority delays in fulfilling its Conditions Precedent such that the cap on Damages set out herein is breached, then the Authority may continue to pay the Contractor Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each additional day's delay and if the Authority fails to pay such Damages, the Contractor may, in its sole discretion, terminate the Agreement. Provided that in the event of a delay by the Contractor in procuring fulfilment of any of its Conditions Precedent specified in Clause 4.1.3 and where such delay impacts the Authority's ability to fulfil any of its Conditions Precedents, no Damages shall be due or payable by the Authority under this Clause 4.3 until the date on which the Contractor shall have procured fulfilment of the relevant Conditions Precedent specified in Clause 4.1.3.
- (b) Upon a termination of this Agreement pursuant to Clause 4.3(a), the Authority shall return the Performance Security submitted by the Contractor subject to the Contractor having paid in full any amounts due and payable by it to the Authority as on the date of termination.

#### **4.4 Damages for delay by the Contractor**



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- (a) In the event that (i) the Contractor does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 by the Scheduled CP Satisfaction Date (as the same may be extended in accordance with the provisions of Clause 4.2(b) above), or, within the time period specified for the fulfilment of such Condition Precedent, the Contractor shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Condition Precedent specified in Clause 4.1.2 and where such delay impacts the Contractor's ability to fulfil any of its Conditions Precedents, no Damages shall be due or payable by the Contractor under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the relevant Conditions Precedent specified in Clause 4.1.2.
- (b) Upon a termination of this Agreement pursuant to Clause 4.4(a), the Authority shall encash the Performance Security submitted by the Contractor.

#### **4.5 Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 4.2, 4.3 and 4.4 and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within 400 (four hundred) days from the date of this Agreement or any other mutually extended period agreed by the Parties, all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is on account of the Authority failing to fulfil its Conditions Precedent, the Authority shall return the Performance Security submitted by the Contractor subject to the Contractor having paid in full any amounts due and payable by it to the Authority as on the date of termination. Further, in the event the delay in occurrence of the Appointed Date is on account of the Contractor failing to fulfil its Conditions Precedent, the Authority shall encash the Performance Security submitted by the Contractor.



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## ARTICLE 5 OBLIGATIONS OF THE CONTRACTOR

### 5.1 Obligations of the Contractor

- 5.1.1 The Contractor shall procure finance for, and at its sole cost and expense, the procurement, supply and Maintenance of the Buses as per the Procurement Schedule provided in Schedule G hereto for providing the services in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the terms and conditions of this Agreement.
- 5.1.2 Without affecting the generality of the provisions contained in Clause 5.1.1 above, the Contractor shall procure at its cost and expense, all Contractor Applicable Permits from Government Instrumentalities including but not limited to the certificate of registration, certification of fitness from the relevant Regional Transport Office (RTO) having jurisdiction over the Project for all Buses and shall maintain the Buses in accordance with the terms and conditions of this Agreement.
- 5.1.3 Subject to and on the terms and conditions of this Agreement, the Contractor shall, at its own cost and expense, undertake the Fit Out Works and Operation and Maintenance of the Maintenance Depots for the maintenance of Buses and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.4 Subject to and on the terms and conditions of this Agreement, the Contractor shall, at its own cost and expense, undertake the complete downstream electrical and civil infrastructure along with design, engineering, procurement, supply, installation, testing, commissioning and Operation of the chargers along with the buses in ratio of three bus one charger (3:1) (final ratings of the chargers will be confirmed by the authority before handover of maintenance depot and the fitout work) Also, contractor shall take out the Maintenance of the Charging Infrastructure and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.5 The Contractor shall procure, install, operate and maintain adequate metering equipment for the Charging Infrastructure to accurately record throughout the term of this Agreement the electricity consumed for charging the Buses for the purpose of determining the payments to be made by the Authority pursuant to Clause 22.5 of this Agreement.
- 5.1.6 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.7 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Contractor shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice.
- 5.1.8 The Contractor shall deliver the e-buses to the Authority in [•] as per the Deployment Plan.
- 5.1.9 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining the



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any Applicable Permits other than the Authority Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

- (b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining renewals or extensions of any Authority Applicable Permits after the Appointed Date;
- (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Buses, Maintenance Depots and Charging Infrastructure;
- (d) perform and fulfil its obligations under the Financing Agreements;
- (e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (f) ensure and procure that its Contractors comply with all Contractor Applicable Permits and Applicable Laws and Good Industry Practices in the performance by them of any of the Contractor's obligations under this Agreement;
- (g) bear and pay for all electricity consumed for the purposes of performing the Contractor's obligations or exercising its rights under this Agreement, including without limitation, all electricity required for, or in relation to the Fit Out Works, Operation and Maintenance of the Maintenance Depot (including the Charging Infrastructure) and Operation of the Buses over and above the Allowed Power Consumption pursuant to Clause 22.5;
- (h) always act in a manner consistent with the provisions of this Agreement and not omit or cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (i) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (j) take all reasonable precautions for the prevention of accidents on or around the Maintenance Depots and provide all reasonable assistance and emergency medical aid to accident victims; and
- (k) vacate and handover peaceful possession of the Maintenance Depots to the Authority upon Termination of this Agreement or expiry of the Contract Period, in accordance with the provisions of this Agreement.

## 5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other Project Agreements or any other agreement, and no default under any other Project Agreement or agreement shall excuse the Contractor from its obligations or liability hereunder.



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- 5.2.2 The Contractor shall submit to the Authority the drafts of all Project Agreements (to which the Authority is not a party) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Contractor within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Contractor shall submit to the Authority a true copy thereof, duly attested by a Director or any person authorised by the Board of Directors of the Contractor, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Contractor shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of increasing the Total Project Cost, and in the event that any replacement or amendment is made without such consent, the Contractor shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, and subject to this Clause 5.2.3, no prior consent of the Authority shall be required for restructuring or rescheduling of the debt of the Contractor provided such restructuring or rescheduling does not result in an increase in the Total Project Cost.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Contractor shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Depot Sites, without prior written approval of the Authority, which approval the Authority shall not unreasonably withhold or delay unless, such sub-lease, sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- 5.2.5 The Contractor shall procure that each of the Project Agreements or Bus Lease Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Contractor in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality subject to the Contractor issuing a notice of reminder to the Authority at least 15 (fifteen) days prior to the expiry of the aforesaid 90 (ninety) day period. The Contractor expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.



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5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Contractor agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Contractor, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. Provided however, that this Clause 5.2.6 shall not apply to any subcontracts entered into by the Contractor for the provision of any housekeeping or basic office support staff services. For the avoidance of doubt, it is expressly agreed that approval of the Authority under this Clause 5.2.6 shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Contractor or its Contractors from any liability or obligation under this Agreement.

### 5.3 Obligations relating to Change in Ownership

5.3.1 The Contractor shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty five per cent) or more of the total Equity of the Contractor; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Contractor by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Contractor, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Contractor without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority pursuant to this Clause 5.3.2 hereunder shall be limited to a national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Contractor from any liability or obligation under this Agreement. It is further agreed that in the event of any acquisition of shares or control in the Selected Bidder (or Lead Member in case of a consortium) or its holding company by another entity, which results in a Change in Ownership as set forth in this Clause 5.3.2, the Contractor shall inform the Authority of such occurrence within 15 (fifteen) days thereof and seek consent of the Authority under and in accordance with the provisions of this Clause 5.3. In the event the Authority denies its consent to such Change in Ownership, a Change in Ownership in breach of this Clause 5.3 shall be deemed to have occurred.

For the purposes of this Clause 5.3.2:

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- (i) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Contractor;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Contractor; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Contractor, not less than half of the directors on the Board of Directors of the Contractor or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Contractor shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Contractor.

#### **5.4 Obligations relating to employment of foreign nationals**

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement. Provided that, the Authority shall provide reasonable assistance to the Contractor, if required, in relation to applying for any employment/residential visas and work permits in accordance with Clause 6.1.2(l).

#### **5.5 Obligations relating to employment of personnel**

- 5.5.1 The Contractor shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- 5.5.2 The Contractor shall, notwithstanding its obligations contained herein for employment and training of staff, undertake capacity building training and workshops for the maintenance of the Buses and Maintenance Depots and other infrastructure., as may be directed by the Authority and in accordance with Article 23 hereto.
- 5.5.3 The Contractor shall ensure that the personnel engaged by it in the performance of its obligations under this Contract are at all times properly trained and possess the requisite skill and qualifications as per Good Industry Practice and Applicable Laws for undertaking their respective functions as provided in Article 23 of this Agreement.
- 5.5.4 The Contractor shall ensure that proper training is provided to pool of qualified drivers provided by Authority as combination of classroom instruction and behind-the-wheel



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instruction as specified in Article 23, sufficient to enable each driver to operate the Bus in a safe and efficient manner in terms of this Agreement.

5.5.5 The Contractor shall ensure that each driver receives a refresher training course from time to time in accordance with Good Industry Practices and Applicable Laws during the Contract Period as specified in Clause 23.2.

5.5.6 The Authority may require the Contractor to immediately remove any staff member/ personnel employed by the Contractor for the purpose of the Project, who in the opinion of the Authority:

- (a) persists in any misconduct;
- (b) is incompetent or negligent in the performance of his duties;
- (c) fails to conform with any provisions of this Agreement; or

in each case, subject to provision of reasonable evidence.

5.5.7 The Contractor shall be solely and exclusively responsible for all employees on the rolls of Contractor (except bus crew), workmen, personnel and staff employed or contracted for the purposes of implementing the Project. The Authority shall not be liable for payment of any sum or give compensation for any claim (including but not limited to compensation on account of death/ injury/ termination) of such nature to such foregoing personnel and staff of the Contractor at any point of time during the Contract Period or thereafter. The Contractor undertakes to hold harmless and keep the Authority indemnified in this regard for any claim for payment raised by such foregoing persons or any third party.

5.5.8 The Contractor shall ensure that all personnel and staff wear uniforms as approved by the Authority. The Contractor shall at its own cost and expense, provide uniforms and shall ensure that all personnel and staff employed by it shall, at all times, wear clean uniforms while on duty or doing any act in relation to the Project.

5.5.10 The Contractor shall be responsible for all the costs and expenses for employment of personnel including but not limited to expenses for travel, training of its employees, and payment to vendors engaged by the Contractor in connection with the implementation of this Project.

5.5.11 The Contractor shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Contractor's obligations under this Agreement by exercising appropriate supervision and control;

5.5.12 The Contractor shall be responsible for employing any and all manpower, personnel, labour, etc., as may be required to be deployed by it for implementation of the Project and as such the Contractor on an exclusive basis shall be responsible for exercising supervision and control over such manpower, personnel, labour, etc. For all intents and purposes under this Contract, the Contractor alone shall be the principal employer in terms of the provisions of the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 in respect of such manpower, personnel, labour, etc. The Authority shall at no point of time be concerned in any manner whatsoever with any employee or labour related issues of such manpower, personnel, labour, etc. of the Contractor and shall not have any liability or responsibility towards them. The Contractor shall keep the Authority indemnified for all claims that may arise due to Contractor's non-compliance with any provisions of this Clause 5.5.12.



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## 5.6 Advertisement and Branding of Buses

The Buses or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Contractor or its shareholders, save to the extent as provided in Clause 16.8. Provided that, the Contractor may affix the brand logo, make and model of the Bus at the front and rear end of the Bus. The Contractor undertakes that it shall not, in any manner, use the name or identity of its shareholders to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Contractor may, at every Maintenance Depot, display its own name at a spot where other public notices are displayed for the Users.

## 5.7 Obligations regarding risk of loss or damage

- 5.7.1 The Contractor shall bear the risk of loss in relation to each Bus for the performance of its Maintenance obligations hereunder. However, in case of accidents the same will be in accordance with Clause 13.11.5
- 5.7.2 Notwithstanding the Contractor's obligations under Article 37, the Contractor shall take or cause to be taken all steps necessary under Applicable Laws to protect the Authority against claims by other parties with respect thereto in accordance with the terms and provisions of this Agreement.

## 5.8 Obligations relating to information

- 5.8.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Contractor shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 5.8.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Contractor's activities under or pursuant to this Agreement which the Authority proposes to publish, the Contractor shall provide such comments to the Authority in the manner and form required by the Authority.

## 5.9 Obligations relating to aesthetic quality

The Contractor shall maintain a high standard in the appearance and aesthetic quality of the Buses, the Maintenance Depot and the Project as a whole and achieve integration of the Buses Maintenance Depots and Charging Infrastructure with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Contractor shall engage a professional architect and consultants of repute for ensuring that the design of the Buses and Maintenance Depots meets the aforesaid aesthetic standards.

## 5.10 Obligations relating to noise control

The Contractor shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Buses and the Maintenance Depots and its impact on the Users and the surrounding neighbourhood.



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### 5.11 Obligations relating to Charging Infrastructure

The Contractor agrees that it shall procure, construct, install and provide the Charging Infrastructure at the Maintenance Depots such that each Maintenance Depot is capable of Overnight Charging a minimum 50 (fifty) Buses and opportunity charging of Buses. The Contractor agrees that it shall ensure that the Charging Infrastructure installed at the Maintenance Depots are used only for the purpose of charging of Buses and no other purpose whatsoever.

The obligations of the Operator under this Clause is subject to adequate size of the Maintenance Depot and other related facilities being provided by the Authority.

### 5.13 Registration of the Project under Clean Development Mechanism (CDM)

CESL shall have the right to prepare and monetize the carbon assets from the NEBP. CESL shall register the project for carbon credits under Clean Development Mechanism (CDM) and/or voluntary market mechanisms as considered appropriate. CESL shall decide the preparation pathway most suited for availing carbon credits. The Authority shall extend support to CESL for the project preparation and registration under CDM and/or Voluntary market mechanisms. The revenues shall be split in equal parts (i.e. 50-50) between the Authority and the Bidder, less registration and costs (including third party costs) incurred for preparation of the Carbon Asset payable to CESL, unless otherwise decided in writing. Authorities and/or Bidders shall inform CESL should they wish to not avail carbon credits.



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## ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

### 6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) operate buses and energise the depots as per Deployment Plan, including provision of staff for operations and accept liability of all aspects of operations including maintenance of operational service levels, punctuality, fare collection, operational infractions and any damages or liability arising out of the actions or behaviour of drivers and conductors appointed by authority except operational disruptions and failures attributed to the Contractor ;
  - (b) subject to and on the terms and conditions of this Agreement, the Authority shall handover peaceful and unencumbered possession of Maintenance Depots, which meet the Minimum Maintenance Depot Specifications as per the prevailing standards and guidelines, to the Contractor in accordance with the timelines set out in Clause 10.2.4;
  - (c) Provide pool of qualified driver to Contractor for necessary training from time to time.
  - (d) Prior to engaging any driver for operating the buses, shall ensure that each such driver had received a combination of classroom instruction and behind-the-wheel instruction as specified in Article 23, sufficient to enable each driver to operate the bus in a safe and efficient manner in terms of this Agreement.
  - (e) provide the Contractor with adequate Right of Way and license to use the Maintenance Depots in accordance with the provisions of this Agreement;
  - (f) at its own cost and expense, provide, or cause to be provided, road connectivity (sufficient for the movement of the Buses and other vehicles and machinery required for the Operation and Maintenance of the Maintenance Depots) to the nearest motorable road, at any location at the boundary of the Maintenance Depots in accordance with Clause 12.1;
  - (g) provide vacant land at the depot for development with all necessary clearance/approvals, right of way, utility connection to the Contractor, electricity connections and upstream electricity infrastructure (at the available HT metering level, which for the avoidance of doubt may be a 11/22/33/66 kV connection) and substations up to 415 V at the locations of the Maintenance Depots specified in Schedule-A for charging of the Buses and operation of the Charging Infrastructure, along with all requisite permissions, approvals and licenses in relation to the utilisation by the Contractor of such electricity connection;
  - (h) bear the cost of electricity charges payable in relation to the charging of the Buses in accordance with Clause 22.5;



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- (i) pay electricity consumption charges for charging of buses subject to Allowed Power Consumption.
- (j) procure and provide access and connections, at its cost, to municipal water and sewage disposal utilities for the Maintenance Depots, provided that the Contractor shall remain liable to pay any regular bills raised by the relevant Government Instrumentality for the use of such utilities;
- (k) upon written request from the Contractor, provide (to the extent required under this Agreement) the Contractor with competent and trained employees to assist the Contractor in carrying out its duties under this Agreement;
- (l) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide all reasonable support and assistance to the Contractor in procuring the Contractor Applicable Permits,;
- (m) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (n) support, cooperate with and facilitate the Contractor in the implementation and operation of the Project with in the domain of the obligations of the authority in accordance with the provisions of this Agreement;
- (o) upon written request from the Contractor and subject to the provisions of Clause 5.4, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Contractors their obligations under this Agreement. The Authority shall support, cooperate and facilitate the Operator in the implementation and operation of the Project.

The Authority shall endeavour to earn green revenues accruable from mitigation of greenhouse gases as a result of implementation of the Project, if available under Applicable Law. CESL shall also undertake to prepare the project for availing green revenues and get these registered under the Clean Development Mechanism (“CDM”) under Applicable Laws or any other such mechanism available during the Contract Period. The Contractor can not avail carbon credits from CDM under this project. The revenues shall be split in equal parts (i.e. 50-50) between the Authority and the Bidder, less registration and costs (including third party costs) incurred for preparation of the Carbon Asset payable to CESL, unless otherwise decided in writing.



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## ARTICLE 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and warranties of the Contractor

The Contractor represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of the Selected Bidder/ any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which



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in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {Selected Bidder/ Consortium Members}, together with {its/their} Associates, shall hold not less than 51% (fifty one per cent) of its issued and paid up Equity till the completion of 3 years from COD and 26% of its issued and paid up Equity thereafter; and that the Lead Member shall hold not less than 38% (thirty eight percent) of its issued and paid up Equity; and that no Member of the Consortium (i) whose technical and financial capacity was evaluated for the purposes of selection in response to the Request for Proposal; or (ii) who is an original equipment manufacturer (including its Associates or Affiliates), shall hold less than 26% (twenty six per cent) of the issued and paid up Equity, or (b) Equity corresponding to 5% of the Total Project Cost, whichever is higher, till the expiry of the Contract Period;
- (l) {the Selected Bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the Selected Bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Contractor pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Buses (if applicable pursuant to Clause 33.4), Maintenance Depots (including the Charging Infrastructure) shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects

## 7.2

### Representations and warranties of the Authority



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The Authority represents and warrants to the Contractor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Depot Sites and Maintenance Depots, and has power and authority to grant a licence, in respect thereto to the Contractor;
- (h) it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Contractor, subject to and in accordance with the provisions of this Agreement; and
- (i) it shall enable personnel of the Contractor to travel on board the Buses for the purpose of discharging the Maintenance Obligations in accordance with the provisions of this Agreement and Good Industry Practice.

### 7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.



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## ARTICLE 8

### DISCLAIMER

#### 8.1 Disclaimer

- 8.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, this Agreement, the Specifications and Standards, the Depot Sites, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority, the Program Manager or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, the {Selected Bidder/ Members of Consortium} and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Contractor pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the Contractor and the Authority shall not be liable in any manner for such risks or the consequences thereof.



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## Part III Development and Operations



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## ARTICLE 9 PERFORMANCE SECURITY

### 9.1 Performance Security

- 9.1.1 The Contractor shall, for the performance of its obligations hereunder till the expiry of the Contract Period, provide to the Authority, on or prior to, the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. [\*\*\*\* (Rupees \*\*\*\*\*)]<sup>3</sup> in the form set forth in Schedule-D (the “**Performance Security**”). Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Contractor.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Contractor within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 9.2 Appropriation of Performance Security

- 9.2.1 The Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate, from time to time and as many times as required by the Authority, from the Performance Security such amounts as may be due to it under this Agreement, including in respect of any Damages payable by the Contractor for a failure to perform its obligations under this Agreement, for an Contractor Default or for failure to meet any Condition Precedent, in accordance with the terms of this Agreement.
- 9.2.2 Upon any encashment and appropriation from the Performance Security by the Authority, the Contractor shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32.

### 9.3 Release of Performance Security

- 9.3.1 The Performance Security shall remain in force and effect during the Contract Period and shall be returned to the Contractor within 30 (thirty) days from the date on which the Contract Period expires or upon Termination of this Agreement due to an Authority Default within 120 (one hundred and twenty) days of the Termination Date, without any interest, subject to any deductions which may be made by the Authority in respect of any amounts due and payable by the Contractor to the Authority in accordance with the terms of this Agreement.
- 9.3.2 If the Performance Security is scheduled to expire before the expiry of the Contract Period, then the Contractor shall obtain an extension of the Performance Security or furnish a new

<sup>3</sup> Calculated at approximately 3% (three per cent) of the amount specified in the definition of Total Project Cost.



Performance Security in the form set forth in Schedule-D at least 30 (thirty) days prior to the expiry of the Performance Security. If the Contractor fails to extend or replace the Performance Security, the Authority shall be entitled to claim the entire amount then available under the Performance Security and retain such amount as a cash security until such time as the Contractor submits an extension or replacement of the Performance Security to the satisfaction of the Authority



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## ARTICLE 10 RIGHT OF WAY FOR DEPOTS

### 10.1 Site for the Maintenance Depots

The site(s) for the Maintenance Depots shall comprise the real estate described in Schedule-A and in respect of which a license shall be provided and granted by the Authority to the Contractor as a licensee under and in accordance with this Agreement (the “**Depot Site(s)**”) in order for the Contractor to carry out and perform its obligations under this Agreement.

### 10.2 Licence and Right of Way for Maintenance Depots

10.2.1 The Authority hereby grants to the Contractor access to the Depot Site(s) for carrying out, at its sole risk and expense, any surveys, investigations and soil tests that the Contractor may deem necessary prior to the Appointed Date. The Contractor expressly agrees that the Authority shall have no liability whatsoever in respect of any survey, investigations and tests carried out or work undertaken by the Contractor on or about the Depot Site(s) pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the license fee of Re.1 (Rupee One) per annum, this Agreement and the covenants and warranties on the part of the Contractor herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Contractor, effective from the dates specified in this Clause 10.2, leave and licence rights in respect of the Maintenance Depots at the locations described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), free of any Encumbrances, to develop, equip, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of this Agreement and, solely for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The Authority shall ensure that the Maintenance Depots handed over to the Contractor under this Agreement comply in all respects with the Minimum Maintenance Depot Specifications.

10.2.4 The Authority shall, in accordance with the timelines prescribed in Clause 4.1.2, provide and grant to the Contractor, vacant access, constructive possession and licenses to possess the following Maintenance Depots:

- (a) the Maintenance Depot situated at {\*\*\*\*}; and
- (b) the Maintenance Depot situated at {\*\*\*}.<sup>4</sup>

10.2.5 On and from the Appointed Date, the Authority shall provide and grant to the Contractor, vacant access, constructive possession and license to possess additional Maintenance Depots in line with the Procurement Schedule so as to enable the Contractor to deploy the Buses in accordance with the Deployment Plan. The timeline accordance with this Clause 10.2.5 below:

- (a) within 6 (six) months after the Appointed Date, the Authority shall handover the Maintenance Depot(s) situated at {\*\*\*\*};

<sup>4</sup> **Drafting Note** – List of Maintenance Depots being handed over by the Authority prior to the Appointed Date to be finalized and populated at the time of signing.

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- (b) within 12 (twelve) months after the Appointed Date, the Authority shall handover the Maintenance Depot(s) situated at {\*\*\*\*}; and
- (c) within 18 (eighteen) months after the Appointed Date, the Authority shall handover the Maintenance Depot(s) situated at {\*\*\*\*}.

(each of the above dates, a “**Scheduled Maintenance Depot Handover Date**”).

- 10.2.6 Subject to Clause 10.2.7 below, in the event that the Authority fails to provide vacant access, constructive possession and license to possess the Maintenance Depots specified in Clause 10.2.5 above, which comply with the Minimum Maintenance Depot Specifications, on or prior to the respective Scheduled Maintenance Depot Handover Date, it shall pay to the Contractor as Damages, Rs. 10,000 (Rupees ten thousand) per day **per depot** for each day of delay until, for all the Maintenance Depots required to be handed over by the Authority, vacant access, constructive possession and license to possess thereof is delivered to the Contractor in accordance with the requirements of this Agreement.
- 10.2.7 If the Authority is unable to handover, to the Contractor, Maintenance Depots which meet the Minimum Maintenance Depot Specifications by the relevant Scheduled Maintenance Depot Handover Date, then the Authority may, by way of a written notice provided at least 30 (thirty) days prior to the relevant Scheduled Maintenance Depot Handover Date, require the Contractor to takeover possession and control of the Maintenance Depot on an “as is where is” basis. On and from the date on which the Contractor takes over peaceful, vacant and unencumbered possession of the Maintenance Depot, the Contractor shall, at the cost of the Authority and without prejudice to its obligations to carry out the Fit Out Works, undertake and perform all such works and activities that may be required in order to ensure that the Maintenance Depot meets the Minimum Maintenance Depot Specifications. The scope of work required to be undertaken by the Contractor in this regard, including the costs payable by the Authority for such work, shall be mutually discussed and agreed by the Parties by way of a Change of Scope Order. The Contractor shall also be entitled to a mutually agreed extension of the Scheduled Maintenance Depot Completion Date, with such extension being not less than 90 (ninety) days.
- 10.2.8 Notwithstanding the provisions of Clause 10.2.2, the licence granted in respect of the Licensed Premises hereunder shall expire in respect of such Licensed Premises upon the transfer of the relevant Maintenance Depots upon the early termination or expiry of this Agreement.
- 10.2.9 The Contractor hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Contractor, a transfer or surrender of the license granted/ to be granted hereunder at any time after the Contract Period has expired or has been terminated earlier in terms hereof, sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Contractor consents to it being registered for this purpose.

### 10.3 Handover of the Licensed Premises

- 10.3.1 For each Maintenance Depot that is to be handed over to the Contractor pursuant to the terms of this Agreement, after the Appointed Date, the Authority’s Representative and the Contractor shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works and trees on or attached to the Licensed

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Premises. Such memorandum shall have appended thereto a statement (the “**Appendix**”) specifying in reasonable detail those parts of the Licensed Premises to which vacant possession has not been granted to the Contractor. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Contractor for free and unrestricted use and development of the vacant and unencumbered Licensed Premises during the Contract Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that possession with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Contractor upon vacant access thereto being provided by the Authority to the Contractor.

- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that the Authority shall have granted vacant possession and Right of Way to the Licensed Premises such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Licensed Premises and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 21.1.1.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Contractor shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Contractor shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 30 (thirty) days from the relevant Scheduled Maintenance Depot Handover Date, the Right of Way to the Contractor in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in a sum calculated at the rate of Rs. 1,000 (Rupees one thousand) per day for every 500 (five hundred) square metres or part thereof, commencing from the 31<sup>st</sup> (thirty first) day after the Scheduled Maintenance Depot Handover Date and until such Right of Way is procured.
- 10.3.5 The Contractor may, if so requested by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for ancillary buildings or for construction of works specified in any Change of Scope Order issued under Article 15, in accordance with this Agreement and upon procurement, such land shall form part of the Licensed Premises and vest in the Authority; provided that the Contractor may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith. Provided further that the cost of land acquired under this Clause 10.3.5 shall be borne by the Authority in accordance with Applicable Laws and that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the ancillary buildings, electric sub-stations and approach roads thereof shall conform to the provisions of Schedule-A. It is further agreed that the Authority may, at any time after the Bid Date, *suo moto* acquire the land required hereunder.



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#### **10.4 Maintenance Depot to be free from Encumbrances**

The Maintenance Depots made available by the Authority to the Contractor pursuant hereto shall be free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition, development, possession and use of such Licensed Premises for the duration of the Contract Period, except insofar as otherwise expressly provided in this Agreement.

#### **10.5 Protection of Site from encroachments**

During the Contract Period, the Contractor shall protect the Licensed Premises from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Contractor to place or create any Encumbrance or security interest over all or any part of the Licensed Premises or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

#### **10.6 Access to the Authority**

The licence, Right of Way and right to the Licensed Premises granted to the Contractor hereunder shall always be subject to the right of access of the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### **10.7 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Contractor under this Agreement, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest. Such rights, interest and property on or under the Depot Sites shall vest in and belong to the Authority or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority and any other concerned Government Instrumentality forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Authority and to the extent that the Fit Out Works have been impeded as a result, the Contractor shall be given an extension of time. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Contractor to continue the Fit Out Works with such modifications as may be deemed necessary.

#### **10.8 Felling of trees**

The Authority shall procure any Applicable Permits required for felling of trees to be identified by the Contractor for this purpose if and only if such trees cause a material adverse effect on the Fit Out Works or the Operation and Maintenance of the Maintenance Depots, as the case



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may be. In the event of any delay in felling thereof for reasons beyond the control of the Contractor, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Contractor and any revenues thereof shall be paid to the Authority.

## **10.9 Unforeseen Site Conditions**

If, after the Maintenance Depots are handed over the Contractor in accordance with this Article 10, the Contractor encounters any adverse physical conditions at the Licensed Premises, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Contractor may seek a Change of Scope in accordance with Article 15. Upon receipt of a request for a Change of Scope due to unforeseen conditions relating to the Licensed Premises, if, in the opinion and sole discretion of the Authority, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then the Authority shall issue a Change of Scope Order in accordance with Article 15. Any decision of the Authority regarding the existence of any unforeseen conditions relating to the Licensed Premises shall be final and binding.



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## **ARTICLE 11**

### **UTILITIES, ASSOCIATED ROADS AND TREES**

#### **11.1 Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Depot Site(s) are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Contractor, initiate and undertake at its cost, legal proceedings for acquisition of any right of way necessary for such diversion.

#### **11.2 Shifting of obstructing utilities**

The Contractor shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Depot Site if and only if such utility causes or shall cause a Material Adverse Effect on the Fit Out Works, Operation or Maintenance of the Maintenance Depots. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Contractor shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

#### **11.3 New utilities and transport systems**

- 11.3.1 The Contractor shall allow, subject to such conditions as the Authority may specify, access to, and use of the Depot Sites for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, to the Authority shall pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Depot Site(s) under this Clause shall not in any manner relieve the Contractor of its obligation to undertake the Fit Out Works and Operate and Maintain the Maintenance Depot in accordance with this Agreement and any damage caused by such use shall be restored forthwith.



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## **ARTICLE 12**

### **COMPLETION OF THE MAINTENANCE DEPOTS**

#### **12.1 Road Connectivity**

The Authority shall, at its own cost and expense, provide, or cause to be provided road connectivity (sufficient for the movement of the Buses and other vehicles and machinery required for the Operation and Maintenance of the Maintenance Depots) between the boundary of the relevant Maintenance Depot and the nearest motorable road, by no later than the timeline specified in Clause 10.2.4 and 10.2.5.

#### **12.2 Obligations prior to commencement of construction**

Prior to commencement of the Fit Out Works, the Contractor shall:

- (a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Fit Out Works at the Maintenance Depots (including installation of the Charging Infrastructure);
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of the Fit Out Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed, if any, for the Maintenance Depot under and in accordance with the Applicable Laws and Applicable Permits.

#### **12.3 Maintenance during Fit Out Period**

While undertaking the Fit Out Works, the Contractor shall maintain, at its cost, the existing roads along the alignment of the Maintenance Depots so that their traffic worthiness and safety are at no time materially inferior as compared to their condition 7 (seven) days prior to the date on which such Maintenance Depots are handed over by the Authority, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of the Fit Out Works and conforms to Good Industry Practice. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the existing roads along the alignment of the Maintenance Depots.

#### **12.4 Drawings**

In respect of the Contractor's obligations relating to the Drawings of the Maintenance Depots as set forth in Schedule-F, the following shall apply:

- (a) The Contractor shall prepare and submit, with reasonable promptness, 3 (three) copies each of all Drawings to the Authority for review.



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- (b) By submitting the Drawings for review to the Authority, the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering of the Fit Out Works, including the field construction criteria related thereto, are in conformity with the Scope of the Agreement, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Agreement and the Specifications and Standards. The Contractor shall not be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue the Fit Out Works at its own discretion and risk. However, if the Authority fails to provide its observations on the Drawings submitted by the Contractor within 30 (thirty) days of receipt of such Drawings, the Drawings shall be deemed to be approved subject to the Contractor issuing a notice of reminder to the Authority at least 7 (seven) days prior to the expiry of the aforesaid 30 (thirty) day period.
- (d) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Agreement or the Specifications and Standards, such Drawings shall be revised by the Contractor and resubmitted to the Authority for review. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.
- (f) Within 90 (ninety) days of the issuance of the Maintenance Depot Completion Certificate for each Maintenance Depot, the Contractor shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Fit Out Works actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Maintenance Depots and setback lines, if any, of the buildings and structures.

## 12.5 Completion of the Maintenance Depots

12.5.1 On and from the date on which the Authority hands over possession of each of the Maintenance Depots to the Contractor pursuant to Clause 10.2.4, 10.2.5 or 10.2.6, as the case may be, the Contractor shall undertake the Fit Out Works for such Maintenance Depot in conformity with the Specifications and Standards set forth in Schedule-B. Subject to Clause 10.2.6, the Contractor shall complete the Fit Out Works within 60 (sixty) days from the date on which each Maintenance Depot is handed over by the Authority pursuant to Clause 10.2.4 and 10.2.5 (each date the “**Scheduled Maintenance Depot Completion Date**”).

12.5.2 In the event that the Contractor fails to complete the Fit Out Works by the Scheduled Maintenance Depot Completion Date (as may be extended in accordance with the terms of this Agreement), unless such failure has occurred due to a Delay Event, it shall pay Damages to the



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Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security per bus times the number of buses allocated to the specific depot for each day of delay until the Fit Out Works are completed and the relevant Maintenance Depot is ready to be put into commercial operation. . For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.5.3 In the event that the Maintenance Depot Completion Date, for any Maintenance Depot, does not occur within 270 (two hundred and seventy) days from the relevant Scheduled Maintenance Depot Completion Date (as may be extended in accordance with the terms of this Agreement), unless the delay is on account of a Delay Event, the Authority shall be entitled to terminate this Agreement for an Contractor Default and the consequences of such termination as set out in Article 33 shall apply.
- 12.5.4 Upon completion of the Fit Out Works at each Maintenance Depot, the Contractor shall issue a notice to the Authority pursuant to which the Authority, or the Authority's Representative, shall, within 7 (seven) days from the date of such notice, inspect the Maintenance Depot to assess its conformity with the Specifications and Standards. If the Maintenance Depot complies with the Specifications and Standards, the Authority shall issue a completion certificate for the Maintenance Depot ("**Maintenance Depot Completion Certificate**"). If, however, pursuant to any inspection undertaken by the Authority, or the Authority's Representative, any defects or deficiencies are identified in the Maintenance Depot, the Contractor shall, no later than 30 (thirty) days from the date of such notice, rectify and remedy such defects or deficiencies and shall issue a notice to the Authority pursuant to which the Authority may re-inspect the Maintenance Depot. The process set out in this Clause 12.5.4 shall continue until all defects and deficiencies in the Maintenance Depot have been rectified and the Authority has issued the Maintenance Depot Completion Certificate for such Maintenance Depot.

## 12.6 Extension of Time

- 12.6.1 Subject to Clause 12.6.2 below, the Contractor shall be entitled to a day-for-day extension of the relevant Scheduled Maintenance Depot Completion Date and the Procurement Schedule if and only to the extent that performance of the Fit Out Works for such Maintenance Depot or the procurement of the Buses is, or will be, delayed due to a Delay Event.

- 12.6.2 The Contractor shall promptly provide the Authority with:

- (i) a notice upon becoming aware of any Delay Event; and
- (ii) a notice of its claim for extension the Scheduled Maintenance Depot Completion Date and Procurement Schedule, with such notice specifying the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Contractor, the mitigation measures being taken or proposed to be taken by the Contractor in order to minimise the impact of the Delay Event, and any other information relevant to claim such extension.

Subject to Clause 12.6.3 below, the issuance of such notice within 7 (seven) days from the date the Contractor became aware of the Delay Event shall be a condition precedent to the Contractor's entitlement to an extension under this Clause 12.6.



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- 12.6.3 Where a Delay Event has a continuing effect or where the Contractor is unable to determine whether the effect of a Delay Event will actually cause delay to the Fit Out Works or procurement of the Buses, so that it is not practical for the Contractor to provide notice in accordance with Clause 12.6.2 above, a statement to that effect with reasons together with any other relevant information shall be submitted in place of the notice required pursuant to Clause 12.6.2. In such an event, the Contractor shall, as soon as reasonably practical, submit to the Authority the information required pursuant to Clause 12.6.2.
- 12.6.4 Without prejudice to the Contractor's obligations to notify the Authority regarding the occurrence of a Delay Event above, the Contractor shall: (i) keep and maintain records to accurately substantiate and establish claims for extensions under this Clause 12.6; and (ii) give the Authority access to such records and documents or provide the Authority with copies, if so requested.
- 12.6.5 If there are two or more concurrent causes of delay and only one of those concurrent causes is a cause of delay which would entitle the Contractor to an extension of time in accordance with this Clause 12.6, then the Contractor shall not be entitled to an extension of time for the period of such concurrency.
- 12.6.6 The Contractor shall not be entitled to any extension of time for any reason whatsoever, including due to:
- i delay caused in complying with any instructions of the Authority which are directly attributable to any act or omission of the Contractor;
  - ii failure of any Contractor to commence or carry out any work within the prescribed timelines;
  - iii unavailability or shortage of equipment, materials or any other resources (including any utilities); or
  - iv inclement weather conditions except in case of Force Majeure.
- 12.6.7 Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any Delay Event shall be settled in a final and binding manner in accordance with the Dispute Resolution Procedure.



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## ARTICLE 13 PROCUREMENT OF BUSES

### 13.1 Standards and Specifications

The Contractor shall procure Buses meeting all the Specifications and Standards provided in Schedule-B.

### 13.2 Ownership of Buses

The Contractor agrees that it shall be solely responsible for the procurement of Buses. Subject to the terms of this Agreement, the Parties agree that during the Contract Period, ownership ~~risk~~ of the Buses shall remain with the Contractor and the Contractor shall cause all Buses to be registered in the name of the Contractor, or, where title and ownership of the Buses lies with any other Person pursuant to the terms of any Project Agreement, in the name of such Person, and the Authority shall not exercise any right, title, or interest over any of the Buses, unless provided otherwise under the terms of this Agreement.

### 13.3 Procurement Schedule

The Contractor shall procure the Buses as per the Procurement Schedule provided in Schedule-G hereto and shall ensure the Buses are ready for Commencement of Service in accordance with Article 14. The Contractor further agrees that prior to procurement of the Buses, it shall procure a Prototype Bus for the approval of the Authority in accordance with Clause 13.4.

### 13.4 Prototype

- 13.4.1 The Contractor shall, within 30 (thirty) days from the date of execution of this Agreement, provide to the Authority (or any nominee appointed by it for this purpose) 5 (five) copies of the Designs and Drawings of a sample Bus that conforms to the Specifications and Standards (the “**Prototype**”), as specified in Schedule-F. Provided that the Contractor may, share only the details of the layout of the Prototype and not share any propriety information forming part of Designs and Drawings of the Prototype.
- 13.4.2 The Authority, or any independent third party agency appointed by the Authority for this purpose, shall depute a team of experts for undertaking a review of the Designs and Drawings to ensure compliance with the requirements of this Agreement. Based on the review, the Authority (or its nominee) shall prepare and submit a report (the “**Design Report**”) highlighting therein, amongst other aspects, any specific non-compliances in the Designs and Drawings with the requirements of this Agreement. The Authority (or its nominee) shall submit a copy of the Design Report to the Contractor within 15 (fifteen) days from the date of receiving the Designs and Drawings of the Prototype from the Contractor. It is agreed that any failure or omission of the Authority, or its nominee, to review and/ or comment on the Designs and Drawings or to highlight any deficiency therein shall not be construed or deemed as acceptance of any such Designs and Drawings by the Authority, or its nominee (if any) and, notwithstanding anything to the contrary, the Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to ensure that the Designs and Drawings are fully in compliance with the requirements of this Agreement.
- 13.4.3 Pursuant to the Design Report or otherwise, the Contractor shall carry out such modifications in the Designs and Drawings as may be necessary in order for the Prototype to conform to the requirements of this Agreement, including without limitation, the Specifications and



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Standards. The Authority expressly agrees that it (and any nominee of the Authority) shall, subject to the provisions of this Agreement and Applicable Laws, maintain the confidentiality of any Designs and Drawings provided to them by the Contractor and shall endeavour to protect the Intellectual Property rights of the Contractor, if any, therein.

### **13.5 Tests at Manufacturer's Plant**

- 13.5.1 Prior to procuring the supply of the Prototype, the Contractor shall carry out, or cause to be carried out on the Prototype, at its own cost and expense, all Tests in accordance with Schedule-H and such other tests that the Contractor may consider necessary to demonstrate that the Prototype complies in all respects with the requirements of this Agreement, including the Specifications and Standards. The Contractor shall provide to the Authority (or its nominee) forthwith, a copy of the Contractor's report on each test containing the results of such test and the action, if any, that it proposes to take for compliance with the requirements of this Agreement, including the Specifications and Standards.
- 13.5.2 The Contractor shall, with at least 2 (two) weeks' notice to the Authority (or the Authority's Representative), convey the date, schedule and type of tests that shall be conducted on the Prototype at the manufacturer's plant and the Authority shall have the right, but not the obligation, to nominate its representative (including any third party nominee) to witness the tests. It is clarified that all costs incurred on account of the visit of Authority's Representatives to the manufacturer's plant shall be borne by the Contractor.
- 13.5.3 The Authority, or the Authority's Representative, shall prepare and submit a report forthwith on the tests witnessed by it highlighting therein, amongst other aspects, any specific non-compliances with the requirements of this Agreement. The Authority, or the Authority's Representative shall submit a copy of this report to the Contractor for review. The Contractor shall, prior to dispatch of the Prototype for delivery to the Authority, procure that defects and deficiencies, if any, are rectified and the Prototype conforms with the Specifications and Standards. It is agreed that any failure or omission of any nominee or representative appointed by the Authority, to witness and/or comment on any tests conducted or to highlight any deficiency therein shall not be construed or deemed as acceptance of such tests by the Authority, its nominee (if any) and, notwithstanding anything to the contrary, the Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to ensure that the tests carried out on the Prototype are fully in compliance with the requirements of this Agreement.
- 13.5.4 In the event of failure of any Test specified in Clause 13.5.1, the Contractor shall rectify the defect and conduct repeat Tests, and the procedure specified in this Clause 13.5 shall apply *mutatis mutandis* to such repeat Tests.

### **13.6 Supply of Prototype**

- 13.6.1 The Contractor shall, no later than 90 (ninety) days after the date of execution of this Agreement; procure and deliver a Prototype and demonstrate to the Authority (or its nominee), the tests and trials conducted in accordance with the provisions of Clause 13.5.
- 13.6.2 In the event that the Contractor fails to procure the Prototype within the period specified in Clause 13.6.1, the Authority may recover from the Contractor an amount equal to 0.5% (zero point five per cent) of the Performance Security as Damages for each and every week, or part



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thereof, by which the delivery of the Prototype is delayed; provided that such Damages shall not exceed 10% (ten per cent) of the Performance Security .

### **13.7 Acceptance of Prototypes**

- 13.7.1 Upon procurement of the Prototype by the Contractor, the Authority (or its nominee) shall, for determining that the Prototype conforms to the requirements of this Agreement, including the Specifications and Standards, inspect the Prototype. Once the Contractor has successfully demonstrated to the Authority (or its nominee) that the Prototype conforms to the requirements of this Agreement, including pursuant to any tests required to be undertaken based on instructions from the Authority, the Authority (or its nominee) shall, no later than 7 (seven) days from such date, issue a notice to the Contractor, certifying that the Prototype is in compliance with the requirements of this Agreement, including the Specifications and Standards.
- 13.7.2 Prior to the procurement of the Prototype, the Authority may inspect the Prototype in accordance with the provisions of Clause 13.6.
- 13.7.3 The Parties expressly agree that acceptance of the Prototype by the Authority (or its nominee) shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

### **13.8 Procurement of Buses**

Upon approval of the Prototype in accordance with Clause 13.7, the Contractor shall procure the remaining Buses in accordance with the provisions of Schedule-G and shall comply with timelines of the Procurement Schedule specified therein. The Contractor agrees that the Buses shall include the same specifications and standards as the approved Prototype provided in this Article 13.

### **13.9 Delay in Procurement**

- 13.9.1 In the event the Contractor is unable to procure any Bus as per this Article 13, for reasons not directly attributable to a Delay Event, the Contractor shall pay Damages at the rate of fifty times of 0.1 % (zero point one per cent) of the Performance Security per bus for each day of delay for each Bus (whose procurement is delayed) till the date of procurement of such Bus.
- 13.9.2 If the procurement of any Bus is delayed by a period exceeding 60 (sixty) days from the scheduled date of procurement of such Bus as provided in the Procurement Schedule, for reasons not directly attributable to a Delay Event, or if the Damages payable by the Contractor for such delay in procurement of Buses exceeds 10% (ten percent) of the Performance Security, notwithstanding anything provided in this Agreement, it shall be regarded as an Contractor Default.
- 13.9.3 The Damages payable by the Contractor shall become due and payable within 7 (seven) days of receipt of notice in this regard from the Authority.

### **13.10 Readiness for Commencement of Service**



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13.10.1 The Contractor agrees that it shall undertake such activities as required under Applicable Law, Applicable Permits and Good Industry Practice in order to ensure that each Lot of Buses procured in accordance with the Procurement Schedule are ready for Commencement of Service. Without limiting the generality of the foregoing, such activities shall include:

- (a) joint inspection with the Authority of the Buses proposed to be introduced into service;
- (b) obtaining the certificate of registration for each Bus proposed to be introduced into service;
- (c) obtaining the certificate of fitness for each Bus proposed to be introduced into service;
- (d) payment of all applicable Taxes;
- (e) obtaining insurance for each Bus proposed to be introduced into service in accordance with Article 25; and
- (f) any other readiness related activity to ensure roadworthiness of the Buses proposed to be introduced into service.

13.10.2 The Contractor shall achieve readiness for Commencement of Service for each Lot of Buses procured by it in accordance with Article 14, no later than 45 (forty five) days from the date of procurement of such Lot of Buses, or any extended period as may be agreed upon by the Parties.

13.10.3 The Parties hereto expressly agree that if the delay in achieving readiness for Commencement of Services for any Lot of Buses procured has arisen solely and directly on account of any Delay Event, the Contractor shall be entitled to such additional time as may be reasonably required by the circumstances of the case for achieving readiness for Commencement of Services.

### **13.11 Damage due to accident**

13.11.1 The Authority and Contractor shall be liable for any damage to the Bus on account of accidents as per clause 13.11.5. The Contractor agrees that it shall undertake repair and rectification of such damaged Bus such that the Bus conforms to the Specifications and Standards, to the satisfaction of the Authority.

13.11.2 The responsibility for any liability arising out of any civil or criminal proceedings instituted by any third party, as a result of such accident of the Bus will be in accordance with clause 13.11.5.

13.11.3 The Authority shall notify the relevant Government Instrumentalities of any accidents verbally, within 1 (one) hour of its occurrence followed by a written notice (setting out in reasonable detail the cause of the accident and the steps taken or proposed to be taken in connection with the same) and in the event, such accident involves any fatality, the Authority shall intimate such accident verbally within 5 (five) minutes of the occurrence of such accident, followed by a written notice (setting out in reasonable detail the cause of the accident and the steps taken or proposed to be taken in connection with the same) Where any persons involved in the accident have suffered physical injuries, the Authority shall co-ordinate with the relevant



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Government Instrumentalities to ensure timely medical help and treatment. The Contractor shall provide reasonable assistance and support to the Authority in such situation.

13.11.4 In the event of an accident of a Bus leading to its complete destruction, such that the Bus cannot be repaired and operated in normal circumstances, and is rendered inoperable, the Contractor shall replace such damaged Bus with a new Bus of such make and model which meets the Specifications and Standards and as acceptable to the Authority. The Contractor agrees that any Bus brought as a replacement to a damaged Bus in accordance with this Clause 13.11.4 shall be used in the Bus Service for the remaining Contract Period.

13.11.5 In case of any accident, initially the accident will be categorized in one of the following categories as per Clause 13.11.6.

Type of Accident on account of

- a. Fault of Driver
- b. Fault of third party
- c. Failure of Bus Mechanism

In case the accident falls under the category of Failure of Bus Mechanism, Contractor will be liable for any damage to the bus and liability arising out of any civil or criminal proceedings instituted by any third party, as a result of such accident of the Bus and the Contractor agrees that it shall keep the Authority and its officers, servants, agents, indemnified from and against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, injury, death, cost and expense of whatever kind and nature arising from such accidents.

In case the accident falls under the category of Fault of Driver or Fault of third party, Authority will be liable for any damage to the bus and liability arising out of any civil or criminal proceedings instituted by any third party, as a result of such accident of the Bus and the Authority agrees that it shall keep the Contractor indemnified from and against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, injury, death, cost and expense of whatever kind and nature arising from such accidents.

13.11.6 The Authority and Contractor can mutually agree on the category of accident. In case the category of accident can not be decided mutually then a three member committee will be formed post accident within a time of 5 days comprising a representative each from Authority, Contractor and Transport Department/ULB/Police. The committee will decide and categorize the accident in one of the category after reviewing the evidence and/or consultation with any of the witness within 15 days after formation of committee. Contractor agrees to install an additional camera such that the frontal view of road from drivers seat is captured clearly without any hinderance all the time. In case Contractor fails to provide the recording of additional installed camera covering the frontal view of road the accident will be categorized under accident on account of Failure of bus mechanism. In case the driver is under the influence of any substance or violates any traffic rules then the accident will be categorized under accident on account of Fault of Driver. In case of any dispute the settlement will be done as per dispute redressal mechanism Clause 39.1.



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## ARTICLE 14

### ENTRY INTO COMMERCIAL SERVICE

#### 14.1 Inspection by the Authority

- 14.1.1 The Authority (or its nominee) may inspect each Bus or any Lot of Buses procured by the Contractor, in accordance with the provisions of this Clause 14.1, prior to the Contractor putting such Bus into operation.
- 14.1.2 The Contractor shall notify the Authority, no later than 45 (forty-five) days prior to the date of procurement of the Buses, the date and time on which each Lot of Buses is to be procured. The Authority may, in its discretion, nominate its representative to carry out an inspection of such Buses at a scheduled date and time.
- 14.1.3 The Contractor shall provide the assistance necessary for the Authority Representative to perform the inspection in accordance with the provisions of this Clause 14.1. For the avoidance of doubt, the Parties expressly agree that such inspection shall be completed within a period of 72 (seventy two) hours from the time when a Bus is made available for inspection and upon expiry thereof, the Bus shall, subject to satisfactory completion of the safety inspection under Clause 14.2, be deemed to have been approved by the Authority.
- 14.1.4 The Contractor shall ensure that all Buses meet the prescribed safety standards as set out in the Specifications and Standards and Applicable Law, including but not limited to, ensuring that the Buses are fitted with CCTV cameras, digital ticketing systems, automatic vehicle locator systems, fire and smoke detection equipment, fire suppression systems and panic buttons designed to send real-time alerts to the Control Centre. In the event that, pursuant to any inspection conducted in accordance with Clause 14.1, the Authority's Representative concludes that any Bus does not conform with the safety standards set out in the Specifications and Standards and this Agreement, and is therefore not safe for entry into service, it shall convey to the Parties forthwith, a report stating in detail the reasons for its findings. The Contractor shall, notwithstanding anything to the contrary contained in this Article 14, not introduce such Bus into service until all defects and deficiencies have been rectified by the Contractor and the Bus has been presented to the Authority for re-inspection. Upon presentation by the Contractor of any such Bus for introduction in service, the Authority's Representative shall re-inspect such Bus and upon it being satisfied that that the Bus conforms to the safety standards set out in the Specifications and Standards and this Agreement, the Contractor shall be allowed to introduce such Bus into service.
- 14.1.5 The Authority Representative shall, pursuant to any inspection conducted under this Clause 14.1, also submit an inspection report for each Bus identifying any minor defects and deficiencies required to be rectified by the Contractor in conformity with the Specifications and Standards (the "**Punch List**"). The Contractor shall, no later than 30 (thirty) days from the date on which it receives the Punch List, rectify each item in the Punch List and notify the Authority of the same. The Authority may, in its discretion, inspect the Bus within 7 (seven) days thereof and in the event that any Punch List items remain un-rectified, the Contractor shall pay to the Authority as Damages, an amount of 1% (one per cent) ~~0.01% (zero point zero one per cent)~~ of the Performance Security per bus for each day of delay until all items of the Punch List for the particular bus are rectified.



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## 14.2 Commercial Operation Date (COD) for Respective Lot of Buses

14.2.1 The Contractor shall within 45 (forty-five) days from the date of procurement of each respective Lot of Buses comply with the following:

- (a) ensure activities related to readiness for Commencement of Services are completed; ; and
- (b) ensure that the Maintenance Depot Completion Certificate has been issued in accordance with Clause 12.5.4 for each Maintenance Depot;
- (c) ensure that the Charging Infrastructure required for the charging of such Lot of Buses has been installed and is commissioned and ready to operate in accordance with the requirements of this Agreement; and
- (d) procure and install the necessary movable assets such as plant and equipment, materials, consumables, etc. at the Maintenance Depot as required for the Operation and Maintenance of the Buses, the Maintenance Depots and the Charging Infrastructure.

14.2.2 Upon completing the activities enumerated in Clause 14.2.1 above for the each Lot of Buses, the Contractor shall intimate in writing to the Authority of its readiness to achieve COD for such Lot of Buses, along with detailed proof of completing each such activity. The Authority shall, within 2 (two) days of receiving such written intimation, inspect the relevant documents and the Maintenance Depot, including the Charging Infrastructure, to determine compliance by the Contractor with its obligations in Clause 14.2.1 above. Upon being satisfied that the Contractor has duly complied with all the requirements set forth in Clause 14.2.1 above for achieving COD for such Lot of Buses, the Authority shall within a period no longer than 5 (five) days from such inspection, issue to the Contractor a Completion Certificate (the “**Completion Certificate**”) for such Lot of Buses. In the event, any deficiencies or shortcomings are observed by the Authority in relation to the fulfilment by the Contractor of its obligations under Clause 14.2.1 for any particular Buses, the Authority shall exclude such Buses from the relevant Lot and shall issue a Completion Certificate with respect to the remaining Buses in the Lot. For the Buses that have been excluded from a particular Lot, the Authority shall issue a notice the Contractor within 2 (two) days of such inspection highlighting the deficiencies or shortcomings. The Contractor shall rectify/remove the deficiencies within such period as specified by the Authority and the Authority shall, upon being satisfied that the deficiencies identified by it have been rectified, forthwith issue the Completion Certificate for such Buses. Provided however, that if the deficiencies or shortcomings observed by the Authority are minor in nature and can be rectified in the usual course of performing Operations and Maintenance of the Buses, the Authority shall not withhold the Completion Certificate for such Lot of Buses. Provided further that the issuance of the Completion Certificate in such cases does not, in any manner, affect the Contractor’s obligation to rectifying any deficiencies or shortcomings identified by the Authority.

14.2.3 The date of issuance of the Completion Certificate for a particular Lot of Buses shall be reckoned as the “**Lot Commercial Operation Date**” or “**Lot COD**” under this Agreement. The date when the Completion Certificate is issued for all Lots of Buses required to be introduced into service by the Contractor, shall be the Commercial Operation Date (“**COD**”) under this Agreement whereupon the Project enters into commercial service, provided, however, that the entry of any Buses into commercial service shall always be subject to compliance with the provisions of Clause 18.3.

## 14.3 Damages for delay



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If COD does not occur prior to the 91<sup>st</sup> (ninety first) day after the Scheduled Maintenance Depot Completion Date for the last Maintenance Depot handed over by the Authority pursuant to Clause 10.2.5, as the same may be extended in accordance with the terms of this Agreement (such date, the “**Scheduled COD**”), for reasons not directly attributable to a Delay Event, the Contractor shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security per bus times the number of buses allocated to the specific depot for each day of delay until COD is achieved. Provided however, if the Contractor is unable to achieve COD on account of a Delay Event, then the Contractor shall be entitled to a day-for-day extension of the Scheduled COD if and only to the extent that COD is, or will be, delayed due to a Delay Event. In this context, the provisions of Clause 12.6 shall apply to any extension of the Scheduled COD that is sought by the Contractor.



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Serial No : 1467105

## ARTICLE 15 CHANGE OF SCOPE

### 15.1 Change of Scope

- 15.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of upgraded technology or additional works and services in the Buses or at the Maintenance Depots, which are not included in the Scope of the Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Contractor and reimbursed to it by the Authority in accordance with this Article 15.
- 15.1.2 If the Contractor determines at any time that a Change of Scope is necessary for providing safer and improved Buses, including upgradation of any technology thereof, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 30 (thirty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings in accordance with this Article 15 or inform the Contractor in writing of its reasons for not accepting such Change of Scope, as the case may be.

### 15.2 Procedure for Change of Scope

- 15.2.1 In the event that the Authority determines that a Change of Scope is necessary, it shall issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 15.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the time required for completing the Fit Out Works and the Procurement Schedule, if the Change of Scope is required to be carried prior to COD; and
  - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with Good Industry Practice.
- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Contractor, and the Parties shall thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Contractor to proceed with the performance thereof pending resolution of the Dispute in accordance with the Dispute Resolution Procedure.
- 15.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to any modifications in the Buses undertaken by the Contractor under this Article 15.



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### **15.3 Payment for Change of Scope**

- 15.3.1 Unless otherwise mutually agreed by the Parties, within 15 (fifteen) days of issuing a Change of Scope Order, the Authority shall make a part payment to the Contractor of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as determined pursuant to Clause 15.2 upon the submission by the Contractor of a bank guarantee for an equivalent amount, which bank guarantee shall be valid for a period of 180 (one hundred and eighty) days, substantially in the form specified in Schedule-D. To the extent that the work under the Change of Scope Order is not completed within a period of 180 days from the date of the Change of Scope Order, the Contractor shall procure an extension of the validity of the bank guarantee.
- 15.3.2 The Contractor shall, after commencement of work, present to the Authority bills for payment in respect of the works and services in progress or completed works and services, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Contractor such amounts and after making a proportionate deduction for the advance payment made hereunder. In the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 15.3.3 Notwithstanding anything to the contrary contained in Clause 15.3.1 and 15.3.2, all costs arising out of any Change of Scope Order, other than those agreed as a part of the Change of Scope Order, shall be borne by the Contractor.

### **15.4 Restrictions on certain works**

- 15.4.1 Notwithstanding anything to the contrary contained in this Article 15, the Authority shall not require the Contractor to undertake any works or services if such works or services are likely to delay the procurement and deployment of the Buses in accordance with the requirements of this Agreement; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be taken into account for purposes of determining completion of the Maintenance Depot.
- 15.4.2 Notwithstanding anything to the contrary contained in this Article 15, the cumulative costs relating to all Change of Scope Orders for provision of works and services shall not exceed 5% (five percent) of the Total Project Cost during the Contract Period.
- 15.4.3 Notwithstanding anything to the contrary, unless the Parties agree otherwise, the Authority shall not require the Contractor to undertake any Change of Scope which involves upgradation of batteries used in the Buses due to technological advancements in battery chemistry.



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## ARTICLE 16

### SUPPLY AND MAINTENANCE OF BUSES

#### 16.1 Supply and Maintenance of Buses

- 16.1.1 The Contractor shall make available and Maintain the Buses in accordance with the provisions of this Agreement, and shall comply with maintenance requirements as provided in Schedule-I of this Agreement.
- 16.1.2 The Contractor shall be fully responsible for ensuring the safety and security of the Buses while the Buses are at the Maintenance Depots. In the event the Contractor fails to ensure the security of the Buses and there is any theft of or damage to the Bus or any component of the Bus including but not limited to any component, spare parts, hardware, software, instruments etc., the Contractor shall, as soon as is reasonably practical, repair or replace, as the case may be, such Bus or Bus component, spare, parts, hardware, software, instrument(s) etc. of the same or equivalent quality and specification, after giving prior written notice to the Authority.
- 16.1.3 The Contractor shall, if required by the Authority, provide additional Buses during the Contract Period. The timeline within which the Contractor is required to provide any additional Buses will be mutually discussed by the Parties.
- 16.1.4 Unless the Parties agree otherwise, the maximum number of additional Buses which may be requested by the Authority under Clause 16.1.3 shall be:
- (a) for the first year from the Appointed Date, no more than *[insert number of Buses being equal to 25% (twenty-five per cent) of the total number of Buses to be supplied by the Contractor throughout the Contract Period under the Agreement]*, but excluding the number of additional Buses procured and supplied by the Contractor; and
  - (b) for the remainder of the Contract Period, no more than *[insert number of Buses being equal to 50% (fifty percent) of the total number of Buses to be supplied by the Contractor throughout the Contract Period under the Agreement]* but excluding all additional Buses procured and supplied by the Contractor.

Provided that, unless the Parties agree otherwise, at no time during the Contract Period, shall the additional Buses required to be made operational under Clause 16.1.3 be more than 50% of the total number of Buses to be procured and supplied by the Contractor throughout the term of this Agreement, but excluding all additional Buses procured and supplied by the Contractor. Notwithstanding the foregoing, the Parties agree that provision of additional Buses shall be subject to adequate availability of space and infrastructure (in the form of parking space at the Maintenance Depot, Charging Infrastructure etc.) for parking, maintenance and cleaning and charging of Buses.

- 16.1.5 Any additional Buses required to be procured and made operational pursuant to Clause 16.1.3 shall be done by way of a Change of Scope and the cost of such additional Buses shall be mutually agreed and paid in accordance with the provisions of Article 15.



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- 16.1.6 Any additional Buses procured by the Contractor pursuant to Clause 16.1.3 shall become a part of the fleet of Buses operated by the Contractor under this Agreement and the provisions of this Agreement applicable to such Buses shall apply to all additional Buses as well.

## 16.2 Maintenance Depots

- 16.2.1 The Contractor shall use the Maintenance Depots, only for the purposes of the Maintenance of the Buses and any other activity specified in this Agreement.
- 16.2.2 The Contractor shall ensure that the Maintenance Depots are adequately staffed with skilled personnel, equipped with requisite equipment, plant and machinery and stocked with Consumables, so as to ensure compliance with the Operations and Maintenance standards provided in this Agreement.

## 16.3 Operation Manual

- 16.3.1 The Contractor shall prepare an operation manual (the “**Operation Manual**”) for the operation of Buses in conformity with Good Industry Practice and the provisions of this Article 16. The Contractor shall provide 10 (ten) copies of a provisional operation manual (the “**Provisional Operation Manual**”) to the Authority no later than the date on which the Prototype is delivered pursuant to Clause 13.6. The Authority may review the Provisional Operation Manual and convey its comments to the Contractor within a period of 15 (fifteen) days from the date of receipt thereof. The Contractor shall revise the Provisional Operation Manual, as may be necessary, and provide 10 (ten) copies of the Operation Manual, accompanied by an electronic copy thereof, no later than the 15 (fifteen) days from the date on which it receives any comments from the Authority. The Operation Manual shall be revised and updated once every year and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Authority and the Contractor expressly agree that until the Operation Manual is provided hereunder, the Provisional Operation Manual shall apply.
- 16.3.2 The Operation Manual shall include:
- (a) instructions to operating staff for operation of the Bus;
  - (b) instructions for troubleshooting the Buses, including any software incorporated in the Buses;
  - (c) dos and don'ts for operating staff;
  - (d) safety precautions to be taken by the operating staff;
  - (e) rating and layout of equipment;
  - (f) operating limits of installed systems; and
  - (g) control and safety features of the Buses.

## 16.4 Routes and Schedules

- 16.4.1 The Parties agree that the Authority shall have the exclusive right to determine routes, frequency and schedule of the Buses as part of Deployment Plan throughout the Contract Period. The Authority agrees that any revised Operational Route shall only have an origin, final destination and opportunity charging location at one of the Maintenance Depots or an Opportunity Charging Station allocated to the Contractor as per Schedule-A.



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16.4.2 If the Authority wishes to deploy a Bus on any route which requires the Bus to undergo opportunity charging at a location that is not a Maintenance Depot as per Schedule-A (“**Opportunity Charging Stations**”), then the Authority shall, at its cost, be responsible for procuring and providing to the Contractor:

- (a) vacant and unencumbered possession of land and right of way to such location on which the Contractor will be required to install the charging infrastructure;
- (b) an electricity connection to such location (at the available HT metering level); and
- (c) any and all Applicable Permits that might be required for installing and operating the charging infrastructure at such location.

Any deployment of Buses undertaken pursuant to this Clause 16.4.2, as well as payment of the cost of any additional charging infrastructure installed by the Contractor, shall be undertaken by way of a Change of Scope in accordance with Article 15.

## **16.5 Incidents En-Route**

16.5.1 In case of a Breakdown of a Bus during normal course of Operations, the Authority shall immediately inform the Control Centre and its maintenance team whereupon the Contractor shall ensure speedy tow-away of the affected Bus within 2 (two) hours of the Breakdown reporting by driver.

16.5.2 The Authority and Contractor shall make provisions for the adequate availability of first aid kits on the Buses or at the Maintenance Depots for assisting any persons or Users in need of first aid on-site and shall also co-ordinate with the relevant Government Instrumentalities including but not limited to the police to ensure timely medical help to any injured Users.

## **16.6 Advertising on Buses and Maintenance Depots**

16.6.2 Subject to Applicable Law, the Authority may display advertisements on the Buses and at the Maintenance Depot at their own cost. Other than to the extent set out in this Agreement, the Contractor shall have no right to display any advertisement on the Buses or the Maintenance Depots.

16.6.2 The Authority shall ensure that the display of any advertisements on the Buses and Maintenance Depot does not interfere in any way with the performance by the Contractor of its obligations under this Agreement.

16.6.3 The Authority shall at all times ensure that no part of the Buses including but not limited to the external and internal colour, body of the Buses or any part of the Maintenance Depots are damaged due to the placement of any advertisements or any other form of display material. The Authority shall ensure that the advertisements are displayed in such a manner that it does not obstruct partially or completely, the visibility from inside and outside of the Buses. If any damage is caused to the Buses or the Maintenance Depots directly as a result of the placement of any advertisements by the Authority, the Authority shall be liable to reimburse the Contractor all costs incurred by the Contractor in rectifying such damage.

### **16.6.4 Placement of Advertisement**



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- (a) The Authority may place the advertisement inside and outside the Buses at designated slots described, such that it does not obstruct any safety, advisory or other mandatory information.
- (b) The Authority may place the advertisement on the boundary wall of the Maintenance Depots or any other slot identified by the Authority.

16.6.5 The Authority shall be entitled to appropriate the entire revenue generated from the display of advertisements on the Buses and at the Maintenance Depots.



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## ARTICLE 17 MAINTENANCE OF BUSES

### 17.1 Maintenance Obligations

- 17.1.1 The Contractor shall maintain all Buses in accordance with the provisions of this Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the “**Maintenance Obligations**”).
- 17.1.2 The Parties agree that for discharging the Maintenance Obligations hereunder, the Contractor shall provide its staff, movable equipment, Spares and Consumables, workshop, office space etc. The Parties further agree that the workshop space to be provided hereunder by the Contractor for discharging the Maintenance Obligations of the Contractor shall be no less than 100 m (hundred metres) long and 20 m (twenty metres) wide, within the Maintenance Depot.

### 17.2 Maintenance Manual

- 17.2.1 The Contractor shall prepare a repair and maintenance manual (the “**Maintenance Manual**”) for the maintenance of Buses in conformity with Good Industry Practice and the provisions of this Article 17. The Contractor shall provide 10 (ten) copies of a provisional maintenance manual (the “**Provisional Maintenance Manual**”) to the Authority no later than 90 (ninety) days from the Appointed Date. The Authority may review the Provisional Maintenance Manual and convey its comments to the Contractor within a period of 15 (fifteen) days from the date of receipt thereof. The Contractor shall revise the Provisional Maintenance Manual, as may be necessary, and provide to the Authority 50 (fifty) copies of the Maintenance Manual, accompanied by an electronic copy thereof, no later than 30 (thirty) days from the date on which it receives comments from the Authority. The Maintenance Manual shall be revised and updated once every year and the provisions of this Clause 17.2 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Maintenance Manual is provided hereunder, the Provisional Maintenance Manual shall apply.
- 17.2.2 The Maintenance Manual shall include details of the periodic intervals at which the Contractor will perform its Maintenance Obligations on each Bus (“**Scheduled Maintenance**”). The Contractor shall ordinarily undertake Scheduled Maintenance at the Maintenance Depots and shall ensure that the Maintenance Depots are fully equipped with all equipment, tools, tackles, Consumables and Spares required to undertake the Scheduled Maintenance of the Buses.
- 17.2.3 The Contractor shall, at least 15 (fifteen) days prior to the date of any Scheduled Maintenance issue a notice to the Authority identifying the Buses that will undergo such Scheduled Maintenance. Such notice shall also specify the estimated time required for such Scheduled Maintenance and the estimated date on which such Buses will be made available for operations.
- 17.2.4 Any maintenance or repair of a Bus, not being Scheduled Maintenance, and arising out of any reason including Breakdown, unsatisfactory performance, defects, deficiencies, accident, vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the Contractor as unscheduled maintenance (the “**Unscheduled Maintenance**”). The Parties expressly agree that any and all Unscheduled Maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the relevant Bus. Any and all Unscheduled Maintenance shall form part of the Maintenance Obligations and shall be undertaken by the Contractor at its own cost and expense. Provided that, if any Unscheduled Maintenance is required to be undertaken as a direct result of a breach by the Authority of its obligations under





this Agreement, then any reasonable documented costs and expenses for such Unscheduled Maintenance shall be reimbursable by the Authority to the Contractor.

- 17.2.5 The Contractor shall, within 3 (three) days of the arrival of a Bus at a Maintenance Depot for Unscheduled Maintenance arising out of the reasons specified in Clause 17.2.4, furnish to the Authority in reasonable detail the particulars of defects, deficiencies or damages and the estimated cost of repair thereof. Upon completion of repairs hereunder, the Contractor shall furnish to the Authority the actual cost of repairs, if such costs are to be borne by the Authority pursuant to Clause 17.2.4 above.

### 17.3 Spares and Consumables

- 17.3.1 During the Contract Period, the Contractor shall, at its own cost and expense, replace and install materials which get consumed or wear out beyond serviceable limits in the normal course of operation of a Bus, including oils, lubricants, brake blocks and pads, rubber parts and hoses, fuses, light fittings, bulbs, seats, curtains, filters, look out glass, bearings and insulators (the “**Consumables**”). Save and except as provided in this Agreement, the Consumables shall be replaced or installed, as the case may be, by the Contractor when a Bus is brought to a Maintenance Depot in accordance with the provisions of this Agreement.
- 17.3.2 During the Maintenance Period, the Contractor shall, at its own cost and expense, replace any part or equipment of a Bus, which may be defective, damaged or worn out, by a substitute thereof (the “**Spares**”) for the efficient Operation and Maintenance of a Bus.
- 17.3.3 The Parties expressly agree that the Contractor shall, supply and install doors, window panes, seats, gear case, axle-boxes, brake gear components, wind shield, and under-gear piping/cabling at its own cost and expense; provided, however, that if such supply and installation have arisen on account of negligence of Authority staff, accidents, vandalism, arson, riots or natural calamities, the Authority shall be liable for the costs and expenses incurred by the Contractor as a result.
- 17.3.4 The Contractor shall, at its cost, maintain a sufficient inventory of Consumables and Spares for timely repair and maintenance of Buses in conformity with its Maintenance Obligations and shall ensure that upon Termination, it hands over such Spares and Consumables to the Authority with adequate inventory as may be required for a period of 6 (six) months of operations of the Buses based on Good Industry Practice.

### 17.4 Maintenance Requirements

The Contractor shall procure that at all times during the Contract Period, each and every Bus conforms to the maintenance requirements set forth in Schedule-I (the “**Maintenance Requirements**”).

### 17.5 Damages for breach of Maintenance Obligations

- 17.5.1 In the event that the Contractor fails to repair or rectify any defect or deficiency in a Bus, as set forth in the Maintenance Requirements and within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of 2% (two per cent) of the Performance Security per bus per day. Recovery of such Damages



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shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 17.5.2 The Damages set forth in Clause 17.5.1 may be assessed and specified forthwith by the Authority; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Contractor is otherwise in compliance with its Maintenance Obligations. The Contractor shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

## **17.7 Demobilisation due to Emergency**

- 17.6.1 If in the reasonable opinion of the Authority, there exists an Emergency which warrants the demobilisation of a Bus, the Authority shall be entitled to demobilise the Bus for so long as such Emergency and the consequences thereof warrant; provided that such demobilisation and particulars thereof shall be notified by the Authority to the Contractor without any delay, and the Contractor shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Contractor shall re-mobilise the Bus as quickly as practicable after the circumstances leading to its demobilisation have ceased to exist or have so abated as to enable the Contractor to re-mobilise the Bus and shall notify the Authority of the same without any delay. For the avoidance of doubt, the demobilisation of any Bus pursuant to this Clause 17.6 shall not affect the monthly payment and the Authority shall continue to pay the Fee to the Contractor in accordance with Article 22.

## **17.8 Authority's right to take remedial measures**

In the event the Contractor does not maintain and/or repair the Bus in conformity with the provisions of this Agreement and the Maintenance Manual, and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this regard from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Contractor, and to recover its cost from the Contractor. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Contractor to the Authority as Damages. The Parties agree that the Authority shall not in any manner be liable for any damage to, or deterioration in, a Bus occurring on account of the remedial measures taken hereunder.

## **17.9 Overriding powers of the Authority**

- 17.8.1 If in the reasonable opinion of the Authority, the Contractor is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, and such breach is causing or is likely to cause material hardship to the Users or render the use of a Bus unsafe for operation, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the Contractor to take reasonable measures immediately for rectifying or removing such hardship or unsafe condition, as the case may be.
- 17.8.2 In the event that the Contractor, upon notice under the provisions of this Clause 17.8, fails to rectify or remove any hardship or unsafe condition affecting the operation of any Bus, within 15 (fifteen) days from the date of the notice, the Authority may exercise overriding powers



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under this Clause 17.8 and take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Authority in discharge of such obligations, the Authority shall be entitled to recover them from the Contractor in accordance with the provisions of Clause 17.7 along with the Damages specified therein.

17.8.3 In the event of a national emergency, adverse weather conditions, civil commotion or any such other event, the Authority may take over the performance of any or all the rights or obligations of the Contractor to the extent deemed necessary by it, and exercise such control over the Buses and Maintenance Depots or give such directions to the Contractor as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. It is agreed that the Contractor shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.8, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.8.4 The Parties agree that if the Authority takes over the performance of any or all the rights or obligations of the Contractor pursuant to Clauses 17.8.1, 17.8.2 or 17.8.3, then:

- (a) the period during which the Authority has taken over the operation of the Buses shall be excluded for determining compliance with the Key Performance Indicators in accordance with Article 20;
- (b) the Authority shall continue to pay the Contractor the monthly fee in accordance with Clause 22.4 for the period during which the Authority has taken over the operation of the Buses;
- (c) the Contractor shall bear the cost of electricity, over and above the Allowed Power Consumption, in accordance with Clause 22.5.1; and
- (d) the Authority shall be liable for any damage caused to the Buses during the period in which it has taken over the operations of the Buses.

## 17.9 Restoration of loss or damage to the Buses

Save and except as otherwise expressly provided in this Agreement, in the event that a Bus or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever other than accident, the Contractor shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Bus conforms to the provisions of this Agreement. In case the cause of any loss or damage is on account of accident the restoration responsibility shall be decided in accordance with Clause 13.11.5 and Clause 13.11.6.

## 17.10 Modifications to the Buses

The Contractor shall not carry out any material modifications to a Bus save and except where such modifications are necessary for the Bus to operate in conformity with the Specifications and Standards, Maintenance Obligations, Good Industry Practice and Applicable Laws; provided that the Contractor shall notify the Authority of the proposed modifications along

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with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 15 (fifteen) days of receiving the Contractor's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

#### **17.11 Excuse from performance of obligations**

The Contractor shall not be considered in breach of its obligations under this Agreement in connection with the Maintenance of the Buses and Maintenance Depots if it is unable to perform its obligations on account of any of the following:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe operation of Buses, except when unsafe conditions occurred because of failure of the Contractor to perform its obligations under this Agreement; or
- (c) a breach by the Authority of its obligations under this Agreement and which directly affects the Contractor's ability to comply with any of its obligations;
- (d) delay by the Authority in handing over the Maintenance Depots by the Scheduled Maintenance Depot Handover Dates in accordance with the terms of this Agreement;
- (e) any accidents which prevent the Contractor from complying with the requirements of this Agreement, including the Key Performance Indicators, provided that the Contractor has complied with the notice requirements set out in Clause 13.11.3 and that such accidents were not caused due to reasons attributable to the Contractor;
- (f) grid failures, power outages or inadequate power supply to the extent it affects the Contractor's ability to adequately charge the Buses in accordance with the requirements prescribed in the Operations Manual;
- (g) compliance with a request from the Authority or the directions of any Government Instrumentality.

Provided that, any such inability to comply with its obligations shall be notified by the Contractor to the Authority without any delay. Notwithstanding the foregoing, the Contractor shall keep every unaffected Bus available for operations. Further, the Contractor shall, in the event that it is prevented from performing any time-bound obligation in connection with the Operations and Maintenance of the Buses and Maintenance Depots on account of any of the events set out in this Clause 17.12, receive an extension of time for the performance of such obligation with the period of such extension being equal to the period during which any of the events set out in this Clause 17.12 subsist.

#### **17.12 Warranties for defects and deficiencies**

The Contractor warrants that:



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- (a) all equipment, supplies, plant and machinery at the Maintenance Depots as well as components, parts and systems forming part of a complete Bus including the Spares and Consumables shall be new and of utility-grade quality and in full conformity with the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the other requirements of the Agreement, of suitable quality and fit for the purpose for which they are intended and be free from defects, deficiencies and defective workmanship;
- (b) all Buses shall be free from defects, shall comply with all Applicable Laws and Good Industry Practice and will be capable of operating in the manner intended and contemplated in the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the Agreement;
- (c) the manufacturing, assembly and supply of the Buses shall be performed in accordance with the standards of professional care, skill, diligence and competence generally accepted in the international independent manufacturing industry applicable to engineering and manufacturing and project management practices for manufacturing projects of similar size and type as the Project, when operated in accordance with Good Industry Practice; and
- (d) the Buses shall be capable of performing and would continue to perform as per this Agreement.

### **17.13 Maintenance Depots**

- 17.13.1 For discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement, the Contractor shall also operate and maintain the Maintenance Depots in accordance with the Specifications and Standards, Good Industry Practices and the provisions of this Agreement.
- 17.13.2 The Authority shall make available space to the Contractor for the Maintenance Depot such that, at any given time, at least 50 (fifty) buses can be repaired and maintained at the Depot Site and there is parking facility for the entire fleet of Buses deployed at such depot.
- 17.13.3 Subject to adequate space being made available at the Maintenance Depots by the Authority, the Contractor shall ensure that the Maintenance Depots shall have adequate provisions for the repair and maintenance of at least 50 (fifty) Buses at a time as well as parking facility for the entire fleet of Buses deployed at such depot.



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## **ARTICLE 18**

### **SAFETY REQUIREMENTS**

#### **18.1 Safety Requirements**

The Contractor shall develop, implement and administer a safety programme for providing a safe environment on or about the Buses and Maintenance Depots, and shall comply with the safety requirements set forth in this Article 18 and Schedule-K (the “**Safety Requirements**”).

#### **18.2 Guiding principles**

- 18.2.1 Safety Requirements aim at minimising threat of injuries, loss of human life and damage to property resulting from accidents on account of the Buses or in the Maintenance Depots, irrespective of the person(s) at fault.
- 18.2.2 Safety Requirements shall apply to all phases of construction, operation and maintenance of the Project with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.

#### **18.3 Obligations of the Contractor**

- 18.3.1 The Contractor shall abide by the following to ensure safety of the Buses and Maintenance Depots, human life and property:
  - (a) instructions issued by the Authority;
  - (b) Applicable Laws and Applicable Permits;
  - (c) provisions of this Agreement;
  - (d) relevant standards/guidelines contained in internationally accepted codes; and
  - (e) Good Industry Practice.
- 18.3.2 The Contractor shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, Contractors and agents.
- 18.3.3 The Contractor shall be responsible for undertaking all the measures under its control to ensure safe operation of Buses and the safety and security of the Maintenance Depots.
- 18.3.4 The Contractor agrees that the Authority shall be entitled to inspect any Bus or Maintenance Depot to verify adherence to Safety Requirements and the Contractor shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

#### **18.4 Safety measures during Fit Out Works**

The Contractor shall, while undertaking the Fit Out Works at the Maintenance Depots, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws and Good Industry Practice.

#### **18.5 Annual Safety Report**



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- 18.4.1 The Contractor shall submit to the Authority before the 31<sup>st</sup> (thirty first) May of each Accounting Year, an annual report in 10 (ten) copies containing, without limitation, a detailed listing and analysis of all accidents occurring in the Maintenance Depots during the preceding Accounting Year and the measures taken by the Contractor for averting or minimizing such accidents in the future (“**Annual Safety Report**”).
- 18.4.2 Once in every Accounting Year, a safety audit shall be carried out by the Authority. It shall review and analyse the Annual Safety Report and accident data of the preceding Accounting Year and undertake an inspection of the Buses and Maintenance Depots. The Authority shall provide a safety report recommending specific improvements, if any, required to be made in the Buses and Maintenance Depots. Such recommendations shall be implemented by the Contractor in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.



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## ARTICLE 19

### MONITORING OF MAINTENANCE

#### 19.1 Monthly Status Reports

- 19.1.1 During the Contract Period, the Contractor shall, no later than 7 (seven) days after the end of each month, furnish to the Authority a monthly report stating in reasonable detail the maintenance services performed by the Contractor on the Buses and the defects and deficiencies that require rectification. The report shall also include Key Performance Indicators achieved by the Buses, the compliance or otherwise with the Maintenance Requirements, Maintenance Manual and Operation Manual, details of any breakdowns, claims, challans etc. The Contractor shall promptly give such other relevant information as may be required by the Authority.
- 19.1.2 The monthly report specified in Clause 19.1.1 shall also include a summary of the key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Contractor's operational performance.

#### 19.3 Inspection

The Authority shall be entitled to inspect the Buses and Maintenance Depots after any maintenance activities have been carried out by the Contractor for evaluating the compliance of the Buses and Maintenance Depot with the Maintenance Obligations. Pursuant to any such inspections, the Authority shall prepare a report of such inspection (the “**Maintenance Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Obligations and shall notify the Contractor of the same for taking remedial measures in accordance with the provisions of Clause 19.5.

#### 19.4 Tests

For determining that the Buses are being maintained in conformity with the Maintenance Obligations, the Authority may require the Contractor to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The Contractor shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests to the Authority within 15 (fifteen) days of such tests being conducted. One half of the costs incurred on such tests shall be reimbursed by the Authority to the Contractor. Provided, however, that the Authority shall not bear any costs hereunder for and in respect of tests which have failed. Provided that, the date and time of such tests shall be mutually discussed and agreed by the Parties keeping in mind the operation hours of any such Bus as per the Deployment Plan.

#### 19.5 Remedial measures

- 19.5.1 The Contractor shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the Maintenance Inspection Report or the test results, as the case may be.
- 19.5.2 The Authority shall require the Contractor to carry out or cause to be carried out tests, at the cost of the Contractor, to determine whether the remedial measures have brought the Buses



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into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Buses conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Contractor in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Contractor at the rate of 0.5% (zero point five per cent) ~~0.01% (zero point zero one per cent)~~ of the Performance Security per bus times the number of buses allocated to the specific depot.

## **19.6 Responsibility of the Contractor**

- 19.6.1 It is expressly agreed between the Authority and the Contractor that any inspection carried out by the Authority or the submission of any Maintenance Inspection Report by the Authority as per the provisions of this Article 19 shall not relieve or absolve the Contractor of its obligations and liabilities hereunder in any manner whatsoever.
- 19.6.2 It is further agreed that the Contractor shall be solely responsible for adherence to the Key Performance Indicators specified in Article 20.

## **19.7 Real Time Data Access**

The Contractor shall install and provide a real time data monitoring system in accordance with the Standards and Specifications (“**Data Monitoring System**”) complete with onboard devices on Buses which enable the Authority to monitor the real-time location and status of the Buses. The Contractor shall provide the Authority access to the raw feed of the Data Monitoring System. The Contractor shall install the Data Monitoring System as per the requirements in Schedule-Q. The Contractor shall ensure that the Data Monitoring System is designed to interface with any existing monitoring systems put in place by the Authority as well as the centralised monitoring system implemented by the Program Manager. The Contractor agrees that a failure to comply with its obligations under this Clause 19.7 shall be deemed to be an Contractor Default.

## **19.8 Driver Behaviour Monitoring**

The Contractor shall install and provide onboard tools/software/devices to monitor the driver behaviour and identify improper driving habits and behaviour which may impact safety, energy consumption or faster deterioration of the bus. The Contractor should monitor and evaluate the driver performance, and maintain monthly monitoring report of each driver. In case of non satisfactory performance of driver, the Contractor can request the Authority to replace the driver from the trained pool of driver by submitting detailed evidence of such non satisfactory performance to the Authority. The Authority will replace the driver post evaluation of monitoring report submitted by the Contractor.



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## ARTICLE 20 KEY PERFORMANCE INDICATORS

### 20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Contractor shall provide and maintain every Bus such that it achieves the performance indicators comprising Reliability and Operational Availability as specified in this Article 20, (the “**Key Performance Indicators**”).

### 20.2 Reliability

- 20.2.1 The Parties agree that the average reliability of all Buses in the fleet shall be measured on a quarterly basis in terms of the number of Breakdowns per 10,000 (ten thousand) kilometres travelled by the Buses (the “**Reliability**”).
- 20.2.2 Reliability shall be equal to the quotient of the aggregate number of Breakdowns of all Buses multiplied by 10,000 (ten thousand) and divided by the cumulative distance travelled by all Buses in that quarter.
- 20.2.3 The Contractor agrees that the Reliability for the Buses, determined in accordance with Clause 20.2.2, shall be equal to or less than 1 (one) (“**Assured Reliability**”).
- 20.2.4 The Contractor agrees that for every increase in the Reliability by 1 (one) as compared to the Assured Reliability, it shall pay Damages to the Authority at the rate of 1% (one percent) of the Performance Security.
- 20.2.5 The Authority agrees that if the Assured Reliability is less than 0.85 (zero decimal eight five), then for every 0.1 (zero point one) decrease in the Reliability below a factor of 0.85 (zero point eight five), the Authority shall pay to the Contractor an incentive equal to 0.05% (zero point zero five percent) of the Monthly Fees.

### 20.3 Operational Availability

- 20.3.1 After COD, a Bus shall be deemed to be available for operation at all times, save and except for the instances set out in Clause 20.3.2 below.
- 20.3.2 The Parties agree that the period for which a Bus is deemed to be not available for operation shall be as follows:
- during the period of any Scheduled Maintenance of such Bus which shall be determined as the period between entry of such Bus at the Maintenance Depot and the time when it is declared by the Contractor as available for operation;
  - In the case of any Unscheduled Maintenance arising out of reasons directly attributable to the Contractor, the period between the time of occurrence of an event that renders the Bus unfit or unavailable for service, including breakdowns, and the time when it is declared by the Contractor as available for operation;



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- c. In the case of any faults or malfunctioning of the Charging Infrastructure, thereby preventing the charging of the Buses, the period between the entry of such Bus at the Maintenance Depot for charging and the time when it is declared by the Contractor as available for operation, provided that any planned downtime (i.e., the period between the scheduled end of the Operational Route of such Bus in any particular day and the scheduled start of the Operational Route of such Bus the following day) shall not be considered for determining unavailability; and
- d. any other period during which the Contractor has not made any of the Buses available for operation, unless such unavailability is on account of reasons not directly attributable to the Contractor
- e. during the maintenance period of bus on account of accident caused by failure of bus mechanism.
- f. during the maintenance period of buses on account of accident caused by fault of driver or fault of third party

20.3.3 The following cases shall be excluded from computation of availability of buses for calculating performance levels

- a. Buses held in police/judicial custody
- b. Buses held up due to accidents till the agreed time of repairs
- c. Buses delayed for rectification of defect reported by Authority driver at the time of outshedding, to the extent of reasonable time required for such repair
- d. Buses held up due to any other reason not attributable to the Contractor, as decided by Authority

20.3.4 The availability of the Buses shall be calculated on a daily basis by dividing the number of Buses available for operation (as per Clause 20.3.1 and 20.3.2 above) by the total number of Buses contracted by the Authority under this Agreement multiplied by 100 (one hundred) ("**Availability**"). The Contractor shall at all times procure that the Availability of the Buses during each quarter of the Contract Period is equal to or greater than 95 (ninety five) ("**Guaranteed Availability**").

20.3.5 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the events mentioned in Clause 17.12, the Buses affected by such events will be deemed to be Available for the duration of the event.

20.3.6 If the Authority considers that the operation of a vehicle provided by the Contractor could affect the safety of passengers or the general public, the Authority may not accept the bus as operationally available. In such circumstances the Contractor shall provide at its own expense an alternative vehicle for the performance of the Services.

20.3.7 The Contractor agrees that for every 1% (one percent) reduction in the Availability as compared to the Guaranteed Availability, it shall pay Damages to the Authority at the rate of 5% (five percent) of the Monthly Fees. The Damages payable by the Contractor for a failure to meet the Guaranteed Availability shall be calculated at the end of each quarter.

20.3.8 The Authority agrees that if, in any quarter, the Availability is more than the Guaranteed Availability, then for every 1% (one percent) increase in the Availability over and above the



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Guaranteed Availability, the Authority shall pay to the Contractor an incentive equal to 0.05% (zero point zero five percent) of the Monthly Fees.

#### **20.4 Monthly Report**

- 20.4.1 The Contractor shall, no later than 7 (seven) days after the end of each month, furnish to the Authority a report containing details of the compliance with the Key Performance Indicators of each Bus as measured on a daily basis. The Contractor shall promptly give such other relevant information as may be required by the Authority for the purposes of determining whether the Contractor is achieving the Key Performance Indicators as set out in this Article 20.
- 20.4.2 The Contractor shall keep due and proper records of all data collected from the operation of the Buses from the Data Monitoring System, ITS or any other systems installed, for the purposes of verification by the Authority.

#### **20.5 Cap on Damages for failure to achieve Key Performance Indicators**

The Contractor shall ensure and procure compliance of each of the Key Performance Indicators specified in Article 20. Any Damages payable by the Contractor for a failure to achieve the Key Performance Indicators set out in Clauses 20.2 to 20.4 in any quarter in accordance with this Article 20 shall be capped at 10% of the aggregate Monthly PB Fees payable in such quarter.

#### **20.6 Cap on incentives for exceeding to achieve Key Performance Indicators**

The Contractor shall ensure and procure compliance of each of the Key Performance Indicators specified in Article 20. Any incentives payable by the Authority to the Contractor for exceeding the prescribed Key Performance Indicators in accordance with this Article 20 in any quarter shall be capped at 5% of the aggregate Monthly PB Fees in such quarter.

#### **20.7 Infractions**

- 20.7.1 The Contractor shall Maintain the Buses so as to minimise the occurrence of any of the Infractions. An Infraction may be identified by the Authority (or the Authority's Representative) either through inspections of the Buses and Maintenance Depots, User complaints or review of the data generated from the ITS.
- 20.7.2 The Contractor agrees that upon the occurrence of any Infraction, it shall pay to the Authority Damages of an amount corresponding to the breach of such Infraction as set out in Schedule-T. In the event of any repeated Infractions, the rate of Damages payable by the Contractor shall increase in accordance with the provisions of Schedule-T.



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## Part IV Financial Covenants



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## ARTICLE 21 FINANCIAL CLOSE

### 21.1 Financial Close

21.1.1 The Contractor hereby agrees and undertakes that it shall achieve Financial Close within 60 (sixty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay and for a further period not exceeding 80 (eighty) days, subject to payment of Damages at the rate of 0.25% (zero point two five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 60 (sixty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure; and provided further that, if such delay in achieving Financial Close has occurred directly as a result of the Author'ty's delay in grant of vacant access and Right of Way to the Depot Sites and Maintenance Depots in accordance with Article 10, the Authority shall pay Damages to the Contractor in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay. For the avoidance of doubt, the Damages payable hereunder by the Contractor shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3 for a failure by the Contractor in fulfilling any of its Conditions Precedent specified in Clause 4.1.3.

21.1.2 The Contractor shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Contractor, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

### 21.2 Termination due to failure to achieve Financial Close

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, the Authority shall have the right to terminate this Agreement.

21.2.2 Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash from the Performance Security, an amount equal to the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Performance Security forthwith along with the Damages due and payable under Clause 4.3.



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## ARTICLE 22 FEE

### 22.1 Fee

- 22.1.1 In consideration for undertaking the Project, the Authority shall pay the Contractor a monthly fee per bus (“**Per bus Fee**” or “**PB Fee**”) calculated on the basis of the operational availability of buses by the Contractor in fulfilment of the Contractors obligations under this Agreement (the “**Fee**”).
- 22.1.2 Subject to Clause 22.4 and Clause 22.5 below, the Fee payable to the Contractor under this Agreement shall be calculated by multiplying the aggregate Bus operational availability with with INR [“ (“**PB Fee**”), (which shall be fixed except where varied or adjusted in accordance with this Article 22).

For the avoidance of doubt, the payment of the Fee shall be calculated as follows:

*Monthly Fee = PB Fee X n,*  
*where n is the number of Buses*

- 22.1.3 The Authority shall deposit the Fee due and payable to the Contractor subject to and in accordance with this Article 22, into the Escrow Account.

### 22.2 Payment of Fee

- 22.2.1 After the Lot COD for the first Lot of Buses, and for each subsequent month of the Contract Period, the Contractor shall submit a monthly invoice in respect of the Operational Availability of each Bus which has been put into commercial operation, in accordance with Clause 14.2.1, in the relevant month within 15 (fifteen) days from the end of each month“ (“**Invoice**”). The first Invoice to be submitted by the Contractor after the Lot COD of the first Lot of Buses shall be pro-rated for the number of days from the Lot COD of the first Lot of Buses until the last working day of the month in which the Lot COD occurs. Each subsequent Invoice shall be a monthly invoice to be submitted to the Authority by the 15<sup>th</sup> (fifteenth) day of the immediately following month.
- 22.2.2 Each Invoice shall set out the following amount (collectively referred as the “**Invoice Amount**”).
- (a) the Fee payable to the Contractor for such month, based on the operational availability of all Buses deployed in such month;
  - (b) any costs, Damages or other charges that the Contractor is entitled to recover from the Authority in terms of this Agreement
  - (c) any costs, Damages or other charges that the Authority is entitled to recover from the Contractor in terms of this Agreement and
  - (d) Any applicable taxes



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22.2.3 Upon the submission of each Invoice, the Authority shall, within 30 (thirty) days from the date of submission of such Invoice, verify and certify the amounts due and payable to the Contractor, and either:

- (a) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to the Contractor), conveying its approval for the immediate release of 90% of the amount specified in the Invoice, with the remaining 10% to be released by the 7<sup>th</sup> (seventh) day of the next month, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including any statutory dues); or
- (b) issue a notice to the Contractor disputing the Invoice and directing the Contractor to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority.

The Contractor shall submit a revised Invoice to the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice and issues a certificate to the Escrow Bank (with a copy to the Contractor), conveying its approval for release of the amount specified in the Invoice.

If the Authority fails to either approve an Invoice or issue a notice pursuant to Clause 22.2.3(b) above, within 30 (thirty) days from the date of submission of such Invoice, the Invoice shall be deemed to be approved and the Contractor shall have the right to approach the Escrow Bank for release of the amounts set out in the Invoice, provided that the Contractor has issued a notice of reminder to the Authority at least 7 (seven) days prior to the expiry of the aforesaid 30 (thirty).

Any dispute between the Parties in relation to an Invoice will be settled in accordance with the Dispute Resolution Procedure

## 22.4 Revision of Fee

22.4.1 The Parties agree that the PB Fee shall be revised annually from the second year onwards at a fixed rate of 1% of Basic Quoted Rate throughout the contractual period to accommodate price escalation on account of cost of maintenance, material and manpower. However, for the first year, there will be no revision in PB Fee..

22.4.2 For lots with more than one city in the same lot, bidders shall consider highest of minimum wages (skilled category) from the cities in the lot on due date of tender for PB Fee price quote.

22.4.3 PB Fees shall be adjusted for the remaining cities based on their Minimum Wage (MinW), assuming 10% of the PB Fee as staff cost

22.4.4 The Parties agree that the formula for PB Fee for the remaining cities in the lot with more than one city shall be derived from PB Fee quoted for the city with highest minimum wages (skilled category) as per the following formula:

$$\text{PB Fee for City X} = \text{PB Fee for City H} * [0.9 + (0.1 * (\text{MinW of City X} / (\text{MinW of City H}))]$$

For eg. PB Fee of City H (highest MinW in Lot) is INR 1,00,000, MinW of City H is INR 20,000 per month ,

MinW of City X is INR 10,000 per month,

$$\text{PB Fee of City X} = 100000 * [0.9 + (0.1 * 10,000 / 20,000)] = 95000$$

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22.4.5 The Parties agree that the PB Fee shall stand revised pursuant to any amendment in accordance with this Clause 22.4 and shall become the base PB Fee payable to the Contractor under this Agreement. For the avoidance of doubt, it is clarified that in the event of any dispute or difference in calculation of the MinW hereunder, the Dispute Resolution Procedure shall apply.

## 22.5 Electricity Cost

22.5.1 The Authority agrees to bear the cost of electricity for operation of buses up to the allowable power consumption 0.75 kWh/km for 7 metre Buses, 1 kWh/km for 9 metre Buses, 1.3 kWh/km for 12 metre Buses ("**Allowed Power Consumption**").

The Contractor agrees to bear the cost of electricity consumed for operation of buses over and above the Allowed Power Consumption. The power consumption will be calculated at the aggregate level for the fleet on a annual basis. For the avoidance of doubt, the annual power consumption will be calculated as follows:

*Power Consumption = Total electricity consumption (in kW)/ total operated kms (kms)*  
*where electricity consumption and total kms are taken on a annual basis*

22.5.2 The resolution of the Allowed Power Consumption will be done on an annual basis by the Authority. The annual fleet level Power Consumption will be calculated and average fleet level Power Consumption will be determined.

22.5.3 The cost of any electricity consumed on account of (i) charging of the Buses requiring electricity in excess of the Allowed Power Consumption; (ii) the use of any other equipment, plant and machinery at the Maintenance Depot (apart from the Charging Infrastructure); and (iii) the Operations and Maintenance of the Maintenance Depot, shall be payable by the Contractor.

22.5.4 The Contractor/Authority may install a sub-meter to measure electricity consumption from administrative activities by the Contractor at the depot. The Authority shall deduct an invoice amount for the consumption at the prevailing LT electricity rate..

## 22.6 ~~Other Government Fiscal Assistance~~

22.6.1 ~~For the Buses being procured under this Agreement the Authority (or any other Government Instrumentality) may make available to the Contractor additional Government Fiscal Assistance for such Buses.~~

22.6.2 ~~PK~~

22.6.3



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## ARTICLE 23 TRAINING AND DEPUTATION OF GOVERNMENT EMPLOYEES

### 23.1 Training

The Contractor shall organize training of drivers deputed by the Authority and other staff of the Authority in accordance with the provisions of this Article 23 (the “**Training Obligations**”).

### 23.2 Content and duration of training

23.2.1 The Contractor shall provide driver training to a pool of qualified drivers equal to 3 times the lot size of buses under the dry lease agreement. The authority will designate a list of trained drivers to undergo the driver training by the OEM.

23.2.2 The number of trainees participating in training at any time shall normally be a minimum of 10 (ten) and a maximum of 20 (twenty).

23.2.3 The duration of training courses shall normally be for a minimum period of 6 (six) days and a maximum of 24 (twenty-four) days. The Contractor shall provide a training schedule for training of drivers and ensure that entire list of trainees provided by the Authority will undergo training prior to the Commercial Operation Date of the entire lot.

23.2.4 The driver training specified in this Clause 23.2 shall include classroom and on-the-job/practical training of all selected drivers and include knowledge transfer of minor defects, troubleshooting, maintenance and other aspects of the buses supplied under the consession.

23.2.5 The Contractor at their own cost shall monitor the driver behaviour of all drivers and identify improper driving habits and behaviour which may impact safety, energy consumption or faster deterioration of the bus. The Contractor shall analyze and present data based evidence to identify poor performing drivers and organize periodic retraining courses. The number of trainees participating in the focused retaining shall normally be a minimum of 5 (five) and a maximum of 10 (ten). In case the performance of driver does not improve after retraining then the Contractor can request Authority for the replacement of driver by another driver. The training shall be provided to replacement driver in accordance with Clause 23.2. For the period between replacement of driver and training of replacement driver, Contractor can request the Authority to deploy the reserve driver from the pool of driver’s trained earlier.

23.2.6 The Contractor shall also provide training, transfer of knowledge and skills required for maintenance of buses and specifically with respect to electric vehicle technology, and to content of the training shall comprise transfer of knowledge and skills required for Operation and Maintenance of Buses and Maintenance Depots, as the case may be, and shall be developed by the Contractor in consultation with the Authority.



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23.2.7 The training specified in this Clause 23.2 shall include on-the-job training at the Maintenance Depots and simulation training or real world driving training at driver training centers or in a controlled environment to all drivers of the Buses in accordance with Applicable Laws and Good Industry Practices.

### **23.3 Location of training**

23.3.1 Training courses, as may be required by the Authority prior to the Commercial Operation Date, shall be conducted by the Contractor at the Maintenance Depots or a location nominated by the Authority.

23.3.2 The Contractor shall ensure that the following minimum facilities shall be installed and operated at the training premises:

- (a) air-conditioned lecture halls; and
- (b) any other facilities and infrastructure required for conducting the training in accordance with the provisions of this Agreement.

### **23.4 Annual training programme**

The Contractor shall prepare and conduct an annual training programme in consultation with the Authority and convey the proposed dates for such training programme to the Authority, at least 3 (three) months prior to the commencement of an Accounting Year.

### **23.5 Costs of training**

The Contractor shall bear the cost of any training provided pursuant to this Article 23, including the faculty salaries and expenses and the cost of the training material.

The Authority shall pay the salary and allowances of the drivers and trainee staff during the duration of the training program.

### **23.6 Deputation**

23.6.1 The Authority may, in accordance with the provisions of this Article 23, and at the request of the Contractor, second its maintenance staff on deputation to the Contractor for performing the Maintenance Obligations.

23.6.2 The tenure of deputation under this Clause 23.6 shall be for a minimum period of 2 (two) years and a maximum of 7 (seven) years.

23.6.3 Save and except as otherwise provided herein, the conditions of service of the staff on deputation with the Contractor, including their promotions and emoluments, shall be governed by the applicable rules of the Authority. Provided however, that the Contractor may, in its sole



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discretion, cancel or terminate the deputation of any maintenance staff seconded by the Authority pursuant to this Clause 23.6, if such staff member is found to be in breach of the Contractor's policies on human resources, code of conduct, business ethics etc.

## 27.1 Terms of deputation

23.7.1 The Authority shall pay the salary and allowances to the staff seconded to the Contractor as though such staff was still on the rolls of the Authority.

23.7.2 The Contractor shall reimburse to the Authority the salary, allowances and bonus paid by the Authority to the staff on deputation; provided that the medical expenses, if any, shall be borne solely by the Authority.

23.7.3 The Contractor shall pay to each staff on deputation, a deputation-cum-performance allowance, in accordance with the applicable rules of the Authority. Travel allowance of such staff shall be paid by the Contractor in accordance with its norms. No other incentive or payment shall be made by the Contractor to the staff.

23.7.4 The Contractor may make available to the staff on deputation, facilities including canteen, rest rooms, personal protective equipment, uniform, conveyance, recreational facilities and housing. It is clarified that staff on deputation shall be entitled to avail leave as per the leave policy of the Authority and that the Contractor shall not be excused from performance of its obligations under this Agreement on account of any leave obtained by the staff on deputation if such leave is as per the entitlement of such staff.



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## ARTICLE 24

### TRANSFER OF MAINTENANCE DEPOTS

#### 24.1 Transfer of Maintenance Depots

- 24.1.1 The Maintenance Depots shall, in accordance with the provisions of this Agreement, be handed over to the Authority upon Termination of this Agreement or expiry of the Contract Period. The Parties expressly agree that for and in respect of the transfer hereunder, the provisions of Article 33 shall apply *mutatis mutandis*.
- 24.1.2 Upon the handover of the Maintenance Depots from the Contractor to the Authority pursuant to Clause 24.1.1, all equipment, machinery, building, structures, hardware, software and other assets comprising the Maintenance Depots (including the Charging Infrastructure) shall vest in the Authority without any Encumbrance.

#### 27.2 Provision of Spares upon Termination

- 24.2.1 In the event of termination of this Agreement, along with the Maintenance Depots handed over to the Authority under this Article 24, the Contractor shall provide to the Authority, free of charge, an inventory of Spares. The inventory shall comprise of Spares equivalent to one-half of the average annual consumption of Spares in the Buses and at the Maintenance Depots during the preceding 3 (three) years. For this purpose, the Contractor shall compute the total consumption of each Spare, during the preceding 3 (three) years and divide the same by 3 (three) for arriving at the average annual consumption, and all fractions shall be rounded off to the nearest whole number.
- 24.2.2 Without prejudice to the provisions of Clause 24.2.1, the Authority may, in its discretion, require the Contractor to provide an additional inventory of Spares, equal in all respects to the inventory of Spares specified in Clause 24.2.1, or such proportion thereof as the Parties may by mutual agreement determine. The cost of any such additional Spares shall be paid by the Authority to the Contractor.
- 24.2.3 All Spares provided by the Contractor under this Clause 24.2 shall carry a warranty of 30 (thirty) months from their delivery or 24 (twenty four) months from the date of its use in the Buses or the Maintenance Depots, whichever is earlier, at no additional cost to the Authority. The terms of such warranty shall be determined in accordance with Good Industry Practice.



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## ARTICLE 25

### INSURANCE

#### 25.1 Insurance during Contract Period

The Contractor shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under this Agreement, Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Contractor shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Contractor during the Contract Period.

#### 25.2 Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Contractor shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) total loss, damage or destruction of the Maintenance Depots, Buses, Charging Infrastructure and Opportunity Charging Stations, if any;
- (b) The Contractor shall maintain, throughout the period of the agreement, full liability, third party insurance /self-insurance of the buses including comprehensive coverage.
- (c) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of the Authority or others, arising from any accident at the Maintenance Depots or otherwise, caused by a Bus on account of any negligence of the Contractor or a defect or deficiency in a Bus;
- (d) the Contractor's general liability arising out of the Agreement;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Contractor and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d) above.

#### 25.3 Notice to the Authority

No later than 15 (fifteen) days from the Appointed Date, the Contractor shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes



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to effect and maintain in accordance with this Article 25. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

#### **25.4 Evidence of Insurance Cover**

All insurances obtained by the Contractor in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Contractor shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Authority.

#### **25.5 Remedy for failure to insure**

If the Contractor fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

#### **25.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### **25.7 Contractor's waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **25.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Contractor, and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Buses or Maintenance Depots.

#### **25.9 Compliance with conditions of insurance policies**

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The Contractor expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Contractor's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.



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## ARTICLE 26

### ACCOUNTS AND AUDIT

#### 26.1 Audited accounts

- 26.1.1 The Contractor shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Contractor shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of its accounting year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Contractor during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 26.1.2 The Contractor shall, within 30 (thirty) days of the close of each quarter of its accounting year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 26.1.3 On or before the expiry of 2 (two) months after its accounting year, the Contractor shall provide to the Authority, for that accounting year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the bills raised by the Contractor for payment by the Authority, (b) the payments received and other revenues derived from the Authority, and (c) such other information as the Authority may reasonably require.

#### 27.3 Appointment of auditors

- 26.2.1 The Contractor shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 3 (three) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-Q. In case the bidder has an existing statutory auditor meeting the eligibility criteria mentioned in Schedule-Q, the Contractor shall request the Authority for appointment of the existing auditors for the project. The Authority may, at its discretion agree to the appointment of the Contractor’s existing Statutory Auditor for the project. All fees and expenses of the Statutory Auditors shall be borne by the Contractor.
- 26.2.2 The Contractor may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.



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26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

### **26.3 Certification of claims by Statutory Auditors**

Any claim or document provided by the Contractor to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

### **26.4 Set-off**

In the event any amount is due and payable by the Authority to the Contractor, it may set-off any sums payable to it by the Contractor and pay the balance remaining forthwith.

### **26.5 Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.



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## ARTICLE 27

### ESCROW ACCOUNT

#### 27.4 Escrow Account

- 27.4.1 The Authority shall, prior to the Appointed Date open and establish an account (“**Escrow Account**”) with a Bank (“**Escrow Bank**”) in accordance with this Agreement and the Escrow Agreement.
- 27.4.2 For the purpose of opening and operating the Escrow Account, the Authority shall, as a Condition Precedent, enter into an agreement with the Contractor and Escrow Bank (“**Escrow Agreement**”) in accordance with the format provided in Schedule M to this Agreement.
- 27.4.3 The Authority shall on or before the Lot COD of the first Lot of Buses, deposit in the Escrow Account a sum equal to 2 (two) months’ estimated Fees payable to the Contractor as a revolving fund and for this purpose, the Authority shall replenish with its own resources, any deficit that may arise in maintaining such balance of funds (“**Minimum Escrow Balance**”).
- 27.4.4 During the Contract Period, the Authority shall ensure that on the 1<sup>st</sup> (first) day of each month after COD, the Escrow Account is replenished so as to maintain the Minimum Escrow Balance in accordance with the terms of this Agreement. If, at any point in time during the Contract Period, the Authority fails to maintain the Minimum Escrow Balance, it shall have a period of 30 (thirty) days within which it shall be required to replenish the Escrow Account so as to ensure that the Minimum Escrow Balance is maintained. If the Authority fails to ensure that the Minimum Escrow Balance is maintained upon the expiry of the aforesaid 30 (thirty) day period, then the Minimum Escrow Balance shall be increased by at a rate equal to 3% over and above the Policy Repo Rate (as set by the Reserve Bank of India) for every 1 (one) month that the Authority fails to maintain the Minimum Escrow Balance.

#### 27.2 Deposit in Escrow Account

- 27.2.1 For the purpose of maintaining the Minimum Escrow Balance, the Authority shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- (a) All Fees due and payable to the Contractor subject to and in accordance with Article 22;
  - (b) any deposits required to be made by the Authority to maintain the Minimum Escrow Balance;
  - (c) all grants, payments and financial support received by the Authority from the State Government and/or GoI in relation to the Project;
  - (d) amounts towards insurance claims, if any, received;



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- (e) all payments due to the Contractor towards any Damages payable by the Authority under and in accordance with the terms of this Agreement;
- (f) any amounts towards Termination Payment due to the Contractor;
- (g) all revenues generated and all the income accruing from the Project including but not limited to the User Fare and advertising revenue, deposits ; and
- (h) any other revenues or capital receipts from or in respect of the Project.

### **27.3 Withdrawal During Contract Period**

27.3.1 The Authority shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of the Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated every month, or at shorter intervals as may be necessary pursuant to the terms of this Agreement, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Contractor for and in respect of the Project;
- (b) all payments relating to Fit Out Works, Operations and Maintenance of the Maintenance Depots, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) all payments and Damages certified by the Authority as due and payable to it by the Contractor;
- (f) balance, if any, in accordance with the instructions of the Contractor.

27.3.2 The Authority shall not in any manner modify the order of payment specified in Clause 27.3.1, except with the prior written approval of the Contractor.

### **27.4 Withdrawal upon Termination**

27.4.1 Notwithstanding anything to the contrary contained in the Escrow Agreement upon Termination of this Agreement, the amounts standing to the credit of the Escrow Account shall be appropriated.

- (a) all taxes due and payable by the Contractor for and in respect of the Project;
- (b) incurred or accrued O&M Expenses;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Contractor;



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- (d) retention and payments relating to the liability for defects and deficiencies set forth in Article 37;
- (e) any payments due and payable to the Authority;
- (f) any other payments required to be made under this Agreement; and
- (g) balance, if any, in accordance with the instructions of the Contractor.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 27.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 27. The provisions of this Article 27 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 27.4.1 have been discharged.



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## ARTICLE 28

### TRAFFIC REGULATION AND SECURITY

#### 28.1 Security

- 28.1.1 The Contractor acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security at the Maintenance Depots for the prevention of vandalism, arson, terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Contractor may at any time mutually enter into an agreement to jointly provide security services in the Buses.
- 28.1.2 The Contractor shall abide by and implement any instructions of the Authority for enhancing the security at the Maintenance Depots. The Contractor shall co-operate with any relevant organisations appointed by the Authority for the purpose providing security. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, in order to ensure security within the Maintenance Depot premise. The Contractor agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Authority in the discharge of their obligations thereunder.
- 28.1.3 Subject to the rights of the Contractor under this Clause 28.1.3, the Authority or any agency duly authorised by it shall be entitled to inspect and search all Buses and the Maintenance Depots and to search any person or vehicle entering the Depot Sites or departing there from, without unduly or unreasonably disrupting the operations of the Buses.
- 28.1.4 The Authority agrees that it shall, at the request of the Contractor, procure and provide the services of security forces of the Authority on a best effort basis.
- 28.1.5 The Authority shall ensure and procure that the personnel of the Contractor and all its contractors, suppliers, sub-contractors and agents and the Users of the Buses are allowed free ingress and egress from the limits of the Buses and the Maintenance Depots without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.
- 28.1.6 The Authority shall ensure security in the bus during the operations for the prevention of vandalism, arson, terrorism, hijacking, sabotage and/or similar acts or occurrences. The Authority is liable for any damages incurred due to acts not covered by the third party insurance and agrees to pay the Contractor charges for damages and cost of repair and spare parts to ensure the operational availability of the bus.



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## Part V Force Majeure and Termination



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## ARTICLE 29 FORCE MAJEURE

### 29.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean, save and except as expressly provided otherwise, occurrence in India of any Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4, respectively, if, and to the extent, it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) could not have been prevented or overcome by the Affected Party by exercise of due diligence and by following Good Industry Practice, and (c) has a Material Adverse Effect on the Affected Party.

### 29.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemics, pandemics, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion;
- (b) strikes or boycotts (other than those involving the Contractor, Sub-Contractors or their respective employees/representatives, or directly attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- (c) any failure or delay of a Sub-Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Sub-Contractor;
- (d) any delay or failure of an overseas Sub-Contractor to deliver the Buses or equipment to India if such delay or failure is caused outside India by any event specified in Subclause (a) above and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Sub-Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Depot Sites that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.



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### 29.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents production, and assembly of Buses, Fit Out Works at the Maintenance Depots or fulfilment of Maintenance obligations of the Contractor for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;
- (e) failure of the Authority to permit the Contractor to continue perform its obligations under this Agreement, with or without modifications, in the event of stoppage of any works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Sub-Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Sub-Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event;
- (h) the imposition, by any Government Instrumentality, of any lockdowns, curfews or mandatory quarantine rules arising out of the occurrence of any Non-Political Event or otherwise, which prevents the manufacture, procurement and delivery of the Buses, of the Fit Out Works at the Maintenance Depots or fulfilment of the Operations and Maintenance obligations of the Contractor for an aggregate period exceeding 7 (seven) days in an Accounting Year; or
- (i) any event or circumstances of a nature analogous to any of the foregoing.

### 29.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) a Change in Law;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;



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- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such Sub-Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

## **29.5 Duty to report Force Majeure Event**

29.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **29.6 Effect of Force Majeure Event on the Contract Period**



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- 29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.2 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 29.6.2 At any time after the Appointed Date and up until COD, if any Force Majeure Event occurs, the Contract Period shall be extended by a period, equal in length to the period during which the Contractor was prevented from performing its obligations.

## **29.7 Allocation of costs arising out of Force Majeure**

- 29.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and directly attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
  - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Contractor; and
  - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor, provided that in case of a Change in Law no additional compensation shall be payable to the Contractor if the consequences of such Change in Law have been dealt with under and in accordance with the provisions of Article 36.

For the avoidance of doubt, Force Majeure Costs shall only include costs directly attributable remedying, rectifying and/or mitigating such Force Majeure Event and shall not include interest payments on debt, O&M Expenses, any increase in the cost of the Fit Out Works or the Buses on account of inflation, loss of income or debt repayment obligations and for determining such costs, the Affected Party shall be required to submit such information as may be relevant to evidence that it has incurred such costs, including documentary proof such as receipts, challans, invoices etc.

- 29.7.3 Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **29.8 Termination Notice for Force Majeure Event**

- 29.8.1 If a Force Majeure Event affecting all, or substantially all, parts of the Project subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three



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hundred and sixty five) days, then and subject to Clause 29.8.3 below, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29. Upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.

- 29.8.2 Provided that, before issuing such Termination Notice as provided in Clause 29.8.1 above, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant the other 15 (fifteen) days' time to make a representation. In the event such Party fails to make a representation within the given time period, a Party in its sole discretion may issue the Termination Notice.
- 29.8.3 If a Force Majeure Event affecting all, or substantially all, parts of the Project occurs after the Lot COD has been achieved for at least 80% (eighty percent) of the total Buses procured under this Agreement, and provided that the Authority is fulfilling its obligations under Clause 22.3.2, the Contractor shall not have a right to terminate this Agreement for an extended Force Majeure Event under Clause 29.8.1 above.

## **29.9 Termination Payment for Force Majeure Event**

- 29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Contractor in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Contractor of an amount equal to:
- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
  - (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
  - (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.
- 29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 32.3 as if it were an Authority Default.

## **29.10 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **29.11 Excuse from performance of obligations**

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29.11.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.



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## **ARTICLE 30**

### **COMPENSATION FOR BREACH OF AGREEMENT**

#### **30.1 Compensation for default by the Contractor**

In the event of the Contractor being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any default or breach in respect of which Damages are expressly specified and payable under this Agreement.

#### **30.2 Compensation for default by the Authority**

In the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Contractor by way of compensation, all direct costs suffered or incurred by the Contractor as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

#### **30.3 Extension of Contract Period**

Subject to the provisions of Clause 30.5, in the event that a material default or breach of this Agreement set forth in Clause 30.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Contract Period, with such extension being equal in duration to the period by which COD was delayed.

#### **30.4 Compensation to be in addition**

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

#### **30.5 Mitigation of costs and damage**

The affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.



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## ARTICLE 31

### SUSPENSION OF CONTRACTOR'S RIGHTS

#### 31.1 Suspension upon Contractor Default

Upon occurrence of an Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Contractor under this Agreement including the Contractor's right to receive the Fee, and other payments pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Contractor and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

#### 31.2 Authority to act on behalf of Contractor

- 31.2.1 During the period of Suspension, the Authority may, at its option and at the risk and cost of the Contractor, remedy and rectify the cause of Suspension. The Authority shall be entitled to make deductions from the Fee for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and for defraying the expenses on Operation and Maintenance of Buses.
- 31.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the maintenance of Buses, including the Maintenance Depots, shall continue to vest in the Contractor in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Contractor for and in respect of Maintenance of Buses.

#### 32.4 Revocation of Suspension

- 31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 31.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Authority shall provide access to the Maintenance Depots and Buses, as the case may be, to enable the Contractor to cure the Contractor Default hereunder.

#### 32.4 Termination



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d2246abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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User ID : a.bhattacharya  
Serial No : 1467105

- 31.4.1 At any time during the period of Suspension under this Article 31, the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is an Contractor Default under Clause 32.1.
- 31.4.2 Notwithstanding anything to the contrary contained in this Agreement, and in the absence of any mutual agreement between the Parties to the contrary, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of an Contractor Default.



Signature :-  
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## ARTICLE 32

### TERMINATION

#### 32.1 Termination for Contractor Default

32.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 120 (one hundred and twenty) days, the Contractor shall be deemed to be in default of this Agreement (an “**Contractor Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority, the Authority's Representative or due to Force Majeure. The defaults referred to herein shall mean and include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2, and the Contractor fails to replenish or provide fresh Performance Security, within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Contractor fails to cure, within a Cure Period of 120 (one hundred and twenty) days, the Contractor Default for which whole or part of the Performance Security was appropriated;
- (c) the Contractor fails to complete the Fit Out Works for the Maintenance Depots within 270 (two hundred and seventy) days from the Scheduled Maintenance Depot Completion Date, as may be extended in accordance with the terms of this Agreement;
- (d) the Contractor fails to supply the Prototype within the period specified in Clause 13.6;
- (e) the Contractor fails to procure and deliver the Buses in accordance with the Procurement Schedule and the amount of Damages payable by the Contractor for such delay exceeds the maximum amount specified in Clause 13.9.2.
- (f) the Contractor is in material breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (g) the Contractor is in breach of its obligations under Clause 19.7;
- (h) the Contractor has failed to make any payment to the Authority within the period specified in this Agreement and the Authority is unable to set-off such amounts from amounts due from it to the Contractor in accordance with the terms of this Agreement;
- (i) a failure by the Contractor to achieve the Key Performance Indicators set out in Clauses 20.2 to 20.7 such that the Damages payable by the Contractor for such failure exceeds the maximum amount specified in Clause 20.11 in any 6 (six) consecutive months;
- (j) a material breach of any of the Project Agreements by the Contractor has caused a Material Adverse Effect on the Authority;
- (k) the Contractor creates any Encumbrance in breach of this Agreement;



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- (l) the Contractor repudiates this Agreement (or any part thereof) or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement (or any part thereof);
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Contractor under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Contractor, and such transfer causes a Material Adverse Effect on the Authority;
- (o) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect on the Authority;
- (p) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- (q) the Contractor suffers an Insolvency Event;
- (r) The Contractor has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect provided that, the same shall not be considered to be an Contractor Default if, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (s) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- (t) the Contractor submits to the Authority any false statement, notice or other document, in written or electronic form, which has a Material Adverse Effect on the Authority;
- (u) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or



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- (v) a Suspension of this Agreement pursuant to Clause 31 (to the extent such Suspension is directly attributable to the Contractor) for a period exceeding 180 (one hundred and eighty) days;
- (w) the Contractor commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority and the Contractor fails to cure such default in a Cure Period of 120 (one hundred and twenty) days.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice subject to the provisions of Clause 32.1.3.

32.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.4.1 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Contractor in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, (i) procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Contractor, or (ii) issue a notice to the Authority requiring it to terminate the Agreement, and upon such notice being issued, the Authority shall, forthwith, immediately terminate this Agreement.

Provided further that upon written request from the Lenders' Representative and the Contractor, the Government shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

## 32.2 Termination for Authority Default

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall mean and include the following:



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- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- (b) the Authority delays in approving, or issuing a notice pursuant to Clause 22.3.8(b) in respect of, an Annual Assured Payment Invoice and the Damages payable by the Authority for such delay exceeds the amount specified in Clause 22.3.9;
- (c) the Authority fails to provide the Right of Way to the Depot Sites in accordance with the terms of this Agreement;
- (d) the Authority has failed to make any payment to the Contractor within the period specified in this Agreement;
- (e) an assignment by the Authority, of its rights, interests and obligations under this Agreement in contravention of Clause 35.5; or
- (f) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority, with a copy to the Program Manager; provided that before issuing the Termination Notice, the Contractor shall by a notice (which shall also be copied to the Program Manager) inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### 32.3 Termination Payment

32.3.1 Upon Termination on account of an Contractor Default after COD, the Authority shall pay to the Contractor, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment.

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

Providing further that, in computing the termination Payment due to the operator, the authority shall deduct an amount equal to any subsidy and Government Fiscal Assistance received by the operator from the Program manager and/or the authority.

Further, upon Termination on account of an Contractor Default prior to the Lot COD of the first Lot of Buses, the Authority shall have the right to take over the Fit Out Works in progress in which case it shall pay to the Contractor an amount equal to the actual capital cost of the Fit Out Works completed by the Contractor up until the date of Termination as verified by an independent third party to be appointed by the Authority.



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32.3.2 Upon Termination on account of an Authority Default at any time after the Appointed Date, the Authority shall pay to the Contractor, by way of Termination Payment, an amount equal to:

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

Provided further that, in computing the Termination Payment due to the Contractor, the Authority shall deduct an amount equal to any Subsidy and Government Fiscal Assistance received by the Contractor from the Program Manager and/or the Authority. However, in case of termination on account of an Authority Default, the Authority shall return the Performance Security and any State Subsidy Bank Guarantees available with it at the time.

32.3.3 Termination Payment shall become due and payable to the Contractor within 60 (sixty) days of a demand being made by the Contractor to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days of a demand being made by the Contractor to the Authority with the necessary particulars; provided further that liability of the Authority to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with the provisions of Article 33 of this Agreement. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

32.3.4 Upon Termination on expiry of the Contract Period by efflux of time, no Termination Payment shall be due and payable to the Contractor; provided that in the event any Project Assets shall have been acquired and installed after the 5<sup>th</sup> (fifth) anniversary of the COD, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such assets and equipment shall be deemed to be Debt Due for the purposes of Termination Payment. Provided that, any Project Assets acquired by the Contractor without the prior written consent of the Authority shall not be taken into account when calculating the Termination Payment under this Clause 32.3.4 and such Project Assets shall remain the property of the Contractor after Termination and the Contractor may dispose of such Project Assets as it deems fit.

32.3.5 The Contractor expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement for any reason whatsoever and that the Contractor or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## **32.4 Certain limitations on Termination Payment**

32.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency



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shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Contractor shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70 % (seventy per cent) of the Total Project Cost.

- 32.4.2 The Contractor may only construct, acquire or install any Specified Assets after the 5<sup>th</sup> (fifth) anniversary of COD, but before the 10<sup>th</sup> (tenth) anniversary thereof (and excluding land), with the prior written consent of the Authority and which consent shall not be unreasonably withheld by the Authority. Provided that, any Project Assets constructed, acquired or installed by the Contractor without the prior written consent of the Authority shall not be taken into account when calculating any Additional Termination Payment due to the Contractor under this Article 32 and such Project Assets shall remain the property of the Contractor after Termination and the Contractor may dispose of such Project Assets as it deems fit.

### 32.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Buses, provided that the Termination has occurred after COD;
- (b) take possession and control of the Maintenance Depots (including the Charging Infrastructure) forthwith;
- (c) take possession and control of all materials, stores, implements, plants and equipment on or about the Maintenance Depots;
- (d) be entitled to restrain the Contractor and any person claiming through or under the Contractor from entering upon the Maintenance Depots or any part of the Authority's premises;
- (e) require the Contractor to comply with the Divestment Requirements set forth in Clause 33.1; and
- (f) succeed upon election by the Authority, without the necessity of any further action by the Contractor, to the interests of the Contractor under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Contractor. For the avoidance of doubt, the Contractor acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Contractor and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure



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any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

### **32.6 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.



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**ARTICLE 33**  
**DIVESTMENT OF RIGHTS AND INTEREST**

**33.1 Divestment requirements upon expiry of the Contract Period**

33.1.1 Upon expiry of the Contract Period, the Contractor shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), no later than 15 (fifteen) days from the date of expiry of the Contract Period:

- (a) remove all its personnel and vacate and deliver forthwith the actual or constructive possession of the Maintenance Depots along with the infrastructure therein and any Opportunity Charging Stations, free and clear of all Encumbrances;
- (b) cure the equipment at the Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations (if applicable) of any defect or deficiency such that it can continue to be used efficiently and economically in accordance with Good Industry Practice, provided that if such defects and deficiencies have arisen on account of accidents, vandalism, arson, riot or natural calamity occurring (in each case for reasons not directly attributable to the Contractor) no earlier than 120 (one hundred and twenty) days prior to the expiry of the Contract Period, the Authority shall grant to the Contractor such additional time, not exceeding 240 (two hundred forty) days from the date of expiry of the Contract Period, as may be reasonably required for repair and rectification thereof;
- (c) provide to the Authority a license or sub-license, free of any Encumbrances, with respect to all Intellectual Property pertaining to the Maintenance Depots, the Charging Infrastructure and the Opportunity Charging Stations, if any, including transferring all relevant records, reports, software and manuals, and complete ‘as built’ Drawings as on the Transfer Date so as to enable the Authority to operate and maintain the Maintenance Depots, the Charging Infrastructure and the Opportunity Charging Stations, and execute such deeds of conveyance, documents and other writings as the Authority may reasonably require in connection therewith. For the avoidance of doubt, the Contractor represents and warrants that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Maintenance Depots, the Charging Infrastructure and Opportunity Charging Stations;
- (d) transfer and/or deliver to the Authority all Applicable Permits in respect of the Maintenance Depots, the Charging Infrastructure and Opportunity Charging Stations, if any, to the extent permissible under Applicable Laws;
- (e) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Contractor in respect of the outstanding insurance claims to the extent due and payable to the Authority;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Contractor in the Maintenance Depots, the Charging Infrastructure and the Opportunity Charging Stations, if any; and



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- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Contractor in the Maintenance Depots, the Charging Infrastructure and the Opportunity Charging Stations, if any, and Insurance Cover, free from all Encumbrances, absolutely unto the Authority or to its nominee.

### 33.2 Inspection and cure

Not earlier than 90 (ninety) days prior to expiry of the Contract Period, but not later than [15 (fifteen)] days prior to the effective date of such expiry, the Authority shall verify, after giving due notice to the Contractor specifying the time, date and place of such verification and/or inspection, compliance by the Contractor with the Maintenance Obligations, and if required, cause appropriate tests to be carried out at the Contractor's cost for this purpose. The Contractor shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

### 33.3 Cooperation and assistance on transfer of Maintenance Depots

- 33.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the assets specified in Clause 33.1.1 in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Depot Sites.
- 33.3.2 The Authority shall have the option to purchase or hire from the Contractor at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 33.1.1 and is reasonably required in connection with operation of the Maintenance Depots. For the avoidance of doubt, in the event of Dispute or difference relating to the determination of the fair market value of such plant and machinery, the Dispute Resolution Procedure shall apply.

### 33.4 Divestment requirements upon termination

- 33.4.1 Upon Termination after COD and before the expiry of the Contract Period, the Contractor shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), no later than 15 (fifteen) days from the date of Termination:
- (a) procure and deliver forthwith title to, and actual or constructive possession of the Buses and vacate and handover actual or constructive possession of the Maintenance Depots, the Charging Infrastructure and the Opportunity Charging Stations, if any, free and clear of all Encumbrances;
- (b) cure the Maintenance Depots, all Buses, Charging Infrastructure and Opportunity Charging Stations, if any, of all defects and deficiencies so that the Maintenance Depots, Buses, Charging Infrastructure and Opportunity Charging Stations are compliant with the Maintenance Obligations; provided that if such defects and deficiencies have arisen on account of accidents, vandalism, arson, riot or natural calamity occurring no earlier than 120 (one hundred and twenty) days prior to such Termination, the Authority shall grant to the Contractor such additional time, not



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exceeding 240 (two hundred forty) days from the date of expiry of the Contract Period, as may be reasonably required for repair and rectification thereof;

- (c) provide to the Authority a license or sub-license, free of any Encumbrances, with respect to all Intellectual Property pertaining to the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations including transferring all relevant records, reports, software and manuals and complete 'as built' Drawings as on the Transfer Date so as to enable the Authority to operate and maintain the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations and execute such deeds of conveyance, documents and other writings as the Authority may reasonably require in connection therewith. For the avoidance of doubt, the Contractor represents and warrants that the Intellectual Property shall be adequate and complete for the Maintenance of the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations and shall be assigned or licensed to the Authority free of any Encumbrance for the operational life of these assets;
- (d) transfer and/or deliver to the Authority all Applicable Permits in respect of the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations to the extent permissible under Applicable Laws;
- (e) take all necessary steps to safeguard and protect the Buses, the Charging Infrastructure, the Opportunity Charging Stations, if any, the Maintenance Depot(s) and all other equipment, materials and goods on the Depot Site;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Contractor in respect of the outstanding insurance claims to the extent due and payable to the Authority;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Contractor in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Contractor in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.4.2 Subject to the exercise by the Authority of its rights under this Agreement or any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Contractor, the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any Termination Notice until the Termination of this Agreement becomes effective in accordance with its terms.

33.4.3 Upon Termination of this Agreement prior to the Lot COD of the First Lot of Buses, if the Authority exercises its right to take over the Fit Out Works, the Contractor shall be required to handover peaceful possession of the Depot Sites and any Fit Out Works to the Authority no later than 15 (fifteen) days from the date of Termination. If the Authority chooses not to take over the Fit Out Works, the Contractor shall clear the Depot Site(s) and handover vacant,



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peaceful possession of the Depot Site(s) to the Authority no later than 30 (thirty) days from the date of Termination.

### 33.5 Vesting Certificate

The divestment of all rights, title and interest in the assets specified in Clause 33.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-P (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Contractor of all of its rights, title and interest in such assets, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Buses and Maintenance Depots on the footing that all Divestment Requirements have been complied with by the Contractor.

### 33.6 Divestment costs etc.

- 33.6.1 Upon expiry of the Contract Period, the Authority shall bear and pay, all costs incidental to divestment of all of the rights, title and interest of the Contractor in the Maintenance Depots, Charging Infrastructure and the Opportunity Charging Stations, if any, in favour of the Authority.
- 33.6.2 In the event of Termination attributable to the Contractor, the Contractor shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Contractor in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations, if any, in favour of the Authority upon such Termination.
- 33.6.3 In the event of Termination attributable to the Authority, the Authority shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Contractor in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations, if any, in favour of the Authority upon such Termination.
- 33.6.4 In the event of any Dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.



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## ARTICLE 34

### DEFECTS LIABILITY AFTER TERMINATION

#### 34.1 Liability for defects after Termination

The Contractor shall be responsible for all defects and deficiencies in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations, if any, for a period of 180 (one hundred and eighty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations during the aforesaid period. In the event that the Contractor fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Contractor's risk and cost. All costs incurred by the Authority hereunder shall be reimbursed by the Contractor to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

#### 34.2 Retention in Escrow Account

- 34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to 10% (ten per cent) of the total Fee in respect of the Contract Year immediately preceding the Transfer Date shall be retained by the Authority for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.
- 34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Authority shall carry out an inspection of the Buses, Maintenance Depots, Charging Infrastructure and Opportunity Charging Stations, if any, at any time between 180 (one hundred and eighty) and 15 (fifteen) days prior to the Transfer Date and if it determines that the status of the Buses, Maintenance Depots, Charging Infrastructure or Opportunity Charging Stations is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained by the Authority and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount so determined, subject to a ceiling equivalent to twice the amount specified in Clause 34.2.1 shall be retained by the Authority for a period not exceeding 240 (two hundred and forty) days.
- 34.2.3 The Contractor may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-D (the “**Defects Performance Security**”), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Defects Performance Security for undertaking the repairs or rectification at the Contractor's risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Performance Security under this Clause 34.2.3, the retention of funds in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.



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## Part VI Other Provisions



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## ARTICLE 35

### ASSIGNMENT AND CHARGES

#### 35.1 Ownership of Project Assets

- 35.1.1 The Contractor shall be the legal and beneficial owner, or shall have legal and beneficial right of use, of the Project Assets during the Contract Period and up until the divestment of its rights in the Project Assets in accordance with Article 33.

#### 35.2 Restrictions on assignment and charges

- 35.2.1 Subject to Clause 35.3, this Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Authority.
- 35.2.2 Subject to the provisions of Clause 35.3, the Contractor shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Contractor is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### 35.3 Permitted assignment and charges

The restraints set forth in Clause 35.2 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Contractor;
- (b) mortgages/pledges/hypothecation of goods/assets, and their related documents of title, arising or created in the ordinary course of business of the Contractor, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Contractor to or in favour of the Lenders' Representative as nominee and for the benefit the Senior Lenders, to the extent covered by an in accordance with the Substitution Agreement as security for financing provided by the Senior Lenders under the Financing Agreements;
- (d) liens or encumbrances required by any Applicable Law

#### 35.4 Substitution Agreement

- 35.4.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Contractor pursuant to the agreement for substitution of the Contractor (the "**Substitution Agreement**") to be entered into amongst the Contractor, the Authority, the Program Manager and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-S.

- 35.4.2 Upon substitution of the Contractor under and in accordance with the Substitution Agreement, the Nominated Company substituting the Contractor shall be deemed to be the Contractor under



this Agreement and shall enjoy all rights and be responsible for all obligations of the Contractor under this Agreement as if it were the Contractor; provided that where the Contractor is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Contractor for curing such breach.

### **35.5 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Contractor, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who shall, at a minimum, have a credit rating (set by a reputed credit rating agency) that is equal to or better than that of the Authority as of the date of such assignment.



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## ARTICLE 36

### CHANGE IN LAW

#### 36.1 Increase in costs

If as a result of Change in Law, the Contractor directly suffers an increase in costs or reduction in net after-tax return or other financial burden, the Contractor may so notify the Authority. Upon the issuance of a notice by the Contractor, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on any amendments to this Agreement or on any other mutually agreed arrangement by which the Authority will compensate the Contractor.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Contractor may by notice require the Authority to pay an amount that would place the Contractor in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein.; If the Authority disputes such claim of the Contractor, the same shall be settled in accordance with the Dispute Resolution Procedure.

#### 36.2 Reduction in costs

If as a result of Change in Law, the Contractor directly benefits from a reduction in costs or increase in net after-tax return or other financial gains, the Authority may so notify the Contractor and propose amendments to this Agreement so as to place the Contractor in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Contractor to pay an amount that would place the Contractor in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Contractor shall pay the amount specified therein to the Authority.; If the Contractor disputes such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure.

#### 36.3 Protection of NPV

Pursuant to the provisions of Clauses 36.1 and 36.2 and for the purposes of placing the Contractor in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Contractor has raised its debt under its Financing Agreements.



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#### 36.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.



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## ARTICLE 37

### LIABILITY AND INDEMNITY

#### 37.1 General indemnity

37.1.1 The Contractor shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) from and against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of goods and services by the Contractor to the Authority or to any person or from any negligence of the Contractor under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, a breach or default of this Agreement or any related agreement and/or a breach of its statutory duty on the part of the Authority Indemnified Persons.

37.1.2 The Authority shall indemnify, defend, save and hold harmless the Contractor and its officers, servants and agents (the “**Contractor Indemnified Parties**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Depot Sites, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Contractor of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Contractor, its subsidiaries, affiliates, Contractors, servants or agents, the same shall be the liability of the Contractor.

#### 37.2 Indemnity by the Contractor

37.2.1 Without limiting the generality of Clause 37.1, the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Contractor’s Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Contractor or any of its Contractors which are payable by the Contractor or any of its Contractors.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims,

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suits or proceedings arising out of claims of infringement of any domestic or foreign Intellectual Property or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Contractor's Contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Maintenance Depots, Buses, Charging Infrastructure or Opportunity Charging Stations, if any, as the case may be, or any part thereof or comprised therein, are held to constitute an infringement and their use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that they become non-infringing.

### 37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 37.4 Defence of claims

- 37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be reimbursed by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).



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37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **37.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **37.6 Limitation of Liability**

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except with respect to any Termination Payment payable by the Authority in accordance with the terms of this Agreement, shall not exceed Rs. 1 crore (Rupees one crore) per Bus that is procured under this Agreement. For the avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties.

37.6.2 Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any loss of profit or for any other indirect or consequential damages or losses that may be suffered in connection with this Agreement.

### **37.7 Survival on Termination**



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The provisions of this Article 37 shall survive Termination.



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Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## **ARTICLE 38**

### **RIGHTS AND TITLE OVER SITES**

#### **38.1 Contractor's rights**

For the purpose of this Agreement, the Contractor shall have right to use the Depot Sites as the sole and exclusive licensee, subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Depot Sites by third parties in accordance with and subject to the provisions of this Agreement.

#### **38.2 Access rights of the Authority and others**

38.2.1 The Contractor shall allow free access to the Depot Sites at all times to the authorised representatives of the Authority and any Government Instrumentality to inspect the Maintenance Depots, and to investigate any matter within their authority., Upon reasonable notice, the Contractor shall provide to such aforesaid persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Contractor shall, for the purpose of operation and maintenance of any utility allow free access to the Depot Sites, as the case may be, at all times for the authorised persons and vehicles of the controlling body of such utility.

#### **38.3 Property taxes**

38.3.1 All property taxes on the Depot Sites shall be payable by the Authority as owner of the Depot Sites; provided, however, that any such taxes payable by the Contractor under Applicable Laws for use of the Depot Sites shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Contractor to pay such stamp duties, which shall be reimbursed by the Authority to the Contractor within 15 (fifteen) days of receiving the demand therefor.

#### **38.4 Restriction on sub-letting**

The Contractor shall not sublicense or sublet the whole or any part of Depot Sites, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Contractor to appoint Sub-Contractors for the performance of its obligations hereunder including for Operation and Maintenance of all or any part of the Depot Sites.



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## ARTICLE 39

### DISPUTE RESOLUTION

#### 39.1 Dispute resolution

- 39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.
- 39.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon a mutually accepted person to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by such person or without the intervention of such person, either Party may require such Dispute to be referred to the [Chairman of \*\*\*] and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved through a written settlement agreement within 30 (thirty) days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

#### 39.3 Arbitration

- 39.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be [[●]]<sup>5</sup>, and the language of arbitration proceedings shall be English.
- 39.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Rules.
- 39.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

<sup>5</sup> **Drafting Note** – Insert relevant city for which the agreement pertains (i.e., the city where the buses are being deployed).





39.3.4 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

39.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### **39.4 Adjudication by a tribunal**

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.



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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## ARTICLE 40

### DISCLOSURE

#### 40.1 Disclosure of Specified Documents

The Contractor shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Operation Manual, the Safety Requirements and the Specifications and Standards (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Contractor’s registered office. The Contractor shall prominently display at the Maintenance Depots, public notices stating the availability of the Specified Documents for such inspection and shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

#### 40.2 Disclosure of Documents relating to safety

The Contractor shall make available for inspection by any person copies of all Documents and data relating to Safety of the Buses, free of charge, during normal business hours on all working days, at the Contractor’s registered office. The Contractor shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

#### 40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Authority shall be entitled to direct the Contractor, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

*Explanation:*

The expression **Protected Documents** shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.



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## ARTICLE 41

### MISCELLANEOUS

#### 41.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [●]<sup>6</sup> shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

#### 41.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

#### Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Contractor in the Maintenance Depots shall be deemed to be acquired and owned by the Contractor. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Contractor under Applicable Laws.

#### 41.3 Delayed payments

- 42.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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<sup>6</sup> **Drafting Note** – Insert relevant city for which the agreement pertains (i.e., the city where the buses are being deployed).



42.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

## **42.5 Waiver**

42.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

42.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **42.6 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority of any Project Agreement, Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, operation or maintenance of the Project and Buses nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

## **42.7 Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

## **42.8 Survival**

42.8.1 Termination shall:

- (a) not relieve the Contractor or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and



Signature :-  
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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
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- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

42.8.2 All rights and obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination; provided, however, that all obligations of the Contractor in relation to licensing, sub-licensing, assignment or transfer of the specified Intellectual Property to the Authority shall survive the Termination in perpetuity.

#### **42.9 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such, provided however, that if there is a contradiction or conflict between the terms of the Request for Qualification or Request for Proposals and the terms of this Agreement, the terms of this Agreement shall prevail.

#### **42.10 Severability**

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### **42.11 No partnership**

This Agreement shall not be interpreted or construed to create an association or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### **42.12 Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

#### **42.13 Successors and assigns**



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This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

#### 42.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside [●]<sup>7</sup> may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or email to the number as the Contractor may from time to time designate by notice to the Authority;

{ Attention:  
Designation:  
Address:  
Fax No:  
Email: }

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in [●]<sup>8</sup> it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier;

{ Name:  
Designation:  
Address:  
Fax No:  
Email: }; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### 42.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

<sup>7</sup> Drafting Note – Insert relevant city for which the agreement pertains (i.e., the city where the buses are being deployed).

<sup>8</sup> Drafting Note – Insert relevant city for which the agreement pertains (i.e., the city where the buses are being deployed).

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## 42.16 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.



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Serial No : 1467105

## ARTICLE 42 DEFINITIONS

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**“Additional Auditors”** shall have the meaning ascribed to it in Clause 26.2.3;

**“Additional Termination Payment”** means the amount payable upon Termination in respect of Specified Assets, if any, as further limited by the provisions of Clause 32.4.2;

**“Adjusted Depreciated Value”** means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Contractor) to reflect the variation occurring in WPI between the date of procurement thereof and the Transfer Date;

**“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.56% (zero point five six per cent)<sup>9</sup> thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Contract Period is extended, but the revision on account of WPI shall continue to be made;

**“Affected Party”** shall have the meaning as set forth in Clause 29.1;

**“Agreement”** or “means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

<sup>9</sup> This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Contract Period. For example, the figure for a 15 (fifteen) year Contract Period shall be  $100/180 = 0.555$  rounded off to two decimal points i.e. 0.56.



"**Allowed Power Consumption**" shall have the meaning as set forth in Clause 22.5.1.;

"**Annual Assured Bus Kilometres**" shall have the meaning ascribed to it in Clause 22.3.1;

"**Annual Assured Payment Amount**" shall have the meaning ascribed to it in Clause 22.3.2;

"**Annual Assured Payment Invoice**" shall have the meaning ascribed to it in Clause 22.3.3;

"**Annual Safety Report**" shall have the meaning ascribed to it in Clause 18.5.1;

"**Appendix**" shall have the meaning as set forth in Clause 10.3.1;

"**Applicable Electricity Tariff**" shall have the meaning as set forth in Clause 22.5.1;

"**Applicable Laws**" means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, the State Government or any Government Instrumentality having jurisdiction over the Parties, the Depot Sites or the Project, including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"**Applicable Permits**" means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, Operation and Maintenance of the Buses and Maintenance Depots, as the case may be, during the subsistence of this Agreement and shall include those as set out in Schedule C;

"**Appointed Date**" means the date on which Financial Close is achieved and all the Condition Precedents are satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

"**Approved Valuer**" means a firm of valuers recognized as such by the Inform Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rs. One hundred crore) each in value.

"**Arbitration Act**" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"**Associate**" or "**Affiliate**" means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"**Assured Reliability**" shall have the meaning set forth in Clause 20.2.3.

"**Authority Applicable Permits**" shall mean those Applicable Permits that are required to be obtained by the Authority as set out in Schedule C;



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Serial No : 1467105

**“Authority Default”** shall have the meaning set forth in Clause 32.2.1;

**“Authority Indemnified Persons”** shall have the meaning set forth in Clause 37.1.1;

**“Authority Nominated Personnel”** means any person authorized by the Authority to collect User Fare from passengers for using the Bus Service;

**“Authority Representative”** means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

**“Availability”** shall have the meaning set forth in Clause 20.3.3;

**“Award”** shall have the meaning set forth in Clause 39.3.3;

**“Bank”** means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;

**“Bank Rate”** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

**“Base Electricity Tariff”** shall have the meaning as set forth in Clause 22.5.1;

**“Base Index Date”** means the last date of the month which shall have closed no later than 30 (thirty) days prior to the Bid Date;

**“Bid”** means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all pre-qualified bidders;

**“Bid Date”** means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

**“Bid Security”** means the security provided by the Contractor to the Authority along with the Bid in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

**“Board of Directors”** refers to the board of directors of the Contractor;

**“Breakdown”** means the mechanical failure of a bus that prevents the bus from being in operation or impedes the operation so much that it is impossible or dangerous to operate, provided that such mechanical failure has not arisen on account of any accidents, vandalism, arson, riots or natural calamities;

**“Bus”** means a bus complying with Standards and Specifications as detailed in Schedule B, procured by the Contractor as per the Procurement Schedule, for the purposes of Project;



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**“Bus Kilometre”** means kilometres travelled by each Bus, as per this Agreement or as directed/approved by the Authority;

**“Bus Kms Frequency”** shall have the meaning as set forth in Clause 20.5.1(b);

**“Bus Service”** means the service provided to Users in terms of this Agreement;

**“Bus Stop”** means designated stops, along the routes from where passengers board and alight the Bus, as per the Deployment Plan at Schedule-J;

**“CDM”** shall have the meaning as set forth in Clause 6.2;

**"CESL" or "Program Manager"** shall have the meaning set forth in Recital B;

**“Change in Law”** means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Instrumentality;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Applicable Law, which has not entered into effect until the Bid Date;
- (d) the introduction of a requirement for the Contractor to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit;
- (e) a change in the interpretation or application of any Applicable Law, by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (f) any change in the rates of any of the Taxes that have a direct effect on the Agreement;

**“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares or a fresh issue of any of the foregoing, that causes the aggregate holding of the {Selected Bidder/Consortium Members}, together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof till the completion of 3 (three) years from the COD and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Contract Period. Any direct and/or indirect transfer of legal or beneficial ownership of any shares, or securities convertible into shares, (i) such that the Consortium Members cease to collectively hold a minimum of 51% (fifty one per cent) of the subscribed and paid-up Equity of the Contractor, (ii) the Lead Member cease to hold a minimum of 38% (thirty three per cent) of such Equity, or (iii) by any Consortium Member (i) who is either an original equipment manufacturer (including its Associates); or (ii) whose technical and/or financial capacity was evaluated for the purposes of selection in response to the Request for Proposal, that results, or may result, in such member ceasing to hold Equity less than; (a) 26% (twenty six per cent) of the Equity; or (b) Equity corresponding to 5% (five per cent) of the total project cost, till the expiry of the Contract Period, shall constitute a Change in Ownership;

**“Change of Scope”** shall have the meaning as set forth in Clause 15.1;



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**“Change of Scope Notice”** shall have the meaning set forth in Clause 15.2.1;

**“Change of Scope Order”** shall have the meaning set forth in Clause 15.2.3;

**“Charging Infrastructure”** means the charging infrastructure and equipment required to be installed by the Contractor at the Maintenance Depots for the sole purpose of charging Buses at the Maintenance Depots, and which shall include all step-down electric and allied civil infrastructure downstream of the boundary of the Maintenance Depot, in accordance with the Specifications and Standards;

**"Commencement of Service"** means, with respect to any Bus, the date such Bus is commissioned and put in commercial operations, in each case, in accordance with the provisions of this Agreement;

**"Commercial Operation Date"** or **“COD”** shall have the meaning set forth in Clause 14.2.3;

**“Completion Certificate”** shall have the meaning as set forth in Clause 14.2.2;

**“Complaint Register”** shall have the meaning as set forth in Clause 41.1.1;

**"Concession"** shall have the meaning set forth in Clause 3.1.1;

**“Control Centre”** shall have the meaning as set forth in Clause 16.4.7;

**“Conditions Precedent”** shall have the meaning as set forth in Clause 4.1.1;

{**“Consortium”** shall have the meaning as set forth in Recital (D);}

**“Consumables”** shall have the meaning as set forth in Clause 17.3.1;

**“Contract Period”** shall have the meaning as set forth in Clause 3.1.1;

**"Contract Year"** means the First Contract Year and thereafter each period of 12 (twelve) Months, provided that the last Contract Year shall end on the last day of the Contract Period.

**“Contractor”** has the meaning ascribed to it in the Recitals;

**"Contractor Applicable Permits"** shall mean those Applicable Permits that are required to be obtained by the Contractor as set out in Schedule C;

**“Contractor Default”** shall have the meaning as set forth in Clause 32.1.1;

**"Contractor Indemnified Parties"** shall have the meaning as set forth in Clause 37.1.2;

**“Covenant”** shall have the meaning as set forth in Clause 5.2.7;

**“CPIIW”** means the Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India and shall include any index which substitutes the CPIIW, and any reference to CPIIW shall, unless the context otherwise requires, be construed as a reference to the CPIIW published for the period ending with the preceding month;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:



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- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord its approval;

**“Damages”** shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

**"Data Monitoring System"** shall have the meaning as set forth in Clause 19.7.

**“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default, provided that any accrued interest payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) in the event of Termination due to an Contractor Default shall be capped at the lesser of (i) the interest rate specified in the Financing Agreements; or (ii) 5% (five percent) above the Bank Rate;
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; and
- (d) any debt provided by the Senior Lenders in connection with any bank guarantees submitted by the Contractor to the Authority or the Program Manager pursuant to any Subsidy or Government Fiscal Assistance received by the Contractor, to the extent that such bank guarantees have been called and become funded.

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Contractor, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;



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**"Defects Performance Security"** shall have the meaning as set forth in Clause 34.2.3;

**"Delay Event"** shall mean:

- (i) occurrence of a Force Majeure event, provided that the requirements of Clause 29.5 have been complied with;
- (ii) a Change in Law;
- (iii) undue delay by the relevant Government Instrumentality in granting or renewing any Applicable Permit, despite the Contractor having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
- (iv) undue delay by the relevant Government Instrumentality in providing any utility connection, despite the Authority or the Contractor, as the case may be, having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
- (v) failure by the Authority to handover possession of Maintenance Depots meeting the Minimum Maintenance Depot Specifications in accordance with the requirements of this Agreement;
- (vi) any delay directly attributable to unforeseen site conditions in accordance with Clause 10.10; and
- (vii) delay caused in complying with any instructions of the Authority, which instructions are not directly attributable to any default of the Contractor.

**"Depot Sites"** shall have the meaning as set forth in Article 10;

**"Deployment Plan"** shall have the meaning as set forth in Clause 16.5.1;

**"Designs"** or **"Drawings"** means all of the drawings, designs, calculations and documents pertaining to the Buses as set forth in Schedule-F;

**"Design Report"** shall have the meaning as set forth in Clause 13.4.2;

**"Dispute"** shall have the meaning as set forth in Clause 39.1.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes as set forth in Article 39;

**"Divestment Requirements"** means the obligations of the Contractor for and in respect of Termination as set forth in Clause 33.1.1;

**"Document"** or **"Documentation"** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**"EESL"** shall have the meaning set forth in Recital A



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**“Emergency”** means a condition or situation that is likely to endanger the environment or lives or security of the individuals on or about the Maintenance Depots or Buses, as the case may be, or which poses an immediate threat of material damage to any of the Project Assets;

**“Encumbrances”** means, in relation to the Licensed Premises, Maintenance Depots or Buses and, as the case may be, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Maintenance Depots or Buses, as the case may be, where applicable herein;

**“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Contractor for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Contractor, and any interest-free funds advanced by any shareholder of the Contractor for meeting such equity component.

**“Escrow Account”** means an account which the Authority shall open and maintain with the Escrow Bank in which all inflows and outflows of cash on account revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account;

**“Escrow Agreement”** shall have the meaning set forth in Clause 27.1.2;

**“Escrow Bank”** shall have the meaning set forth in Clause 27.1.1;

**“Escrow Default”** shall have the meaning set forth in Schedule-M; "

**“Fee”** shall have the meaning set forth in Clause 22.1;

**“Fee Revision”** shall have the meaning set forth in Clause 22.4.1;

**“Fee Revision Date”** means the date of Fee Revision in accordance with Clause 22.4.1;

**“Financial Close”** means the fulfilment of all Conditions Precedent to the initial availability of funds under the Financing Agreements;

**“Financial Model”** means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**“Financial Package”** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt, if any;

**“Financing Agreements”** means the agreements executed by the Contractor in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to nonconvertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the



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financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

**"First Contract Year"** means the period of 12 (twelve) calendar months commencing from the date on which the Lot COD for the first Lot of Buses procured by the Contractor is achieved.

**"Fit Out Works"** means all works and things required to be undertaken by the Contractor to completely fit out, equip and otherwise complete the Maintenance Depots in accordance with this Agreement, including the provision of all service equipment, tools, tackles, facilities, civil and electrical works and any other allied infrastructure (including the Charging Infrastructure) as may be required to Operate and Maintain the Buses, the Maintenance Depot and the Charging Infrastructure;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 29.1;

**"Force Majeure Costs"** shall have the meaning as set forth in Clause 29.7.2;

**"GoI"** means the Government of India;

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**"Government Fiscal Assistance"** means, any financial assistance provided to the Contractor by any Government Instrumentality, under any Applicable Laws or any scheme, policy or guidelines, as may be applicable;

**"Government Instrumentality"** means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Buses or Maintenance Depots as the case may be, or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

**"Guaranteed Availability"** shall have the meaning set forth in Clause 20.3.4;

**"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 37;

**"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 37;

**"Indexed Price"** shall have the meaning as set forth in Clause 22.4.2;

**"Indirect Political Event"** shall have the meaning as set forth in Clause 29.3;

**"Insolvency Event"** in respect of a Party means:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become



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- due; (C) enters into a compromise arrangement with its creditors; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("**Code**"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

**"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 25, and includes all insurances required to be taken out by the Contractor under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**"Intellectual Property"** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, geographical indicators, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**"Intelligent Transport Systems"** or "**ITS**" shall have the meaning as set forth in Clause 16.4.7;

**"Invoice"** shall have the meaning as set forth in Clause 22.2.1;

**"Invoice Amount"** shall have the meaning as set forth in Clause 22.2.2;

**"Key Performance Indicators"** shall have the meaning as set forth in Clause 20.1;

**"LOA"** or **"Letter of Award"** means the letter of award referred to in Recital (E);

**"Lead Member"** shall mean the lead member of the Consortium, and in the event there is no Consortium, the Selected Bidder;

**"Lenders' Representative"** means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

**"Licensed Premises"** shall have the meaning set forth in Clause 10.2.2;

**"Lot(s)"** means the Buses procured, by the Contractor, in lots as per the Procurement Schedule;



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**"Lot Commercial Operation Date" or "Lot COD"** shall have the meaning set forth in Clause 14.2.3;

**"Maintenance Depots"** shall mean the bus depots and/or terminals to be handed over by the Authority to the Contractor for the Buses at the Depot Sites specified in Schedule-A, in accordance with the Minimum Maintenance Depot Specifications, Applicable Laws and Good Industry Practices;

**"Maintenance Depot Completion Certificate"** shall have the meaning as set forth in Clause 12.5.4;

**"Maintenance Depot Completion Date"** means the date on which the Completion Certificate is issued under the provisions of Article 14;

**"Maintenance Inspection Report"** shall have the meaning as set forth in Clause 19.3;

**"Maintenance Manual"** shall have the meaning ascribed to it in Clause 17.2.1;

**"Maintenance Obligations"** shall have the meaning as set forth in Clause 17.1.1;

**"Maintenance Requirements"** shall have the meaning as set forth in Clause 17.4;

**"Material Adverse Effect"** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**"Minimum Escrow Balance"** shall have the meaning as set forth in Clause 27.1.3;

**"Minimum Maintenance Depot Specifications"** means the minimum specifications and standards according to which the Maintenance Depots are required to be designed, constructed and completed prior to its handover by the Authority to the Contractor in accordance with the requirements of this Agreement, as set forth in Schedule [●].

**"Monthly Fees"** shall mean the Fees payable to the Contractor for each month after commencement of the Bus Services and which shall be calculated in accordance with Article 22;

**"MW"** means minimum wages (skilled category) as notified by the relevant Government Instrumentality in accordance with Applicable Laws.

**"Non-Political Event"** shall have the meaning as set forth in Clause 29.2;

**"Nominated Company"** means a company, incorporated under the provisions of the Companies Act, 1956, or the Companies Act, 2013, as the case may be, selected by the Contractor, and proposed to the Authority for assignment/transfer of the Agreement;

**"NPV"** shall have the meaning as set forth in Clause 36.3;

**"Operation and Maintenance" or "O&M"** means operation and maintenance of the Buses, the Maintenance Depot and the Charging Infrastructure, as the case may be, and includes all matters connected with or incidental to such maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;



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**“O&M Contract”** means the maintenance contract that may be entered into between the Contractor and the O&M Contractor for performance of all or any of the O&M obligations;

**"O&M Contractor"** means the person, if any, with whom the Contractor has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Contractor;

**“O&M Expenses”** means expenses incurred by or on behalf of the Contractor or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**“Operation Manual”** shall have the meaning as set forth in Clause 16.3.1;

**"Operational Infractions"** shall mean those events, incidents or circumstances of sub-optimal performance and/or non-compliance with the Operations and Maintenance requirements in this Agreement which are as set out in Schedule T

**“Operational Route”** shall have the meaning as set forth in Clause 16.4.1;

**"Opportunity Charging Stations"** shall have the meaning as set forth in Clause 16.4.8;

**“Overnight Charge”** or **“Overnight Charging”** means, with respect to each Bus, the ability to fully charge the battery of such Bus from full discharge, between the time such Bus is scheduled to arrive at the Maintenance Depot after completing its operations on any day and the time such Bus is next scheduled to commence operations (which may be on the immediately next day), in each case in accordance with the Deployment Plan.

**“Panel of Chartered Accountants”** shall have the meaning set forth in Clause 26.2.1;

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

**“Passenger Charter”** shall have the meaning as set forth in Clause 20.10;

**“Performance Security”** shall have the meaning as set forth in Clause 9.1.1;

**“PB Fee”** shall have the meaning as set forth in Clause 22.1.2;

**“PKM”** or **“Passenger Kilometres”** means the cumulative distance travelled by Users on the Buses in a day;

**“Political Event”** shall have the meaning as set forth in Clause 29.4;

**“Procurement Schedule”** shall mean the schedule according to which the Contractor shall procure and deliver the Buses in accordance with the terms of this Agreement and as set out in Schedule [●];



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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
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**“Project”** means the supply and maintenance of Buses and the Fit Out Works, operation and maintenance of the Maintenance Depots in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement [;

**“Project Agreements”** means this Agreement, construction contracts, supply contracts, O&M Contract, and any other material agreements or contracts that may be entered into by the Contractor with any person in connection with matters relating to, arising out of or incidental to this Agreement, but does not include any agreement for goods and services for the Maintenance Depots;

**“Project Assets”** means all physical and other assets relating to and forming part of the Depot Sites and Maintenance Depots, including:

- (a) rights over the Licensed Premises in the form of licence, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems and administrative offices;
- (c) all rights of the Contractor under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc.;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to or in respect of the Project;

**“Project Milestones”** means the project milestones set forth in Schedule-E;

**“Project Manager”** refers to CESL;

**“Protected Documents”** shall have the meaning as set forth in Clause 40.3;

**“Prototype”** shall have the meaning as set forth in Clause 13.4.1;

**“Provisional Maintenance Manual”** shall have the meaning as set forth in Clause 17.2.1;

**“Provisional Operation Manual”** shall have the meaning as set forth in Clause 16.3.1;

**“Punch List”** shall have the meaning set forth in Clause 14.1.5;

**“Re.”, “Rs.” or “Rupees” or “Indian Rupees”** means the lawful currency of the Republic of India;

**“Real Estate Development”** shall have the meaning set forth in Clause 3.1.3;

**“Reliability”** shall have the meaning as set forth in Clause 20.2.1;

**“Reference Exchange Rate”** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;



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**“Reference Index Date”** for and in respect of a Year, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of that Year;

**“Request for Proposals”** or **“RFP”** shall have the meaning as set forth in Recital (E);

**“Request for Qualification”** or **“RFQ”** shall have the meaning as set forth in Recital (D);

**“Right of Way”** means the constructive possession of the Depot Sites, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Maintenance Depots [and Real Estate Development]<sup>10</sup>, in accordance with this Agreement;

**“Safety”** means general safety and severe safety;

**“Safety Requirements”** shall have the meaning as set forth in Clause 18.1;

**“Scheduled COD”** shall have the meaning set forth in Clause 14.3;

**“Scheduled CP Satisfaction Date”** shall have the meaning set forth in Clause 4.2(a);

**“Scheduled Maintenance”** shall have the meaning as set forth in Clause 17.2.2;

**“Scheduled Maintenance Depot Completion Date”** shall have the meaning set forth in Clause 12.5.1;

**“Scope of the Agreement”** shall have the meaning as set forth in Clause 2.1;

**“Selected Bidder”** shall have the meaning as set forth in Recital (F);

**“Senior Lenders”** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Contractor under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Contractor;

**“Spares”** shall have the meaning as set forth in Clause 17.3.2;

**“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Buses and Maintenance Depots, as set forth in Schedule-B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Buses submitted by the Contractor to, and expressly approved by, the Authority;

**“Specified Assets”** means and includes such of the Project Assets which are constructed, acquired or installed after the [5<sup>th</sup> (fifth)] anniversary of COD, but before the [10<sup>th</sup> (tenth)] anniversary thereof; and but shall in no case include land.

**“Specified Documents”** shall have the meaning as set forth in Clause 40.1;

**“State”** means the State of [●] and

<sup>10</sup> **Drafting Note** – To be deleted if Real Estate Development is not included.

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**“State Government”** means the government of [●];

**"State Subsidy Bank Guarantee"** shall have the meaning as set forth in Clause 22.7.3;

**“Statutory Auditors”** means a reputable firm of chartered accountants acting as the statutory auditors of the Contractor under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force;

**“Subordinated Debt”** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Contractor’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Contractor’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**“Substitution Agreement”** shall have the meaning as set forth in Clause 35.4.1;

**“Sub-Contractor”** means the person or persons, as the case may be, with whom the Contractor has entered into any of the construction contracts, the O&M Contract any other material contract for the Fit Out Works, operation and/or maintenance of the Maintenance Depots, the Charging Infrastructure or the Buses, as the case may be, or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Contractor;

**“Suspension”** shall have the meaning as set forth in Clause 31.1;

**“Taxes”** means any Indian taxes including the goods and services tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project, which are charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

**“Termination”** means the termination of this Agreement in accordance with its terms;

**“Termination Notice”** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**“Termination Payment”** means the amount payable by the Authority under and in accordance with the provisions of this Agreement, upon Termination and includes Additional Termination Payment.



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For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 32.3;

**“Tests”** means the tests as set forth in Schedule-H to determine the conformity of Buses with the provisions of this Agreement;

**“Total Project Cost”** means the capital cost incurred on construction and financing of the Project, excluding Real Estate Development, and shall be limited to the lowest of:

- (a) the capital cost\* of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion; and
- (c) a sum of Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore);

\* Capital cost definition

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

**“Training Obligations”** shall have the meaning as set forth in Clause 23.1;

**“Transfer Date”** means the date of completion of the services under this Agreement or termination of the Agreement by a Termination Notice;

**“Unscheduled Maintenance”** shall have the meaning as set forth in Clause 17.2.4;

**“Unsubsidised Buses”** shall have the meaning as set forth in Clause 22.7.1;

**“User”** means a person who uses or intends to use the Buses on payment of User Fare or in accordance with the provisions of this Agreement and Applicable Laws;

**“User Fare”** means the fare payable by users for traveling on the Bus;

**“Vesting Certificate”** shall have the meaning as set forth in Clause 33.5.

**“WPI”** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GoI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.



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Serial No : 1467105

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
THE AUTHORITY by:

THE COMMON SEAL OF CONTRACTOR has been  
affixed pursuant to the resolution passed by the  
Board of Directors of the Contractor at its meeting  
held on the .....day of 20..... hereunto  
affixed in the presence of ..... Director,  
who has signed these presents in token thereof and  
..... Company Secretary / Authorised  
Officer who has countersigned the same in token  
thereof<sup>£</sup>:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail Address)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail Address)

In the presence of:

1.

2.



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£ To be affixed in accordance with the articles of association of the Contractor and the resolution passed by its Board of Directors

## SCHEDULES



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**SCHEDULE-A**  
(See Clause 10.1)

**SITE OF THE MAINTENANCE DEPOT**

**1 The Depot Site**

- 1.1 Depot Site shall include the land described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to the Site shall be prepared jointly by the Authority Representative and the Contractor, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 The depot shall be as per the latest manual published by Ministry of Housing Affairs “*Manual For Planning, Design & Implementation of City Bus Depots*”



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**Annex - I**  
**Site of the Depot**

[●]

Note: Through suitable Drawings and description in words, the land comprising the Site shall be specified briefly but precisely. In the event there are any buildings or structures on the Site, the same shall be marked in the Drawings and briefly described in words.



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**[Annex-II  
Real Estate Development]**



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**[Annex - III  
Funded Works  
(See Clause 12.6)  
[●]**

Note: Briefly but precisely list the work to be included in Funded Works along with the lump sum amount of capital cost of each of the listed works.]



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**SCHEDULE -B**  
(See Clause 12.5.1)

**SPECIFICATIONS AND STANDARDS**

1. The Contractor shall comply with the Bus Specifications (including specifications for ITS) set forth in Volume 3 – Technical Specifications.
2. Latest bus specifications, currently [Urban Bus Specifications - II issued by Ministry of Urban Development, GoI in April 2013, the AIS 052 – Bus Body Code issued by the Automotive Research Association of India (“ARAI”) in 2015, and the Central Motor Vehicles Rules, 1989], should be followed unless changes are specified to this schedule by the Authority.



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## Annex – I

1. Subject to the provisions of this Schedule, procurement of Bus shall conform to Applicable Laws and the latest bus specifications published by Ministry of Urban Development, GoI. An authenticated copy of the latest bus specifications has been provided to the Contractor as part of the RFP.
2. Deviations from the aforesaid bus specifications shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.



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**SCHEDULE-C**  
(See Clause 4.1.3)

**APPLICABLE PERMITS**

**I. The following permits shall be obtained by the Contractor:**

**1. For Buses**

- (a) Commercial Vehicle Permit
- (b) Certificate of Registration of Buses
- (c) Certificate of Fitness
- (d) Pollution under Control Certification
- (e) Bus Insurance
- (f) Customs Clearance Certificate (if needed)

**2. For Maintenance Depot**

- (a) Permits for Building Plan in accordance with the applicable State Act and by-laws
- (b) Fire safety clearance from Fire Department
- (c) Insurance for Depot, Electrical & Civil Infrastructure and other Authority owned assets
- (d) Customs Clearance Certificate for any testing or maintenance equipment (if needed)
- (e) Permission of State Government for extraction of boulders from quarry
- (f) Permission of Pollution Control Board for installation of crushers
- (g) Permission of State Government for drawing water from nearby river/reservoir (if needed)
- (h) Clearance of Pollution Control Board for installation of diesel generator sets
- (i) Permission of State Government for cutting of trees
- (j) License for use of explosives (if needed)
- (k) License from Inspector of factories or other competent authority for setting up of Batch Plant (if needed)
- (l) Clearance of Pollution Control Board for Asphalt Plant (if needed)
- (m) Any other permits or clearances required under Applicable Laws]

**II. The following permits shall be procured by the Authority:**

- [1. No Objection Certificate from State Transport Department or RTA or from State Transport Undertaking as applicable
- [2. Stage Carriage Permit
- [3. Conductor's License
- [4. Fare Notification
- [5. Passenger Tax
- [6. Applicable Environment Clearance from State Government]



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## SCHEDULE-D

(See Clause 9.1)

### PERFORMANCE SECURITY

.....  
Government of .....,  
.....

#### WHEREAS:

- A. **The Governor of [•]**, acting through {.....}, [•], and having its head office at { ..... } (hereinafter referred to as the “**Authority**” or, which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns) of the one part;

#### AND

{\*\*\*\*\* Limited}, having its registered office at {.....} represented through its \*\*\*\*\* (hereinafter referred to as the “**Contractor**”, which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assigns) of the other part.

The Authority and the Contractor are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

- B. The Agreement requires the Contractor to furnish a Performance Security to the Authority in a sum of Rs ..... (Rupees ..... only) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the term of the Agreement Period (as defined in the Agreement).
- C. We, .....through our Branch at.....(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor’s obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of the ....., that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during the



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Agreement Period under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Contractor for the fulfilment, compliance and/or performance of all or any of the obligations of the Contractor under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until a period of 30 (thirty) days beyond the Contract Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 3 (three) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



10. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the 30 (thirty) days from the expiry of the Contract Period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ..... , 20 ..... at

**SIGNED, SEALED AND DELIVERED**

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



Signature :-  
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**SCHEDULE -E**  
(See Clause 12.5.1)

**MAINTENANCE DEPOT COMPLETION SCHEDULE**

**1. Completion Schedule**

During Construction Period, the Contractor shall comply with the requirements set forth in this Schedule-E for each of the Project Milestones and Scheduled Maintenance Depot Completion Date (the “**Maintenance Depot Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Authority of such compliance along with necessary particulars thereof.

**2.** [The completion timeline of the following essential components, *inter alia*, of construction of Maintenance Depot shall be periodically reviewed by the Authority:

- (a) Structural Work
- (b) Electrical Work
- (c) IT/Telecom system
- (d) Fire safety system
- (e) Water supply system
- (f) Drainage system]

**3. Scheduled Maintenance Depot Completion Date**

The Scheduled Completion Date shall occur on the [180<sup>th</sup> (one hundred and eightieth)] day from the Appointed Date. On or before the Scheduled Maintenance Depot Completion Date, the Contractor shall have completed the Maintenance Depot in accordance with this Agreement.

**4. Extension of period**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Maintenance Depot Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Maintenance Depot Completion Schedule shall be deemed to have been amended accordingly.



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## **SCHEDULE-F**

*(See Clause 13.4)*

### **DESIGN AND DRAWINGS**

#### **1 Designs and Drawings**

- 1.1 In compliance of the obligations set forth in Clause 13.4 of this Agreement, the Contractor shall furnish to the Authority, free of cost, all Designs and Drawings listed in Annex-I of this Schedule-F; provided that the Designs and Drawings relevant for design review by the Government as specified in Clause 13.4.2, shall be submitted prior to such review.
- 1.2 For the purposes hereof, Design shall mean and include plans and Drawings of the Buses or sub-system or equipment thereof. Provided that the Contractor may share only details regarding the layout of the bus and not any other propriety information.
- 1.3 All Designs shall include maintenance and service manual of the respective sub-systems.
- 1.4 All Designs and Drawings shall be supplied in hard copy, in duplicate, and in electronic form. All Drawings shall be provided in auto-cad format.
- 1.5 All Designs and Drawings shall conform to and refer to the relevant provisions in the Specifications and Standards.
- 1.6 All Designs and Drawings shall be in English.

#### **2 Additional Designs and Drawings**

If the Authority determines that for discharging its duties and functions under this Agreement, it requires any Designs or Drawings other than those listed in Annex – I, it may by notice require the Contractor to prepare and furnish such Designs and Drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such Designs and Drawings to the Authority, as if such Designs and Drawings formed part of Annex – I of this Schedule F.]



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**Annex – I**  
**List of Designs and Drawings**

**1 Designs and Drawings**

In compliance with the requirement under Clause 13.4.1, the Contractor shall provide the following Designs and Drawings:

- (i) General schematic Drawings
- (ii) Bus offer drawing attached Layout
- (iii) Front, rear and both side views of the offered design of the Bus]



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**SCHEDULE-G**  
(See Clause 13.3)

**PROCUREMENT SCHEDULE**

Sr. No.	Lot No.	Type of Bus	Number of Buses	Expected date of receipt of Buses from the Appointed Date	Expected date of achieving Readiness for Commencement of Bus Service
	1			Appointed Date + [insert number of days for delivery of 1 <sup>st</sup> Lot of Buses]	Appointed Date + [insert number of days for delivery of 1 <sup>st</sup> Lot of Buses] + [45 (forty five) days]
	2			Appointed Date + [insert number of days for delivery of 2 <sup>nd</sup> Lot of Buses]	Appointed Date + [insert number of days for delivery of 2 <sup>nd</sup> Lot of Buses] + [45 (forty five) days]
	3			Appointed Date + [insert number of days for delivery of 3 <sup>rd</sup> Lot of Buses]	Appointed Date + [insert number of days for delivery of 3 <sup>rd</sup> Lot of Buses] + [45 (forty five) days]



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## **SCHEDULE-H**

(See Clause 13.5)

### **TESTS**

#### **1 Tests**

- 1.1 Save and except as otherwise provided in this Agreement, the Contractor shall conduct, or cause to be conducted, each of the Tests specified in this Schedule-H.
- 1.2 The Authority shall conduct, or cause to be conducted, adequate trial runs of Prototypes to determine their compliance with Specifications and Standards, requirements and Safety Requirements.
- 1.3 Tests to be conducted on the Prototype or its sub-systems, as the case may be, (the “**Type Tests**”) have been specified in Annex-I of this Schedule-H and routine tests to be carried out on all Buses (the “**Routine Tests**”) have been specified in Annex-II of this Schedule-H.
- 1.4 The Contractor shall provide the results of all Tests to the Authority for review and comments, if any.

#### **2 Schedule for Tests**

- 2.1 The Contractor shall, not later than [●] weeks prior to the likely date of conducting a Type Test, notify the Authority of its intent to conduct the Test and furnish particulars of the equipment and methodology forming part of the Test.
- 2.2 The Contractor shall notify the Authority of its intent to conduct the Type Test, referred to in paragraph 2.1 above, at any time after [●] days from the date of such notice. The notice shall specify the place, date and time of such Test. Upon receipt of such notice, the Authority may, within [●] days of such notice, designate its representative to witness the Test. The Contractor shall, whether or not an Authority Representative is designated, conduct the Test in accordance with Article 13 and this Schedule-H.
- 2.3 The Authority may at any time designate its representative to witness any Routine Test on a Bus and the Contractor shall, upon receipt of a notice to this effect, undertake such Routine Test on a mutually agreed date, and in the presence of the Authority Representative.

#### **3 Agency for conducting Tests**

Save and except as otherwise specified, all Tests set forth in this Schedule-H shall be conducted by the Contractor or such other agency or person as it may specify in consultation with the Authority.

#### **4 Tests for Safety certification**

Tests for determining the conformity of a Bus with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

#### **5 Acceptance certificate**

Upon successful completion of Tests, the Authority shall issue an Acceptance Certificate for the Prototype in accordance with the provisions of Article 13.



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## Annex - I Type Tests

In addition to the standard Type Tests of ARAI, the following tests shall be conducted for the buses:

S. No.	Applicable Tests	Standard / Regulation
1	Gradeability	AIS 003 & AIS 049
2	Pass by noise	IS 3028 & AIS 049
3	Coast Down Test	IS 14785 & AIS 049
4	Brake, Base line (Part – 3)	IS 11852 & AIS 049
5	Brake static (Part - 4)	IS 11852 & AIS 049
6	Construction and Functional safety requirements	AIS 038
7	Electrical energy consumption	AIS 039
8	Range Test	AIS 040
9	Net Power and Max 30 min power test	AIS 041
10	Safety requirements of Traction batteries	AIS 048
11	EMC	AIS 004 (Part 3) & AIS 049



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## **Annex - II**

### **Routine Tests**

[Routine Tests under this Agreement shall include the list of routine tests determined by Government Instrumentality including ARAI from time to time.]



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## SCHEDULE-I

(See Clause 16.1.1 and Clause 17.4)

### OPERATION AND MAINTENANCE REQUIREMENTS

Bus repair and maintenance generally calls for following activities amongst others at varying intervals / periodicity / Km operated by each bus, requirements varying with bus make, model, etc.:

- (a) Daily washing and cleaning of buses.
- (b) Periodic inspections and rectifications as required.
- (c) Preventive Maintenance as prescribed by Bus Manufacturer in form of maintenance schedules at certain time intervals / Km plied - such maintenance generally varies with period / Km plied by various sub-systems of a Bus. As an example periodicity of some such maintenance schedules and main activities therein are illustrated as under:
  - (i) Daily maintenance - oils / lubricants, coolant, air pressure, air inflation, loose fasteners, fitments etc. - check, top up, tighten, as required.
  - (ii) Monthly / bi-monthly – [•] / [•] Km operation - All activities of earlier schedules and engine oil / engine filter change, checking for exhaust emission, tyre condition necessary for corrective / preventive actions, engine tuning, etc.
  - (iii) Quarterly – [•] Km operation - All activities of earlier schedules and brake system maintenance including but not limited to inspection, servicing, brake lining change / replacement, servicing of other brake system items, greasing etc.; vehicle electrical, lighting, alignment, etc.
  - (iv) Six monthly – [•] Km - All activities of above schedules, and activities related to steering, axles, transmission, tyres, drive line, etc.
  - (v) Yearly – [•] Km - All above activities and full checking / inspection of bus chassis, bus bodies and their fitments, and taking necessary corrective / preventive actions.
  - (vi) Bi-annual / annual - Certification of road worthiness of buses - Initial periodicity being after two years for up to certain age then annually.
  - (vii) Replacement of in-use bus aggregates at about Mean Time Between Failures (MTBF) to prevent failures and consequent costs and inconvenience.
- (d) Running repairs upon driver complaints/ report etc.
- (e) Break down repairs on-site of Bus failures.
- (f) Towing of failed Bus to a depot workshop and repairing the bus failures.
- (g) Accidental vehicles' towing and or repairs.
- (h) Preparation of buses for periodic roadworthiness certification which includes all types of denting / painting of bus bodies / bus body items and operational functionality of chassis items and the bus as a whole.
- (i) Bus body and related items repairs / replacements etc. on the basis of periodic inspections / crew reports / general presentation aspects / operational problems reported by commuters / any other stake holders, etc.
- (j) Major repairs /calibrations of bus aggregates such as engines, gear box, rear axle etc.
- (k) Replacement of failed aggregates with new / serviceable ones.
- (l) Removal, dismantling, repairing, assembling and re-fitment of tyres and rims to buses.
- (m) Repair, replacement of electrical, electronic, ITS, lighting, etc. items, subsystems etc.
- (n) Removal, replacement of items failing due to operational wear and tear, such as brake and clutch lining, etc.
- (o) Repair / replacement of seats, upholstery; cleaning, dusting and washing upholstery.
- (p) Denting / painting of buses as per requirement.
- (q) Reconditioning of Bus aggregates such as engines, transmission, axles, steering system, electrical, etc.
- (r) Retrieval of spare parts during / for above processes.



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- (s) Repair and re-treading of tyres / repair of tubes.
- (t) Major accidental repair of buses including chassis, bus body and related items.
- (u) Acquisition, storage, inventory management, distribution, scrapping and disposal of spares / items / materials / vehicles etc.
- (v) Any other activity related to operation and maintenance of buses.
- (w) Infrastructure and other requirements for repair and maintenance functions of Bus, such as:
  - (i) Bus depot duly equipped with requisite plant and equipment, machinery, tools, jigs and fixtures, etc.
  - (ii) Other facilities as under:
    - A. Washing facilities complete with washing machine, water storage and treatment facilities, etc.,
    - B. Charging infrastructure,
    - C. Service pits / ramps etc.,
    - D. Painting facilities,
    - E. Welding - electric arc and oxy-acetylene gas based,
    - F. Tyre repair facilities,
    - G. Air compressor and air inflation facilities,
    - H. Utilities, administrative, accounts, stores, and other related facilities, and
    - I. Breakdown van / recovery / towing vehicle etc.
  - (iii) Contractor Control Centre facilities duly equipped with microprocessors, communications and other related facilities.
  - (iv) Trained staff for various trades and shifts of work.
  - (v) Documents, schedules, manuals etc. for maintenance activities; specifications of spares, etc.



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**SCHEDULE-J**  
(See Clause 18.1)

**SAFETY REQUIREMENTS**

**1. General Safety Requirements**

- 1.1 The Contractor shall be responsible for all safety matters related to the performance of the Project and shall manage on behalf of the Authority all safety requirements related to the Bus Service in accordance with all Applicable Laws.
- 1.2 The Contractor shall bear full responsibility for the safety of the Bus Service throughout the Contract Period in accordance with the Contract.
- 1.3 Without prejudice to the Contractor's obligation to ensure the safety of the Bus Service, the Contractor shall:
  - (a) comply with Applicable Laws;
  - (b) provide all appropriate measures in the providing Bus Service and maintenance of the Project Facilities to ensure, so far as reasonably practicable, the safety of all passengers, contractors, staff and the general public;
  - (c) consult with Authority and adopt the requirements of the emergency services;
  - (d) take particular care to ensure safety for all passengers at accesses and exits, while waiting, boarding or alighting and when moving along the Buses; and
  - (e) have due regard for the safety of third parties, in particular pedestrians and other road users, in the operation and maintenance of Project Facilities.

**2. Safety Planning**

- 2.1 The Contractor shall participate in any safety and emergency planning forum together with relevant third parties, which shall include, as a minimum, the Authority and the emergency services. This forum will consider and agree the safety matters and safety risks presented by the Project, consult relevant internal and external stakeholders and examine these risks in a thorough manner and plan the appropriate contingencies.

**3. Safety Management**

- 3.1 The Contractor shall develop safety procedures for the Project and shall implement the safety procedures throughout the Contract Period.

**4. Applicable Laws**

- 4.1 The Contractor shall, after prior consultation with the Authority, implement all alterations to the Bus Service which are required by any Applicable Laws which comes into force after the Effective Date relating to safety.
- 4.2 The Contractor shall comply and shall procure that Sub-Contractors shall comply with the requirements of all relevant Government Authorities.

**5. Response to Emergencies**

- 5.1 The Contractor shall react safely and quickly to emergencies in all aspects of the Project.



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- 5.2 The Contractor shall co-operate with relevant Fire Services, Police, and any other Government Instrumentalities wherever necessary.
- 5.3 The Contractor shall develop an Emergency Management Plan that sets out its predetermined actions to providing a response to a major crisis or emergency occurring at Maintenance Depots, and en-Route Buses (the “**Emergency Management Plan**”).
- 5.4 In developing the Emergency Management Plan, the Contractor shall consult with all relevant Government Instrumentalities, emergency services and local authorities.
- 5.5 All personnel designated to carry out specific responsibilities under the Emergency Management Plan are expected to know and understand the policies and procedures outlined in the Plan. The response to any major crisis or disturbance shall always be conducted within the framework of the Plan.
- 5.6 The Contractor shall ensure that all staff are given clear instructions in line with the Emergency Management Plan, including training to deliver public address announcements in a way that avoids causing alarm and that instils confidence in passengers that the matter is under control.

## **6. Reporting of Incidents**

- 6.1 The Contractor shall comply with all Applicable Laws relating to the reporting of accidents, incidents, fatalities, injuries, and dangerous occurrences. The Contractor shall liaise with the Authority in relation to the reporting of any incident and the future measures to be taken to prevent the recurrence thereof.



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**SCHEDULE-K**  
(See Clause 17.1)

**MAINTENANCE DEPOTS EQUIPMENT**

The Contractor shall install the following list of equipment to ensure majority of the periodic and unscheduled maintenance activities are carried out at the maintenance depots. The equipment required to be installed at the depot must include the list of equipment provided below. The list is inclusive and not exhaustive and Contractor shall install additional tools/equipment to ensure maintenance activities of the bus may be undertaken at the depots.

S. No.	Equipment
1.	Depot yard lighting - high mast type, search lights, etc.
2.	Fully automatic three brushes bus washing machine with simultaneous chassis and wheel washing arrangement and complete with waste water treatment and recycling system
3.	[Effluent Treatment Plant (ETP)] (if not already available at depot)
4.	Heavy duty vacuum cleaner
5.	Fire safety equipment set
6.	Air compressor
7.	Paint booth complete with environment control, paint drying system, etc.
8.	Lathe machine complete with general tools, jigs and fixtures
9.	Radial drilling machine
10.	Brake drum turning / re-boring machine
11.	Hydraulic press
12.	Brake efficiency assessment system
13.	Wheel alignment
14.	Head light beam aligner
15.	Grease pump (Air operated)
16.	Hand held grease pump
17.	Pedestal mounted and portable digital, with auto cut-off, tire inflation system
18.	Nitrogen tire inflation
19.	Tire - wheel rim dismantling and assembling system / tyre changer
20.	Wheel balancing equipment



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21.	Auto electrical test bench
22.	AC gas charger with AC gas cylinders
23.	Battery charger auto cut-off system
24.	Battery tester
25.	Multi-function tester
26.	Hydraulic jack
27.	Hydraulic pallet trolley
28.	Battery operated forklift truck
29.	Break down relief van
30.	Power cutter
31.	Pneumatic impact tools kit
32.	Portable electric welding machine
33.	Portable gas welding machine
34.	Full set of hand tools, including torque wrench, measuring instruments, gauges
35.	Riveting tools, hand drills, riveting guns / equipment
36.	Sheet metal / tubing / structural items cutting, forming facilities / equipment; plywood and upholstery cutting and fabrication facilities
37.	Work benches, bench vices. Hand drills, jigs and fixtures, clamping devices,
39.	Washing pumps with guns

Additionally, the Contractor shall set up administrative and training facilities at the maintenance depots for monitoring of operations, staff training and resting facilities and incident management at the depots.

S. No	Equipment
1.	Storage facilities for: <ul style="list-style-type: none"> <li>• new materials, spares, aggregates, tyres, oils and lubricants</li> <li>• repairable as above</li> </ul> scrapped and disposable items as above
2.	Vehicles for transportation of materials, stores and spares
3.	Basic Contractor Control Centre equipment including those related to IT, ITS, communication, display, etc. - hardware and software
4.	Simulators for driver training
5.	Capacity building /training facilities and equipment



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3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9b91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



6.	Complete set of workmen cupboards, rest room facilities
7.	Office furniture, cup boards, all other office requirements
8.	All utilities- phones, fax, mobile phones, printers, etc. for workshop and other offices
9.	Vehicles for officers, checking, attending to alerts /emergencies
10.	Safety and security equipment / facilities
11.	Water cooler with water filter / purifier
12	Desktops and laptops, printers, related hard ware and software



Signature :-  
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User ID : a.bhattacharya  
Serial No : 1467105

## SCHEDULE-L

(See Clause 27.1)

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the ..... day of ..... 20.....

#### AMONGST

- 1 ..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ..... (name and particulars of Lenders’ Representative/Lessor) and having its registered office at ..... acting for and on behalf of the Senior Lenders/Lessor as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 ..... (name and particulars of the Escrow Bank) and having its registered office at ..... (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Governor of \*\*\*\*\*, represented by [\*\*\*\*\* and having its principal offices at \*\*\*\*\*) (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

#### WHEREAS:

- (A) The Authority has entered into a Supply cum Operation and Maintenance Agreement dated ..... with the Contractor (the “**SCOM Agreement**”) for operation of Buses on build, own, operate and transfer basis (“**BOOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The SCOM Agreement requires the Contractor to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9,  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9b91a53d22468abb  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Agreement”** means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

**“Contract”** means the Supply cum Operation and Maintenance Agreement referred to in Recital (C) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Contractor or the Authority, as the case may be and shall commence from the date on which a notice is delivered by the Authority or Contractor, to the Contractor or the Authority, as the case may be, with either the Contractor or the Authority asking the other Party to cure the breach or default specified in such notice;

**“Escrow Account”** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

**“Escrow Default”** shall have the meaning ascribed thereto in Clause 6.1;

**“Parties”** means the parties to this Agreement collectively and “Party shall mean any of the Parties to this Agreement individually;

**“Payment Date”** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

**“Sub-Accounts”** means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

## 1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract shall apply, *mutatis mutandis*, to this Agreement.

## 2 ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

- 2.1.1 The Contractor hereby appoints the Escrow Bank to act as trustee for the Authority, Lenders’ Representative and the Contractor in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the



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terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The Contractor hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, Lenders' Representative and the Contractor, and applied in accordance with the terms of this Agreement. No person other than the Authority, Lenders' Representative and the Contractor shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

## **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this

Agreement and shall treat the amount in the Escrow Account as monies deposited by the Contractor or the Senior Lenders' or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, Lenders' Representative and the Contractor or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

## **2.3 Establishment and operation of Escrow Account**

- 2.3.1 Within {insert number of days} days from the date of this Agreement, and in any case prior to the Appointed Date, the Contractor shall open and establish the Escrow Account with the..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Contractor shall, after consultation with the Lenders' Representative and the Authority agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

## **2.4 Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Parties. Such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

## **2.5 Rights of the parties**

The rights of the Authority, Lenders' Representative and the Contractor in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, Lenders' Representative and the Contractor shall have no other rights against or to the monies in the Escrow Account.

## **2.6 Substitution of the Contractor**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9f3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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The Parties hereto acknowledge and agree that upon substitution of the Contractor with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Contractor under this Agreement on and with effect from the date of substitution of the Contractor with the Nominated Company.

### **3 DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1 Deposit by the Authority**

3.1.1 The Authority agrees and undertakes that it shall deposit into and/or credit the Escrow Account with;

- (a) Fee in accordance with Article 22 of the Contract wherein the Authority shall at all times throughout the Contract Period maintain in the Escrow Account, a balance of at least an amount equivalent to {3 (three)} months' estimated Fee;
- (b) Any other monies disbursed by the Authority to the Contractor;
- (c) Damages payable to the Contractor;
- (d) Termination Payments.

#### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Authority in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

### **4 WITHDRAWALS FROM ESCROW ACCOUNT**

#### **4.1 Withdrawals during Contract Period**

4.1.1 At the beginning of every month, or at such intervals as the Authority may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) All payments towards taxes and other statutory levies, payable by the Contractor for and in respect of the Project;
- (b) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (c) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the SCOM Agreement and that the amounts claimed are due to it from the Contractor;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Contractor pursuant to the SCOM Agreement;

#### **4.2 Withdrawals upon Termination**

Upon Termination of the Contract, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, shall be appropriated in the following order:

- (a) all taxes due and payable by the Contractor for and in respect of the Project;



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- (b) all payments and Damages certified by the Authority as due and payable to it by the Contractor pursuant to the SCOM Agreement and any claims in connection with or arising out of Termination;
- (c) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 34 of the SCOM Agreement;
- (d) incurred or accrued O&M Expenses;
- (e) any other payments required to be made under the SCOM Agreement; and
- (f) balance if any, in accordance with the instructions of the Contractor:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

### **4.3 Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

## **5 OBLIGATIONS OF THE ESCROW BANK**

### **5.1 Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received and shall be segregated from other funds and property of the Escrow Bank.

### **5.2 Notification of balances**

15 (fifteen) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Authority as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances and any anticipated shortfall in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day. In the event of any such shortfall, the Authority shall meet the same by crediting adequate sums to the Escrow Account from its own financial sources.

### **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Authority upon a certificate signed by or on behalf of the Authority.;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 7 (seven) business days after receipt, deliver a copy to the Authority acting through..... (name to be specified by the Authority) of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Contractor or any other person hereunder or in connection herewith; and



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- (d) shall, within 7 (seven) business days after receipt, deliver a copy to the Contractor of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Authority or any entity in connection herewith.

#### 5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### 5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### 6 ESCROW DEFAULT

#### 6.1 Escrow Default

##### 6.1.1 Authority Default

Following events shall constitute an event of default by the Authority (an “**Authority Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Contractor:

- (a) the Authority commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 30 (thirty) business days;
- (b) the Authority causes the Escrow Bank to transfer funds to any account of the Authority in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 30 (thirty) business days; or
- (c) the Authority commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 30 (thirty) business days.

##### 6.1.2 Contractor Default

Following events shall constitute an event of default by the Contractor (an “**Contractor Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- (a) the Contractor causes the Escrow Bank to transfer funds to any account of the Contractor in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 30 (thirty) business days; or



Signature :-  
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(b) the Contractor commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 30 (thirty) business days.

6.1.3 Upon occurrence of an Authority Escrow Default or Contractor Escrow Default, as the case may be, the consequences thereof shall be dealt with under and in accordance with the provisions of the Contract.

## **7 TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

This Agreement shall unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Clause by written notice from the Authority and the Contractor to the Escrow Bank, remain in full force and effect for the duration of the Contract.

### **7.2 Substitution of Escrow Bank**

The Authority may after consultation with the Contractor, by not less than 30 (thirty) days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Authority made on or after the payment by the Authority of all outstanding amounts under the Contract including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Authority. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8 SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary escrow agreement**

The Authority and the Contractor shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the restrictions on withdrawals by the Contractor or the Authority in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.



Signature :-  
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## 9 INDEMNITY

### 9.1 General indemnity

- 9.1.1 The Authority will indemnify, defend and hold the Contractor and Escrow Bank, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Contractor will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Contractor to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

### 9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 7 (seven) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be..... (name of the city) and the language of arbitration shall be English.

## 11 MISCELLANEOUS PROVISIONS

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
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## 11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at..... shall have jurisdiction over all matters arising out of or relating to this Agreement.

## 11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

## 11.3 Priority of agreements

In the event of any conflict between the Contract and this Agreement, the provisions contained in the Contract shall prevail over this Agreement.

## 11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

## 11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## 11.6 No third party beneficiaries



Signature :-  
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Serial No : 1467105

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

## **11.7 Survival**

### **11.7.1 Termination of this Agreement:**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

### **11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.**

## **11.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to Dispute Resolution under Clause 10.1 of this Agreement or otherwise.

## **11.9 Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

## **11.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The addresses for service of each Party, its facsimile number or e-mail, are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

## **11.11 Language**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

#### **11.12 Authorised representatives**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### **11.13 Original Document**

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN**

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
by:

SIGNED, SEALED AND  
DELIVERED

For and on behalf of ESCROW BANK  
AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of LENDER by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of CONTRACTOR in the  
presence of:



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb  
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1.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## SCHEDULE-M

(See Clause 33.5)

### VESTING CERTIFICATE

1. The (the “**Authority**”) refers to the Contract dated\*\*\* (the “**Contract**”) entered into between the Authority and ..... (the “**Contractor**”) for .....(hereinafter called the ‘Project’).
2. The Authority hereby acknowledges compliance and fulfilment by the Contractor of the handback requirements set forth in Article 33 of the Contract on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Contractor in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Contractor to rectify and remedy any defect or deficiency in any of the handback requirements and/or relieving the Contractor in any manner of the same.

Signed this \*\*\* day of \*\*\*, 20\*\* at .....

AGREED, ACCEPTED AND SIGNED

For and on behalf of CONTRACTOR by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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## **SCHEDULE-N**

*(See Clause 19.7)*

### **DATA MONITORING SYSTEM**

#### **1. Data Monitoring System**

In compliance with the obligations set forth in Clause 19.7 of this Agreement, the Contractor shall install the data monitoring system comprising of all equipment and services listed in Annex 1 of this Schedule–Q.

#### **2. On Board Devices**

In compliance with the obligations set forth in Clause 19.7 of this Agreement, the Contractor shall install the on-board devices on each bus in accordance with the specifications listed in Annex 2 of this Schedule–Q.



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Serial No : 1467105

## Annex – I

### On Board Devices

- i. The Bidder shall procure buses as defined by the Authority which shall also include various but not limited to ITS System as defined by UBS II, AIS 140 Specifications and any amendments issued thereof. Some of the equipment's and their quantities are listed below:

Sr. No	Type of Equipment	12m/9m/7m (Qty)	Remarks
1	Passenger Display Boards	[3/4]	
2	Speaker	2	
3	Amplifier	1	
4	Single Control Unit (SCU) / On Board Unit (OBU)	1	
5	Driver Display Unit (DDU)	1	
6	CCTV with MDVR	[3/4]	Internal and External with 7 days backup storage
7	Panic Button		As per AIS 140 Specifications
8	Camera based Automatic Passenger Counters (APC)	[1/2]	At each door

- ii. The OBITS equipment installed in the buses should provide accuracy upto last 3-4 meters from the standing location and not beyond
- iii. The equipment of the OBITS shall be integrated to each other and the Bus CAN for transmitting all the bus data, vehicle tracking data and the any other data as required by the Authority. The Cost of such integration should be the responsibility of the Contractor.
- iv. The Authority shall provide all the route information for along with Passenger Information System to the Contractor to upload into the OBITS.
- v. The camera based passenger counter shall be integrated to the OBITS at the time of prototype approval, or delivery of the bus or as a date mutually agreed with the Authority.
- vi. The common minimum requirement of vehicle health monitoring and diagnostics (VHMD) parameters will be-SOC level, Motor speed in RPM, Vehicle Speed. The OEM should provide minimum 10 – 15 VHMD parameters through CAN Bus Data.
- vii. Security Camera Network (CCTVs) minimum three numbers and display screen should meet the specification for IP based cameras and mNVR as per Detailed specification document for CCTV devices as per IS 16833:2018 CCTV system with integrated emergency System (with 2-megapixel camera, SSD hard disc, 4G/5G, Wifi for data transfer). Responsibility of APIs based integration with backend System.
- viii. Rear View Camera System to display the zone behind the vehicle shall be provided along with display on or near dash board. The Reverse Parking Alert System (RPAS) shall comply with provisions of AIS 145. The indirect vision system shall get activated upon engagement of reverse gear. RPAS should give audio warning on reaching the critical distance available for reverse parking.



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 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
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## Annex - II

### Data Monitoring System

- i. The bidder shall procure buses in compliance with AIS-140: Intelligent Transportation Systems (ITS) - Requirements for Public Transport vehicle operation and set up data monitoring systems for on board ITS: Vehicle Location Tracking, Camera Surveillance System and Emergency Request Button. The bidder shall set up systems for monitoring operations and managing incidents.
- ii. The bidder shall share real time data from on-board devices using standard communications protocols defined by AIS 140 with the Authority. The bidder shall give the Authority access to real time feed from buses through Advanced Programming Interface (APIs) and support the Authority in integrating feed from the buses procured under the concession to existing Intelligent Transport Management Systems (ITMS) set up by the Authority to ensure monitoring of services and KPIs set out under Article 20 of the agreement.
- iii. Electric bus (eBus) performance and safety are directly linked with the battery performance. The usage of eBus battery under sub-optimal conditions can directly influence the performance as well as life of the battery. Analysis of the impact of different stress factors (Battery temperature, C-rate, DOD, and SOC) on the battery can help in getting more insights into the degradation mechanism and battery aging (i.e. Calendar and Cyclic aging). Monitoring and analysis of some of the battery parameters during eBus operation is important to ensure optimal battery life and eBus performance along with a high level of safety. As the Battery Management System (BMS) of the eBus battery monitors all the critical parameters of the battery during eBus operation, the availability of these data with the Authority will help in better planning of eBus operation and charging strategies and ensure safety of operations.
- iv. The bidder shall share vehicle health monitoring and diagnostics (VHMD) parameters through the bus CAN data on a real time basis with the Authority. The following CAN parameters should to be integrated to the on board IoT device/OBITS and capable of transmitting data at a frequency of 30 sec either to a server set-up by the Authority or through APIs set up by the bidder. The list of CAN data parameters shall be shared over and above the vehicle location data through the on board telematics system.
  1. Timestamp
  2. Odometer reading
  3. Vehicle Status
  4. SoC (State of Charge)
  5. SoH (State of Health)
  6. Speed
  7. Acceleration
  8. Voltage (pack and cell level)
  9. Current (pack and cell level)
  10. Charger Current
  11. Charger Voltage
  12. Ambient temperature
  13. Cell temperature
  14. Motor temperature
  15. BMS error



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RVICES LIMITED, C=IN  
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User ID : a.bhattacharya  
Serial No : 1467105

## **SCHEDULE-Q**

(See Clause 26.2)

### **PANEL OF CHARTERED ACCOUNTANTS**

#### **1 Panel of Chartered Accountants**

Pursuant to the provisions of Clause 26.2.1 of the Agreement, the Authority and the Contractor shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-R.

#### **2 Invitation for empanelment**

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, or the Companies Act, 2013, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

#### **3 Evaluation and selection**

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

#### **4 Consultation with the Contractor**

The Authority shall convey the aforesaid panel of firms to the Authority for scrutiny and comments, if any. The Contractor shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
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## **5 Mutually agreed panel**

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Contractor, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Contractor, a new panel shall be prepared in accordance with the provisions of this Schedule-R.



Signature :-  
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RVICES LIMITED, C=IN  
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Serial No : 1467105

**SCHEDULE-R**  
(See Clause 35.3.1)

**SUBSTITUTION AGREEMENT**

THIS SUBSTITUTION AGREEMENT is entered into on this the ..... day of ..... 20....

**AMONGST**

- 1 The Governor of \*\*\*\*\*, represented by [• and having its principal offices at \*\*\*\*\*) (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 [..... Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the “**Contractor**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); AND
- 3 (name and particulars of Lenders’ Representative) and having its registered office at ....., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes).

**WHEREAS:**

- (A) The Authority has entered into a Supply cum Operation and Maintenance Agreement dated ..... with the Contractor (the “**SCOM Agreement**”) for e-Buses in the State on build, own, operate and transfer basis (“**BOOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Contract to a Nominated Company in accordance with the provisions of this Agreement and the SCOM Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the SCOM Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**



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Serial No : 1467105



In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Agreement”** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Contractor for a minimum period of 3 (three) months;

**“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956, or the Companies Act, 2013, as the case may be, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Contract as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually.

## 1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the SCOM Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the SCOM Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the SCOM Agreement shall apply, *mutatis mutandis*, to this Agreement.

## 2 ASSIGNMENT

### 2.1 Assignment of rights and title

The Contractor hereby agrees to assign the rights, title and interest in the Contract to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the SCOM Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## 3 SUBSTITUTION OF THE CONTRACTOR

### 3.1 Rights of substitution



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Contractor by a Nominated Company under and in accordance with the provisions of this Agreement and the SCOM Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Contractor by endorsement on the SCOM Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Contractor either individually or collectively).

### **3.2 Substitution upon occurrence of Financial Default**

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Contractor (the "Notice of Financial Default") along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Contractor for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Contractor by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Contractor and undertake the operation and maintenance of the Project in accordance with the provisions of Article 16 and 17 of the SCOM Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the SCOM Agreement. The aforesaid Suspension shall be revoked upon substitution of the Contractor by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the SCOM Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the SCOM Agreement; provided that upon written request from the Lenders' Representative and the Contractor, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the SCOM Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Contractor Default**

- 3.3.1 Upon occurrence of an Contractor Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Contractor by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Contractor by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Contractor by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders'

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Representative and the Contractor, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.4 Procedure for substitution**

- 3.4.1 The Authority and the Contractor hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Contract to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Contractor towards the Authority under the SCOM Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Contractor, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Contract; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the SCOM Agreement;
  - (b) endorse and transfer the Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Contractor.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Contractor. The Contractor irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Contract in favour of the Nominated Company. The Contractor agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Contractor's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Contractor shall have no right or remedy to prevent, obstruct or restrain the Authority or the



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Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Contract as requested by the Lenders' Representative.

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Contractor shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Contractor in the event of such Nominated Company's assumption of the liabilities and obligations of the Contractor under the SCOM Agreement.

## **5 TERMINATION OF SCOM AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the SCOM Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the SCOM Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the SCOM Agreement forthwith in accordance with the provisions thereof.

### **5.3 Realisation of Debt Due**

The Authority and the Contractor hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Contractor, without any further reference to or consent of the Contractor, the Debt Due upon Termination of the SCOM Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the SCOM Agreement and the Escrow Agreement.

## **6 DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

## **7 INDEMNITY**

### **7.1 General indemnity**



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- 7.1.1 The Contractor will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Contractor of any of its obligations under this Agreement or on account of failure of the Contractor to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Contractor harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Contractor's obligations under the SCOM Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Contractor harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Contractor's obligations under the SCOM Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 8 DISPUTE RESOLUTION

### 8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Contractor and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be \*\*\* and the language of arbitration shall be English.

## 9 MISCELLANEOUS PROVISIONS

### 9.1 Governing law and jurisdiction

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This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at \*\*\* shall have jurisdiction over all matters arising out of or relating to this Agreement.

## **9.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

## **9.3 Priority of agreements**

In the event of any conflict between the SCOM Agreement and this Agreement, the provisions contained in the SCOM Agreement shall prevail over this Agreement.

## **9.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

## **9.5 Waiver**

### **9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:**

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

### **9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.**

## **9.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.



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## **9.7 Survival**

### **9.7.1 Termination of this Agreement:**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

### **9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.**

## **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to Dispute Resolution under Clause 8 of this Agreement or otherwise.

## **9.9 Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

## **9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

## **9.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

## **9.12 Authorised representatives**



Signature :-  
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Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

### 9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF CONTRACTOR  
has been affixed pursuant to the resolution  
passed by the Board of Directors of the  
Contractor at its meeting held on the .....  
day of 20..... hereunto affixed in the  
presence of ....., Director, who has signed  
these presents in token thereof and .....,  
Company Secretary / Authorised Officer who  
has countersigned the same in token thereof \$:

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)  
(e-mail address)

In the presence of:

1.

2.

\$ To be affixed in accordance with the articles of association of the Contractor.



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**SCHEDULE S:**  
**Time Frame (Shift Loss) for Repeated Accidental Vehicles Repairs**

S. No.	Type of accident	Shifts
1.	Front Wind Shield broken	2
2.	Front Wind Shield crack	2
3.	Rear Wind Screen glass broken	1
4.	Front/Rear Bumper-Centre/ Corner replacement	0.5
5.	Passenger door glass replacement (single)	1
6.	Passenger door damage/ replacement (single)	2
7.	Body side window glass LH/ RH (Only glass)	1
8.	Window top sliding glass (only glass) LH/RH broken/ replacement	1
9.	Driver door glass- sliding glass / movement glass replacement	1
10.	Body side window assembly (single) LH/ RH	2
11.	Skirt panel replacement (each)	1.5
12.	Window safety guard damage/ replacement-3 pipes with bracket	1
13.	Rear view mirror LH/ RH replacement	Running repair in depot premises
14.	Rear view mirror bracket replacement	Running repair in depot premises
15.	Top window fixed glass broken (Above driver door/ Side destination board)/ side fixed black glass	2
16.	CNG Cylinder Cover damage	3
17.	LHS/ RHS body wheel arch rubber damaged	1
18.	Tail light damage	Running repair in depot premises
19.	Tail light damage with dent to body	1
20.	Engine Flap Replacement	3
21.	Outside dent and paint repair-per square feet	2
22.	Passenger Front Gate Pillar damage from one side	8
23.	Radiator/ Air Filter Flap damage/ replacement	2
24.	Battery flap replacement	2
25.	Head light damage	Running repair in depot premises
26.	Wiper arm damaged LH/ RH	Running

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S. No.	Type of accident	Shifts
		repair in depot premises
27.	Fog lamp damaged	1
28.	Triangular hazard reflector	Running repair in depot premises
29.	Front face dent damage-one side	6
30.	Rear face dent repair-one side LH/RH	6
31.	Body side indicator lamp damaged	Running repair in depot premises
32.	License plate lamp damage	Running repair in depot premises
33.	Door Ramp Damage	2
34.	Driver door lock damage	Running repair in depot premises
35.	Front face repair/ replace	11
36.	Rear face repair/ replace	8
37.	Emergency Fixed Glass RH Broken/ Replacement	1



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## **SCHEDULE T: Infractions**

### Infractions:

An Incidence of sub-optimal performance and/or non-compliance of Specifications and standards shall be referred to as an “Infraction”. The deduction for each Infraction shall be made in terms of the table set out below:

Sr. No.	Category of Infraction	Reference Table for Infraction in Annexure	Amount for Each Infraction for calculating Performance Claim/ Deduction (in Rupees)	Time to Resolve for next higher slab in terms of Clause ...of this Schedule (Bus related infraction)
1	A	Table A	100/-	One day
2	B	Table B	500/-	Two days
3	C	Table C	1,000/-	Three Days
4	D	Table D	1,500/-	Three Days
5	E	Table E	10,000/-	One day
6	F	Table F	50,000/- + Actual expenses to be borne by the contractor.	One day

*Note: Performance Deduction/Claim amount shall be applied even during time to resolve the infraction (Period indicated as in above table).*

Infractions can be identified by STU, a nominated person, on visual checking, electro-mechanical reviews, reports from STU/passenger feedback and data from the Central Data Base of STU.

STU shall have access to Operator’s facilities in order to check such Infractions on a regular basis either through visits to the workshops and garages commonly used by the Operator, or bus inspections at terminal points along the route during service hours.

The Operator may note that the formats provided in category wise Infractions given in tables A, B, C, D, E and F are typical, but are subject to revision from time to time based on actual information, logistics and monitoring requirements.

In case of non-rectification of infraction within stipulated time to resolve, any subsequent repetition shall attract penalty of next higher slab with a ceiling of Rs. 3,000 per infraction, for category A, B, C and D. Thereafter, it will be binding on the Operator not to operate the vehicle till rectification of the bus related to infractions.



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Total infractions of all buses, mentioned in tables A, B, C, D except Safety items shall be capped to 5 % of the total monthly due payments.

All other infractions (of Safety category) mentioned in tables A, B, C and D & all infractions mention in tables E and F shall be non-capped.

## CATEGORY WISE LIST OF INFRACTION

Table A : Category “A” Infraction

Sr. no.	Description of the infraction
<b>Safety</b>	
1	Damaged/Missing window safety guard rails.
2	Loose electrical wiring/ tampering with electrical wiring harness.
3	Lack of specified fire extinguishers, empty or partially empty fire extinguishers that are beyond the date of expiry, or do not specify the expiry date.
4	Damaged floor, steps, hatches, or hatch covers inside the bus.
5	Missing damaged, or loosely hanging rub rails, hand grab rails, and handholds.
6	Missing, broken, or loosely hanging, seat belts if provided
7	LED board defective (per board)
8	Missing/ non operative, or blackened saloon lights, indicator lights, wiper system, wiper blades, prescribed horn and any indicating instruments (per item)
9	Fixing any additional lights, gadgets, guards, fixtures, etc. on the exterior of the bus in contravention to the Applicable Laws.
10	Fitment of radio, music system, or any other gadgets inside the bus in contravention to the Applicable Laws.
<b>Quality</b>	
11	Vehicles with visible dents, damaged / torn external panels that are more than 6” in width.
12	Oil spillage on wheel rims, hubs, tyres, etc
13	Discoloration or unpainted repair work inside the bus or on any of its items
14	Not maintaining USB charging ports in ok condition



Table B: Category “B” Infraction

Sr. No.	Description of the infraction
<b>Safety</b>	
1	Defective front, side and/or back brake lights
2	Section of handrail loose or with sharp edges
3	Inadequate operation of passenger access doors, either due to damage or incorrect operation which affects the boarding and alighting of passengers
4	Defective, emergency exits and hatches or damaged or bent bumpers
<b>Quality</b>	
5	Dirty vehicle, outside or inside, at the beginning of the journey
6	Damaged, broken, loosely fitted, or missing passenger seats, windows rattling
7	Display of incorrect passenger route information, inadequately lit or illegible display of passenger information at any of designated locations for displaying passenger information on the bus
8	Display of slogans, posters on the bus without prior approval of STU.

Table C: Category “C” Infraction

Sr. No.	Description of Infraction
<b>Safety</b>	
1	To reduce the percentage of visual transmission of lights of safety glasses beyond normal as prescribed in Rule 100(2) of CMVR
2	Violation of any of the legal requirements related to registration and maintenance of the buses
3	Fitment of an Air Pressure Horn
<b>Quality</b>	
4	To use or modified colors and designs of the external paintwork of the vehicle outside the standards parameters as notified by Transport Division, STU.
5	To place advertising material not authorized by STU or to infringe regulations regarding advertising material in vehicles.
6	Failure to refurbish the bus after sixth (Type II and Type III)/ Seventh year (Type I) from date of put in service, per bus per day.
7	Failure to comply with the maintenance obligations and safety requirements



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Table D : Category “D” Infractions

Sr. No.	Description of the infraction
<b>Safety</b>	
1	Damaged, or over worn tyres, poor quality retreading of tyres, poorly inflated tyres etc.
2	To refuse to accept the visits of STU inspectors or authorized representatives. To hide information or to provide partial or erroneous information.
3	Failure to provide adequate information to STU/ Police in relation to accident/s, injury to persons, damage to public / third party property

Table E: Category “E” Infraction

Sr. No.	Description of the infraction
1	“Serious nature of breakdowns” means breakdowns in those critical systems of bus such as which may result in fire, heavy damage to bus, major injury etc.

Table F: Category “F” Infractions

Sr. No.	Description of the infraction
1	“Fatal Accidents” means any incident in which bus involved inside STU’s depot / parking premises by the staff of the contractor, which causes death.



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### Technical Specifications for Type-I buses, Type II and Type-III buses

S No.	Description	Technical Specification
	Introduction	<p>i. Stage Carriage buses shall conform to the specifications set out in this schedule. The minimum Technical Specifications have been set out for the following types of Stage Carriages:</p> <p>(a) Low Floor Fully Built AC Pure Electric Standard Size (12 Metre) Buses.</p> <p>(b) Low Floor Fully Built non-AC Pure Electric Standard Size (12 Metre) Buses.</p> <p>(c) Standard Floor (900 mm) Fully Built Non-AC Pure Electric Midi Size (9 Metre) Buses.</p> <p>ii. The word “bus” shall mean the New Stage Carriage to be used for the project.</p> <p>iii. The word “bus” shall also mean a bus powered exclusively by an <b>Electric Motor whose traction energy is supplied exclusively by traction battery</b> installed in the vehicle suitable for operations in city conditions.</p> <p>iv. The bidder shall comply with all applicable Central, State and local laws (including Acts, Rules &amp; Regulations).</p> <p>v. The word “Bus” wherever it has been used in specifications means the “<b>Battery Operated Bus</b>”. The bus in general shall meet all applicable Central Motor Vehicle Rules, 1989 as amended (hereinafter referred to as “CMVR”), norms for safety applicable on the date of manufacture and Bus Code AIS 052 and any revisions thereof [hereinafter called Bus Code] AIS-049, AIS-038 and AIS-153 all amended up to date as also those related to easy passenger accessibility including for persons with disabilities (PWDs) and all other norms and regulations on high voltage electric vehicles.</p> <p>vi. Where there is conflict between the requirement as per any applicable law in force and the requirement emanating from these specifications whichever of these two is of superior/ higher standard shall prevail. Also, any specifications superior to the ones set out as Minimum Technical Specifications shall meet requirements of the contract.</p> <p>vii. Bus Model should be in compliance with CMVR &amp; Bus Code and approved as per AIS: 052+ AIS:153+ Annexure 3 of UBS II + FAME II by any Indian Government testing agency like ARAI, ICAT, NATRaX, CIRT etc.</p>
	Statutory requirements	<p>The eBus shall be designed and manufactured in accordance with the specifications &amp; AIS-052 and UBS-II: Code of Practice for Bus Body Design &amp; Approval [Bus Code], AIS – 049, AIS – 038 and AIS-153 all amended up to date as also those related to easy passenger accessibility including for persons with disabilities (PWDs).</p> <p>eBus shall be type approved as per CMVR requirements</p>
	FAME- II compliance	Bus should be compliant with FAME-II requirement

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 RVICES LIMITED, C=IN  
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 Serial No. : 1467105

1	Electric propulsion system & its requirements.	Electrically propelled system should design to meet “Code of practice for Electric Propulsion System” performance as per AIS 048 & AIS 049.  Electric Propulsion system should propel the bus at GVW fitted with all other auxiliary devices and system including air conditioning. Electric propulsion system and other sub-system should be able to operate efficiently at ambient temperatures / environmental conditions
2	Type of Battery	Advance chemistry battery as defined by Ministry of Heavy Industry vide Notification No S.O. 1472(E) dated 28 <sup>th</sup> March 2019, as amended from time to time. Manufacture should use advance new generation batteries. Battery should certified as per AIS-038 Rev-02 Amendment 3  For Human Safety, Battery should also be certified with Office memorandum F.NO. 01(02) /2022 –AEI (20555) Dated 28th October 2022.
3	a. Battery Pack Rating and Energy/Power b. Minimum & Maximum Charging% c. Motor/s Capacity d. Charging standard e. Charging standard in high voltage system	(i) No. of Motors / Batteries as per Manufacturer’s design (ii) Location of motor and batteries as per Manufacturer’s design considering minimal maintenance and easy of charging (iii) Electric Regeneration is required (iv) Charging Mode as per Manufacturer’s design. Charging Time less than 5 hours- overnight charging. (v) Safety–Short circuit/ Over Temperature / Lightning Protection is mandatory. (vi) CCS 2.0- Combined Charging System.
3.1	Battery Cooling System	Liquid Cooling system
3.2	Battery Life	Battery to be used in mobility application upto 80% SoH. OEMs to replace battery when SoH falls below 80%.
3.3	Battery Charging System	DC fast charging by CCS 2.0
3.4	Electric Drive Motors	Optimal Rating, Type, Make, Model of Electric Drive Motors with minimum maintenance. Motor should be able to operate efficiently at ambient temperatures of approximately 0 to 50 degrees centigrade, humidity level from 5% to 100%.
3.5	Electric propulsion system motor rating / power sufficient to provide Rated Performance at GVW in Stop/ Start In Urban Operation:	
a.	Rated Performance at GVW in Stop/ Start In Urban Operation	Maximum speed without speed limiter to be minimum 70 +/- 5 kmph at GVW load and air conditioning and other sub-system operational. Maximum rated speed should meet the requirement as per CMVR
b.	Acceleration (Meter / Sec. <sup>2</sup> )	≥0.8
c.	Bus Speed of 0 – 30 kmph in Seconds.	≤10.5 seconds
d.	Maximum Speed	Maximum speed without speed limiter to be 70 +/- 5 kmph
e.	Grade ability from Stop at GVW	15%
f.	Rated HP/torque preferably at lower rpm range	Rated HP at low rpm and Maximum torque required at lower range of motor RPM and spread over a wider range of RPM Sufficient

		torque to meet the acceleration, gradeability, AC and range requirement.
g.	Power requirements for Air conditioning system ITS, etc	Required to be provided by traction battery of electric propulsion system
h.	Energy Consumption of e-Bus when tested as per AIS 039 (latest revision) with AC ON and AC OFF condition (Annual Average)	Standard Bus (12 m) AC: 1.3 kWh/km Standard Bus (12 m) non-AC: 1.1 kWh/km Midi Bus (9 m) Non-AC: 0.85 kWh/km
3.6	Pass bye noise norms	As per CMVR & bus code AIS:052
4	Operational safety	Transmission system to be fitted with a mechanism which makes it possible to engage reverse gear only when vehicle is stationary
5	Bus Characteristics	
5.1	Front Axle	As per manufacturers design UBS-II / AIS 052/CMVR
5.2	Rear Axle	As per manufacturers design UBS-II / AIS 052/CMVR
6	Suspension (Front & Rear)	Air suspension at Front & Rear
6.1	Anti-roll bars/stabilizers	Required at front and rear If independent front suspension is used, anti-roll bar is not required.
6.2	Shock absorbers	Hydraulic double acting 2 at front & 2/4 at rear
6.3	Kneeling applicable in case of air suspension (required only for 400 mm floor height buses)	Min. 60 mm entry /exit side collectively
6.4	Controls (optional)	Electronically controlled air suspension system
7	Steering	Power steering with height and angle adjustment. As per manufacturers design UBS-II / AIS 052/CMVR
8	Transmission	Automatic transmission.
9	Brakes	As per manufacturers design
9.1	Braking system	Mandatory ABS with Disc at front and Drum at rear OR disc brake at front and rear. In case of Brake Failure provision should made for obtaining effectiveness of service brake Graduated hand controlled, spring actuated parking brakes acting on rear wheels.
10	Electrical system for auxiliary devices	24V DC
10.1	Batteries (ancillaries equipment and light and light signalling devices)	Low maintenance type leads acid batteries for 24 V & Min 100Ah system- performances as per BIS: 14257- 1995 (latest).
10.2	Electrical wiring & controls -type	Multiplexing type -- As specified separately under ITS specifications and conforming to IP 67. It should be as per UBS-II and AIS 153.
11	Speed limiting device	Electronic type duly approved /certified as per AIS – 018/2001 or latest, tamper proof and be adjusted to applicable speed limit
12	Tyres	Steel Radial Tube-less. Size and performance as per CMVR/IS/AIS standard.
13	Charging range	Daily operation km per bus upto 225 kms with one opportunity fast charging of up to 45 minutes (depot-in, depot-out basis).  The minimum range (autonomy) on single charge of (i) 200 kms (at 80% SoC) for 12 m bus &

		(ii) 180 kms (at 80% SoC) for 9 m bus duly certified as per AIS 040 standard by Indian Government testing agency (ARAI/ICAT/CIRT/ VRDE etc.) along with type approval certificate at GVW and additional AC load (in case of AC buses) along with all system operational	
14.1	Bus characteristics	12- Meter (Standard)	9- Meter (Midi)
A	Overall length (excluding bumper)	11900 -12300 mm	8500 -9500 mm
B	Overall width (sole bar/floor level- extreme points)	2600 mm (maximum)	2600 mm (maximum)
C	Overall height (unladen - at extreme point)	As per CMVR	As per CMVR
D	Floor Height above ground	Low Floor- 400mm Standard Floor- 900 mm ±25 mm	Low Floor- 400mm Standard Floor- 900 mm ±25 mm
E	Wheelbase	As per CMVR	As per CMVR 4700 ±250mm
F	Front Overhang	As per CMVR- To accommodate Door ahead of Front axle and meeting the requirement of AIS-052	
G	Rear Overhang	As per CMVR	
14.2	Maximum turning circle radius (mm)	As per CMVR	
14.3	Clearances (mm)		
A	Minimum Axle clearance (mm)	Minimum 165 mm	
B	Wheel area clearance (mm)	> 220 mm for parts fixed to bus body &> 170 mm for the parts moving vertically with axle.	
C	Minimum ground clearance (un-kneeled) at GVW	Within the wheelbase not less than 240mm.	
14.4	Angles (degrees)		
A	Angle of approach (unladen)	Not less than 8.5° for Standard bus & 8.0° for Midi and Mini bus	
B	Angle of departure (unladen)	Not less than 9° for Standard bus & 8.5° for Midi and Mini bus	
c	Ramp over angle (half of break-over angle)	Not less than 4.8°	
15	Bus Gates/Doors (Passenger Doors, Driver door & Emergency Exit & Door) Ramp for wheel chair at the gates	Entry and exit Door: Power operated passenger door, JK type/Swing in door as per manufacturing design.  2 Door for 12 Metre (Standard) & 9 Metre for (Midi) 1 Door for 7 Metre (Mini)-there should be only 1 door within Wheel base.  Driver Door as per CMVR/AIS052, Emergency Exits as per CMVR/AIS-052 & AIS-153	
A.	Operating mechanism	Passenger Door: Electro pneumatically controlled Driver Door: Manually Operated	

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B.	Opening/Closing time in seconds per operation (maximum)	4 Seconds						
C.	Positions of door controls	On dashboard and also inside & outside of doors as per AIS 052.						
D.	Passenger safety system – allowing bus motion on doors closing and doors opening only when the bus is stopped	Mandatory.						
E	Door Components/Door Locks/Locking system/door hinges/Door retention	As per AIS 052						
15.1	Service doors – Requirement	As per AIS 052 & AIS 153						
A	Minimum door aperture (without flaps) in mm	<table><tr><th>Door Aperture</th><th>Width</th></tr><tr><td>12 m (Type-I)</td><td>1200 mm (Middle Door) 650 mm (FOH/ROH Door) Or Both Door with 1200 mm Aperture</td></tr><tr><td>9 m (Type-I)</td><td>650 mm</td></tr></table>	Door Aperture	Width	12 m (Type-I)	1200 mm (Middle Door) 650 mm (FOH/ROH Door) Or Both Door with 1200 mm Aperture	9 m (Type-I)	650 mm
Door Aperture	Width							
12 m (Type-I)	1200 mm (Middle Door) 650 mm (FOH/ROH Door) Or Both Door with 1200 mm Aperture							
9 m (Type-I)	650 mm							
B	Minimum clear door width (fully opened) in mm	1000 + 50 mm for 12 Metre WB Door (Standard) 600 ± 50 mm for 12 Metre & 9 Metre						
C	Minimum door height in mm	1900 mm						
D	Positioning front service gate	Ahead of front axle for 12 Metre and 9 Metre. Ahead or Behind of front axle for 7 Metre						
E	Number of gates	2 Nos. for 12 Metre and 9 Metre. 1 No. for 7 Metre						
15.2	Door closing requirements for bus movement	Bus should move only after door closing completed						
A	Power operated service door - construction & control system of a power operated service door to be such that a Passenger is unlikely to be injured/trapped between the doors while closing	As per AIS 052						
15.3	Step height (mm) from ground - unladen & un-kneeled position in buses	For Low Floor Fully Built - Direct entry no step Floor Height Steps as per AIS-153						
16	Provisions of for wheel chair of Persons with Disability (PwD)	Should meet requirement as per AIS-153						
A	wheel chair Boarding Devices	Ramp mandatory for one door (Preferably Within rear side door) as per AIS-153 for Low Floor Bus. Ramp should be power operated and should meet the requirement as per AIS-153						
B	Area, Length and Width of boarding devices	As per AIS-153						

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C	Slope of ramp in % & Slope of extended ramp if provided in %	As per AIS-153
D	Load carrying capacity (in kilograms)	As per AIS-153
E	Device to prevent the wheel chair roll off the sides when the length exceeds	As per AIS-153
F	Device to lock wrapped up ramp	As per AIS-153
G	Kneel ramp control	As per AIS-153
H	Mode of operation for Ramp	As per AIS-153
I	Requirement for passengers with Reduced mobility	As per AIS-153
J	Wheel chair anchoring - minimum for one-wheel chair	As per AIS-153
K	Priority seats - minimum 2 seats	As per AIS-153
L	Stop request	As per AIS-153
M	Emergency door /exists or Apertures	Emergency Exit (Door/Window) should provide for Disabled person near to Wheelchair location. Safety and proper movement of disabled person should considered.
N	Other Technical requirement	<p>Push buttons for alighting of wheelchairs.</p> <p>Location of wheelchair space shall be clearly highlighted and be visible using the standard symbols for wheelchair accessibility. The lifting platform should be fitted with a safety restraints system e.g., safety belt, handrails, etc. With built-in safety parameters to avoid any slippage.</p> <p>For the Floor Height 900 mm and above – 12m &amp; 9 m Buses Hydraulic Lift arrangement should be provided for PwD.</p>
17	Bus design	
17.1	Design type approval	As per CMVR, AIS:052 + AIS:153 IS 16833 and IS 16490
17.2	Bus structure - materials specifications etc.	<p>OEM should ensure GI tubular structure</p> <p>To meet the requirements of Annexure 3 of UBS II + AIS:052 + AIS:153</p> <p>Exterior panels: as per OEM design</p>
17.3	Insulation	FR grade material as per IS 15061
A	Roof and side	FR Grade material glass wool, PU foam or thermocol:
B	Battery Pack compartment	
17.4	Floor type/Materials etc.	
A	Type of Floor	As per AIS:052 requirements.
B	Steps on floor	As per AIS:052 / AIS 153 requirements.
C	Maximum floor slope	As per Bus AIS:052

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D	Floor surface material	Minimum 15mm thickness phenolic resin bonded densified laminated compressed wooden floor board (both side plain surface) having density of 0.95 - 1.25 gms/cc conforming to IS 3513 (Part-3): type VI 1989 or latest. The flooring should also be boiling water resistant as for marine board BIS:710-1976/ latest and fire retardant as per BIS:5509-2000 (IS15061:2002). The chequered plywood 15mm thick is also allowed as per the relevant standard for the quality and fire resistance/flammability.
E	Anti – skid material	3 mm thick anti-skid type silicon grains ISO 877/76 for colour, IS:15061:2002 for FR grade.
17.5	Safety glasses and fittings:	
A	Front windscreen (laminated) glass:	Single piece laminated safety glass, plain, lateral/curved with curved corners with PVB film IS 2553 (Part-2)-1992/latest. Standard designs for each variant of buses to be followed
B	Laminated Glass Specifications	Total Thickness = 8.76 mm ± 0.2 mm Clear Interlayer
C	Rear windscreen: (wherever provided)	Single piece flat/curved toughened glass- plain/flat/curved at centre & curved at corners IS:2553 (Part-2)–1992/latest revision
D	Side windows:	Single piece flat /curved pasted toughened glass as per IS 2553 (Part-2)-1992/latest revision
E	Side Window /Rear Windshield Glass specifications	Toughened glass IS2553 (Part-2)-1992/latest revision Thickness = 4.8-5.3mm
F	Other glasses - material specs, thickness etc. (If Provided).	Toughened as per IS:2553 (Part-2)–1992/latest revision of Thickness = 4.8- 5.3 mm thickness
17.6	Driver Seat	Should meet the requirement as per AIS-023 and AIS-052
A	Performance & strength requirements Driver Seat	As per AIS-023
B	Driver's working space	As per AIS-052
C	Driver seat belt & anchorage duly type approved.	ELR recoil type, 3 point mounting as per CMVR & AIS 052 conforming to AIS 005 & AIS 015
17.7	Passenger Seat and Layout	Should meet the requirement as per AIS-023 and AIS-052
A	Performance & strength requirements passenger Seat	As per AIS-023
B	Passenger Seat	Type Approved Seats & seating layout as per bus code 'PP-LD' (Polypropylene Low Density)/ LDPE moulded construction, with moulded flame retardant Polyurethane (PU) cushion for seat & back rest meeting the performance requirements of AIS 023 and other requirements as per the AIS-052 for Type I application.  Flammability of passenger seat components As per IS: 15061:2002  The gangway shall be as per the provisions of the AIS 052 Bus Code/UBS-II and would meet the requirements of AIS-153.
C	Passengers seat belt Number and Location	As per AIS-052
D	Seat layout in Floor area	2X2 as per AIS-052
E	Minimum seating capacity	i. Total 36 numbers for Standard (12-meter) bus excluding wheelchair.(36 seats + 1 wheelchairs + Driver) ,  ii. Total 23 numbers for Midi (9-meter) bus excluding

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20	Corrosion prevention & painting	As per AIS 052								
21	Wind screen wiping system:	As per CMVR: IS 15802								
A	Wiper motor:									
B	Wiper arm/Wiper blade Washing system									
22	Electrical system	As per CMVR and as per AIS 052.								
22.1	Electrical cables:	Copper conductors with fire retardant as per IS/ISO:6722:2006 as per appropriate class. Conductor cross- section varying as per circuit requirements, minimum cross- section 0.5 sq. mm. Quality marking may also be as per equivalent or better European, Japanese, US standards, Conforming to IP 67 water& air-tight for traction battery. For Bus Body Building IS 2465/Multiplex wiring /ISO 6722								
22.2	Conductor cross section									
22.3	Safety requirements of electrical									
A	Fuse	As per AIS 052. Battery cut off (Total Two) - One manual near driver seat - One electronic on driver Dashboard area.								
B	Isolation switches for electrical circuits where RMS value of voltage exceeds 100 volts									
C	Location of cables away from heat sources									
D	Type approval of circuit diagram as per standards related to electric equipment's/wiring									
E	Battery cut - off switch (isolator switch):									
22.5	Lighting - internal & external and illumination	All lights including interiors should be LED Type Head Lights can be bulb type. Other information as per AIS 052 and AIS 153								
22.6	Illumination requirements/performance of:									
A	Dash board tell-tale lighting/control lighting	As per AIS 052								
B	Cabin lighting - luminous flux of all lamps for cabin Lighting	As per AIS 052 with illumination level of $\geq 100$ lux & $\leq 200$ lux								
C	Passenger area lighting - luminous flux of all lamps for Passenger area lighting	As per AIS 052 with illumination level of $\geq 100$ lux and $\leq 200$ lux								
23	ITS enabled bus	<p>i. The Contractor shall procure buses as defined by the Authority which shall also include various but not limited to Intelligent Transport System (ITS) as defined by AIS 153, IS 16833, AIS 140 specifications and any amendments issued thereof. The ITS shall be integrated into the bus and shall be available onboard.</p> <p>Specifically requirements but not limited to, include:</p>								
<div><div>Signature :- Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcafc3cdb91a53d22468abb352fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN User ID : a.bhattacharya Serial No : 1467105</div></div>		<table><tr><th>Sr. No</th><th>Type of Equipment</th><th>12/9M/7M (Qty)</th><th>Remarks</th></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></table>	Sr. No	Type of Equipment	12/9M/7M (Qty)	Remarks				
Sr. No	Type of Equipment	12/9M/7M (Qty)	Remarks							

1	Passenger Display Boards as per IS 16490 specifications	4	Internal, Front, Left Side, and Rear
2	Speaker	2	
3	Amplifier	1	
4	Fully ITS compliant	1	As per IS 16490 specifications and amendment 2
5	DDU	1	As per IS 16833 annexure C Amendent 2
6	CCTV Camera with 4G eSIM MNVR	4 1	Internal and External with 30 days backup storage as per IS 16833 annexure C 4 or 8 channel minimum 2 TB DVR for recording
7	Panic Button		As per AIS 140 Specifications
8	Camera based Passenger Counters	2	At each door as per the specifications in Annexure 1 below

- ii. The (onboard) ITS equipment installed in the buses should provide accuracy upto last 3-4 meters from the standing location and not beyond. The Authority has the right to ask the Contractor to change the ITS system including but not limited to if the accuracy is not within the prescribed distance of actual location and if the system is not performing accurately. The Operator shall be responsible to change the entire system without any additional charge upon receipt of request from the Authority on such change.
- iii. The equipment of the ITS shall be integrated to each other and the Bus CAN for transmitting all the bus data, vehicle tracking data and the any other data as required by the Authority. The Cost of such integration should be the responsibility of the Operator.
- iv. The operator is required to share vehicle health monitoring and diagnostics (VHMD) parameters through the bus CAN data on a real time basis with the Authority. The following CAN parameters should to be integrated to the ITS and capable of transmitting data at a frequency of 30 sec either to a server set-up by the Authority or through APIs set up by the operator
  1. Timestamp
  2. Odometer reading
  3. Vehicle Status
  4. SoC (State of Charge)
  5. SoH (State of Health)
  6. Speed
  7. Acceleration
  8. Voltage (pack and cell level)

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		<p>9. Current (pack and cell level)</p> <p>10. Charger Current</p> <p>11. Charger Voltage</p> <p>12. Ambient temperature</p> <p>13. Cell temperature</p> <p>14. Motor temperature</p> <p>15. BMS error/charging fault</p> <p>v. The Authority shall provide all the route information to the Operator to upload into the ITS in regular intervals. The Operator should make the required changes as and when provided by the Authority within seven (7) working days for the envisaged routes to be made operational. Information displayed in the PIS Boards should be dynamic and not static accounting for any route change or deviation from existing routes.</p> <p>vi. The Camera Based Passenger Counter shall be integrated to the SCU at the time of prototype approval, or delivery of the bus or as a date mutually agreed with the Authority.</p> <p>vii. Security Camera Network (CCTVs) minimum four numbers should meet the specification for IP based cameras and MNVR as per Detailed specification document IS 16833:2018 CCTV system with integrated emergency System and built-in tracking system (with min 5-megapixel camera, SSD hard disc, 4G/5G, Wifi for data transfer). Real-time feed enabled at DDU and provision for integration with central ITMS system through APIs.</p> <p>viii. Four hi-resolution CCTV cameras and one reverse camera to be installed in the e-buses. These hi-resolution CCTV cameras shall be installed each one at 'A' pillar facing towards front road view, one above the passenger entrance door from inside facing towards driver seat, one above driver door from inside facing towards the passenger &amp; fourth one in the exit door from the inside facing towards passenger compartment. Three hi-resolution CCTV applicable for 7m buses. Operating temp is -10°C to 60°C. The camera should provide day/night functionality, automatically switches to night mode in low light scenes. Rear View Camera System to display the zone behind the vehicle shall be provided along with display on or near dash board.</p> <p>ix. The Reverse Parking Alert System (RPAS) shall comply with provisions of AIS 145. The indirect vision system shall get activated upon engagement of reverse gear. RPAS should give audio warning on reaching the critical distance available for reverse parking.</p> <p>x. All data security, usage and storage should be as per latest Ministry of Electronics and Information Technology (MeiTY) guidelines or notifications and as amended from time to time.</p>
24	Safety related items:	
24.1	First Aid Box	As per provision of CMVR, AIS-052
24.2	Fire extinguisher:	As per AIS 052
24.3	Handrails minimum length*diameter*height above floor in mm	Colour contrasting and slip resistant sleeves with MS tubing of 32 mm dia, 3 mm thick/ powder coated Rest as per AIS 052
24.4	Handholds:	Colour contrasting and slip resistant/powder coated. 2 to 4 numbers. Handholds per bay. Rest as per AIS 052
24.5	Stanchions:	As Manufacturer design.

		MS tubing of 38 mm dia with sleeves, 3 mm thick/ powder coated Rest as per AIS 052
24.6	Passengers stop request signal	High visibility bell pushes/pulley chord/touch tapes shall be fitted at a height of $1.2 \pm 0.1$ meter on alternate stanchions mainly for persons with disabilities.
24.7	Window guardrails:	As per AIS 052 (for Non-AC buses)
24.8	Entrance/Exit Guard/Step well guard:	800 mm minimum height extending $\geq 100$ mm more than centre line of sitting position of the Passenger.
24.9	Emergency exit doors, warning devices etc:	As per AIS 052/CMVR
24.10	Front/rear door, step well lights, door open sign, Buzzers	As per AIS 052
24.11	Towing device front/rear	Heavy duty 1.2 times (minimum) the kerb weight of the bus with 30% of the longitudinal axis of the bus. As per CMVR & IS 9760-Ring Type. Towing at Front of Bus is required and optional at Rear of Bus.
24.12	Warning triangle	As per AIS 052/CMVR
24.13	Fog lighting	As per AIS 052/CMVR (Optional)
24.14	Bumpers - front and rear	FRP or steel or combination of both meeting requirement of an energy absorbing system. As per CMVR and AIS 052.
24.15	Passenger safety system	Mandatory allowing bus motion on doors closing and doors opening only when the bus is stopped
25	Windows	
A	Type of window	Sliding type window panes for Non-AC bus and fixed glass windows for AC bus.
B	Minimum height of window aperture (clear vision)* in mm	$\geq 650$ mm
C	Clear vision includes partition between fixed and sliding glass subject to a maximum width of 100 mm	As per AIS 052
D	Minimum height of upper edge of window aperture from bus floor	As per AIS 052
E	Minimum width of windows (clear vision zone)	As per AIS 052
26	Life cycle requirements of bus (whichever is earlier)	<b>12 years or 10,00,000 Km</b>  OEM to take responsibility of bus bodies as well as of chassis for the period of warranty assured period. OEM to ensure refurbishment of vehicle in 6 years
27	Air conditioning system - test procedure for type approval	Specifications, Target results, apparatus and procedure as per UBS II. - Min. 26 kw for 9m, - Min. 34 kw for 12m
A	Air curtains on entry/exit gates to avoid loss/gain of heat and or cool air when	Optional Fitment

	doors are frequently opened for boarding/alighting of Passenger with min air flow of 1000±50 m <sup>3</sup> /hr. at each gate. Type of air curtains at entry exit gates their power consumption etc. be accounted for while deciding Motor power, etc.	
28	Additional requirements	
28.1	Air circulations and ventilation in driver's area	An air passage/duct/roof hatch to be provided in driver area at a suitable location for proper inflow of air inside the driver cab
		Drivers work area to be provided with blower or suitable device (200 mm diameter fan) to ensure proper ventilation. These devices may be capable of 3 – speed adjustment
28.2	Interior noise and pass by noise	shall conform to IS: 12832:2010 or latest and IS: 3028:2018, AIS 20 or latest respectively.
28.3	Destination boards	<p>Four Destination Board: Internal, Front, Side and Rear. (UV resistant)</p> <p>Alphanumeric Dual Display Technology Amber colour LED based electronic route display system in English and appropriate regional language of High Intensity illumination with automatic brightness control shall be installed at the front, rear and side of bus with GPS feed triggered display on internal display board and announcement of name of approaching bus-stop inside the bus. Destination boards should comply with IS 16490 BIS standards. (As per AIS-153 and AIS-052)</p> <p>Information on a route and its final destination should be displayed outside the bus in large text, especially on the front and side of the bus. This information should be in bright contrasting color and be well illuminated by an external light to make it readable in the dark. The pitch of the LEDs shall be optimized to cover the maximum possible area along the length for displaying the maximum number of letters. The display shall be clearly visible in all weathers at a distance of up to 50 meters.</p> <p>For Inside Display: The micro- processor-based Signature of the announcement shall be made for both current and next bus stop/destination synchronized with the display alternatively in local and English. The illumination system will be of modular display type. The display shall be mounted behind the driver at an appropriate height for clear visibility to all passengers in the bus from all angles.</p> <p>Ingress Protection Grade of IP 65/55 for destination Boards</p> <p>Colour scheme as per STU requirement. The approval of design and shade of the paint be obtained from respective STU before painting.</p>
29	Paint	

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 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=81130621576d9b6e93011a3edb9c67d46, ST=DELHI, O=DELTA ELECTRICITY SUPPLIES LIMITED, OU=CHIEF GENERAL MANAGER, O=DELTA ELECTRICITY SUPPLIES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105







packs of each bus. This will be measured at the charger level or by a certified Ammeter by the energy (measured Ah) uptake of the battery packs while charging from 25% to 100% SoC. The relative deterioration of energy uptake of the battery packs will be used to determine the SoH of the battery to be calculated at energy uptake in quarter (kWh)/ energy uptake in first quarter post COD.

- XII. Manufacturers need to meet high safety standards for battery packs. These standards include a protection level that is no less than IP67—which represents a high water and dustproof battery pack—and satisfactory operation safety in extreme temperatures ranging from 0 to 65°C.
- XIII. Bidder to submit the type approval certificate for the allocated bus at the time of delivery of buses to the respective cities.
- XIV. Camera Based Passenger Counting System should be Bi – Directional Counting on a Definable Line (Polygon), Variable position of counting lines, Adaptation to on-site requirement, No Double Counting, Automatic Compensation for interference from swinging and sliding doors, It should also have real-Time Video Streaming or recording of video files to external storage media, Start and Stop function via door contact, No interference with other functions. The system shall achieve minimum 95% counting accuracy. The system should be intergrated through ITS to the backend of the System(s) of the Authority. The cost of such integration shall be the responsibility of the Bidder during the Contract Period.
- XV. Camera Based Passenger Counting System should generate Total Passenger Report- A basic report to analyze passenger counts on a single vehicle only. Time resolution shall be by day, week, month or year. Option to select a range of dates shall also be available; default time interval shall be by day with maximum 90 day resolution allowed. Report output shall be displayed on screen as tabular, chart or both. Export feature shall be of the tabular output only, downloadable as a CSV file.
- XVI. Integration to Existing ITMS/AFC System: Bidder shall provide the complete ITS system as specified herein above in the Buses. The bidder shall also ensure to supply equipment compatible with existing ITS System of Authority so as to enable smooth integration. Bidder is responsible for regular maintenance ITS equipment installed by throughout the Contract Period. The Contractor and Authority agree to share interfacing protocols and Active Programming Interface with each other for smooth integration of the ITS equipment provided by Bidder to the Authority's ITMS. The Authority can mount any equipment in the Buses provided by the Bidder at its own cost and the Bidder shall be responsible for the safety and security of such equipment during the Contract Period.



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User ID : a.bhattacharya  
Serial No : 1467105

**Table 2: Technical specifications of Electric bus Compliant with the requirements of CMVR AIS:052 Type -II & Type -III 12m electric bus**

S No.	Description	Technical Specification
	Introduction	<p>i. The minimum Technical Specifications have been set out for the following types of Stage Carriages:</p> <p>a) Fully Built non-AC Pure Electric Standard Size (12Metre) Type II Buses</p> <p>b) Fully Built non-AC Pure Electric Standard Size (12Metre) Type III Buses.</p> <p>ii. The word “bus” shall mean the New Stage Carriage to be used for the project.</p> <p>iii. The word “bus” shall also mean a bus powered exclusively by an Electric Motor whose traction energy is supplied exclusively by traction battery installed in the vehicle suitable for operations in city conditions.</p> <p>iv. The bidder shall comply with all applicable Central, State and local laws (including Acts, Rules &amp; Regulations).</p> <p>v. The word “Bus” wherever it has been used in specifications means the “Battery Operated Bus”. The bus in general shall meet all applicable Central Motor Vehicle Rules, 1989 as amended (hereinafter referred to as “CMVR”), norms for safety applicable on the date of manufacture and Bus Code AIS 052 and any revisions thereof [hereinafter called Bus Code] AIS-049, AIS-038 and AIS-153 all amended up to date and all other norms and regulations on high voltage electric vehicles.</p> <p>vi. Where there is conflict between the requirement as per any applicable law in force and the requirement emanating from these specifications whichever of these two is of superior/ higher standard shall prevail. Also, any specifications superior to the ones set out as Minimum Technical Specifications shall meet requirements of the contract.</p> <p>vii. Bus Model should be in compliance with CMVR &amp; Bus Code and approved as per AIS: 052+ AIS:153+ Annexure 3 of UBS II + FAME II by any Indian Government testing agency like ARAI, ICAT, NATRaX, CIRT etc.</p>
	Statutory Requirements	<p>The eBus shall be designed and manufactured in accordance with the specifications &amp; AIS-052: Code of Practice for Bus Body Design &amp; Approval [Bus Code], AIS – 049, AIS – 038 and AIS-153 all amended up to date as also those related to easy passenger accessibility including for persons with disabilities (PWDs).</p> <p>eBus shall be type approved as per CMVR requirements</p>
	FAME- II compliance	Bus should be compliant with FAME-II requirement
	Electric propulsion system & its requirements.	Electrically propelled system should design to meet “Code of practice for Electric Propulsion System” performance as per AIS 048 & AIS 049.



		Electric Propulsion system should propel the bus at GVW fitted with all other auxiliary devices and system including air conditioning. Electric propulsion system and other sub-system should be able to operate efficiently at ambient temperatures / environmental conditions
2	Type of Battery	Advance chemistry battery as defined by Ministry of Heavy Industry vide Notification No S.O. 1472(E) dated 28 <sup>th</sup> March 2019 as amended time to time. Manufacture should use advance new generation batteries. Battery should certified as per AIS-038 Rev-02 Amendment 3  For Human Safety, Battery should also be certified with Office memorandum F.NO. 01(02) /2022 –AEI (20555) Dated 28th October 2022
3	a. Battery Pack Rating and Energy/Power b. Minimum, Maximum Charging %, charging time c. Motor/s Capacity d. Charging standard e. Charging standard in high voltage system	i. No. of Motors/ Batteries as per Manufacturer's design- ii. Location of motor and batteries as per Manufacturer's design considering minimal maintenance and easy of charging iii. Electric Regeneration is required iv. Charging Mode as per Manufacturer's design. v. Charging time less than 5 hours- overnight charging vi. Safety –Short circuit/ Over Temperature / Lightning Protection is mandatory vii. CCS 2.0 - Combined Charging System
3.1	Battery Cooling System	Liquid Cooling system with minimum maintenance.
3.2	Battery Life	Battery to be used in mobility application up to 80% State of Health (SoH). OEMs to replace battery when SOH falls below 80%.
3.3	Battery Charging System	DC fast charging by CCS 2.0
3.4	Electric Drive Motors	Manufacture should use optimal Rating, Type, Make, Model of Electric Drive Motors with minimum maintenance Motor should be able to operate efficiently at ambient temperatures of approximately 0 to 50 degrees centigrade, humidity level from 5% to 100%.
3.5	Electric propulsion system motor rating / power sufficient to provide Rated Performance at GVW	
a.	Acceleration (Meter / Sec. <sup>2</sup> )	≥ 0.8
b.	Bus Speed of 0 – 30 kmph in Seconds.	≤ 10.5 seconds
c.	Maximum Speed	Maximum speed shall be as per the Government regulations from time to time Maximum rated speed should meet the requirement as per CMVR
d.	Grade ability from Stop at GVW	17%
e.	Rated HP/torque preferably at lower rpm range	Rated HP at low rpm and Maximum torque required at lower range of motor RPM and spread over a wider range of RPM Sufficient torque to meet the acceleration, gradeability, AC and range requirement.
f.	Power requirements for Air conditioning system ITS, etc	Required to be provided by traction battery of electric propulsion system
g	Energy Consumption of Bus when tested as per AIS 039 (latest revision) with	Standard Bus (12 m) non-AC – 0.9 kWh/km

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CN=ASHIM BHATTACHARYA, O=ENERGY EFFICIENCY SE  
User ID : a.bhattacharya

	AC ON and AC OFF condition (Annual Average)	
4	Operational safety	Transmission system to be fitted with a mechanism which makes it possible to engage reverse gear only when vehicle is stationary
5.	Bus Characteristics	
5.1	Front Axle	As per manufacturers design UBS-II/AIS 052/CMVR
5.2	Rear Axle	As per manufacturers design UBS-II/AIS 052/CMVR
6	Suspension (Front & Rear)	Air suspension at Front & Rear
6.1	Anti-roll bars/stabilizers	Required at front and rear If independent front suspension is used, anti-roll bar is not required.
6.2	Shock absorbers	Hydraulic double acting 2 at front & 4 at rear
6.3	Controls (optional)	Electronically controlled air suspension system
7	Steering	Power steering with height and angle adjustment. As per manufacturers design UBS-II/ AIS 052/CMVR
8	Transmission	Automatic transmission.
9	Brakes	As per manufacturers design
9.1	Braking system	Mandatory ABS with Disc at front and Drum at rear OR disc brake at both front and rear. In case of Brake Failure provision should made for obtaining effectiveness of service brake Graduated hand controlled, spring actuated parking brakes acting on rear wheels.
10	Electrical system for auxiliary devices	24V DC
10.1	Batteries (ancillaries equipment and light and light signalling devices)	Low maintenance type leads acid batteries for 24 V & Min 100Ah system- performances as per BIS: 14257- 1995 (latest).
10.2	Electrical wiring & controls -type	Multiplexing type -- As specified separately under ITS specifications and conforming to IP 67. It should be as per AIS 153.
11	Speed limiting device	Electronic type duly approved /certified as per AIS – 018/2001 or latest, tamper proof and be adjusted to applicable speed limit
12	Tyres	Steel Radial Tube-less. Size and performance as per latest CMVR/IS 15633/IS 15636,/AIS 142 standard
13	Charging range	Daily operation km per bus upto 475kms for Type III and 375kms for Type II with one opportunity fast charging of up to 60 minutes (depot-in, depot-out basis).  Single charge range:  Type III buses Non-AC– 325 kms (at 80% SoC)  Type II buses Non-AC – 275 kms (at 80% SoC)  Duly certified as per AIS 040 standard by Indian Government testing agency (ARAI/ICAT/CIRT/ VRDE etc.) along with type approval certificate at GVW and additional AC load (in case of AC buses)
14.1	Bus characteristics	12- Meter (Standard)
A	Overall length (excluding bumper)	≥11900 mm



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RVK&S LIMITED, C=IN  
Serial No. : 149/105

B	Overall width (sole bar/floor level- extreme points)	2600 mm (maximum)
C	Overall height (unladen - at extreme point)	As per CMVR
D	Floor Height above ground	Standard Floor- 1100 ±50 mm
E	Wheelbase	As per CMVR
F	Front Overhang	As per CMVR- To accommodate Door ahead of Front axle and meeting the requirement of AIS-052
G	Rear Overhang	As per CMVR
14.2	Maximum turning circle radius (mm)	As per CMVR
14.3	Clearances (mm)	
A	Minimum Axle clearance (mm)	Minimum 165 mm
B	Wheel area clearance (mm)	> 220 mm for parts fixed to bus body & > 170 mm for the parts moving vertically with axle.
C	Minimum ground clearance (un-kneeled) at GVW	Within the wheelbase not less than 240mm.
14.4	Angles (degrees)	
A	Angle of approach (unladen)	Not less than 8.5° for Standard bus
B	Angle of departure (unladen)	Not less than 9° for Standard bus
C	Ramp over angle (half of break-over angle)	Not less than 4.8°
14.5	Luggage space	Hat rack + parcel Luggage is provided as per AIS052 for Type II and Type III buses
15	Bus Gates/Doors (Passenger Doors, Driver door & Emergency Exit)	Entry and exit Door: Power operated passenger door, JK type/Swing in door as per manufacturing design. Single FOH Door for Type III buses Double Door for Type II buses Driver Door as per CMVR/AIS-052, Emergency Exits as per CMVR/AIS-052 & AIS-153
A.	Operating mechanism	Passenger Door: Electro pneumatically controlled Driver Door: Manually Operated
B.	Opening/Closing time in seconds per operation (maximum)	4 Seconds
C.	Positions of door controls	On dashboard and also inside & outside of doors as per AIS 052.
D.	Passenger safety system – allowing bus motion on doors closing and doors opening only when the bus is stopped	Mandatory.
E	Door Components/Door Locks/Locking system/door hinges/Door retention	As per AIS 052
5.1	Service door Requirement	As per AIS 052 & AIS 153



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 Sent on: 11/07/2023

A.	Minimum door aperture (without flaps) in mm	650 mm FOH/ROH Door)
B.	Minimum clear door width (fully opened) in mm	600 ± 50 mm
C.	Minimum door height in mm	1900 mm
D.	Positioning front service gate	For Type III buses: 1 No. FOH only  For Type II buses: one door at FOH and second door at ROH. Preferably behind of rear axle or optional ahead of rear axle (should be at Rear half of vehicle)
E	Number of gates	For Type III buses: 1 No. FOH only  For Type II buses: 2 Nos as mentioned in 14.1 D clause
15.2	Door closing requirements for bus movement	Bus should move only after door closing completed
A	Power operated service door - construction & control system of a power operated service door to be such that a Passenger is unlikely to be injured/trapped between the doors while closing	As per AIS 052
15.3	Step height (mm) from ground - unladen & un-kneeled position in buses	Floor Height Steps as per AIS-153
17	Bus design	
17.1	Design type approval	As per CMVR, AIS:052 + AIS:153 IS 16833 and IS 16490
17.2	Bus structure - materials specifications etc.	OEM should ensure GI tubular structure To meet the requirements of AIS:052 + AIS:153 Exterior panels: as per OEM design
17.3	Insulation	FR grade material as per IS 15061
A	Roof and side	FR Grade material glass wool, PU foam or thermocol: As per AIS:052.
B	Battery Pack compartment	
17.4	Floor type/Materials etc.	
A	Type of Floor	As per AIS:052 requirements.
B	Steps on floor	As per AIS:052 / AIS 153 requirements.
C	Maximum floor slope	As per AIS:052 requirements
D	Floor surface material	Minimum 15mm thickness phenolic resin bonded densified laminated compressed wooden floor board (both side plain surface) having density of 0.95 - 1.25 gms/cc conforming to IS 3513 (Part-3): type VI 1989 or latest. The flooring should also be boiling water resistant as for marine board BIS:710-1976/ latest and fire retardant as per BIS:5509-2000 (IS 15061:2002). The chequered plywood 15 mm thick is also allowed as per the relevant standard for the quality and fire resistance/flammability.

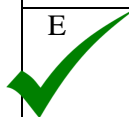
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User ID : a.bhattacharya  
Serial No : 1467105





E	Anti – skid material	3mm thick anti-skid type silicon grains ISO 877/76 for colour, IS:15061:2002 for FR grade.
17.5	Safety glasses and fittings:	
A	Front windscreen (laminated) glass:	Single piece laminated safety glass, plain, lateral/curved with curved corners with PVB film IS 2553 (Part-2)-1992/latest. Standard designs for each variant of buses to be followed
B	Laminated Glass Specifications	Total Thickness = 8.76 mm ± 0.2 mm Clear Interlayer
C	Rear windscreen: (wherever provided)	Single piece flat/curved toughened glass- plain/flat/curved at centre & curved at corners IS:2553 (Part-2)–1992/latest revision.
D	Side windows:	Single piece flat /curved pasted toughened glass IS 2553 (Part-2)-1992/latest revision.
E	Side Window /Rear Windshield Glass specifications	Toughened glass IS2553 (Part-2)-1992/latest revision Thickness = 4.8-5.3mm
D	Other glasses - material specs, thickness etc. (If Provided)	Toughened glass IS2553 (Part-2)-1992/latest revision Thickness = 4.8-5.3mm
17.5	Driver Seat	Should meet the requirement as per AIS-023 and AIS-052
A	Performance & strength requirements Driver Seat	As per AIS-023
B	Driver's working space	As per AIS-052
C	Driver seat belt & anchorage duly type approved.	ELR recoil type, 3 point mounting as per CMVR & AIS 052 conforming to AIS 005 & AIS 015
17.6	Passenger Seat and Layout	Should meet the requirement as per AIS-023 and AIS-052
A	Performance & strength requirements passenger Seat	As per AIS-023
B	Passenger Seat	Type Approved Push Back Seats (PBS) (AIS-023) with footrest with water bottle holder, Magazine pouch & Bag hook for Type III buses  Type Approved High Head Rest Seats (HHR) (AIS-023) without footrest with optional water bottle holder, Magazine pouch & Bag hook for Type II buses  Seat belts to be provided as per AIS-052 clause. Flammability of passenger seat components As per IS: 15061:2002  The gangway shall be as per the provisions of the AIS 052 Bus Code and would meet the requirements of AIS-153.
C	Passengers seat belt Number and Location	As per AIS-052
D	Seat layout in Floor area	2X2 as per AIS-052
D	Minimum seating capacity	Total 43 numbers passenger seat for Standard (12-Metre) bus excluding Driver. (43 + Driver) for Type II buses
E	Standee Passenger	NA For Type III Standee capacity as per calculation for Type II buses. Area Need to mentioned in layout. Min. standee for Type II bus = 23 numbers

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 SERVICES LIMITED, C-IN  
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22.3	Safety requirements of electrical																					
A	Fuse	As per AIS 052. Battery cut off (Total Two) <ul style="list-style-type: none"><li>- One manual near driver seat</li><li>- One electronic on driver Dashboard area.</li></ul>																				
B	Isolation switches for electrical circuits where RMS value of voltage exceeds 100 volts																					
C	Location of cables away from heat sources																					
D	Type approval of circuit diagram as per standards related to electric equipment's/wiring																					
E	Battery cut - off switch (isolator switch):																					
F	Charging Socket	Concealed Type Safety Socket along with two USB port of sufficient capacity for each Row of Passenger Seat																				
G	ETM Charger	ETM Charger should be provided in Driver Cabin																				
22.4	Lighting - internal & external and illumination	All lights including interiors should be LED Type Head Lights can be bulb Type. Other information as per AIS 052 and AIS 153																				
22.5	Illumination requirements /performance of:																					
A	Dash board tell-tale lighting/control lighting	As per AIS 052																				
B	Cabin lighting - luminous flux of all lamps for cabin Lighting	As per AIS 052 with illumination level of $\geq 100$ lux & $\leq 200$ lux																				
C	Passenger area lighting - luminous flux of all lamps for Passenger area lighting	As per AIS 052 with illumination level of $\geq 100$ lux and $\leq 200$ lux																				
23	ITS enabled bus	<p>i. The Bidder shall procure buses as defined by the Authority which shall also include various but not limited to ITS System as defined by AIS 153, AIS 140 Specifications and any amendments issued thereof. Some of the equipment's and their quantities are listed below:</p> <p>Specifically requirements but not limited to, include:</p> <table><thead><tr><th>Sr. No</th><th>Type of Equipment</th><th>12M (Qty)</th><th>Remarks</th></tr></thead><tbody><tr><td>1</td><td>Passenger Display Boards as per IS 16490 specifications</td><td>3</td><td>Internal, Front, and Rear</td></tr><tr><td>2</td><td>Speaker</td><td>2</td><td></td></tr><tr><td>3</td><td>Amplifier</td><td>1</td><td></td></tr><tr><td>4</td><td>Fully ITS compliant</td><td>1</td><td>As per IS 16490 specifications and amendment 2</td></tr></tbody></table>	Sr. No	Type of Equipment	12M (Qty)	Remarks	1	Passenger Display Boards as per IS 16490 specifications	3	Internal, Front, and Rear	2	Speaker	2		3	Amplifier	1		4	Fully ITS compliant	1	As per IS 16490 specifications and amendment 2
Sr. No	Type of Equipment	12M (Qty)	Remarks																			
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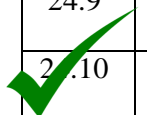
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 User ID : a.bhattacharya  
 Serial No : 1467105





		<p>route change or deviation in the PIS Boards should be dynamic and not static for existing routes already uploaded.</p> <p>xi. The Camera Based Passenger Counter shall be integrated to the SCU at the time of prototype approval, or delivery of the bus or as a date mutually agreed with the Authority.</p> <p>xii. The common minimum requirement of vehicle health monitoring and diagnostics (VHMD) parameters will be-SOC level, Motor speed in RPM, Vehicle Speed. The OEM should provide minimum 10 – 15 VHMD parameters through CAN Data.</p> <p>iii. Security Camera Network (CCTVs) minimum four numbers and display screen should meet the specification for IP based cameras and mNVR as per Detailed specification document for CCTV devices as per IS 16833:2018 CCTV system with integrated emergency System (with min 5-megapixel camera, SSD hard disc, 4G/5G, Wifi for data transfer). Responsibility of APIs based integration with backend System.</p> <p>xiv. Two hi-resolution CCTV cameras and one reverse camera to be installed in the e-buses. These hi-resolution CCTV cameras shall be installed in the front of the passenger compartment &amp; other in the rear of the passenger compartment. Rear View Camera System to display the zone behind the vehicle shall be provided along with display on or near dash board. Operating temp is -10°C to 60°C. The camera should provide day/night functionality, automatically switches to night mode in low light scenes. Rear View Camera System to display the zone behind the vehicle shall be provided along with display on or near dash board.</p> <p>xv. The Reverse Parking Alert System (RPAS) shall comply with provisions of AIS 145. The indirect vision system shall get activated upon engagement of reverse gear. RPAS should give audio warning on reaching the critical distance available for reverse parking.</p> <p>vi. All data security, usage and storage should be as per latest Ministry of Electronics and Information Technology (MeiTY) guidelines or notifications and as amended from time to time.</p>
24	Safety related items:	
24.1	First Aid Box	As per provision of CMVR, AIS-052
24.2	Fire extinguisher:	As per AIS 052
24.3	Handrails minimum length*diameter*height above floor in mm	Colour contrasting and slip resistant sleeves with MS tubing of 32 to 38 mm dia, 3 mm thick/ powder coated. Rest As per AIS 052
24.4	Handholds:	Colour contrasting and slip resistant/powder coating. As per AIS 052
24.5	Stanchions:	As Manufacturer design/ AIS-052
24.6	Passengers stop request signal	For persons with disabilities as per AIS-153.
24.7	Window guardrails:	As per AIS 052 (for Non-AC buses)
24.8	Entrance/Exit Guard/Step well guard:	800 mm minimum height extending $\geq 100$ mm more than centre line of sitting position of the Passenger.
24.9	Emergency exit doors, warning devices etc	As per AIS 052/CMVR
24.10	Front/rear door step well lights, door open sign	As per AIS 052



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24.11	Towing device front/rear	Heavy duty 1.2 times (minimum) the kerb weight of the bus with 30o of the longitudinal axis of the bus. As per CMVR & IS 9760-Ring Type. Towing at Front and Rear of Bus is required
24.12	Warning triangle	As per AIS 052/CMVR
24.13	Fog lighting	As per AIS 052/CMVR (Optional)
24.14	Bumpers - front and rear	FRP or steel or or combination of both meeting requirement of an energy absorbing system. As per CMVR and AIS 052.
24.15	Passenger safety system	Mandatory allowing bus motion on doors closing and doors opening only when the bus is stopped
25	Windows	
A	Type of window	Sliding type windowpanes for Non-AC bus and fixed glass windows for AC bus.
B	Minimum height of window aperture (clear vision)* in mm	≥ 550 mm
C	Clear vision includes partition between fixed and sliding glass subject to a maximum width of 100 mm	As per AIS 052
D	Minimum height of upper edge of window aperture from bus floor	As per AIS 052
E	Minimum width of windows (clear vision zone)	As per AIS 052
26	Life cycle requirements of bus (whichever is earlier)	10 years or 16,00,000 Km for Type-III 10 years or 12,50,000 Km for Type-II  OEM to take responsibility of bus bodies as well as of chassis for the period of warranty assured period. OEM to ensure a mid-life refurbishment of vehicle (as per the consession agreement)
27	Air conditioning system - test procedure for type approval	Specifications, Target results, apparatus and procedure as per UBS II. Min. 34 kw for 12m
A	Air curtains on entry/exit gates to avoid loss/gain of heat and or cool air when doors are frequently opened for boarding/alighting of Passenger with min air flow of 1000±50 m³/hr. at each gate. Type of air curtains at entry exit gates their power consumption etc. be accounted for while deciding Motor power etc.	Optional Fitment for AC and not applicable for Non-AC
28	Additional requirements	
		An air passage/duct/roof hatch to be provided in driver area at a suitable location for proper inflow of air inside the

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User ID : a.bhattacharya  
Serial No : 1467105

28.1	Air circulations and ventilation in driver's area	driver cab
		Drivers work area to be provided with blower or suitable device (200 mm diameter fan) to ensure proper ventilation. These devices may be capable of 3 – speed adjustment
28.2	Interior noise and pass by noise	shall conform to IS: 12832:2010 or latest and IS: 3028:2018, AIS 20 or latest respectively.
28.3	Destination boards	<p>Three Destination Board: Internal, Front, and Rear. (UV resistant)</p> <p>Alphanumeric Dual Display Technology Amber colour LED based electronic route display system in English and appropriate regional language of High Intensity illumination with automatic brightness control shall be installed at the inside, front, and rear of bus with GPS feed triggered display on internal display board and announcement of name of approaching bus-stop inside the bus. Destination boards should comply with IS 16490 BIS standards. (As per AIS-153 and AIS-052)</p> <p>Information on a route and its final destination should be displayed outside the bus in large text, especially on the front and side of the bus. This information should be in bright contrasting color and be well illuminated by an external light to make it readable in the dark.</p> <p>The pitch of the LEDs shall be optimized to cover the maximum possible area along the length for displaying the maximum number of letters.</p> <p>The display shall be clearly visible in all weathers at a distance of up to 50 meters.</p> <p>For Inside Display: The micro- processor-based Signature of the announcement shall be made for bus stop/destination synchronized with the display alternatively in appropriate regional language and English. The illumination system will be of modular display type. The display shall be mounted behind the driver at an appropriate height for clear visibility to all passengers in the bus from all angles. Ingress Protection Grade of IP 65/55 for destination Boards</p>
29	Paint	<p>Colour scheme as per STU requirement. The approval of design and shade of the paint be obtained from respective STU before painting.</p> <p>All the structural members of the bus shall be treated for corrosion prevention internally as well as externally and painted wherever required. The Polyurethane (PU) painting conforming to BIS: 13213-1991 or latest shall be used for exteriors painting of the bus including interiors wherever required. Colour shade shall match to the shades as per BIS: 5-1978 or latest. In case of Matt black paint, the same shall be tested as per IS: 13213-1991 or latest except the gloss value should be up to 30 units.</p>
	Colour Scheme	<p>Colour scheme as per STU requirement. The approval of design and shade of the paint be obtained from respective STU before painting. Exterior, interior colour schemes and logo/ graphics to be applied will be as notified by Public Transport Authority. The buses must be recognizable as environmentally friendly battery buses.</p> <p>Buses shall bear CESL Logo and branding as provided by CESL. Logos shall be lodged onto the bus body as per requirements of CESL.</p>

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User ID : a.bhattacharya  
Serial No : 1467105





30	Jack	As per CMVR & bus code
31	Fire Detection & alarm System (FDAS)	As per AIS-153
32	Tool Kit	As per CMVR & bus code AIS052
33	GVW	As per CMVR Rules & its amendments from time to time.
34	Fire retardancy	All material used inside the bus, should be fire retardant as per IS 15061:2002

Note:

- I. The Bidder shall submit Technical Specification of Components/Systems of Electric Propulsion system and submit the test certificate for these components as per the prescribed standards from the notified testing agencies like ICAT, CIRT, ARAI, ICAT, NATRaX , VRDE, etc.
- II. All electrical wiring harness and accessories used on electric bus shall comply necessary automotive safety standards.
- III. All units & electrical accessories and wiring harnesses use on the bus shall be so mounted that they are easily accessible and can be removed without disturbing other components. Further these accessories and wiring harnesses shall be well protected to prevent ingress of water.
- IV. Mandatory Certification Compliance and acceptance tests for Safety Components, Batteries, Buses and Requirements for Battery Charging Infrastructure Systems etc. by competent authority to be obtained.
- V. Mandatory Certification Compliance for Safety Components, Batteries & Buses should be met
- VI. The Bidder shall ensure the fitment of all electric propulsion system components on the bus confirming to National/International Standards. In case if the standards are not available, then it should confirm to the company's standard based on sound technical information and Engineering practices.
- VII. The Bidder shall undertake type approval testing of Traction Batteries pack fitted on the bus as per CMVR notified standard and submit copy of Approved certificate.
- VIII. The Buses shall meet all the above technical specification requirements. The buses shall be deemed satisfactory for operation only after the buses meet all the requirements prescribed above.
- IX. The Bidder shall monitor the operation of these Buses and sort out the operational issues, if any.
- X. The Bidder shall ensure safe & successful operation of these buses. In case of breakdown in these vehicle systems or battery charging infrastructure system, the Bidder shall immediately rectify the defects / replace parts and make the Buses, vehicle systems or charging system operational as the case may be.
- XI. Bus manufacturer needs to provide lifetime warranty for the battery, electric motor, and controller. Smaller repairs had to be resolved in six hours while system faults with battery, electric motor and controller have to be corrected within 48 hours. The warranty also requires the manufacturers to replace batteries when the state of health (SOH) falls below 80 percent. The bidder shall provide quarterly reports on the SoH of battery packs of each bus. This will be measured at the charger level by the energy (kWh) uptake of the battery packs while charging from 25% to 100% SoC. The relative deterioration of energy uptake of the battery packs will be used to determine the SoH of the battery to be calculated at energy uptake in quarter (kWh)/ energy uptake in first quarter post COD.
- XII. Manufacturers need to meet high safety standards for battery packs. These standards include a protection level that is no less than IP67—which represents a high water and dustproof battery pack—and satisfactory operation safety in extreme temperatures ranging from 0 to 65°C.
- XIII. Bidder to submit the type approval certificate for the allocated bus at the time of delivery of buses to the respective cities.
- XIV. Integration to Existing ITMS/AFC System: bidder shall provide the complete ITS system as specified herein above in the Buses. The bidder shall also ensure to supply equipment compatible with existing ITS System of Authority so as to enable smooth integration. Bidder is responsible for regular maintenance ITS equipment installed by throughout the Contract Period. The Contractor and Authority agree to share interfacing protocols and Active Programming Interface with each other for smooth integration of ITS equipment

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 Date : 20/05/2020  
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provided by Bidder to the Authority's ITMS. The Authority can mount any equipment in the Buses provided by the Bidder at its own cost and the Bidder shall be responsible for the safety and security of such equipment during the Contract Period.



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User ID : a.bhattacharya  
Serial No : 1467105

**Annexure 1**  
**Camera Based Passenger Counter Specification & Functionality**

**A. Feature and Functionality**

1. The APC (Automatic Person Counting) system shall use ceiling mounted stereovision cameras giving a 3D representation of the count zone.
2. The APC sensors shall be connected in a serial daisy chain or parallel wired star format.
3. There should be no impact on accuracy due to bad lighting. The APC should count with the light of up to 30 LUX, with no shadow influence.
4. There should be no impact on accuracy due to steps. Step counting feature should be there.
5. The Ethernet connector on the device should of Industrial Grade like M12 connector.
6. Power Supply should be 24V DC
7. The power consumption of the device should be less than 5 watts.
8. Aperture angle should be greater than 100°
9. APC should be able to monitor area of up to 4 x 4 meter
10. The APC should be Configurable and versatile based on the vehicle type.
11. The APC shall have the capacity to retain count data for a minimum of 30 days either onboard or offboard to an external storage media or cloud based servers.
12. In the event of interrupted power to the APC sensors, no counting data shall be lost.
13. The APC system has to give a control video via Ethernet to control the entrance area (door free).
14. The APC system has to support the storage and the verification of control videos and of counting results to control the accuracy of the system in an offline state.
15. The APC sensor shall determine the count result via onboard processing. The real time video streaming or recording of video files to external storage media shall be made available to the Authority and integration of real time streaming through the OBITS with the backend of the Authority system(s) is the responsibility of the bidder.
16. All count results shall be time-stamped via a synchronized onboard real-time clock. The operator shall provid passenger reports based on daily, weekly and monthly passenger counts at single vehicle, route and fleet level with the option of downloading data as a CSV file format.
17. The APC should eliminate the counts resulting from partial passages and motion reversals
18. Automatic passenger counter should be able to detect passenger in both direction ie bi – Directional Counting on a Definable Line (Polygon), variable position of counting lines, adaptation to on-site requirement, no double counting, with automatic compensation for interference from swinging and sliding doors

19. The Automatic Passenger counter should be fixed at the gate of the bus and should be vandal resistant.
20. The automatic passenger counter device should have minimum following certifications:

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RVICES LIMITED, C=IN  
Date: 11/01/2025



## B. Technical Specifications – Specifications and Integration

1. An onboard computer shall provide a communication interface to the APC sensor network.
2. All APC sensors shall be accessible from the onboard computer or OBITS.
3. The onboard computer shall provide the user with a software interface to monitor the health of the counting system.
4. The onboard computer shall provide an Internet connection for the local counting database to be replicated in real-time to an Internet-based destination.
5. Processor: Minimum ARM 9 or ARM 11 or Intel Atom 1.6 Ghz
6. RAM: Minimum 1 GB
7. SSD: 32 GB
8. VGA: Single port
9. Network: 10/100 Gbps
10. USB: 4 ports
11. RS232: 1 port
12. GSM & GPRS module with antenna
13. Wi-Fi: Not required / optional
14. Power Input: 24 V DC with power consumption
15. Internal Slot for putting the mobile SIM card.
16. Operating Temp: 0 to +60 degrees
17. Mounting Kit for buses – holes for the screws / bolts should be there.
18. Certification as per AIS 004 Part 3 for the following:
  - a. EMC
  - b. Radio
  - c. Shock & Vibration Certification
  - d. Safety Compliance



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3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcdfc3cdb91a53d22468abb  
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RVICES LIMITED, C=IN  
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Serial No : 1467105

## Annexure 2

### NCMC Based Ticket Validator Specifications

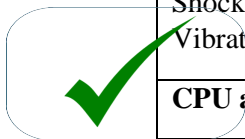
### A. Feature and Functionality

1. The on board ticket validators will enable commuters to use National Common Mobility Card (NCMC) for fare payment and pre-paid ticket and pass validation.
2. The Validator should be provided for the AFC Provider of STU/Authority to upload the software and security features in the OS provided in the Validator. The AFC Provider will integrate the Validator through the ITS to the AFC software at the backend which would be integrated into the Acquiring Bank / Central System.
3. The flow of data of regular transaction will be through the ITS as defined by RBI regulations for security and safety guidelines. This is the responsibility of the AFC provider of the STU/Authority and not the Bidder.
4. The validators will allow commuters to pay fares through multiple media types read including smartphone/tablet/smartwatch displays & paper tickets. The hardware with basic OS, wiring and wiring would be provided by the Bidder, the software and the complete AFC solutions would be provided by the AFC Provider of the STU/Authority and not the Bidder.

No wiring for any kind of retro fitting will be allowed for the validators after deployment. All wiring for the validators in the buses would be pre installed irrespective of the validators being installed during the contract period.

## B. Technical Specifications

<b>Physical</b>	
Dimensions	less than 300 mm(L) x 225 mm(W) x 150 mm(H), mounted on stanchions near passenger entry and exit doors
Display	minimum 4.3" display, sunlight readable with contrast ratio 800:1 with capacitive multi-touch, viewing angle (CR>10),
Body	ABS (Acrylonitrile Butadiene Styrene)
<b>Power Supply and external connectivity</b>	
Voltage	24V
USB Port	1* Type-C supporting OTG (on the go)
<b>Operating Environment</b>	
Temperature	Storage temp:-20°C~60°C Operating temp:0°C~50°C
Humidity	5-100% humidity
Shock and Vibrations	IEC 61373 category 1 class B
<b>CPU and OS requirement</b>	



CPU	ARM Cortex-A9 processor or higher
Operating System	Android 7.0 or higher/ Linux OS with full API and device access for developers
RAM	1GB or above
Device Memory	4 GB or above
<b>Communication and Connectivity</b>	
SIM Slot	1* NANO SIM & 1* MINI SIM
Cellular Data	Mobile Data: 2G/3G/4G
WIFI	WiFi: 2.4GHz/5GHz, IEEE 802.11a/b/g/n
Positioning	GPS, Sensitivity: -159dBm; receive frequency: 1575.42MHz; satellite Channel: 20 channel; positioning accuracy: <10m
Bluetooth	Bluetooth 2.1/3.0/4.2 and BLE
Speaker	Stereo speakers with digital control for audio playback
<b>Readers and Validation</b>	
QR code reader	1D/ 2D barcode reading. Media types read: Smartphone/tablet/smartwatch displays & paper tickets
NFC	NFC: ISO/ICE 14443 Type A&B, Mifare cards
Smart card	MIFARE PLUS SE 1K , operating distance upto 5 cm
Card Readers	Magstripe: ISO 1/2/3, ISO 18092 compliant
Certification	RuPay qSPARC certified for NCMC Contactless: EMV Level 1 and 2 compliant Certified PCI PTS 5.x, EMV certified Smartcard: EMV Level 1, NPCI Rupay Qsparc (attendant and unattended)



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User ID : a.bhattacharya  
Serial No : 1467105

## SECTION 5

### 1. Measurement and Verification (M&V)

Not Applicable for this tender

NIT/Bid Document No.: CESL/06/2022-23/ebuses/GC-dry-lease/222301013

Dated 04.01.2023

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
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Serial No : 1467105

SECTION-5

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**SECTION-6**  
**Forms & Procedures**

**ATTACHMENT – 1**

**BID FORM**

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

Dear Sir,

With Reference to your subject IFB/RfP, we are pleased to submit our bid for “.....  
.....” in a sealed cover as detailed below:

Envelope 1: Bid document fee/cost of tender documents [wherever applicable], Bid Security Declaration, Bid Form, Power of attorney, Certificate regarding acceptance of important terms and conditions, Form of acceptance of CESL fraud prevention policy.

Envelope 2: Price Bid

We confirm that we have quoted as per instructions and terms and conditions of tender documents. We have submitted all the four attachments as stated in “Instructions to Bidders”

We declare that the prices left blank in price schedule/price bid will be deemed to have been included in the prices of other items. We confirm that except as otherwise specifically provided, our bid prices include all applicable taxes including service tax, entry tax (if any), duties, levies, charges as may be assessed on us.

We further declare that additional conditions, variations, deviations, if any, found in the proposal other than those listed in Attachment-5 save those pertaining to any rebates offered, shall not be given effect to.

We undertake, if our bid is accepted, we shall commence the work immediately upon your Letter of Intent /Letter of Award to us, to achieve completion of work within the time specified in the bidding documents.

If our bid is accepted, we undertake to provide contract performance securities and securities for Deed(s) of Joint Undertaking (as applicable) in the form and amounts and within the times specified in the bidding documents.

We agree to abide by this bid for a period 180 days from the date of opening of bids as stipulated in the bidding documents and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period. Further, the prices of recommended spares, if asked for; contained in our bid shall re-main valid for the entire project period after placement of LoI/LoA.

Until a formal contract is prepared and executed between the parties, this bid, together with your written acceptance thereof in the form of your Letter of Intent/ Letter of Award shall constitute a binding contract between parties.

We understand that you are not bound to accept the lowest or any other bid you may receive.

We, hereby, declare that only the persons or firms interested in this proposal as principals are named here and that no other persons or firms other than those mentioned herein have any interest in this proposal or in the contract to be entered into, if the award is made on us, that this proposal is made any connection with any other person, firm or party likewise submitting a proposal, is in all respects for and in good faith, without collusion or fraud.

Dated -----

NAME/S & AUTHORISED SIGNATORIES

ADDRESS:

MOBILE NO.:



Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9  
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3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3c9db91a53d22468abb  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



**Our correspondence details are:**

1	Name of the bidder	
2	Address of the bidder	
3	Name of the contact person to whom all references shall be made regarding this tender	
4	Designation of the person to whom all references shall be made regarding this tender	
5	Address of the person to whom all references shall be made regarding this tender	
6	Telephone (with STD code)	
7	E-Mail of the contact person	
8	Fax No. (with STD code)	
9	GST No. of the bidder	



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Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
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3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb  
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RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**Bid Security Form Bank Guarantee**

(To be stamped in accordance with Stamp Act, if any, of the country of the issuing Bank)

Bank Guarantee No. ....

Date.....

To:

Convergence Energy Services Limited.

(A 100% EESL Owned

Subsidiary) Core-3, 2<sup>nd</sup> Floor,

SCOPE Complex, Lodhi Road,

New Delhi-110003

Dear Sir(s),

In accordance with invitation for bids under your bidding document/package no.....dated.....M/s.....having its registered/head office at.....(here in after called "Bidder") wish to participate in the said bid for (name of package)

We, the ..... (Name and address of the bank), having our head office

at ..... guarantee and undertake to pay immediately on demand by Convergence Energy services Limited, the amount of .....without any reservation, protest, recourse. Any such demand made by the employer shall be conclusive and binding on us irrespective of any dispute or difference raised by the bidder.

The Guarantee shall be irrevocable and shall remain valid upto..... If any further extension of guarantee

is required, the same shall be extended to such period (not exceeding one year) on receiving instructions from..... (Bidder's Name)....., on whose behalf guarantee is issued.

In witness whereof the bank, through its authorized officer, has set its hand and stamp on this...

day

of .....20.....at.....

Witness:

Signature:

Name:

Official address:

Signature:

Name:

Designation with Bank Stamp

Authorized vide Power of Attorney no.Date



Signature :-  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
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 3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb  
 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

**NOTE:**

- Bid Security amount shall be as specified in the IFB/ITB.
- Complete mailing address of the Head Office of the Bank to be given. The bank guarantee validity date shall be forty five (45) days after the last date for which the bid is valid.
- The Stamp Paper of appropriate value shall be purchased in the name of guarantee issuing Bank. The Bank Guarantee shall be issued on a stamp paper of value as applicable in the State of the issuing bank in India or the State of Delhi in India or the State of India from where the BG shall be operated, whichever is higher.
- While getting the Bank Guarantee issued, Bidders are required to ensure compliance to the Bank Guarantee Verification Check List. Further, Bidders are required to fill up this Form 16 and enclose the same with the Bank Guarantee.

**BANK GUARANTEE CHECK LIST**

1	Bank Guarantee No.	
2	Issuing Bank	
3	Nature of BG & No. of Pages	
4	Validity of BG	
5	Package Description	
6	Party & Contracts ref.	Name, Address, Tel, Fax, E—mail
7	Bank Reference	

**CHECK LIST**

Sl. No.	Details of Checks	YES / NO
a)	Is the BG on non-judicial Stamp Paper of appropriate value, as per Stamp Act ?	
b)	Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor? (The date of purchase of stamp paper should be not later than the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. Also the Stamp Paper should not be older than six months from the date of execution of BG)	
c)	In case the BG has been executed on Letter Head of the Bank, whether adhesive Stamp of appropriate value has been affixed thereon?	
d)	Has the executing Officer of BG indicated the name, designation and Power of Attorney No. / Signing Power no. etc., on the BG ?	
e)	Is each page of BG duly signed / initiated by executants and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed proforma?	
f)	Does the Bank Guarantees compare verbatim with the proforma prescribed in the bid documents ?	
g)	In case of any changes in contents of text, whether changes are of minor/clerical nature (which in no way limits the right of CESL in any manner) ?	
h)	In case of deviations in text of BG, which materially affect the right of CESL, whether the changes have been agreed based on the opinion by Legal Department or BG I considered acceptable on the basis of opinion of law Department already available on the similar issue.	
i)	Are the factual details such as Bid Document No. NOA/LOA/Contact No., Contract Price, Percentage of Advance, Amount of BG and Validity of BG correctly mentioned in the BG ?	
j)	Whether overwriting / cutting if any on the BG have been properly authenticated under signature and seal of executant ?	
k)	Whether the BG has been issued by a Bank in line with the provisions of Bid /Contract documents ?	
l)	In case BG has been issued by a Bank other than those specified of Bid / Contract Documents, is the BG confirmed by a Bank in India acceptable as per Bid / Contract documents?	

Signature : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3aeb09fc82f9;  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3aeb09fc82f9;  
 C=IN, ST=DELHI, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105



## ANNEXURE-I

### LIST OF BANKS ACCEPTABLE FOR SUBMISSION OF BANK GUARANTEE FOR BID SECURITY

#### 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 Mysore
2.	State Bank of Bikaner and Jaipur	6.	State Bank of Patiala
3.	State Bank of Hyderabad	7.	State Bank of Saurashtra
4.	State Bank of Indore	8.	State Bank of Travancore

##### • NATIONALISED BANKS

Sl. No.	Name of Banks	Sl. No.	Name of Banks
9.	Allahabad Bank	13.	Canara Bank
10.	Andhra Bank	14.	Central Bank of India
11.	Bank of India	15.	Corporation Bank
12.	Bank of Maharashtra	16.	Dena Bank
17.	Indian Bank	18.	Indian Overseas Bank
19.	Oriental Bank of Commerce	20.	Punjab National Bank
21.	Punjab & Sind Bank	22.	Syndicate Bank
23.	Union Bank of India	24.	United Bank of India
25.	UCO Bank	26.	Vijaya Bank
27.	Bank of Baroda		

##### • SCHEDULED PRIVATE BANKS (INDIAN BANKS)

Sl. No.	Name of Banks	Sl. No.	Name of Banks
27.	Bank of Rajasthan	41.	Sangli Bank Ltd.
28.	Bharat Overseas Bank Ltd.	42.	South Indian Bank Ltd.
29.	Catholic Syrian Bank	43.	Tamilnad Mercantile Bank Ltd.
30.	City Union Bank	44.	United Western Bank Ltd.
31.	Dhanalakshmi Bank	45.	ING Vysya Bank Ltd.
32.	Federal Bank Ltd.	46.	UTI Bank Ltd.
33.	Jammu & Kashmir Bank Ltd.	47.	S.B.I. Commercial & International Bank Ltd.
34.	Karnataka Bank Ltd.	48.	Ganesh Bank of Kurundwad Ltd.
35.	KarurVysya Bank Ltd.	49.	INDUSIND Bank Ltd.
36.	Lakshmi Vilas Bank Ltd.	50.	ICICI Bank Ltd.
37.	Lord Krishna Bank Ltd.	51.	HDFC Bank Ltd.
38.	Nainital Bank Ltd.	52.	Centurion Bank of Punjab Limited
39.	Kotak Mahindra Bank	53.	Development Credit Bank Ltd.
40.	Ratnakar Bank Ltd.	54.	Yes Bank

##### • SCHEDULED PRIVATE BANKS (FOREIGN BANKS)

Sl. No.	Name of Banks	Sl. No.	Name of Banks
55.	Abu Dhabi Commercial Bank Ltd.	71.	Sonali Bank
56.	ABN Amro Bank Ltd.	72.	Standard Chartered Bank
57.	American Express Bank Ltd.	73.	J.P Morgan Chase Bank
58.	Bank of America NA	74.	State Bank of Mauritius



Signature :-  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
 3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
 3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3c9b91a53d22468abb  
 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

<b>59.</b>	Bank of Behrain& Kuwait	<b>75.</b>	Development Bank of Singapore
<b>60.</b>	Mashreq Bank	<b>76.</b>	Bank of Ceylon
<b>61.</b>	Bank of Nova Scotia	<b>77.</b>	Bank International Indonesia
<b>62.</b>	The Bank of Tokyo-Mitsubishi UFJ Limited.	<b>78.</b>	Arab Bangladesh Bank
<b>63.</b>	Calyon Bank	<b>79.</b>	Cho Hung Bank
<b>64.</b>	BNP Paribas	<b>80.</b>	China Trust Bank
<b>65.</b>	Barclays Bank	<b>81.</b>	MIzuho Corporate Bank Ltd.
<b>66.</b>	Citi Bank	<b>82.</b>	Krung Thai Bank
<b>67.</b>	Deutsche Bank	<b>83.</b>	Antwerp Diamond Bank N.V. Belgium
<b>68.</b>	The Hong Kong and Shanghai Banking Corporation Ltd.	<b>84.</b>	Internationale Nederlanden Bank N.V. (ING Bank)
<b>69.</b>	Oman International Bank	<b>85.</b>	Bank of China Ltd.
<b>70.</b>	Societe Generale		

• **PUBLIC SECTOR BANK**

<b>Sl. No.</b>	<b>Name of Banks</b>	<b>Sl. No</b>	<b>Name of Banks</b>
<b>86.</b>	IDBI Ltd.		



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

Tender Document No/Package No:

Dated:

Package Details.....

**POWER OF ATTORNEY**

**BIDDER TO ATTACH THE POWER OF ATTORNEY IN THEIR OWN  
FORMAT on 100Rs Stamp Paper**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcafc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

Tender Document No/Package No:

Dated:

**(CERTIFICATE REGARDING ACCEPTANCE OF IMPORTANT CONDITIONS)**

Bidder's Name&amp; Address

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

Sub: .....

1.0 With reference to our bid proposal no.....dated..... for  
..... / **Package** ..... **no**  
**Dated**....., we hereby confirm that we have read the following provisions of the following  
clauses and further confirm that notwithstanding anything stated elsewhere to the contrary, the stipulation of  
these clauses are acceptable to us and we have not taken any deviation to these clauses.

Governing Laws	-	Clause 7 of ITB
Settlement of Disputes	-	Clause 17 of ITB
Terms of payment	-	Clause 2.0 of SCC
Performance Security	-	Clause 5.9 of ITB
Taxes and Duties	-	Clause 8 of ITB
Completion Time Guarantee	-	Clause 9 of ITB
Defects Liability	-	Clause 10 of ITB
Functional Guarantee	-	Clause 11 of ITB
Patent Indemnity	-	Clause 2.25 of ITB
Limitations of Liability	-	Clause 2.27 of ITB
Project information, Estimation, bid Assumptions and conditions for Evaluation	-	As per Tables in price

We further confirm that any deviation to the above clauses found anywhere in our bid  
proposal, implicit or explicit, shall stand unconditionally withdrawn, without any implication  
to CESL.

Date:

Signature:

Place:

Printed Name:

Designation:

Common Seal

**Note: In the absence of this certificate, the bid shall be rejected and shall be returned unopened.  
Bidder can take a printout of it and sign.**



Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, O=ID.2.5.4.17=11000  
3, O=ID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



NAME OF WORK: .....

BIDDING DOCUMENT NO.....

**(Deviations Statement)**

Bidder's Name and Address:

To,

**CGM (CONTRACTS)**

Convergence Energy Services Limited.

(A 100% EESL Owned Subsidiary)

Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,

Lodhi Road, New Delhi-110003

Dear Sir,

The following are the deviations and variations from and exceptions to the terms, conditions and specification of the bidding documents for IFB/RfP No. ....

These deviations and variations are exhaustive. We are furnishing below the cost of withdrawal for the deviations and variations stated in this Attachment. We shall withdraw the deviations proposed by us in this Attachment at the cost of withdrawal indicated herein, failing which our bid may be rejected and bid security may be forfeited. We confirm that except for these deviations and variations, the entire work shall be performed as per your specifications and conditions of bidding documents. Further, we agree that additional conditions, variations, deviations if any, found in the proposal documents other than those stated in this Attachment, save those pertaining to any rebates offered, shall not be given effect to:

Section/ Part/ Chapter	Clause No.	Page No.	Statement of Deviations/ Variations	Cost of withdrawal
------------------------------	---------------	-------------	---	--------------------

A. COMMERCIAL DEVIATIONS:

B. TECHNICAL DEVIATIONS:

Date : (Signature).....

Place : (Printed Name).....

(Designation).....

(Common Seal) .....

Note: Continuations sheets of like size and format may be used as per Bidder's requirement.



Signature :  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
 3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, O=D.2.5.4.17=11000  
 3, O=D.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb  
 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

(On Non – Judicial Stamp Paper of appropriate value and purchased in the name of executing Bank)

**PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE**

Ref.: .....

Bank Guarantee No.....

Date.....

To,

Convergence Energy Services Limited.

(A 100% EESL Owned Subsidiary)

Core-3, 2<sup>nd</sup> Floor, SCOPE

Complex, Lodhi Road, New

Delhi-110003

Dear Sirs,

In consideration of the CESL, (hereinafter referred to as the 'Owner,' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s with its Registered / Head Office at

..... ( hereinafter referred to as the 'Contractor', which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns ), a Contract by issue of Owner's Letter of Award No..... dated ..... and the same having been unequivocally accepted by the Contractor and the contractor (Scope of Contract ) having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to \* ..... % (percent) of the said value of the Contract to the Owner.

We ..... (Name & address ) having its Head Office at

..... (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns) do hereby guarantee and undertake to pay the Owner, on demand any all money payable by the Contractor to the extent of

..... as aforesaid at any time up to

..... (days/months/year) without any demur, reservation, contest, recourse or protest and / or without any reference to the Contractor. Any such demand made by the Owner on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Owner and further agrees that the guarantee herein contained shall continue to be enforceable till the owner discharges this guarantee.

The owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extend the time for performance of the Contract by the Contractor. The owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the owner and Contractor or any other course of or remedy or security available to the owner. The Bank shall not be released of its obligations under these presents by any exercise by the owner of its liberty with reference to the matters aforesaid on any of other indulgence shown by the owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.



Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

The Bank also agree that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a Principal debtor, in the first instance without proceeding against the Contractor and not withstanding any security or other guarantee that the owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to ..... and it shall remain in force up to and including\*\* .....and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s on whose behalf this guarantee has been given.

Witness

Dated this .....day of.....at.....

Witness

.....  
Signature

Name

.....  
Official Address

Signature

.....  
Bank's Rubber Stamp

Name

Designation with Bank Stamp

Attorney as per power of Attorney  
No.....dated.....  
.....

**Note: \*\* Validity of Bank Guarantee should be 90 days in excess of the period for which it is required.**

### **BANK GUARANTEE CHECK LIST**

1	Bank Guarantee No.	
2	Issuing Bank	
4	Nature of BG & No. of Pages	
5	Validity of BG	
6	Package Description	
7	Party & Contracts ref.	Name, Address, Tel, Fax, E—mail
8	Bank Reference	

### **CHECK LIST**

S.No.	Details of Checks	YES / NO
a)	Is the BG on non-judicial Stamp Paper of appropriate value, as per Stamp Act ?	
b)	Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor? (The date of purchase of stamp paper should be not later than the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. Also the Stamp Paper should not be older than six months from the date of execution of BG)	



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

c)	In case the BG has been executed on Letter Head of the Bank, whether adhesive Stamp of appropriate value has been affixed thereon?	
d)	Has the executing Officer of BG indicated the name, designation and Power of Attorney No./ Signing Power no. etc., on the BG?	
e)	Is each page of BG duly signed / initiated by executants and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed proforma?	
f)	Does the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents?	
g)	In case of any changes in contents of text, whether changes are of minor / clerical nature (which in no way limits the right of CESL in any manner)?	
h)	In case of deviations in text of BG, which materially affect the right of CESL, whether the changes have been agreed based on the opinion by Legal Department or BG I considered acceptable on the basis of opinion of law Department already available on the similar issue.	
i)	Are the factual details such as Bid Document No./NOA/LOA / Contact No., Contract Price, Percentage of Advance, Amount of BG and Validity of BG correctly mentioned in the BG?	
j)	Whether overwriting / cutting if any on the BG have been properly authenticated under signature and seal of executant?	
k)	Whether the BG has been issued by a Bank in line with the provisions of Bid / Contract documents?	
l)	In case BG has been issued by a Bank other than those specified of Bid / Contract Documents, is the BG confirmed by a Bank in India acceptable as per Bid / Contract documents?	

## LIST OF BANKS ACCEPTABLE FOR SUBMISSION OF BANK GUARANTEES 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 Mysore
2.	State Bank of Bikaner and Jaipur	6.	State Bank of Patiala
3.	State Bank of Hyderabad	7.	State Bank of Saurashtra
4.	State Bank of Indore	8.	State Bank of Travancore

#### Nationalised Banks

Sl.No.	Name of Banks	Sl. No.	Name of Banks
9.	Allahabad Bank	18.	Indian Overseas Bank
10.	Bank of India	19.	Oriental Bank of Commerce
11.	Bank of Maharashtra	20.	Punjab National Bank
12.	Canara Bank	21.	Punjab & Sind Bank
13.	Central Bank of India	22.	Syndicate Bank
14.	Corporation Bank	23.	Union Bank of India
15.	Dena Bank	24.	United Bank of India
16.	Indian Bank	25.	UCO Bank
17.	Vijaya Bank	26.	Bank of Baroda



Signature :  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
 3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, O=ID.2.5.4.17=11000  
 3, O=ID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3c9b91a53d22468abb  
 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

**C. Foreign Banks**

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

**D. SCHEDULED PRIVATE BANKS**

Sl.No.	Name of Banks	Sl. No.	Name of Banks
40.	ING Vysya Bank Ltd.	43.	UTI Bank Ltd.
41.	ICICI Bank Ltd.	44.	YES Bank
42.	HDFC Bank Ltd.		

**E. Other Public Sector Banks**

Sl.No.	Name of Banks	Sl. No.	Name of Banks
45.	IDBI Ltd.		



Signature :-  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcdfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

**FORM OF ACCEPTANCE OF FRAUD PREVENTION POLICY**  
**(On the letter head)**

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

Sub: Letter of Acceptance of EESL Fraud Policy Ref: NIT/BID Document No.:-

Dear Sir/Madam,

We have read the contents of the Fraud Prevention Policy of EESL and undertake that we along with our associate / collaborator / sub-contractors / sub-vendors / bidders/ service providers shall strictly abide by the provisions of the Fraud Prevention Policy of EESL.

Thanking You,

Yours faithfully,

Signature .....

Printed Name .....

Designation.....

Common Seal.....

Date:

Place:

**FOR DETAILED POLICY, PLEASE VISIT OUR WEBSITE [www.eeslindia.org](http://www.eeslindia.org)**



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcafc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**PROFORMA OF LETTER OF UNDERTAKING****(TO BE FURNISHED ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)**

**[To be executed by the Holding Company Supported by Board Resolution and submitted by the Bidder along with the Bid, in case financial support is being extended by the Holding Company to the Bidder for meeting the stipulated Financial Qualifying]**

Ref.: NIT/Bid Document No.:

Our Reference No ..... Date: .....

Bidder's Name and Address:

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

Dear Sir,

1.0 We, M/s ..... (Name of the Holding Company) declare that we are the holding company of M/s ..... (Name of the Bidder) and have controlling interest therein.

M/s ..... (Name of the Bidder) proposes to submit the bid for the package ..... (Name of the package) for ..... (Name of the Project) under bid reference no. .... dated. and have sought financial strength and support from us for meeting the stipulated Financial Qualifying Requirement as per Clause Section 3 and its subsequent amendment.

2.0 We hereby undertake that we hereby pledge our unconditional & irrevocable financial support for the execution of the said package to M/s ..... (Name of the Bidder), for the execution of the Contract, in case they are awarded the Contract for the said package at the end of the bidding process. We further agree that this undertaking shall be without prejudice to the various liabilities that M/s ..... (Name of Bidder) would be required to undertake in terms of the Contract including the Performance Security as well as other obligations of M/s ..... (Name of the Bidder).

3.0 This undertaking is irrevocable and unconditional, and shall remain in force till the successful execution and performance of the entire contract and/or till it is discharged by CESL.

4.0 We are herewith enclosing a copy of the Board Resolution in support of this undertaking.

**Witness:****Yours faithfully,**

(1) .....

(2) .....

(Signature of Authorized Signatory) on behalf of the Holding Company\

Name &amp; Designation .....

Name of the Holding Company .....

(Seal of Holding Company)

Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105





**REAL TIME GROSS SETTLEMENT (RTGS)/ NATIONAL ELECTRONIC FUND TRANSFER (NEFT)**

From: M/s

---



---

Subject: RTGS/NEFT Payments

We are agreeing to accept admissible payments through electronic mode viz RTGS/NEFT. For this, we are providing the requisite information herein below. The RTGS/NEFT charges for the above facility may be deducted/Recovered from our admissible payment.

Name Of City	
Bank Code No.	
Branch Code No.	
Bank's Name	
Branch Address	
Branch Telephone/ Fax No.	
Supplier Account No.	
Type of Account	
IFSC Code for NEFT	
IFSC Code for RTGS	
Supplier's name as per Account	
Telephone No. of Supplier	
Supplier's E-mail ID	
GST No. of the supplier	

**A cancelled cheque against above bank account number is also being enclosed.**

Encl: As above: -

Confirmed by Banker  
With Seal

Signature of supplier  
with stamp & Address



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcafc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**(Declaration for Quoted Lots by the Bidder)**

Ref. NIT/BID Document No.: -.....

Description: “.....

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor,  
SCOPE Complex, Lodhi Road, New Delhi-110003

Subject: Declaration for the Quoted Lots by bidder in the Tender

Ref. above Tender, I/we (on behalf of M/s..... ) hereby admit that I/we, have quoted for the..... Lots in the above-referred Tender.

As detailed below:

Sr. No.	Bus Specifications	Participated(Yes or NO)
<b>Type-I Bus</b>		
1	Lot-1 12m Low Floor AC Bus (Type-I)	
2	Lot-2 12m Low Floor Non-AC Bus (Type-I)	
3	Lot-3 9m Standard Floor AC Bus (Type-I)	
<b>Type-II Bus</b>		
4	Lot-4 12m Standard Floor Non-AC Bus (Type-II)	
<b>Type-III Bus</b>		
5	Lot-5 12m Standard Floor Non-AC Bus (Type-III)	
<b>Future upcoming any other bus specifications.</b>		
Optional-1		
Optional-2		

Signature of bidder with stamp &amp; Address

(\*bidder has to mandatorily submit the declaration as above. The bid shall be evaluated on the basis of this declaration. Providing false information may lead to technically non-responsiveness of the bid)



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, O=D.2.5.4.17=110003, O=D.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**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	Details / Terms & Conditions	Applicable for	Yes / Attached	Reasons for non-compliance/Remarks
1	EMD, If applicable	Indian Bidders		
2	EMD Exempted for being MSEs / Start-up	Indian Bidders		
	Relevant Certificate of MSEs / Start-up Certificate from DIPP is required to be submitted	Indian Bidders		
	In case of SC/ST entrepreneurs belonging to MSE, documentary proof submitted	Indian Bidders		
	In case of Women entrepreneurs belonging to MSE, documentary proof submitted	Indian Bidders		
	Declaration & Undertaking By Micro & Small Scale Enterprises / Start-up Companies	Indian Bidders		
3	Duly signed and company sealed copy of whole tender document	Indian Bidders		
4	Duly filled up and attached Technical (Unpriced) Bid & all applicable formats of Tender Document	Indian Bidders		
5	Separate sheet(s) for Deviation if any, from the tender conditions with seal and signature of authorized personnel	Indian Bidders		
6	GST Registration Certificate and PAN Card Copy.	Indian Bidders		



Signature :-  
 Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
 3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
 3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb  
 332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
 RVICES LIMITED, C=IN  
 User ID : a.bhattacharya  
 Serial No : 1467105

## Compliance Matrix/Check-List for Bid Evaluation Criteria

[To be submitted on Letter Head]

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

<b>Technical QR</b>	<b>Bidder qualification criteria for as per Tender terms and conditions. The relevant documentary evidence like work order copies, completion certificates etc. are required to be furnished along with technical bid substantiating the qualification towards relevant experience/technical criteria (Documentary proof to be attached along with the technical bid)</b>			
Order/Award Nos	Order date and completion date	Order/Award Amount	Client Name	De Description of Order/Award
<b>Financial QR</b>	<b>Average Annual turnover of the bidder shall be as specified in tender documents in three preceding financial years. Copy of latest audited balance sheet, profit and loss account and copy of IT returns required to be furnished as asked in the tender.</b>			
Financial Year	Annual Turnover	Net Worth	Profitability	
<b>Other Mandatory Requirements</b>				
Confirmation for Tender Terms and Conditions/EMD [Please tick (√) as applicable]				
1	Confirm that your bid is valid as per tender terms and conditions as on the last date of submission of the bid			
2	Confirm your compliance to TERMS AND CONDITIONS of bidding document			
<p><b>Note:</b>  Documentary evidence is attached for experience criteria as per QR is attached along with technical unpriced bid.  Non-compliance to any of the QR will lead to outright rejection of the bid without any further reference to the bidders.</p>				

The above mentioned points are major Terms & Conditions and are indicative in nature. Bidder shall carefully go through the detailed requirements, QR and other terms and conditions for better understanding and submit the bid accordingly.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, O=ID.2.5.4.17=11000  
3, O=ID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3c9b91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**Declaration regarding “Restrictions on procurement from a Bidder of a country which shares a land border with India”**

*(To be submitted on Applicant’s Letter Head)*

To,  
CGM (CONTRACTS)  
Convergence Energy Services Limited.(A 100% EESL Owned Subsidiary)  
Core-3, Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003Dear Sir,

With reference to our bid proposal for participation in CESL tender NIT/Bid Document No :  
.....

\_\_\_\_\_dated:\_\_\_\_\_, I/we hereby confirm that, I/We have read the clause asmentioned in the tender document mentioned above 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.

I/We certify that we/our Collaborator/JV Partner/Consortium member/Assignee are/is not from such a country or, if from such a country, have/has been registered with the Competent Authority and we will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

We hereby certify that we fulfil all requirements in this regard and are eligible to be considered.

We further confirm that evidence of valid registration by the Competent Authority for us/our Collaborator/JV Partner/Consortium member/Assignee, as applicable, is enclosed as Annexure...

\*Bidder to strike-off, if not applicable.

\*\*Bidder to mention the Annexure no.

Date:\_\_\_\_\_

Place:\_\_\_\_\_

\_\_\_\_\_  
Seal of Organization & Signature

of Authorized Applicant

Signature :  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9;  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105



## CERTIFICATE REGARDING DECLARATION OF LOCAL CONTENT

[On the Letter Head]

To,  
CGM (CONTRACTS)  
Convergence Energy Services  
Limited.(A 100% EESL Owned  
Subsidiary) Core-3, 2nd Floor,  
SCOPE Complex, Lodhi Road,  
New Delhi-110003

**Sub: Compliance of Minimum Local Content Requirement as mentioned in Ministry of Commerce and Industry Trade and order no. P-45021/2/2017-PP(BE-II) dated 04<sup>th</sup> June 2020**

Ref: NIT/Bid Document No: .....

Dear Sir/Madam,

This is to certify that following is the local content percentage ..... being offered/quoted against aforementioned tender by M/s....., the same is in compliance with Ministry of Commerce and Industry order no: **P-45021/2/2017-PP(BE-II) dated 04<sup>th</sup> June 2020** and the bidder shall strictly abide by all provisions of the subject notification.

Sr. No	Item/s	Percentage of Local Content
1		

Thanking  
You, Yours  
faithfully,

Signature (Statutory Auditor/ Cost Auditor/ Practicing CA – As applicable)

.....

Printed Name.....

Seal.....

UDIN No .....

Date.....

Place.....



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
3, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcafc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**CERTIFICATE REGARDING COMPLIANCE OF MeitY NOTIFICATION VIDE FILE NO.  
1(10)/2017-  
CLES dt. 02.07.18**

(To be submitted on Applicant's letter head)

To,  
CGM(CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2<sup>nd</sup> Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

**Sub: Compliance of MeitY notification vide File No. 1(10)/2017-CLES dt. 02.07.18**

Empanelment Doc Ref No :

Dear Sir/Madam,

This is to certify that the products/items being offered/ quoted against ref. Empanelment Document Number by M/s..... meet the definition of domestically manufactured/produced **Cyber Security Products** as per Para 4 of MeitY notification vide File no. 1(10)/2017-CLES dt. 02.07.18 and the bidder shall strictly abide by all provisions of the subject notification.

Thanking You,

Yours faithfully,

Signature (Statutory Auditor or  
Cost Auditor)

.....

Date: .....

Place: .....

Printed Name.....

Seal.....

UDIN No: .....

**P.S. In case any complaint is received at CESL end against the bidder regarding supply of domestically manufactured/produced Cyber Security Products, the same shall be referred to STQC, an attached office of MeitY**

Stamp of  
31/06/2018 17:00:00 93017a5ed95c0700 31-DEC-17 0102:54:17-11000  
3. OID.2.5.4.65=6ec3cd955300d5a9acfe13705fcfc3cdb91a53d22468abb  
332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105





**CERTIFICATE REGARDING DECLARATION OF INDIGENIZATION REQUIREMENT****[On the Letter Head]**

To,  
CGM(CONTRACTS)  
Convergence Energy Services Limited.  
(A 100% EESL Owned Subsidiary)  
Core-3, 2nd Floor, SCOPE Complex,  
Lodhi Road, New Delhi-110003

**Sub: DECLARATION OF INDIGENIZATION REQUIREMENT**

Ref: NIT/Bid Document No: .....

Dear Sir/Madam,

This is to certify that products and services offered against tender by M/s....., the same is in compliance with the following indigenization requirement.

**Table 1 – Compliance for indigenization of xEV parts of eBus**

S No.	Item Description
1	HVAC
2	Electric Compressor
3	Power and control Wiring harness along with connectors
4	MCB/Circuit breakers/ electric safety device
5	AC Charging Inlet: Type 2
6	DC Charging Inlet CCS2 / CHAdeMO
7	DC charging inlet BEVC DC 001
8	Traction Battery Pack
9	Wheel rim integrated with hub motor
10	DC – DC Converter
11	Electronic Throttle
12	Vehicle Control Unit
13	On Board Charger
14	Traction Motor
15	Traction Motor Controller/ inverter
16	Instrument Panel
17	Lighting : Headlamp, Tail Lamp, Indicators, Interior Lamp, Flasher etc.
18	Body Panel

**Note : Traction Battery pack** to be assembled domestically, for which battery cells and associated thermal and battery management system may be imported.

**Table 2 – Component wise Manufacturing and Origin Information**

S No	Item Description	Domestic Value Addition	Level
1	Vehicle Control Unit	More than 25%	Tier 1
2	Traction Motor	More than 25%	Tier 1
3	Traction Motor controller/ Inverter	More than 25%	Tier 1



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9  
3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=11000  
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332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SE  
RVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

4	HVAC	More than 50%	Tier 1
5	Electric Compressor	More than 50%	Tier 2
6	Power Control wiring harness along with connectors	More than 50%	Tier 2
7	MCB /Circuit breakers/Electric safety device	More than 50%	Tier 2
8	AC charging inlet type 2	More than 50%	Tier 2
9	DC charging inlet CCS2.0	More than 25%	Tier 1
10	Traction Battery Pack	More than 25%	Tier 1
11	Wheel rim integrated with hub motor	More than 50%	Tier 2
12	DC -DC converter	More than 25%	Tier 1
13	Electronic Throttle	More than 25%	Tier 2
14	Instrument Panel	More than 25%	Tier 1
15	On Board Charger	More than 50%	Tier 2
16	Lightening: Headlamp, Tail Lamp, Indicators, Interior Lamp, Flasher etc.	More than 75%	Tier 2
17	Body Panel	100%	Tier 2
18	Brake System including ABS	More than 50%	Tier 1
19	Electric Vacuum Pump for brake booster	More than 50%	Tier 2
20	Steering system including electric/hydraulic assist system, electric pump	More than 75%	Tier 2
21	Switches/ selection knobs	More than 75%	Tier 2
22	Chassis	100%	Tier 2
23	Reverse parking alert system (RPAS)	More than 75%	Tier 2
24	Protection device as per AIS 075	100%	Tier 2
25	Vehicle Alarm system as per AIS 076	More than 25%	Tier 1
26	Vehicle location tracking system	More than 75%	Tier 2
27	Body control module	More than 50%	Tier 1
28	Axles	More than 25%	Tier 1
29	Suspension/ shocker absorber	More than 25%	Tier 1
30	Horn	More than 75%	Tier 3
31	Tires	100%	Tier 3
32	Windshield	75%	Tier 3
33	Wipers	More than 50%	Tier 3
34	Seats (Passenger & Driver)	100%	Tier 3
35	Ignition Key/ Button	100%	Tier 3
36	Parking brake	100%	Tier 3
37	Windows	100%	Tier 3
38	Door locks and hinges	100%	Tier 3
39	Main mirror & rear-view mirror	100%	Tier 3
40	Safety belt	100%	Tier 3
41	Air bags, if any	More than 50%	Tier 3
42	Bumper	100%	Tier 1
43	Infotainment system if any	More than 25%	Tier 1
44	Wheel rim	More than 75%	Tier 3
45	Battery Cell, associated thermal and battery management system	More than 25%	Tier 1
46	Battery Thermal Management System	More than 25%	Tier 1

**Note:** Basis the above table each Bidder has to ensure >50% domestic value Addition at vehicle level along with above mentioned norms to be certified by ICAT/ARAI/CIRT or any other testing agency notified under Rule 12 of the CMVR

*Formula: {[Ex-Factory Price (Net of GST)- Import Content]/Ex-factory Price (Net of GST)} \*100*



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3ed9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9b91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

Import Content: Sum of FOB Value of all imported components or materials in the final product including import duties.

*Imported source includes direct as well as indirect imports*

*Indigenous source implies domestically manufactured/assembled and tested*

Thanking You,  
Yours faithfully,

Signature (Statutory Auditor/ Cost Auditor/ Practicing CA – As applicable)

.....

Printed Name.....

Seal.....

UDIN No .....

Date.....

Place.....



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcafc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

ATTACHMENT-17

**Self-declaration for testing certificate**

To,

CGM (CONTRACTS)

Convergence Energy Services Limited.

(A 100% EESL Owned Subsidiary)

Core-3,2nd Floor, SCOPE Complex,

Lodhi Road, New Delhi -110003

Sub: For providing testing certificate at the time of delivery

Ref: NIT/BID Document No.:

Dear Sir/Madam,

We hereby confirm and declare that we, M/s <<Name >, <<Address>.> (including all the members of consortium.) will provide the bus type approval certificate (CMVR certificate), homologation certificate and FAME II compliant certificate for Electric Bus (100% battery operated) offered under this tender from the designated testing center in India. i.e., ARAI/ICAT/CIRT/ VRDE at the time of delivery of vehicle.

Thanking You.

Yours faithfully,

Signature Printed Name-

Designation-

Common Seal.....



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**Attachment- E1****Check list for Envelop-1**

(required to be uploaded under Envelop 1 through e-proc portal in same sequence as mentioned below)

Sr. No.	Description	Whether submitted (Yes/No)	Page No & pdf ref. name	Remarks/Reason for non-compliance
1	Bid Document Cost Or Documents/Certificate in support of exemption, if claimed.			
2	Bid Form as per Attachment-1			
3	Bid Security Fee/Earnest Money Deposit as Attachment-2 Or Documents/Certificate in support of exemption, if claimed.			
4	Power of Attorney on INR 100 stamp paper as Attachment-3			
5	Certificate regarding acceptance of important terms & condition-Attachment 4			
6	Fraud prevention policy of ESSL-Attachment 7			
7	Proforma of Letter of Undertaking –Attachment 8.			
8	NEFT/RTGS Bank Details -Attachment 09			
9	Self-Declaration of Quoted Lots – Attachment 10			
10	Self-Declaration for not been blacklisted by Central/State/UT Government or any Public sector entities.			
11	Duly filled Compliance Matrix/ CHECK -LIST FOR BIDDERS- Attachment-12			
12	Self-Declaration regarding “Restrictions on procurement from a Bidder of a country which shares a land border with India” as per Attachment-13			
13	Self-Declaration 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.			
14	Undertaking on all counts to be provided by the Bidder, including requesting to disclose anything related that is under litigation of subjudice.			
15	Certificate regarding Declaration of local content – Attachment 14			
16	Compliance of Meity Notification – Attachment 15			
17	Self-Declaration regarding not being debarred / blacklisted from any GoI agency at the time of bid submission and/or until such time financial bid is opened or until such time LoA's are issued.			
18	Self-Attested & Duly filled Check List to Envelope-I as per Attachment-E1			
19	PMC Fee			
20	Other document.			

*\*This check list is intended to help the bidder submit all required documents and rule out any deficiency. However, it will be advisable to read the check list in conjunction with Part A of Section-4. All the documents should be self-attested by the authorized representative of the bidder. Any document not mentioned above and required to be submitted as per tender condition. Bidder shall submit/upload such document and details may be mentioned under “Other Document”.*



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3c9db91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

**Attachment- E2****Check list for Envelop-II**

(required to be uploaded under Envelop II through e-proc portal in same sequence as mentioned below)

Sr. No.	Description	Whether submitted (Yes/No)	Page No & pdf ref. name	Remarks/Reason for non-compliance
1	Deviation Statement – Attachment 5			
2	Self-Attested copy of GST Certificate			
3	Self-Attested copy of PAN			
4	Self-Attested copy of Aadhar card			
5	Covering Letter of the bidder, enclosing Techno-commercial bid as indicated in bid documents, i.e., documentary evidences regarding bidder's eligibility and qualifications to perform the Contract, as required per the Eligibility Conditions/Criteria, Qualifying Requirements and Bid Evaluation Criteria. As per clause 6 (Qualification and Eligibility Criteria) of Vol.I of Section 4 of Tender Document.			
6	One complete set of the tender document along with all its subsequent amendments (if any, effected)}, duly signed and stamped on each page by the bidder.			
7	Whether price bid submitted online		NA	
8	Self-Attested & Duly filled Check List to Envelope–II as per Attachment-E2			
9	Other documents			

*\*This check list is intended to help the bidder submit all required documents and rule out any deficiency.*

*However, it will be advisable to read the check list in conjunction with Part A of Section-4. All the documents should be self-attested by the authorized representative of the bidder. Any document not mentioned above and required to be submitted as per tender condition. Bidder shall submit/upload such document and details may be mentioned under “Other Document”.*



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfda925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105

## Annexure-A

### PRE-BID CONFERENCE

**(No registration/fee deposition/separate invitation, etc. is required for the interested firms for attending the Pre-bid meeting)**

The official representative of the bidder may attend the Pre-bid Conference as mentioned in Summary Sheet, which shall take place through WebEx.

***(Bidders are requested to send their queries before the schedule date of Pre-bid meeting only in the prescribed format as given below on email id provided in Section-1 of tender document:***

Name of Tender				
Tender No.				
Tender ID (in case of e-tender)				
Bid Opening Date				
Bidder's Name				
Contact person from Bidder with address, mail and Contact No.				
Sr.No.	Section No. Page No. Para No/Clause No.	Description as Per RfP	Queries/ Clarification of the bidder	Remarks
1.	Section No. Page No. Para No/Clause No.			
2.	Section No. Page No. Para No/Clause No.			

- ⌚ The purpose of the meeting shall be to clarify any issues regarding the bid process.
- ⌚ Record notes of the meeting including the text of the questions raised and responses given shall be transmitted to all the bidders who were present at the meeting. Based on that, amendment can be issued in the tender documents.
- ⌚ The clarifications that could not be furnished during pre-bid conference shall be separately communicated to all the bidders.
- ⌚ Non-attendance at the pre-bid meeting shall not be a cause for rejection of a Bidder(s).
- ⌚ Based on the discussion in pre-bid meeting, CESL reserves the right for modification/change in tender.



Signature :-  
Subject : CN=ASHIM BHATTACHARYA, SERIALNUMBER=850e5bfa925f3eab09fc82f9c3f1306215f76dfb6be93011a3edb9c67d46, ST=DELHI, OID.2.5.4.17=110003, OID.2.5.4.65=6ec3cd955300d5a9acffe13705fcfc3cdb91a53d22468abb332fb3748b62ed5, OU=CHIEF GENERAL MANAGER, O=ENERGY EFFICIENCY SERVICES LIMITED, C=IN  
User ID : a.bhattacharya  
Serial No : 1467105