

## **SECTION - 1**

### **INVITATION FOR BIDS (IFB)**

“Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir”.

S N	Details	
1.	Date of issuance of IFB	<b>21.03.2023</b>
2.	NIT/Bid Document No.:	NIT Bid Document No: <b>EESL/NRC/-J&amp;K/2022-23/SLNP/DIC-SMC/OTE/222303001 Dated: 21/03/2023</b>
3.	Funding	Domestic
4.	Name of the Employer/ Buyer/Owner	<p>Energy Efficiency Services Limited   A JV of PSUs under the Ministry of Power Corporate Office at: 5th Floor, Core-3, SCOPE Complex, Lodhi Road, New Delhi 110003</p> <p>EESL, invites sealed bids from eligible bidders for the subject tender for scope, inter-alia covers “Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu &amp; Kashmir.” on domestic competitive bidding basis under secured e-procurement procedure.</p> <p>This Invitation for Bids extended through media, website or written communication or by any other means shall not be construed to mean that the prospective bidders to whom the Invitation for Bids has been extended is deemed to be an eligible bidder. The eligibility of the bidders shall be determined as per the provisions of Bidding Documents.</p>
5.	Publication	This invitation for bids follows the e-procurement notice (Invitation for Bids) for the subject package published on EESL Website and e-procurement portal ( <a href="http://www.tenderwizard.com/EESL">www.tenderwizard.com/EESL</a> ) and on Government of India’s Central Public Procurement Portal ( <a href="https://eprocure.gov.in">https://eprocure.gov.in</a> ). Any Corrigendum and/or amendments, etc. shall also be published only on the above website/portals.
6.	e-procurement portal	<p>This invitation for bids follows the e-procurement notice (Invitation for Bids) for the subject package published on EESL Website and e-procurement portal (<a href="http://www.tenderwizard.com/EESL">www.tenderwizard.com/EESL</a>) and on Government of India’s Central Public Procurement Portal (<a href="https://eprocure.gov.in">https://eprocure.gov.in</a>). Any Corrigendum and/or amendments, etc. shall also be published only on the above website/portals.</p> <p><i>(Refer Annexure-I to this Section for Important Instruction for participation in the e-Bidding).</i></p>

S N	Details	
7.	Bidding Procedure	Single Stage Two Envelope Bidding (Domestic Competitive Bidding under e-procurement)
8.	Brief Scope of Work	<p><b>1.</b> The brief scope of work essentially consists of following:</p> <p><b>“Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu &amp; Kashmir.”</b> as per Scope of work of this RfP.</p> <p><i>(The detailed scope of work is given in the Part B of <b>Section-4</b> of the Bidding Documents).</i></p>

S N	Details			
9.	Completion Period/Delivery Schedule	<b>Sl. No.</b>	<b>Activity</b>	<b>Completion period/Delivery Schedule</b>
		1.	<b>Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu &amp; Kashmir</b> as per Scope of Work mentioned under Technical Specifications i.e., Section-4(Part-B) of Bidding Document.	<b>a. Detailed Field Survey</b> <ul style="list-style-type: none"> <li>Completion of Field Survey in entire Division/ULBs within 7 days of issuance of LOA.</li> </ul> <b>b. Installation and Commissioning of LED Streetlight</b> Entire material to be delivered, installed, and commissioned Within 8 weeks of issuance of LoA for Srinagar Municipal Corporation.  Maintenance of Streetlights for 54 months or Feb 2027 whichever is earlier.  Above para may be read in detail at point number 5 of Part -B Section 4.
		2.		
10.	Qualifying Requirements (QR)	The detailed Qualifying Requirements (QR) are given at <b>Section-4 Part-D(QR)</b> .		
11.	Bidding Documents	The complete RfP/ Bidding Documents are available at EESL's e-procurement portal <a href="http://www.tenderwizard.com/EESL">www.tenderwizard.com/EESL</a> .  The bidding documents are meant for the exclusive purpose of bidding against this specification and shall not be transferred to any parts or reproduced or used otherwise for any purpose other than for which they are specifically uploaded.		

S N	Details																																																																								
12.	Pre-bid meeting	<p>Date: <u>28.03.2023</u> Time: <u>1100 Hrs. (IST)</u> Place: Kind Attn.: Assistant Manager (CLNRC- Contracts)/Deputy Manager (Tech) Energy Efficiency Services Limited, Core-5, 4<sup>th</sup> Floor, SCOPE Complex, Lodhi Road, New Delhi-110003 Contact No.: +91 11 45801260 Email: rsisodia@eesl.co.in; <a href="mailto:arastogi@eesl.co.in">arastogi@eesl.co.in</a>; , <a href="mailto:rsingh@eesl.co.in">rsingh@eesl.co.in</a>;</p> <p>Further it may be mentioned that Pre-bid meeting will be conducted for this tender as per detail provided in Section-1 IFB and this also be communicated through Portal. However, a query may be forwarded to EESL in the following format within 7 days of floating of inquiry.</p> <table><tr><td colspan="2">Name of Tender</td><td colspan="3"></td></tr><tr><td colspan="2">Tender No.</td><td colspan="3"></td></tr><tr><td colspan="2">Tender ID</td><td colspan="3"></td></tr><tr><td colspan="2">Bid Opening Date</td><td colspan="3"></td></tr><tr><td colspan="2">Bidder's Name</td><td colspan="3"></td></tr><tr><td colspan="2">Contact person from Bidder with address, e-mail and Contact No.</td><td colspan="3"></td></tr><tr><td rowspan="3">Sr. No.</td><td>Section No.</td><td rowspan="3">Description as Per RFP</td><td rowspan="3">Queries/ Clarification of the bidder</td><td rowspan="3">Remarks</td></tr><tr><td>Page No.</td></tr><tr><td>Para No/ Clause No.</td></tr><tr><td rowspan="3">1.</td><td>Section No.</td><td rowspan="3"></td><td rowspan="3"></td><td rowspan="3"></td></tr><tr><td>Page No.</td></tr><tr><td>Para No/ Clause No.</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td rowspan="3">2.</td><td>Section No.</td><td rowspan="3"></td><td rowspan="3"></td><td rowspan="3"></td></tr><tr><td>Page No.</td></tr><tr><td>Para No/ Clause No.</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td rowspan="3">3.</td><td>Section No.</td><td rowspan="3"></td><td rowspan="3"></td><td rowspan="3"></td></tr><tr><td>Page No.</td></tr><tr><td>Para No/ Clause No.</td></tr></table>				Name of Tender					Tender No.					Tender ID					Bid Opening Date					Bidder's Name					Contact person from Bidder with address, e-mail and Contact No.					Sr. No.	Section No.	Description as Per RFP	Queries/ Clarification of the bidder	Remarks	Page No.	Para No/ Clause No.	1.	Section No.				Page No.	Para No/ Clause No.						2.	Section No.				Page No.	Para No/ Clause No.						3.	Section No.				Page No.	Para No/ Clause No.
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13.	Deadline for submission of bids	Soft Copy Part of the Bids: <u>11.04.2023 up to 1100 Hrs. (IST)</u>													
		Hard Copy Part of the Bids: <u>11.04.2023 up to 1100 Hrs. (IST)</u>													
14.	Bid Opening:	<p><b>Envelope-1 (First Envelope) (Comprising Packet-I and Packet-II):</b> Date: <u>11.04.2023</u> Time: <u>1130 Hrs. (IST)</u></p> <p><b>Envelope-2 (Second Envelope) (Comprising Price Bid):</b> Schedule shall be intimated after evaluation of First Envelope bids in accordance with ITB.</p> <p><i>(Bids shall be opened in the presence of the bidders' representatives who choose to attend in person at the address below or may be viewed by the bidders by logging in to the portal).</i></p>													
15.	Bidding Document/Tender fee	<p>Rs. 25,000/- (Non-refundable and non-adjustable)</p> <p>All the Bidders except those exempted shall submit along with the hard copy part of bid a nonrefundable fee as <b>INR 25000</b> towards the cost of Bidding Documents in the form of demand draft in favor of Energy Efficiency Services Limited, payable at New Delhi.</p> <p>Bid Fee may also be submitted online through RTGS. The detail of RTGS is as mentioned below:</p> <table><tr><th>Account Name</th><th>Account No.</th><th>Bank Name</th><th>Branch Name</th><th>RTGS DETAIL</th></tr><tr><td>ENERGY EFFICIENCY SERVICES LIMITED</td><td>2164002100012319</td><td>Punjab National Bank</td><td>LARGE CORPORATE BRIN DELHI</td><td>IFSC CODE: PUNB0216400 MICR Code: 110751001 BRANCH: DELHI NEW, L.C.B. ADDRESS: TOLSTOY HOUSE, TOLSTOY</td></tr></table>				Account Name	Account No.	Bank Name	Branch Name	RTGS DETAIL	ENERGY EFFICIENCY SERVICES LIMITED	2164002100012319	Punjab National Bank	LARGE CORPORATE BRIN DELHI	IFSC CODE: PUNB0216400 MICR Code: 110751001 BRANCH: DELHI NEW, L.C.B. ADDRESS: TOLSTOY HOUSE, TOLSTOY
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S N	Details				
					MARG, NEW DELHI ,DELHI- 110001
		<p>Note: Bidders submitting Bid Fee through RTGS shall upload the scan copy of receipt of transfer of amount in Envelope-I. Participation of bidder shall be subject to confirmation of amount transferred through RTGS. The details mentioned in document uploaded as proof of transfer of amount shall only be considered for verification purpose.</p> <p>Bidder's failure to submit nonrefundable fee towards the cost of Bidding Documents in the form of an acceptable Demand Draft along with the bid or an online payment through EESL ONLINE PAYMENT UTILITY or subsequently pursuant to Clarification during bid evaluation, except as exempted, shall lead to outright rejection of the Bid.</p>			
16.	Bid Security/EMD	<p><b>Bidder have to submit EMD of Rs. 15,48,000/- (Rs. Fifteen Lakh Forty-Eight Thousand Only)</b></p> <p>Bid security / EMD must be submitted in physical form or bidder shall also have the option for paying online (<i>for details refer Part C - Section 4</i>).</p>			
17.	Address for correspondence	<p>(By Post/In Person) Assistant Manager (Cluster NRC - Contracts) /Deputy Manager (Technical) Energy Efficiency Services Limited, Core-5, 4<sup>th</sup> Floor, SCOPE Complex, Lodhi Road, New Delhi-110003 Contact No.: Email: rsisodia@eesl.co.in, <a href="mailto:arastogi@eesl.co.in">arastogi@eesl.co.in</a>; / <a href="mailto:rsingh@eesl.co.in">rsingh@eesl.co.in</a>;</p>			
18.	Bid Validity Duration	180 days from the date of bid opening of Techno-Commercial Bid.			

Pre bid meeting Link: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZmM4NjExZTEtYjY4My00ODIzLWFIOGMtNDIxOWI1NzI5ZDFl%40thread.v2/0?context=%7b%22Tid%22%3a%224a993be3-3ce0-49c4-96e9-23324992b1dd%22%2c%22Oid%22%3a%2279fc4553-df72-4b77-abcc-f5bb29c4d2c8%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmM4NjExZTEtYjY4My00ODIzLWFIOGMtNDIxOWI1NzI5ZDFl%40thread.v2/0?context=%7b%22Tid%22%3a%224a993be3-3ce0-49c4-96e9-23324992b1dd%22%2c%22Oid%22%3a%2279fc4553-df72-4b77-abcc-f5bb29c4d2c8%22%7d)

**Note:**

- 1.0 Bidding will be conducted through the domestic competitive bidding procedures as per the provisions of ITB, Section-2 and the contract shall be executed as per the provisions of the Contract.
- 2.0 The Bid Document Fee and Bid Security must reach the following address in a sealed envelope superscripted “EMD/Bid Security and Bidding Document Fee for NIT/BID Document No.: - EESL/NRC/-J&K/2022-23/SLNP/DIC-SMC/222303001 Dated: 21/03/2023” before the submission date & time mentioned above.

Cluster Head - NRC,  
Energy Efficiency Services Limited  
Core-5, 4th 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 Bid Security Declaration are received by EESL 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. EESL will not be responsible for any delay, loss or non-receipt of Bidding/RfP Document Cost or Bid Security Declaration 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 Bid Security Declaration and Bidding Document Cost and shall be subject to fulfilment of conditions defined in the said clauses. Since all the conditions explained in the said clauses for seeking exemption from submission of Bidding Document Cost & Bid Security Declaration 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 Bid Security 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.

- 3.0 In case Hard copy part of the bid is not received by the Employer till the deadline for submission of the same prescribed by the Employer, but the bidder has uploaded the soft copy part of the bid, the soft copy part of the Envelope-1 (First Envelope) bid uploaded on the portal shall be opened in line with provisions of Bidding Documents. Such bids will be rejected during preliminary examination. However, in case of MSEs who are exempted from submission of Bidding Document/Tender fee and Bid Security/EMD, non-submission of Hard copy part shall not lead to outright rejection of the bid, but the documents required to be submitted in the hard copy part shall be sought through clarifications.



- 4.0 EESL reserves the right to cancel/withdraw this invitation for bids without assigning any reason and shall bear no liability whatsoever consequent upon such a decision.

*---- End of Section-I (IFB) ----*

## SECTION-2

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## SECTION-2

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

**Name of Work: -:** Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir

**NIT/BID Document No.:-** EESL/NRC/-J&K/2022-23/SLNP/DIC-SMC/222303001 **Dated:** 21/03/2023

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

#### A. The Bidding Documents

##### 1.1 The bidding documents include the following

<b>Section-1</b>	<b>Invitation for Bids (IFB)</b>
<b>Section-2</b>	<b>Instructions to Bidder / Consortium of Bidders</b>
<b>Section-3</b>	<b>General Conditions of Contract</b>
<b>Section-4</b>	<b>Special Conditions of Contract explaining in detail technical specifications, scope of work for supply/supply and installation &amp; Commissioning/Consultancy, drawings, documents in support of bidder's qualifications (Qualifying Requirement), and Online Price Bid format.</b>
<b>Section -5</b>	<b>Measurement and Verification</b>
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	<p><b>Attachment 14: Format for Certificate Regarding Non Debarment / Blacklisting/Disqualification</b></p> <p><b>Attachment 15: Format for Proforma Of Bank Guarantee For Contract Performance</b></p> <p><b>Attachment 16: Format for Undertaking By The Joint Venture Partners (If Applicable)</b></p> <p><b>Attachment A: Format for Notification of Award to be issued to successful Consultant on letterhead paper of the Employer</b></p> <p><b>Attachment B: Format for Contract Agreement to be signed between successful consultant and Employer on INR 100/- non-judicial Stamp Paper.</b></p>
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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 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 EESL 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 "EESL" shall mean Energy Efficiency 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. "EESL" shall mean Energy Efficiency 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.
32. "O&M/ AMC" shall mean Operation & Maintenance(O& M)/ Annual Maintenance Contract (AMC) of the supplied equipments;
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.

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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 EESL in writing or by post or by telex or telefax) at the EESL's mailing address indicated below. The EESL will respond in writing to any request for clarification or modification of the bidding documents that it receives no later than ten (10) days prior to the deadline for submission of bids prescribed by the EESL. Written copies of the EESL's response (including an explanation of the query but not identification of its source) will be sent to all prospective Bidders that have received the bidding documents.

The address of EESL, for communication:

Cluster Head – (NRC),  
Energy Efficiency Services Limited,  
C/o Floor 4<sup>th</sup>, Core 5  
Scope Complex, Lodhi Road,  
New Delhi-110003  
Email:

The Bidder is advised to visit and examine the site where the facilities are to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for supply and installation of the facilities. The costs of visiting the site shall be borne by the bidder fully.

EESL will also facilitate the bidder and any of its personnel or agents for getting permission from the authorities, where actual work is to be executed, to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the EESL and also the authorities, where work is to be executed, and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

Whenever the bidder is silent about the acceptance of RfP/IFB conditions such as bank guarantee, warranty period, liquidated damages, certification of relation clause no.2.13 [Conflict of Interest] etc. it shall be presumed that the bidder has accepted and certified RfP/IFB conditions and no further correspondence seeking specific confirmation about acceptance of these conditions shall be made.

The Bidder shall be deemed to have examined the Bid document, to have obtained his own information in all matters whatsoever that might affect carrying out the Works in line with the Technical specifications and Scope of Work specified in the document at the offered rates and to have satisfied himself to the sufficiency of his Bid. The bidder shall be deemed to know the scope, nature and magnitude of the work and requirement of materials, equipment, tools and labour involved, local and national wage structures and as to what all works he has to complete in accordance with the Bid documents irrespective of any defects, omissions or errors that may be found in the Bid documents.

#### 1.3 Amendment to bidding documents

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At any time prior to the deadline for submission of bids, the EESL may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.

The amendment will be notified in writing or by cable to all prospective bidders who have purchased the bidding documents and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained therein have been taken into account by the Bidder in its bid.

In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bid, the EESL may, at its discretion, extend the deadline for the submission of bids.

#### 1.4 Cost of tender Documents

Interested bidder/consortium of bidders may download the RfP/ Tender documents from the website [www.eeslindia.org](http://www.eeslindia.org) or may purchase the detailed RfP from the EESL office, address of which is given above at 1.2, between 0900 hrs. and 1730 hrs. on working days on payment of amount as mentioned in Section-1. The payment would be accepted in the form of crossed Demand Draft (DD)/Pay Order/Banker's Cheque, drawn from any Scheduled Bank, payable at par at NOIDA, in favour of "Energy Efficiency Services Limited".

While submitting the bid (in case tender documents are downloaded from EESL website), bidder shall submit Tender Document Cost as mentioned in Section-1 in the form of DD/Pay Order/Banker's Cheque in favour of "Energy Efficiency Services Limited" payable at New Delhi along with the bid. However, bidders who directly purchase the tender documents from EESL can do so by payment of requisite bid document fee at EESL office in the form of DD/Pay order or Banker's Cheque.

#### B. Preparation of Bids

##### 2.1 Procedure for Submission of Bid/RfP.

#### Single Stage Single Envelope Bidding Process:

The Bidder or Consortium of bidders should submit hard copy of the offer, i.e. Techno Commercial and Price Bid together in a single sealed envelope superscripted with Bid/RfP number and date, content of envelope, name of work and Bid opening date. Bid-Form, Power of Attorney, Certificate regarding acceptance of important terms and conditions, Deviations Statement, Form of acceptance of Fraud Prevention Policy, etc. as per format defined in Section-6 (Forms & Procedures) shall also be submitted in the same envelope.

#### Single Stage Two Envelope Bidding Process:

The Bidder shall seal the proposal in one outer and two inner envelopes labeled as Envelope-I and Envelope-II. Two Envelopes should contain the details of the offer as follows:

Envelope-I should contain (This envelope appear ONLINE in dynamic form in case of E-tenders)

- i. Tender Document Cost in the form of DD/Pay Order/Banker's Cheque (wherever applicable).
- ii. Bid Security/Earnest Money Deposit in the form of Banker's Cheque/Demand Draft/Pay order in favor of "Energy Efficiency Services Limited" or in the form of Bank Guarantee as prescribed format as Attachment-2 of Section-6 (Forms &

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- Procedures). (Only EMD and Bid document fee related document to be submitted by post in sealed envelope super-scribed with RfP/Tender reference in case of e-tender).
- iii. Power of attorney to sign the bid as Attachment-3 of Section-6 (Forms & Procedures). Bidders to use their own format.
  - iv. Certificate regarding acceptance of important terms and conditions as per ITB Clause No. 4.6 as Attachment-4 of Section-6 (Forms & Procedures).
  - v. Letter of the bidder submitting the bid in the form as stipulated in the bid document, i.e., as per Bid Form as Attachment-1 of Section-6 (Forms & Procedures).
  - vi. Deviation statement as per Attachment-5 of Section-6 (Forms & Procedures).
  - vii. Form of acceptance of EESL fraud prevention policy as per Attachment-7 of Section-6 (Forms & Procedures).
  - viii. Techno-commercial bid as indicated in bid document. Documentary evidence regarding bidder's qualifications to perform the contract as required in qualifying Requirement.

Envelope-II should contain Price Bid, to be submitted in 2<sup>nd</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 two separately sealed envelopes will then be placed in one outer envelope, sealed and marked properly and submitted to the EESL office on or before the deadline for submission of the bid. Every envelope (2 inner and 1 outer) should be super-scribed with Bid/RfP number and date, content of envelope i.e. bid security/price bid etc., name of work and Bid opening date.

#### Single Stage Three Envelope Bidding Process:

The Bidder shall seal the proposal in one outer and three inner envelopes labeled as Envelope-I, Envelope-II and Envelope-III. Three Envelopes should contain the details of the offer as follows:

Envelope-I should contain (This envelope appear ONLINE in dynamic form in case of E-tenders).

- i. Bid document fee/cost of tender documents inform of DD/Pay order or banker's cheque [wherever applicable].
- ii. Bid Security fees/Earnest Money Deposit in form of Banker's Cheque/Demand Draft/Pay order in favor of "Energy Efficiency Services Limited" or in the form of Bank Guarantee as prescribed format [attachment 2 of section - 6, Forms& Procedure]. (Only EMD and Bid document fee related document to be submitted by post in sealed envelope superscribed with RfP/Tender reference in case of e-tender)
- 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 EESL 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 EESL 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 outrightly 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 EESL. EESL 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 EESL, 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.**

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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 "Energy Efficiency 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 EESL may ask the bidder to extend the validity of bid security.

Any bid not accompanied by an acceptable bid security, shall be rejected by EESL 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:

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- (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	Price quoted by MSE	How the tender shall be finalized
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tender		
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 condition that such MSEs match the L1 price. Further, 4% out of above 25% shall be from MSEs owned by SC/ST entrepreneurs & 3% out of above shall be from MSEs owned by women entrepreneurs. This quota is to be transferred to the general category MSEs in case of NON-availability of MSEs owned by SC/ ST entrepreneurs & Women entrepreneurs respectively.

**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.

**2.3 MSE owned by SC/ST is defined as:**

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

**2.4 MSE owned by Women is defined as:**

- In case of proprietary MSE, proprietor(s) shall be Women
  - In case of partnership MSE, The Women partners shall be holding at least 51% shares in the enterprise.
  - In case of Private Limited Companies, at least 51% share shall be held by Women promoters.
- If bidder does not provide appropriate document or any evidence to substantiate the above, then it will be presumed that he does not qualify for any preference admissible under the Public Procurement Policy, 2012.

- 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	(a) 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%.

			<p>The treatment for award will be same for MSE as general bidder.</p> <p>(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 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</p>
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			<p>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</p>
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			<p>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 EESL. However, EESL 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 EESL reserves the right to award</p>
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			appropriate quantity based on the existing requirement and such decision will be taken by EESL which will be binding on the bidder. EESL 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.

**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 order 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 EESL, 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 EESL 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

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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 EESL 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 EESL, 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.

## 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

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Bids shall remain valid for a period of 90 days after the closing date prescribed by the EESL for the receipt of bids. A bid valid for a shorter period may be rejected by the EESL as being non-responsive. In exceptional circumstances, the EESL 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.

#### 2.13 Conflict of Interest

EESL's policy requires that a bidder participating in a procurement/contract process under EESL financed projects shall not have a conflict of interest. All bidders found to have a conflict of interest shall be ineligible for award of contract.

A. Bidder may be considered to have a conflict of interest in a bidding process if:

- a) it, or any of its affiliates, has been engaged by EESL to provide consulting services for the preparation or implementation of a project, and participates in a bidding to provide goods, works, or non-consulting services resulting from or directly related to such consulting services. Or
- b) it submits more than one bid in a bidding process, either individually or as a partner in a joint venture, except for permitted alternative bids. This will result in the disqualification of all bids in which the bidder is involved. However, this does not limit the inclusion of a firm as a subcontractor in more than one bid and the participation of a bidder as a subcontractor in another bid in certain types of procurement/contract, if permitted by the EESL's bidding documents; or
- c) it (including its personnel or sub-contractors) has a business or family relationship with a member of a EESL's staff (or of the project implementing staff, or of a recipient of a part of the loan) who: are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or would be involved in the implementation or supervision of such contract unless the authority inviting tenders shall be informed of the fact/ such relationship at the time of submission of the tender and the conflict stemming from such

- relationship has been resolved in a manner acceptable to the EESL throughout the procurement process and execution of the contract. EESL may in its discretion reject the tender or rescind the contract.; or
- d) it does not comply with any other conditions that may be specified in the Company's Standard Bidding Documents relevant to the specific procurement process.

#### 2.14 Disclaimer

EESL and/or its officers, employees disclaim all liability from any loss or damage, whether foreseeable or not, suffered by any person acting on or refraining from acting because of any information including statements, information, forecasts, estimates or projections contained in this document or conduct ancillary to it whether or not the loss or damage arises in connection with any omission, negligence, default, lack of care or misrepresentation on the part of EESL and/or any of its officers, employees.

#### 2.15 Authorized Signatory (Bidder or Consortium of bidders)

The bidder or consortium of bidders as used in the RfP/ bid document shall mean the one who has signed the bid/RfP document forms. The bidder or consortium of bidders should be the duly authorized representative of the bidder/consortium of bidders, for which a certificate of authority/power of attorney will be submitted along with the offer. This should clearly define the authority provided to the authorized representative. Complete offer, all certificates and documents (including reply to any clarifications sought and any subsequent correspondences) shall be furnished and signed on all pages by the authorized representative.

The power of attorney or authorization, or any other document consisting of adequate proof of the ability of the signatory to bind the bidder or consortium of bidders shall be annexed to the bid as attachment 3 in envelope 1. EESL may reject outright any proposal not supported by adequate proof of the signatory's authority.

#### 2.16 Consortium related conditions

The bidder shall have the option to submit the proposal either alone or along with other partner companies. Prerequisites for bidder have been specified in qualifying requirement and other parts of the tender document. The lead partner shall be the sole point of contact for all purposes of the Contract. The lead partner will have the prime and sole responsibility for the execution of the scope of work. Any information/clarification submitted to the lead partner by EESL will mean that the same has been conveyed to all partners. However, the partner companies should not be involved in any major litigation that may have an impact of affecting or compromising the delivery of services as required under this contract. The bidder or any of the partner companies should not have been black-listed by any Central / State Government or Public Sector Undertakings. If at any stage of tendering process or during the currency of the contract, any suppression / falsification of such information is brought to the knowledge, EESL shall have the right to reject the proposal or terminate the 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 EESL's response to queries should give their contact details to EESL. The Bidder or Consortium of bidders should send their contact details in writing at the EESL's contact address.

#### 2.18 Inspection / Checking / Testing

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**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 EESL 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 EESL 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, EESL 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**

**EESL 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 EESL.**

#### **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 EESL.**

**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 EESL 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 EESL 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**

**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**

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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 EESL indemnified in that regard in the event of any equipment/material or part thereof supplied by the bidder is involved in any suit or other proceedings held to constitute infringement and its use is enjoyed, the bidder shall, at his own expenses, either procure for EESL 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 EESL 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 EESL 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 EESL, the order may be cancelled. Such cancellation, would be without any liability whatsoever on the part of EESL. In the event of such cancellation, the bidder shall refund any amount advanced or paid to the bidder by EESL 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 EESL, 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 EESL and the aggregate liability of the Implementing Partner to the EESL, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Implementing Partner to indemnify the EESL with respect to patent infringement or 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

**Bids must be received by the EESL 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.**

**Chief General Manager (Contracts),  
Energy Efficiency Services Limited,  
Floor 5<sup>th</sup> and 6<sup>th</sup>, Core 3  
Scope Complex, Lodhi Road  
New Delhi-110003  
Email: rkrohilla@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 EESL, the bids will be received up to the appointed time on the next working day.**

**The EESL 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 EESL 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 EESL after the bid submission deadline prescribed by the EESL, 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 EESL 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 EESL, 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 EESL, 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**

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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 EESL will prepare minutes of the bid opening.

#### 4.2 Clarification on Bids

During bid evaluation, the EESL 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 EESL 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.

#### 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 EESL 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 EESL 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 EESL'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 EESL 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

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

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

At the time of award of contract, if so desired by the EESL 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 EESL'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 EESL, and may not subsequently be made responsive by the bidder by correction of the nonconformity.

#### 4.7. Technical Evaluation

The EESL 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 EESL 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 EESL 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 EESL'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 EESL'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 EESL, 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 EESL of third parties.

#### 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

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will be used if necessary. If such a price is not given in Attachment-5, the EESL 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 EESL**

Where bids include the undertaking of work or the provision of services or facilities by the EESL in excess of the provisions allowed for in the bidding documents, the EESL 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<br>Type test Charges/Lab Test charges + inland transportation<br>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**  
 $N(N1+N2+N3)$

## 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 EESL will determine to its satisfaction whether the bidder selected as having submitted the lowest evaluated responsive bid/or bidder giving highest return to EESL, 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 EESL 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 EESL will proceed to the next lowest evaluated bid/next bid giving highest return to EESL 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 EESL 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 satisfactorily 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 EESL 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 EESL 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.

Except for the deviations listed in Attachment-5, the bidder would be required to comply with all the requirements of bidding documents without any extra cost to EESL failing which his bid security will be forfeited. Further, the EESL may request the bidder to withdraw any or all of the deviations listed in Attachment – 5 to the winning bid, at the price shown for the deviation in Attachment 5 to the 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.

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

- (i) First Contract: For supply of plant and equipment.
- (ii) Second Contract: For providing all services i.e. inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation (including civil. Structural steel work & allied work, if applicable) insurance covers other than inland transit insurance, erection, testing & commissioning, conducting Guarantee tests in respect of all the Goods supplied under the 'First Contract' and all other
- (iii) Services as specified in the Contract Documents.

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

#### 5.3. Quantity Variation

The EESL 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.

#### 5.4. Additions / Alterations / Modifications

EESL 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 EESL may increase this quantity, if required.

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#### 5.5. EESL's right to accept any bid and to reject any or all bids

**The EESL 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 EESL's action.**

#### 5.6. Letter of Intent / Letter of Award

**Prior to the expiration of the period of bid validity, the EESL 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.**

**The bidder shall return duplicate copy of the LoI/LoA/contract and the other enclosed documents duly signed as a token of acceptance, within 15 days from the date of receipt of this order. Bidder is to make two original copies of contract containing Contract agreement at top, and then Letter of award, techno commercial offer, copy of price bid and copy of all tender documents are to be placed. Three more copies of the contract to be submitted by the bidder in addition to two original at bidder's own cost. Total five copies of contract including two originals copies are to be submitted. This is to be done on instructions of Contract deptt.**

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

#### 5.7. Cancellation

**EESL 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 EESL notifies the successful Bidder that its bid has been accepted, the EESL 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 EESL. Contract agreement will contain agreement on stamp paper, bid documents and bidder's offer etc.**

#### 5.9. Performance security

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Within twenty-eight (28) days after receipt of the letter of award, the successful bidder shall furnish the performance security for ten percent (10%) 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 EESL.

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 EESL may make the award to the next lowest evaluated bidder or call for new bids.

5.10. Corrupt or Fraudulent practices:

The EESL requires that bidders observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the EESL: 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 EESL, 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 EESL 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 EESL.

5.11 Ineligibility for Future Tenders

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 EESL for a period as may be decided by the EESL.

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

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 EESL 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 therefrom. However, these adjustments would be restricted to direct transactions between the EESL and the Contractor/assignee of Foreign Implementing Partner (if applicable). These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Implementing Partner/assignee and also not applicable on the bought out items 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 EESL liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as “Maximum” in the SCC. Once the “Maximum” is reached, the EESL may consider termination of the Contract.

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 EESL 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 EESL regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Implementing Partner shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Implementing Partner shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

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

**10.3** The EESL 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 EESL shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

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

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

**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 EESL may give to the Implementing Partner a notice requiring that tests of the defective part of the Facilities shall be made by the Implementing Partner immediately upon completion of such remedial work, whereupon the Implementing Partner shall carry out such tests.

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

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

**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 EESL because of any of the aforesaid reasons. Upon correction of the defects in the Facilities or any part thereof by repair/ replacement, such repair/replacement shall have the Defect Liability Period extended by a period of twelve (12) month from the time such replacement/ repair of the Facilities or any part thereof.

**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 EESL upon completion of the necessary changes, modifications and/or additions, and shall seek the EESL's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the EESL may at its option, either

- 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 are to be conducted). The Employer shall notify the Contractor in writing in a timely manner of the identity of any representatives retained for these purposes.

**12.2** The inspections and tests may be conducted on the premises of the Contractor or its subcontractor(s), at point of delivery and/or at the Goods final destination. If conducted on the premises of the Contractor or its subcontractor(s), all reasonable Works and assistance, including access to drawings and production data shall be furnished to the inspectors at no cost to the Employer.

**12.3** Should any inspected or tested Goods fail to conform to the specifications, the Employer may reject and the Contractor shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Employer.

**12.4** The Employer's right to inspect, test and, where necessary, reject the Goods after the arrival at Site shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Employer or its Representative prior to the Goods shipment.

**12.5** Nothing in GCC Clause 6 shall in any way release the Contractor from any warranty or other obligations under this Contract.

#### **12.5 Manuals and Drawings**

**12.6** Before the Goods and Services are taken over by the Employer, the Contractor shall supply operation and maintenance manuals together with drawings of the goods and equipment. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the equipment as stated in the specifications.

**12.7** The manuals and drawings shall be in the English ruling language and in such form and numbers as stated in the contract.

**12.8** Unless and otherwise agreed, the goods and equipment shall not be considered to be completed for the purpose of taking over until such manuals and drawings have been supplied to the Employer.

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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.**

#### **13.0 Insurance**

**The Goods supplied under the Contract shall be fully insured in Indian Rupees against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery. For delivery of goods at site, the insurance shall be obtained by the Contractor, for an amount not less than the Contract Price of the goods from “warehouse to warehouse” (final destinations) on “All Risks” basis including War risks and strikes.**

#### **14.0 Transportation, Demurrage Wharfage, Etc.**

**Contractor is required under the Contract to transport the Goods to place of destination defined as Site. Transport to such place of destination in India including insurance, as shall be specified in the Contract, shall be arranged by the Contractor, and the related cost shall be included in the Contract Price.**

**Successful bidder, on whom letter of award is placed, is to ensure all safety guidelines, rules and regulations, labour laws etc. Successful bidder indemnify EESL for any accident, injury met by its labour, employee or any other person working for him. Any compensation sought by its labour, employee or any other person working for him shall be paid by successful bidder as per settlement solely. EESL has no role to play in this matter**

#### **15.0 Warranty**

**15.1 The Contractor warrants that the Goods supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Contractor further warrants that all Goods supplied under this Contract shall have no defect arising from design, materials or workmanship (except when the design and/or material is required by the Employer's Specifications) or from any act or omission of the Contractor, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.**

**15.2 This warranty of all the Works shall remain valid for 2 year after the Commissioning. The Contractor shall, in addition, comply with the performance and/or guarantees specified under the Contract. If for reasons attributable to the Contractor, these guarantees are not attained in whole or in part, the Contractor shall:**

**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 damages 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 EESL 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 EESL or the Implementing Partner within fifty-six (56) days of such reference, the decision shall become final and binding upon the EESL 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 EESL 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 EESL 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 EESL and the Implementing Partner.

## **17.2 Arbitration**

**17.2.1** If either the EESL 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 EESL 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 EESL 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 EESL shall pay the Implementing Partner any monies due to the

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## **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 (EESL) 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**

### **20.0 SCOPE OF SERVICES**

**20.1 The Consultant shall deliver the Services in full and on time.**

**20.2 The Services to be performed by the Consultant encompass all the part services  
described and explained in Special Conditions of Contract, Terms of Reference plus Tender  
Documents and The Consultant's bid. Furthermore, the Consultant must deliver all the  
standard and special services as defined intender RfP.**

**20.3 The Consultant shall work together with third parties wherever commissioned by the  
Employer. The Employer is not responsible for these third parties or their performance, when  
the work is assigned to consultant to co-ordinate with them. In addition, the Consultant must  
comprehensively coordinate their services with its own services, as far as possible.**

#### **20.1 STANDARD AND SPECIAL SERVICES**

**20.1.1 In addition to the Services specified explicitly in the Contract, the Consultant shall also  
perform all other services, if necessary, that are not listed under the contractual services, but  
are customarily required in order to properly discharge the contractual obligations ("standard  
services"). The standard services shall be fully compensated through the Agreed Remuneration  
in the contract.**

**20.1.2 "Special Services" are services that are not included under the contractual or standard  
services, but must necessarily be delivered by the Consultant in order to properly perform its  
duties under the Contract, because the external circumstances of service delivery have changed  
unexpectedly, or because the Employer has suspended the Services *Force Majeure* or because  
the Employer, with the prior consent of EESL, requires services that were not included in the  
invitation to tender but are necessary.**

**No extra cost is payable to fulfill the standard and / or special services.**

#### **20.2 DUE DILIGENCE**

**20.2.1 Except where otherwise stipulated in this Contract, or otherwise legally stipulated within  
the country or within another legal system (including the legal system in the Consultant's  
jurisdiction) by provisions that impose higher demands than this Contract, when performing its  
obligations under this Contract the Consultant shall exercise due diligence and provide the  
Services in compliance with professional practice and to the recognized quality standards, in  
accordance with current scientific and generally accepted engineering standards. The  
Consultant must document its work, the progress of the Project and the decisions it takes in an**

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appropriate form that is acceptable to the Employer, bearing in mind the requirements of tender/RfP/Letter of Award.

### **20.3 REPORTING**

**20.3.1** The Consultant shall inform the Employer promptly of all extraordinary circumstances that arise *during the performance of the services and of all matters* requiring EESL approval. The consultant is to make reports as defined in scope of work and submit the same as per timelines defined in the contract.

### **20.4 STAFFING**

**20.4.1** The Consultant shall employ the staff specified in bid [Staffing Schedule] to implement performance of the Services. The list of designated key staff and any changes to it shall require the prior written approval of the Employer.

**20.4.2** The Employer may require the Consultant to terminate the contract of, or replace, any staff member who fails to meet the requirements as per contract. Any such demand must be submitted in writing to the Consultant stating the reasons for it.

**20.4.3** If staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual who possesses at least equivalent qualifications.

**20.4.4** If any one of the Consultant's staff falls ill for more than one month and this jeopardizes the performance of this Contract by the Consultant, the Consultant shall replace this staff member with another staff member who possesses at least equivalent qualifications.

**20.4.5** Staff shall only be replaced after prior approval by the Employer, such approval not to be unreasonably withheld. The exchange, replacement, or planned dispensation of replacement (as exception to existing rules) of key staff specified by name shall require the prior approval of EESL.

**20.4.6** If the Consultant must terminate the contract of, or replace, any staff during the Contract period, the costs thus accrued shall be borne by the Consultant, except where staff are removed or replaced at the Employer's request. In this case, the Employer shall meet the costs of replacing the staff member, unless the staff member in question does not meet the requirements.

### **20.5 CONTACT PERSON OF THE CONSULTANT**

**20.5.1** The Consultant shall appoint for the exercise of all rights and obligations arising from this Contract a natural person as its contact person for the Employer under this Contract.

**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**

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**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.

#### **25.0 REMUNERATION OF THE CONSULTANT**

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**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.**

**EESL will not be responsible in case any accident/ mis-happenings with consultant employee or contract person and for any equipment damage or theft occurs and in no case EESL shall 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  
EESL: Energy Efficiency 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  
PMA: Project Management Agency

### SECTION-3

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GENERAL CONDITIONS CONTRACT (GCC)		
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## **A. Contract and Interpretation**

### **1. Definitions**

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

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

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

“GCC” means the General Conditions of Contract hereof.

“SCC” means the Special Conditions of Contract.

“Day” means calendar day of the Gregorian calendar.

“Month” means calendar month of the Gregorian calendar.

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

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

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

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

“Sub Contractor or Sub Implementing Partner,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is subcontracted 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 EESL 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 Contract.

“Facilities” means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Implementing Partner under the Contract.

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

“Installation Services” means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Implementing Partner under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, Site preparation works (including the provision and use

of Implementing Partner's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training of EESL's Personnel etc.

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

"Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

"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 Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

"Guarantee Test(s)" means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GCC Sub Clause 25.2 (Guarantee Test) hereof.

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

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

## **2. Contract Documents**

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

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

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

2.4 Subsequent to signing of the Contract, the Implementing Partner at his own cost shall provide the EESL

with at least five(05) true copies of Contract Agreement within thirty (30) days after signing of the Contract.

### **3. Interpretation**

#### **3.1 Language**

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

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

#### **3.2 Singular and Plural**

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

#### **3.3 Headings**

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

#### **3.4 Persons**

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

#### **3.5 Inco terms**

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

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

#### **3.6 Construction of the Contract**

**3.6.1** The Contracts to be entered into between the EESL and the successful 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, EESL

2. The place of arbitration shall be: New Delhi

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

General:

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

3.6.2 The award of separate Contracts shall not in any way dilute the responsibility of the Implementing Partner for the successful completion of the Facilities as per Contract Documents and a breach in one Contract shall automatically be construed as a breach of the other Contract(s) which will confer a right on the EESL to terminate the other Contract(s) also at the risk and the cost of the Implementing Partner.

### **3.7 Entire Agreement**

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

### **3.8 Amendment**

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

### **3.9 Independent Contractor or Implementing Partner**

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

Subject to the provisions of the Contract, the Contractor or Implementing Partner shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub Contractor or Sub Implementing Partners engaged by the Implementing Partner in connection with the performance of the Contract shall be under the complete control of the Implementing Partner and shall not be deemed to be employees of the EESL, 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 EESL.

### **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 EESL for the fulfilment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the EESL.

### **3.11 Non-Waiver**

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

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

### **3.12 Severability**

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

### **3.13 Country of Origin**

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

## **4. Notices**

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

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

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

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

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

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

## **5. Governing Law**

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

## **6. Settlement of Disputes**

### **6.1 Adjudicator**

6.1.1 If any dispute of any kind whatsoever shall arise between the EESL 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 EESL or the Implementing Partner within fifty-six (56) days of such reference, the decision shall become final and binding upon the EESL 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 EESL 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 EESL 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 EESL and the Implementing Partner.

## **6.2 Arbitration**

6.2.1 If either the EESL 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 EESL 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 EESL, as set forth in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement.

7.2 The Contractor or Implementing Partner shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

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

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

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

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

7.3.1.3 The Implementing Partner will provide the EESL with the manufacturing drawings, catalogues, assembly drawings and any other document required by the EESL so as to enable the EESL to identify the recommended



spares. Such details will be furnished to the EESL as soon as they are prepared but in any case not later than six months prior to commencement of manufacture of the corresponding main equipment.

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

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

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

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

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

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

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

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

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

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

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

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

For item of spares that may be ordered by the EESL to cover requirements beyond 3 years of Initial Operation of the plant, the warranty will be till the expiry of 7000 hrs of trouble free operation if used within a period of eighteen (18) months from the date of delivery at site. For item of spares that may be used after eighteen (18) months from the date of delivery at site, the warranty period will be 12 months from the date they are put to use or 7000 hrs of trouble free operation, whichever is earlier. In any case the defect liability of spares will expire at the end of forty eight (48) months from the date of their receipt at site.

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

## **8. Time for Commencement and Completion**

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

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

## **9. Contractor or Implementing Partner's Responsibilities**

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

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

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

9.4 The Implementing Partner shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out. The laws will include all national, provincial, municipal or other laws that affect the performance of the Contract and bind upon the Implementing Partner. The Implementing Partner shall indemnify and hold harmless the EESL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or Implementing Partner or its personnel, including the Contractor or Sub Implementing Partners and their personnel, but without prejudice to GCC Sub Clause 10.1 hereof.

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

## **10. EESL's Responsibilities**

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

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

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

10.4 If requested by the Implementing Partner, the EESL shall use its best endeavours to assist the Implementing Partner in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the

execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Implementing Partner or Subcontractor or Implementing Partners or the personnel of the Contractor or Implementing Partner or Sub Contractor or Implementing Partners, as the case may be, to obtain.

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

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

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

### **C. Payment**

#### **11. Contract Price**

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

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

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

#### **12. Terms of Payment**

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

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

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

#### **13. Securities**

##### **13.1 Issuance of Securities**

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

##### **13.2 Advance Payment Security**

13.2.1 The Implementing Partner shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the currency or currencies of the contract, with a 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 prorate 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 upto ninety (90) days beyond the end of scheduled Defect Liability Period of the last equipment covered under the package. If the EESL accepts to enters into 'Second Contract' and/or 'Third Contract' with the Assignee of a foreign Implementing Partner, pursuant to GCC Sub-Clause 3.6, the said Assignee, in addition to the Contract Performance Securities to be provided by the foreign Implementing Partner for 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 EESL, and shall be in the form of unconditional bank guarantee provided in Section-VII (Forms and Procedures)-Form of Performance Security of the bidding documents.

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

### **14. Taxes and Duties**

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

14.2 Notwithstanding GCC Sub-Clauses 14.1 above, the EESL shall bear and promptly reimburse all customs and import duties, if imposed in future, on the Plant and Equipment including Type Test and mandatory spares supplied from abroad and specified in Price Schedule (and on spare parts to be supplied from abroad and specified in Schedule, when awarded) and that are to be incorporated into the Facilities, by the law of the country where the Site is located. However, if the plant and equipment are shipped in Shipper's containers, then the custom duty levied on the cost of empty containers shall be borne and paid/reimbursed by the Implementing Partner. The EESL shall also bear and pay/reimburse to the Implementing Partner/Assignee of Foreign Implementing Partner (if applicable) Sales Tax (but not the surcharge in lieu of Sales Tax), Local Tax including Entry Tax / Octroi (if applicable) in respect of direct transactions between the EESL and the Implementing Partner, if imposed on the Plant and Equipment including Type Test and Mandatory Spares manufactured within the EESL's country and specified in Price (and also on locally supplied spares quoted when awarded) to be incorporated in the Facilities, by the law of country where the site is located. For this purpose, the Ex-works price if quoted in foreign currency and so incorporated in the contract, shall be converted to Indian Rupees as per the TT buying exchange rates established by State Bank of India prevailing on the actual date of Ex-works (India) despatch.



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

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

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

#### **D. Intellectual Property**

#### **15. Copyright**

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

#### **16. Confidential Information**

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

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

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

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

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

thereof.

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

## **E. Work Execution**

### **17. Representatives**

#### **17.1 Project Manager**

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

All notices, instructions, information and other communications given by the Implementing Partner to the EESL under the Contract shall be given to the Project Manager, except as herein otherwise provided.

#### **17.2 Contractor's representative & Construction Manager**

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

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

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

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

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

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

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

17.2.4 From the commencement of installation of the Facilities at the Site until Operational Acceptance, the

Implementing Partner's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Implementing Partner and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. When-ever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

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

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

## **18. Work Program**

### **18.1 Contractor or Implementing Partner's Organization**

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

### **18.2 Program of Performance**

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

### **18.3 Progress Report**

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

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

### **18.4 Progress of Performance**

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

### **18.5 Work Procedures**

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

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



the provisions contained in the Contract.

#### **18.6 Maintenance of Records of Weekly Progress Review meeting at Site**

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

#### **19. Subcontracting**

19.1 Appendix 5 (List of Approved 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 EESL for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the EESL for any of the 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 EESL.

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

##### **20.2 Codes and Standards**

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

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

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

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

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

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

## **21. Procurement**

### **21.1 Plant and Equipment**

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

### **21.2 EESL-Supplied Plant, Equipment, and Materials**

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

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

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

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

### **21.3 Transportation**

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

#### **Packing Material**

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

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

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

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

### **21.4 Customs Clearance**

The Implementing Partner shall, at its own expense, handle all imported Plant and Equipment and Implementing Partner's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the EESL's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the EESL, the EESL shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance due to fault of the EESL, the Implementing Partner shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

## **22. Installation**

### **22.1 Setting Out/Supervision/Labour**

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

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Implementing Partner shall forthwith notify the Project Manager of such error and, at

its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the EESL, the expense of rectifying the same shall be borne by the EESL.

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

**22.1.3 Labour:**

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

**22.2 Contractor, Implementing Partner's Equipment**

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

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

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

**22.3 Site Regulations and Safety**

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

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

#### **22.4 Opportunities for Other Implementing Partners**

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

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

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

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

#### **22.5 Emergency Work**

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

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

#### **22.6 Site Clearance**

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

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

#### **Disposal of Scrap**

The Contractor shall with the agreement of the Employer promptly remove from the site any 'Scrap' generated during



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

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

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

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

#### **22.7 Watching and Lighting**

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

#### **22.8 Work at Night and on Holidays**

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

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

#### **23. Test and Inspection**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **24. Completion of the Facilities**

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

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

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

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the EESL and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters, if so specified in Appendix 6 (Scope of Work and Supply by the EESL) / Technical Specifications, have been provided

by the EESL in accordance with GCC Sub-Clause 24.2, the Implementing Partner shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning.

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

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

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

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

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

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

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

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

## **25. Commissioning, Guarantee Test and Operational Acceptance**

### **25.1 Commissioning**

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

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

### **25.2 Guarantee Test (where ever applicable)**

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



information as the Implementing Partner may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).

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

### **25.3 Operational Acceptance**

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

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Implementing Partner within the period from the date of Completion specified in the SCC or any other agreed upon period as specified in GCC Sub-Clause 25.2.2 above, but successful Completion of the Facilities has been achieved; or
- (C) the Implementing Partner has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and
- (d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

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

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

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

### **25.4 Partial Acceptance**

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

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

## **F. Guarantees and Liabilities**

### **26. Completion Time Guarantee**

26.1 The Implementing Partner guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Implementing 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 EESL liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC. Once the "Maximum" is reached, the EESL may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

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

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

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

## **27. Defect Liability**

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

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

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

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

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

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

27.4 The EESL shall give the Implementing Partner a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The EESL shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

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

The Implementing Partner may, with the consent of the EESL, remove from the Site any Plant and Equipment or any

part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

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

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

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

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

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

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

## **28. Functional Guarantees**

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

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

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

28.3 In case the EESL exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 28.2, up to the limitation of liability specified in the Appendix-8 (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Implementing Partner's guarantees

under GCC Sub-Clause 28.2, and the Implementing Partner shall have no further liability whatsoever to the EESL in respect thereof. Upon the payment of such liquidated damages by the Implementing Partner, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

## **29. Patent Indemnity**

29.1 The Implementing Partner shall, subject to the EESL's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the EESL and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the EESL may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Implementing Partner or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

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

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

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

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

29.3 The EESL 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 EESL.

## **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 EESL, 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 EESL and
- (b) the aggregate liability of the Implementing Partner to the EESL, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Implementing Partner to indemnify the EESL with respect to patent infringement or as specified in SCC.

## **G. Risk Distribution**

### **31. Transfer of Ownership**

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

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

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

#### **31.4 Disposal of surplus material**

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

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

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

**31.5** In case of two/three Contracts entered into between the EESL and the Implementing Partner as per GCC Sub-Clause 3.6 or where the EESL hands over his equipment to the Implementing Partner for executing the Contract, then the Implementing Partner shall at the time of taking delivery of the Equipment through Bill of Lading or other despatch documents furnish Trust Receipt for Plant, Equipment and Materials and also execute an Indemnity Bond in favour of the EESL in the form acceptable to EESL for keeping the equipment in safe custody and to utilise the same exclusively for the purpose of the said Contract. Proforma for the Trust Receipt and Indemnity bond. The EESL shall also issue a separate Authorisation Letter to the Implementing Partner to enable him to take physical delivery of plant, equipment and materials from the EESL.

## **32 Care of Facilities**

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

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

- (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation,



radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced Implementing Partner could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 (Insurance) hereof.

- (b) any use or occupation by the EESL or any third party (other than a SubImplementing Partner) authorized by the EESL of any part of the Facilities.
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the EESL, or any such matter for which the Implementing Partner has disclaimed responsibility herein,

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

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

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

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

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

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

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

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

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

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

#### **34 Insurance**

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

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

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

##### **(b) Installation All Risks Insurance**

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

##### **(c) Third Party Liability Insurance**

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

##### **(d) Automobile Liability Insurance**

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

##### **(e) Workers' Compensation**

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

##### **(f) EESL's Liability**

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

##### **(g) Other Insurances**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **35 Unforeseen Conditions**

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

a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen.



- b) the additional work and/or Plant and Equipment and/or Implementing Partner's Equipment required, including the steps which the Implementing Partner will or proposes to take to overcome such conditions or obstructions.
- c) the extent of the anticipated delay.
- d) the additional cost and expense that the Implementing Partner is likely to incur.

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

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

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

### **36 Change in Laws and Regulations**

36.1 If, after the date seven (7) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Implementing Partner and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Implementing Partner has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the EESL and the Implementing Partner/Assignee of Foreign Implementing Partner (if applicable). These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Implementing Partner/Assignee of Foreign Implementing Partner and shall also not be applicable on bought out items despatched directly from sub-vendor works to site. Further, no adjustment of the Contract Price and/or payment or reimbursement of taxes, duties or levies shall be made on account of variation in or withdrawal of Deemed Export benefits. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix 2 to the Contract Agreement.

### **37 Force Majeure**

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

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

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

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

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

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

expense occasioned thereby

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

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

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

### **38 War Risks**

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

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

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

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

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

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

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

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

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

practicable notify the EESL in writing of any such increased cost.

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

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

## **H. Change in Contract Element**

### **39.1 Changes in the Facilities**

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

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

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

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

### **39.2 Changes Originating from EESL**

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

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

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

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

39.2.4 Upon receipt of the Change Proposal, the EESL and the Implementing Partner shall mutually agree upon all matters therein contained including agreement on rates if such rates are not available in the Contract or if the limit of

15% set forth in Clause 39.2.3 has been exceeded. Within fourteen (14) days after such agreement, the EESL shall, if it intends to proceed with the Change, issue the Implementing Partner with a Change Order.

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

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

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

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

### **39.3 Changes Originating from Implementing Partner**

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

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

## **40. Extension of Time for Completion**

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Implementing Partner 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 EESL under GCC Clause 41 (Suspension) hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
- d) any changes in laws and regulations as provided in GCC Clause 36 (Change in Laws and Regulations) or
- e) any default or breach of the Contract by the EESL, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the EESL) to the Contract Agreement, or any activity, act or omission of any other Implementing Partners employed by the EESL or
- f) any other matter specifically mentioned in the Contract;

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

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

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

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

### **41.2 If**

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

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

41.4 During the period of suspension, the Implementing Partner shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Implementing Partner's Equipment, without the prior written consent of the EESL.

## **42 Termination**

### **42.1 Termination for EESL's Convenience**

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

42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Implementing Partner shall either



immediately or upon the date specified in the notice of termination

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

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Implementing Partner as of the date of termination
- (b) the costs reasonably incurred by the Implementing Partner in the removal of the Implementing Partner's Equipment from the Site and in the repatriation of the Implementing Partner's and its 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 EESL, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Implementing Partner, referring to this GCC Sub-Clause 42.2:

- (a) if the Implementing Partner becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Implementing Partner is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Implementing Partner takes or suffers any other analogous action in consequence of debt.

- (b) if the Implementing Partner assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43 (Assignment).
- (c) if the Implementing Partner, in the judgement of the EESL has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

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

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

#### 42.2.2 If the Implementing Partner

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

then the EESL may, without prejudice to any other rights it may possess under the Contract, give a notice to the Implementing Partner stating the nature of the default and requiring the Implementing Partner to remedy the same. If the Implementing Partner fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the EESL may terminate the Contract forthwith by giving a notice of termination to the Implementing Partner that refers to this GCC Sub-Clause 42.2.

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

cease all further work, except for such work as the EESL may specify in the notice of termination 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 EESL pursuant to paragraph (d) below
- (b) deliver to the EESL the parts of the Facilities executed by the Implementing Partner up to the date of termination.
- (c) to the extent legally possible, assign to the EESL all right, title and benefit of the Implementing Partner to the Works. and to the Plant and Equipment as at the date of termination, and, as may be required by the EESL, in any subcontracts concluded between the Implementing Partner and its SubImplementing Partners.
- (d) deliver to the EESL 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 EESL may enter upon the Site, expel the Implementing Partner, and complete the Facilities itself or by employing any third party. The EESL may, to the exclusion of any right of the Implementing Partner over the same, take over and use with the payment of a fair rental rate to the Implementing Partner, with all the maintenance costs

to the account of the EESL and with an indemnification by the EESL for all liability including damage or injury to persons arising out of the EESL's use of such equipment, any Implementing Partner's Equipment owned by the Implementing Partner and on the Site in connection with the Facilities for such reasonable period as the EESL considers expedient for the supply and installation of the Facilities.

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

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

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

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

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

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

### **42.3 Termination by Contractor or Implementing Partner**

#### **42.3.1 If**

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

(b) the Implementing Partner is unable to carry out any of its obligations under the Contract for any reason attributable to the EESL, including but not limited to the EESL's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities which the EESL 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 EESL thereof, and if the EESL 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 EESL within twenty-eight (28) days of the said notice, the Implementing Partner may by a further notice to the EESL 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 EESL to that effect, referring to this GCC Sub-Clause 42.3.2, if the EESL 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 EESL 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 EESL pursuant to paragraph (d)(ii)

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

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

(i) deliver to the EESL the parts of the Facilities executed by the Implementing Partner up to the date of termination

(ii) to the extent legally possible, assign to the EESL all right, title and benefit of the Implementing Partner to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the EESL, in any subcontracts concluded between the Implementing Partner and its SubImplementing Partners

(iii) deliver to the EESL 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 EESL 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 EESL to the Implementing Partner, account shall be taken of any sum previously paid by the EESL 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 EESL, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Implementing Partner shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

#### **44. Bankruptcy**

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

to terminate the contract forthwith by notice in writing to the liquidator or receiver or to any person in whom the

contract may become vested & to act in the manner provided in GCC clause 42 entitled "Termination" as though the last mentioned notice has been the notice referred to in such clause and the equipment and materials have been taken out of the contractor's hands.

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

#### **45. Contractor Performance & Feedback and Evaluation System**

The Employer has in place an established 'Contractor Performance & Feedback System' against which the contractors 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 alongwith 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.

## **SECTION-4**

### **Scope of Work and Special Conditions of Contract**

## PART-A

**Name of Work:** Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir.

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

NIT/Bid Document No.: **EESL/NRC/-J&K/2022-23/SLNP/DIC-SMC/OTE/222303001**

**Dated: 21/03/2023**

BIDS TO BE SUBMITTED ARE AS FOLLOWS:

*(Please note that, EESL has switched the tender system into e-tendering. Bidders will submit their bid accordingly).*

Envelope I & II will appear online in dynamic form. No Manual/Hard Copy of documents need to be submitted for these envelopes apart from below mentioned documents.

**Envelope I (Pre-Qualifying documents) & Techno-Commercial Proposal of the Bid Should Contain (scanned copies of) the following:**

**Bids shall be submitted in Single Stage Two Envelope Bidding Procedure/Process as per the following:**

- I. Packet-I of Envelope -1 (Techno-Commercial Bid)**
- A. Shall contain Hard Copy of the following documents:**
  - 1. Fee towards cost of RfP Documents as per clause ITB 1.4** or documentary evidence in support of exemption of Document Fee. Bidders submitting Document Fee through RTGS shall upload the scan copy of receipt of transfer of amount in Packet-I of Envelope-I. Participation of bidder shall be subject to confirmation of amount transferred through RTGS. The details mentioned in document uploaded as proof of transfer of amount shall only be considered for verification purpose. For Submission of Bid document fee through NEFT/RTGS mode, clause no - 1.4 of ITB (Section-2)/BDS (Section-IV Part-A) may also be referred (*submission of Hard Copy in "Original" for Document Fee and "Copy" for documentary proof in support of exemption or Payment Acknowledgement towards Document Fee in case of Online Payment*)
  - 2. Bid Security (in Original) as per the format attached in Attachment-2 of Section-6** or documentary evidence in support of exemption of Bid Security, in separate envelope in accordance with clause 2.4 of ITB (*submission of Hard Copy in "Original" for Bid Security and "Copy" of documentary proof in support of exemption*)

Note: In case MSE bidders are exempted from submission of Document fee & Bid Security as indicated in Clause No 2.4 of ITB Section-2, then bidder has to submit copy of valid 'Udyam Registration Certificate' in Packet-1 of Envelop-1 for the purpose of Evaluation. **Micro and Small Enterprises (MSEs) registered with Udyam Registration Portal as specified by Ministry of Micro, Small and Medium Enterprises are exempted from submission of fee towards the cost of Bidding Documents as per the Provisions of the Public Procurement Policy for Micro and Small Enterprises (MSEs) order 2012, Notification dated 01/06/2020 and 26/06/2020 read in conjunction with related notifications issued from time to time for such enterprises.**

The details of EMD instrument have to be submitted in relevant field/column of online module. Tenders without EMD, if applicable, will be out rightly rejected. It should be ensured by the vendor that the original instrument of Bid Security/EMD is received by EESL before deadline of submission of techno-commercial bids.

EESL shall not be responsible for any delay, loss or non-receipt of Tender Document Cost sent by post/courier. The instrument should reach in original to EESL office before the Bid Opening date. In case of Bidder's failure to submit the tender document cost/ tender fees (instrument in original hard copy) along with the Bid or subsequently pursuant to ITB Sub-clause 4.2, the Bid shall be rejected.

Tender Documents fee is non-refundable. The bid securities of unsuccessful bidder(s) will be returned as promptly as possible after the award is made. The bid security of the Bidder will be returned when it has signed the contract agreement and has furnished the required performance security.

**B. Packet-II of Envelope -1 shall contain Soft Copy (Scanned Copy) of the following documents:**

1. Bid Form as per format attached as **Attachment-1 of Section - 6, Forms & Procedures.**

**Note: In case of non-submission of this form, bid will be rejected.**

2. 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. The said power of attorney to be submitted as **Attachment-3 of Section-6**, Bidders to use their own format.

3. Certificate regarding acceptance of important terms and conditions as per format attached as **Attachment-4, Section 6**, Forms & Procedure.
4. Deviation statement as per **Attachment -5 of Section - 6**, Forms & Procedure.

NOTE:

- i. Bids containing material deviations from or reservation to the terms and conditions and specifications mentioned in the RfP Documents will be treated as non-responsive and will not be considered further.
  - ii. In case of non-submission of this attachment, the bid shall be considered as no deviation bid.
5. Form of acceptance of EESL fraud prevention policy and declaration as per **Attachment- 6 of Section 6**, Forms & Procedure.
  6. Letter of undertaking (as per **Attachment-7 of Section-6**) 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 (as applicable)
  7. NEFT/RTGS Bank details as per **Attachment-8 of Section 6**, Forms & Procedure.
  8. Compliance of Matrix/checklist for technical and Financial QR duly filled and signed on Company letter head pad with company's seal. (Scanned Copy to be uploaded at E-tendering portal as per **Attachment-9 of Section-6**).
  9. Certificate Regarding Declaration of Local Content as per **Attachment- 10 of Section-6**
  10. Certification by the Bidder for "Restrictions on procurement from a Bidder of a country which shares a land border with India" as per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order) (as per format in **Attachment -11 of Section-6**).
  11. Details regarding Qualifying Requirement /Eligibility criteria as per **Attachment-12 of Section-6** along with Certificate regarding Capacity and Capability of the Bidder as **Attachment-12**.
  12. Certificate regarding non- debarment for false declaration of Local Content as per **Attachment-13 of Section-6**.
  13. Certificate regarding non-debarment / blacklisting/disqualification as per **Attachment-14 of Section-6**.
  14. Techno-commercial bid as indicated in bid document. Documentary evidence regarding bidder's qualifications to perform the contract as required in Qualifying Requirement (QR).
  15. Signed copy of RFP and subsequent amendments, if any.

16. MSE/NSIC/Start-up Certificate, as applicable.
17. Any other document as considered appropriate

*Bidder to note that no document revealing the prices shall be submitted in Envelope-I along with the techno-commercial bid. Revealing of prices at this juncture in any mode shall lead to outright rejection of bid. Prices are to be filled in Envelop-II as per the provision(s) made available by EESL in the prescribed format uploaded on e-procurement portal*

**II. Envelope-2 (Second Envelope) shall contain Price Bid (to be filled-up in excel format available online on e-portal)**

The prices are to be filled in prescribed format in soft copy (in excel format) available on e-portal only. Bidders are requested not to submit the price bid in hard copy at EESL as the same shall not be considered. Price Bid Format as attached at **Annexure-III** in the RfP document is only for illustration/reference purpose, however, terms and conditions mentioned there in is part of this RfP/Bidding Documents.

The price quoted in respect of all items in the above schedule shall be excluding applicable GST. The Bidder shall quote its prices taking into account the Input Tax Credit (ITC) as may be available under the Goods and Services Tax (GST) Laws and Regulations.

**Note: Qualification:**

The Employer will ascertain to its satisfaction whether Bidders determined having submitted substantially responsive bids are qualified, as per the Qualification Requirement specified in **Part- D of Section-4** to satisfactorily perform the contract. The Employer shall be the sole judge in this regard and the Employer's interpretation of the Qualification Requirement shall be final and binding.

The determination will take into account the Bidder's financial, technical capabilities including production capabilities, in particular the Bidder's contract work in hand, future commitments & current litigation and past performance including fatal accidents during execution of contracts that have been awarded by the Employer on the Bidder. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in the bid, as well as such other information as

The Employer may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, affecting the capability of the Bidder to perform the Contract. An affirmative determination will be a prerequisite for the

Employer to evaluate the Techno - Commercial Part and open the Second Envelope of the Bidder. A negative determination will result in rejection of the Bidder's bid.

**(a) Opening & Further Processing of the Bids**

Initially, Envelope-1 containing documents as stated above will be opened electronically.

In Envelope-II, Price Bid shall be opened subject to acceptance of Techno-Commercial Bid under Envelope-II. Opening date will be intimated to all those bidders, who are found technically & commercially acceptable to EESL.

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

**(b) *During bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of its bid. In case of erroneous/non submission of following documents (as applicable):***

- i) Online Payment Acknowledgement towards the Bid Document fee (*applicable only in cases where online Payment towards Bid Document fee is paid, prior to deadline for submission of bids*). Further, if Bidder has uploaded scanned copy of Banker's Cheque/ Demand Draft drawn in favor of "Energy Efficiency Services Limited" payable at New Delhi towards Bid Document fee, however, not submitted the original (in hard) along with the bid, then such Banker's Cheque/ Demand Draft shall be asked through clarification- **Not Applicable**
- ii) MSE certificate for the Tendered item/ valid NSIC Certificate with the mention of Tendered item in the certificate. The issuance date for aforesaid certificates must be prior to deadline for submission of bids.
- iii) Power of Attorney (POA) to sign the bid as per Attachment-3 of Section 6, Forms & Procedure
- iv) Form of acceptance of EESL fraud prevention policy and declaration as per **Attachment- 7** of Section 6, Forms & Procedure
- v) NEFT/RTGS Bank details as per **Attachment-10** of Section-6, forms and procedure- **Not Applicable**
- vi) 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.
- vii) Compliance of Matrix/checklist for bidder as per (as per format in Attachment -11). duly filled and signed on Company letter head pad with company's seal
- viii) Certificate regarding Declaration of local content (as per format in Attachment -12)
- ix) Self-Declaration duly signed on Company Letter Head Pad with company's seal 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 general financial rules for giving false declaration of local content
- x) Declaration regarding "Restrictions on procurement from a Bidder of a country which shares a land border with India"



- xi) Consortium Agreement (Not applicable)
- xii) Other documents/details of historical nature such as complete Audited Annual Reports together with Audited statement of accounts, Experience Certificate issued by Utility/Employer for work completed prior to deadline for submission of bids etc.
- xiii) Any other documents/details/information of historical nature.

*The EESL may give the Bidder not more than 5 working days' notice to rectify/furnish such documents, failing which the bid shall be rejected. 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.*

**Note: - Unorganized/Un-labelled Bids are liable to be rejected. Bidder to enclose an index of pages with proper nomenclature for each document enclosed and inserted page no. on the documents to be submitted online at E-tendering portal**

For & on behalf of EESL

AM (Cluster NRC  
Contracts)

## **DISCLAIMER**

- a. This Request for Proposal (RFP) is being issued to the respondents who fulfil the eligibility criteria prescribed elsewhere in this RFP document. This RFP is not an offer by the EESL, but an invitation to respond to this RFP document. No contractual obligation on behalf of the EESL, whatsoever, shall arise from the RFP process unless and until a definitive agreement is signed and executed by duly authorized officer of the EESL with the selected Respondent(s). It may be noted that issuance of RFP does not confer any right to be invited to participate further in the EESL's procurement process and the EESL shall have unfettered rights and discretion in its decision regarding further participation in the same. The respondents, by accepting this document, agree that any information contained herein may be superseded by any subsequent written information on the same subject made available to the recipient or any of their authorized officer(s) including those are provided by the EESL in its web-site. It is also understood and agreed by the Respondent/s that decision of the EESL regarding selection of the supplier(s) shall be final and binding on all concerned. No communication in this regard, verbal or written, will be entertained.
- b. The EESL reserves the right to amend, modify, vary, add, delete, accept or cancel, in part or full, any condition or specification of the proposals / orders / responses, without assigning any reason therefor at any stage during the process. Each Respondent shall be entirely responsible for its own costs and expenses that are incurred while participating in the RFP, presentations and contract negotiation processes. The EESL reserves the right to cancel the entire process at any stage at its sole discretion without assigning any reason therefor.
- c. Further, the EESL may, at its sole discretion, procure supplies/services of product specified in tender from one or more than one respondents. The procedure in this regard has been detailed elsewhere in RFP document. The decision taken by the EESL in this regard will be final and binding upon all respondents.

## **PART B - SCOPE OF WORK**

### **1. INTRODUCTION**

Energy Efficiency Services Limited (EESL) and Housing & Urban Development Department, Govt. of Jammu & Kashmir (H&UDD-J&K) along with Jammu & Kashmir Power Development Department (JKPDD) has signed a tripartite agreement for SLNP project to be implemented by EESL in Jammu & Srinagar Municipal Corporations. The objective of the agreement signed between EESL, H&UDD and JKPDD is Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights for a period of 84 months in Jammu Municipal Corporation in the UT of Jammu & Kashmir. EESL proposes to engage professional contractors on contractual basis for the Dismantling, installation (retrofit), Commissioning, Operation and Maintenance of LED street lights in Srinagar Municipal Corporation for remaining 54 months. For the purpose, an open tender bid is proposed to be invited from contractors engaged in street lighting installation and maintenance or similar works.

### **2. The scope of work (SOW) to be carried out by the successful bidder is given below:**

#### **a. Detailed Field Survey:**

The survey reports of requirement of 37,121 Nos of LED street lights in SMC are available with EESL. So, the installation (retrofitting) and commissioning to be taken place on the basis of said reports.

**If requirement of LED street lights in SMC arises beyond above quantity of LED street lights, field survey, within 07 days, to be conducted and signed report from the ULB of the same to be submitted by the successful bidder (s) as per following :-**

Bidders have to carry out, in a phased manner dove-tailing with installation sequence/timelines, the detailed field survey of ULB street light infrastructure to ascertain the following:

- 1) 100% ward wise (pole to pole) survey to be conducted to assess the existing conventional streetlight installations – to compile type, wattage and numbers of Luminaires of each type & wattage connected, actual load (phase wise) to each switching point along with identification of Switching Point and individual Poles, wherever available, in the format specified by EIC. This should also include:
  - a) Type of poles.
  - b) Height of Poles (This is to assess the requirement of appropriate ladder mounted vehicles)

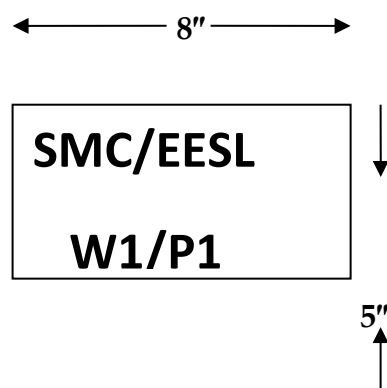
Bidder shall make all efforts to obtain the Area street maps and for marking the roads on which LED Street Lights are to be installed on the Area street maps. Such maps should form part of the Detailed Field Survey Report.

- 2) During Field Survey, bidder shall carry out marking of poles (pole numbering) for each of LED Street Light to be installed under the subject contract, in line with the identification scheme approved by ULB/DISCOM and EESL.
- 3) During Field Survey, Electrical data of existing switch points i.e., voltage, current, power factor, power (kW & kVA), connected load using power analyzer & illuminance level using lux meter covering all categories on representative basis and current uptime of Conventional Luminaires in the ULB area shall be analyzed and documented.
- 4) Detailed Field Survey shall include preliminary assessment of Infrastructure Components i.e., Bracket/Arm/Clamps and requirement of Cables/wires for connection from Luminaire to Overhead conductor/Power supply cable in excess of 3 meters for each Light.
- 5) Ward wise Detailed Field Survey Report shall be duly certified by Authorized Representative of ULB and EESL, which shall form the basis for location and number of LED Street Lights to be retrofitted/ installed. Bidder shall arrange for supplies accordingly.
- 6) Survey of Existing Lights and submission of survey report to EESL (within 7 Days of issuance of LOA)

**b. Installation (Retrofit) & Commissioning:**

- 1) Prior to installation (retrofitting) of LED street lights, bidder to check and ensure the proper pole numbering, by using stencil, on each of the pole as per below format should be available. If pole numbering, as per below format, is not available on the pole, the same shall be done by the bidder in consultation with EIC.

**For SMC**



In the above format, **W** is the ward number and **P** is the pole number. The base shall be painted with yellow color while as the marking shall be done with black color. The dimensions of the pole marking as shown above shall be 8"x 5".

- 2) **Installation of LED street lights shall be executed in SMC to cover dark spots. Bidder to dismantle, install (retrofit) and commission the LED street lights in Wards/Sectors/Lanes of SMC in scattered manner, in between, where LED street lights of EESL already exist under same project. However, some new areas under SMC can also be allocated for dismantling, installation (retrofitting) and commissioning of LED street lights.**
- 3) **As the dismantling, installation (retrofitting) and commissioning of LED street lights shall be performed somewhere in between LED street lights already installed, bidder to ensure proper marking to have discrimination between old LED street lights and new LED street lights.**
- 4) Receiving, transfer of material to installation site and proper accounting of all materials including new and old Street lights from vendors and project sites respectively. Adequate Storage, Godown and office space for the purpose to be provided by contractor. Cost of all these to be built into the bidder's rates. No separate payment shall be made for these items.
- 5) Dismantling of old Street lights, Installation, and commissioning of new LED street lights on the designated poles and masts in the area under jurisdiction of the ULBs or as directed by Engineer-In- Charge (EIC). Subsequently, submission of dismantled old Street Luminaires (with proper handling & in "as it is" condition) to the ULB on day to day basis & taking receipt from store in-charge or representative of the ULB thereof and concurrently seeking joint verification report in EESL's prescribed format for Installation of new LED Street Lights from authorize representative of ULB, EESL & vendor on day to day basis. During dismantling, the bidder shall ensure that lights and old arm, clamp (if replaced) are removed safely without leaving behind any broken pieces on road.
- 6) Replacements of old/damaged pole arms/clamps, damaged wire/cable, repairs of junction boxes, repair or replacement of jumper wire and re-installation of new box connectors, replacement of old/damaged MCB. The retrofitting of LED Streetlights may also include the Infrastructure Developments items such as nuts, bolts, wires, pole arms, bimetallic connectors etc. which shall be paid as per the approved terms/rates as mentioned in clause 4 of this tender documents.
- 7) Safe storage of material including accessories as well as spares with security during the entire installation and maintenance period of 54 Months shall be under scope of bidder.

- 8) Bidder shall ensure proper recording of the dismantled lamps/drivers/spares on daily basis. Handing over certification has to be taken from respective authorities on Daily Basis so as to avoid any discrepancy at a later stage.
- 9) Bidder shall ensure proper record with geotagging (GPS co-ordinates of each light) and photographs having GPS co-ordinates of the LED Street Lights/Flood Lights installed and old conventional fixtures dismantled, duly certified by Authorized Representative of concerned ULB and EESL on Daily Basis.
- 10) Bidder shall certify the received quantity of LED Street Light/Flood Light and material for maintenance from the designated Supplier of EESL and same shall also be got duly certified by representative of EESL (one copy of which shall be submitted to EESL office).
- 11) Bidder shall carry out rectification works wherever necessary for proper and reliable operation of the LED Street Lights. However, any item other than those mentioned in the RfP shall be paid extra with duly approved by EIC.
- 12) Repair/replacement of defective components of the Luminaire or entire Luminaire to restore LED Luminaire to glowing condition including supply of all materials required for the same. This shall include all the activities involved for the restoration including associated wiring connections up to supply tap-off. The cable required from supply point at junction box at the bottom of pole to luminaire shall be responsibility of bidder except the infrastructure related to Street Light phase cable/phase supply. Further, any complaint for failure of luminaire due to connector and loose connections shall be in Bidder's account.
- 13) Bidder shall be responsible for maintenance of all items installed by them or as per directions of EIC related to proper functioning of LED Street Lights installed under this project, for a period of 54 Months. Any extra items will be paid for by EESL separately. The maintenance of phase wire or UG cable for power supply is in scope of ULB/ DISCOM. However, any/all switchgear/MCB in pole junction box is in scope of bidder. In case of non-availability of incoming power supply, the same should be intimated in writing to the authorized representative of ULB and EESL within 24 hours of registration of complaint. The power supply availability at individual pole is the responsibility of DISCOM/ULB.
- 14) Bidder shall be responsible for manual ON & OFF of installed LED Street Lights/Flood Lights on daily basis till completion of installation of CCMS/Timer Switch or in case of failure of CCMS/Timer Switch till 54 Months.
- 15) Bidder shall also share "Daily Progress Report" of Installation/Dismantling and Commissioning of LED Street Lights through Email in prescribed format approved by EIC. The bidder shall provide the verified installation sheets hard copies and soft copies (MS file) to EESL.

- 16) Successful Bidder shall be responsible for maintenance of failure lights during installation phase also.
- 17) In case of buyback, the bidder has to quote the buyback price and takeover material from project site and dispose the dismantled luminaires safely and in line with applicable environmental norms.

## 2. Manpower Deployment and BOQ:

Bidder has to deploy sufficient manpower to complete the project in the allotted time frame. For speedy replacement, bidder to deploy one installation team per 30 lights installation per day in each ULB and achieve 1000 light installations per day in individual ULB. Cost of all these to be built into the bidder's rates. No separate payment shall be made for these items.

Accordingly, the bidder can calculate the no. of teams required to meet daily targets as mentioned against each ULB highlighted in Table-1.

**Table1:** Division wise quantity of Street Lights for installation in the Division's/ULB's: -

Division name	District	ULB Name	Tentative Tender Quantity for DIC Work (in no.)*
Srinagar	Srinagar	Srinagar Municipal Corporation (SMC)	37,121

**\*The quantity to be installed in the Division/ULBs is based on survey quantity which may vary at the time of project executions.**

### Provision of Ladder mounted Vehicles:

Successful bidder shall arrange to procure/own appropriate number of Ladder mounted Vehicles, as may be specified by Engineer In-Charge based on the number of lights of different categories for each type ladder mounted vehicle, to carryout installation/maintenance of Light Fixtures, for contract period. Bidder shall be held responsible for any delay in work to meet minimum respective division/ULB target (as per table mentioned in Table-1) installation per day due to non-availability of sufficient ladder mounted vehicles etc.

Details for minimum requirement of field force and equipment (for the purpose of cost estimation for total lights each package) are given below:

Particular	Minimum Requirement
<b>Number of Lights to be Installed in each Division</b>	Average (weekly) 600 numbers of LED street lights per day for Srinagar MC.
<b>Teams</b>	<p>Since the date of installation, every Bidder must have a maintenance team which comprises of at-least 1 technician having experience of maintaining street light in Municipal corporation/Municipal Council &amp; 1 helpers per every 2000 lights (1 driver required additionally in case the maintenance team is a vehicle mounted in case of Tower wagon, 4 wheeler or 3 wheeler).</p> <p>Bidder to ensure a deployment of regular Staff: One Team comprising of:</p> <ul style="list-style-type: none"> <li>• One Project Head with minimum ten (10) years of experience in the relevant field (Up to awarded quantity of Lights for every division)</li> <li>• Deployment of one (1) Project Manager with relevant five (5) years of experience for each Division/ULB,</li> <li>• One (1) Project Engineer with Electrical engineering background with minimum two (2) years of experience dedicatedly for the project. (For every 20,000 LED Lights)</li> <li>• One (1) store-in-charge per store/depot both at Division and Ward/ULB level as desired by the E-I-C.</li> </ul>
	<ul style="list-style-type: none"> <li>• One (1) computer operator with desktop/laptop and internet connection for generating daily reports and sending and replying to email and other correspondence.</li> </ul> <p>The concerned contractor/bidder shall be responsible for compliances of all labour deployed for above street light work; further contractor(s) shall indemnify EESL as on in any compensation, injury arising out of any accident arising out of deployment for above contract. The contractor shall indemnify EESL of any financial and legal issue/compensation arising out of deployment of manpower in the above contract.</p>



<b>Supervisor</b>	Deployment of one (1) supervisor for every five-(5) installation/maintenance teams.
<b>Ward-In-Charge</b>	Deployment of Ward-In-Charge i.e. one in-charge for twenty (20) wards or whichever is lower.
<b>High Lift Hydraulic Ladder/ Tower Crane</b>	Vendors should have minimum dedicated one (1) no. of hydraulic ladder vehicle per every 5000 LED Lights (suitable to work on street lights mounted at height above 7 m) available 24/7 & 365 days at their disposal for the project implementation period and maintenance for a period of 7 years.
<b>4 Wheeler with telescopic/ folding FRP/ Aluminum Ladder</b>	Vendors should have minimum dedicated one (1) no. 4 wheeler with ladders vehicles for every 4000 LED Lights available 24/7 & 365 days at their disposal for the project implementation period and maintenance for a period of 54 Months.
<b>2 Wheelers</b>	Vendors should have minimum dedicated one (1) nos. of two wheelers per every 4000 LED Lights available 24/7 & 365 days at their disposal for the project implementation period and maintenance for a period of 54 Months.

### 3. Infrastructure Components:

- a. **Bracket/Arm/Clamps:** Bidder has to ensure that arm angle is such that maximum level can be achieved on the roads. In case these items are not available at existing locations or if existing Bracket/Arm/Clamps are defective, the same are to be supplied, installed, dismantled and maintained for contract period by successful bidder.

Bidder is responsible for all the Bracket/Arm/Clamps existing or replaced for contract period; and shall be asked to replace the same if found inappropriate during the contract period. Any cost needs to be borne by bidder.

**Note:** Payment for IDC items to be on actuals as per rate table given below and NOT to be loaded in installation rates of the Lights. Verification of IDC quantity installed is to be carried out by bidder from EESL representative and ULB at the same time as the verification of installation of lights in the same document.

#### b. Bi- Metallic Connectors.

The bidder for installation of each light must use bi-metallic connectors. (Cost to be built into the bidder's rates). No separate payment shall be made for these items.

Bidder to make all necessary arrangements to ensure that complaints generated due to loose connections, bimetallic corrosion (caused by consistent presence of moisture) does not arise. Usage of bimetallic connector with protection against moisture is mandatory. Installations carried out without bi-metallic connectors or with feeder/jumper wire having joints shall be considered not installed & penalty of INR 1000 per such wrong installation shall be levied on the bidder.

In addition to the above mentioned quantity, the same are to be supplied, dismantled, installed and maintained as per the unit rates mentioned in the table subject to verification by ULB and EESL representative of the quantities installed.

EESL IDC Rates			
Sr. No.	Nature of Supply	Item Description	Rates in Rs. (excluding GST)
1	Supply	Supply of Arms of GI Pipe of size 20mm/25mm dia (inner Dia of pole arm) B class 4 feet long bent medium grade 25 mm width 5mm thick MS clamps set 2 Nos. with 3/8th Nut and for fixing of GI pipe in various sizes suitable to RCC/ MS poles as per relevant standard specifications	324.50
	Labour	Labour Charges	86.95
2	Supply	3C x 2.5 sq.mm Copper conductor flexible cable. Per meter rate as per latest IS standards of make Universal/ Finolex/ Polycab/KEI or technically equivalent.	54.77
	Labour	Labour Charges	2.61
3	Supply	1C x 1.5 sq.mm PVC insulated, Aluminum conductor flexible cable. Per meter rate as per latest IS standards of make Universal/Finolex/ Polycab/ KEI or technically equivalent.	4.73
	Labour	Labour Charges	2.61
4	Supply	1C x 1.5 sq.mm Copper conductor flexible cable per meter rate as per latest IS standards of make Universal/Finolex/Polycab/ KEI or technically equivalent.	7.39
	Labour	Labour Charges	2.61
5	Supply	2C x 2.5 sq.mm PVC insulated, Aluminium conductor flexible cable. Per meter rate as per latest IS standards of make Universal/Finolex/Polycab/ KEI or technically equivalent.	14.58

	Labour	Labour Charges	2.61
6	Supply	32 mm Dia (inner Dia of pole arm) x 2 meters long G.I Pipe (medium class) POLE ARM/bracket for mounting of LED Street lighting fitting on pole including bending the pipe to required shape (90-105 degrees), 2 nos. 40 mm x 3 mm flat iron clamps with Nuts, Bolts & Washer, GI coating/Painting the flat iron with primer and finish paint as per relevant standard specifications.	399.55
	Labour	Labour Charges	266.37
7	Supply	Supply & Installation of reducer of GI for oversized pole arms, Class B medium grade	116.45
	Labour	Labour Charges	43.48
8	Supply	Supply & Installation of 3 Way Connector	12.17
	Labour	Labour Charges	8.11
9	Supply	40 mm Dia (inner Dia of pole arm) x 2 meters long G.I Pipe (medium class) POLE ARM/bracket for mounting of LED Street lighting fitting on pole including bending the pipe to required shape (90-105 degrees), 2 nos. 40 mm x 3 mm flat iron clamps with Nuts, Bolts & Washer, GI coating/ Painting the flat iron with primer and finish paint as per relevant standard specifications.	438.00
	Labour	Labour Charges	292.00
10	Supply	Supply and fixing of GI/MS/FRP pole junction box including clamps, bolts, GI/Painting, glands, DIN rail, terminals, insulation, locking arrangement and for providing connection to incomer cable and outgoing wire including labour, transportation, taxation (per set)	584.00
	Labour	Labour Charges	389.00
11	Supply	Supply and fixing 6 A MCB along-with providing connection as per relevant IS in each pole junction box of standard make like L&T/ Siemens, Havells/ Indo Asian etc. (per set)	97.33
	Labour	Labour Charges	64.89
12	Supply	Supply of Arm 32 mm Dia (inner Dia of pole arm) x 4 feet (1.2 meter) long G.I. Pipe (medium class) POLE ARM/bracket for mounting of LED Street lighting fitting on pole including bending the pipe to required shape (90-105 degrees), 2 nos. 40 mm x 3 mm flat iron clamps with Nuts, Bolts & Washer, GI coating/ Painting the flat iron with primer and finish paint as per relevant standard specifications.	376

	Labour	Labour Charges	200
13	Supply	Supply of 2C x 10 sq.mm PVC insulated flattened Aluminium cable as per latest IS standards of make Universal/Finolex/Polycab/ KEI or technically equivalent.	36
	Labour	Labour Charges	6
14	Supply & Labour	6A Switch with Gang Box	26.5 6
15	Supply & Labour	Piercing Connectors on LT AB cables at pole top height to make proper tap-off connections –Main cable size: 16-35 sq.mm, Tap cable size: 1.5-2.5 sq.mm. Brass teeth, Nylon body with Gel.	60
16	Supply	40 mm Dia (inner dia of pole arm) x 1.2 meter (4 feet) long G.I Pipe (medium class) POLE ARM/bracket for mounting of LED Street lighting fitting on pole including bending the pipe to required shape (90-105 degrees), 2 nos. 40 mm x 2 mm flat iron clamps with Nuts, Bolts & Washer, GI coating/ Painting the flat iron with primer and finish paint as per relevant standard specifications.	399. 55
	Labour	Labour charges for installation of 40 mm Dia (inner dia of pole arm) x 1.2 meter (4 feet) long G.I Pipe.	266. 37

**Note: All the materials to be used in work should be as per specifications mentioned in tender and got approved by Engineer-in-charge. Material testing will be done if required and the expenditure will be borne by bidder.**

#### **4. Maintenance of LED Street Light/Flood Light for 54 Months:**

The bidder shall ensure satisfactory performance of the LED streetlight fixtures for a Period of 54 Months. Bidders responsibility includes dismantling of defective fixtures, Repair and/or replace defective parts/components in the lights and re-installation of lights on-site after repairs/replacement. During the project period of 54 Months, following maintenance work will be required to be carried out by the bidder; Repairing/ replacement of all defective components and sub-components of the system as per the requirement to ensure proper operation/ functioning of the LED fixtures.

**The period of maintenance i.e. 54 Months can be increased/decreased/restricted by EESL at its own discretion as per the project requirement up-to February 2027.**

Accordingly, the bidder can calculate the no. of teams required to meet targets as mentioned against each Division/ULB highlighted in Table-2.

**Table-2: Quantity of Street Lights for maintenance in the Division's/ULB's: -**

Division	District	ULB Name	Tentative Tender Quantity for Maintenance (in no.)
Srinagar	Srinagar	Srinagar Municipal Corporation (SMC)	42,121

1. The scope of work includes repairing/ replacement of part(s) to make the system functional, whenever a defect is noticed or reported at site.
2. To ensure proper maintenance, EIC, at its discretion, can allocate the dedicated area(s)/ward(s)/lane(s) having equal number of LED street lights and the same shall be unconditionally accepted by the bidder. For clarification, it is to clear that such area(s)/ward(s)/lane(s) shall be having either both old LED street lights and new LED street lights or only new LED street lights or only old LED street lights, installed in SMC. The allocated area(s)/ward(s)/lane(s) can be changed any time during the maintenance period of Fifty-Four (54) months.
3. The breakdown/rectification/replacement shall be corrected within 48 hours from time of receipt of complaint.
4. When the repairs/ replacement are not in the scope of the bidder, it has to be promptly reported to EESL/ respective EESL/ULB official(s).
5. All spares for repair and maintenance of LED Street Lights will be provided by the EESL of these lights for fifty-four (54) months.
6. All the machineries and instruments required for the Repair & Maintenance is to be arranged by bidder and their expense is also to be borne by them, EESL will only provide the coordination.
7. Bidder shall ensure proper recording of the dismantled lamps/drivers on daily basis handing over certification has to be taken from respective authorities of ULB & EESL to avoid any discrepancy at a later stage.
8. Bidder shall perform the following activities under maintenance service:
  - a. Attending LED Street Light/ Flood Light faults based on CCMS report and from any other source.
  - b. In case of power supply related issues coordinate with Concern DISCOM or Agency.
  - c. Attend complaints passed on by through customer complaint mechanism/ CCMS/ Municipal official(s)/EESL /PMC agency reports or any other source.
9. Bidder has to install new fixtures if necessary as and when required, as per the quoted

rates. However, EESL will supply the new fixtures.

10. Receiving and recording complaints and rectifications done on a daily basis. Diagnosis as well as rectification of all issues which includes failure/flickering or any other issues pertaining to fixtures and accessories. All complaints to be rectified within 48 hours of receiving the complaint (minimum uptime of 95% to be ensured by bidders)
  - a. To replace the defective/non-functional LED Street Lights within 48 hours of the failure or reported failure. Starting of failure period for record will be based on the report from CCMS system. In the absence of CCMS, starting of failure period for record will be time of reporting by ULB/EESL/PMC authorized representative.

Penalty for non-fulfilment after 48 hours is reckoned as follows:

Penalty =  $2 \times [(\text{wattage of defective LED Street Lights}) \times (\text{operating hours}) \times (\text{no. of days of default beyond 48 hours}) \times \text{tariff}] / 1000$

- b. In case of default by Successful Bidder on any of the above, including maintaining uptime of lights of 95%, a penalty equivalent to 2 times the monetized value of energy savings from the defective/non-functional lamps will be deducted from Bidder's payments. The penalty will be reckoned as follows.

Penalty =  $2 \times [(\text{wattage of defective LED Street Lights}) \times (\text{operating hours}) \times (\text{no. of days of default beyond 48 hours}) \times \text{tariff}] / 1000$

Or

INR 50/- per day per light whichever is higher.

**During the maintenance, the Bidder has to ensure the following:**

1. Maintenance of LED Street Lights during installation and maintenance phase. For the purpose, the contractor is required to have regular and contractual manpower on their roles to place 1 maintenance team (1 lineman + 1 helper, if motorcycle mounted and + 1 driver, if team is 3 or 4 wheeler mounted) for every 2000 number installed lights. Cost of all these to be built into the bidder's rates. No separate payment shall be made for these items.
2. Deployment of one (1) supervisor for every 10 installation/maintenance teams or whichever is lower.
3. Deployment of one Circle/Ward-In-Charge i.e. one (1) In-charge for every 20 wards/circles.

4. Provision of two 4 wheeler mounted Quick Response Team (QRT) to attend urgent/ VIP complaints, directly attached & reporting on daily basis to E-I-C.
5. Deployment of one experienced Project Manager for coordination with EESL, one store-in-charge and one computer operator with desktop/laptop and internet connection for generating daily reports and sending and replying to email, for preparation & submission of daily MIS Activities and other correspondence and coordinate with EESL.
6. List of employees on their regular/ contractual roles for street lighting to be provided along with their contact details. The employees shall be provided with ID card carrying requisite information.
7. Provide Tower Crane/Bucket Crane/Hydraulic Ladder/ or Aluminum Ladders with 3 or 4 wheelers and 2 wheelers for fast movement of men and material, tools and tackles for the purpose of light installation and maintenance. Bidder has to set-up a Service Centre (telephone with attender, storage for spares, service personnel with requisite service tools & equipment's) at the Division/ULB level with required skilled manpower for servicing. It is also required to coordinate with EESL/PMC team necessary for collection of necessary spares for repair, replacement and to ensure trouble free operation of installed LED streetlights during the maintenance period.
8. The Successful Bidder to also assign one senior officers per Division level from their organization which are regular employees and provide the contact details of the same, who shall be Accountable for delivering on the commitments during the Contract Period. In case the assigned officer leaves the organization or is reassigned, the Bidder to intimate the same in writing to EESL Project Manager and advice names of the new officers assigned for the role.
9. Bidder has to arrange minimum one Jeep ladder/Hydraulic vehicle for each 5000 lights for Repair & Maintenance of lights which are not accessible with normal/ wooden ladder. However, arranging wooden ladder/ Jeep ladder is in the scope of bidder, NO EXTRA CHARGES WILL BE PAID FOR THE SAME.
10. Provide all necessary consumables like nuts, bolts, cable lugs, Switchgear, Connectors, Ferrules, M-seal, Gel, Teflon Tape and any other consumables (Cost of all these to be built into the bidder's rates). No separate payment shall be made for these items. For Junction Box, Pole Arms, Clamps, Wire and MCBs and MCCBs installation with prior permission from EIC, a separate approved rate list is attached which shall be paid by EESL on actuals based on EESL site-in-charge verification.
11. Bidder shall be levied a penalty of INR 100000 per month for non-compliance of the above requirements in terms of office/store/depot, manpower, equipment & vehicle on

the discretion of Engineer-in-charge (EESL).

## 5. Completion Time:

### a. Detailed Field Survey

- Completion of Field Survey in entire Division/ULBs within 7 days of issuance of LOA.

### b. Installation and Commissioning of LED Streetlight

Entire material to be delivered, installed, and commissioned

- Within 8 weeks of issuance of LoA for Srinagar Municipal Corporation

In case of lack of bids received for above package, EESL reserves the rights to award the work to any party/parties found suitable during evaluation as per evaluation criteria mentioned in the bid, but hasn't participated for the Package under consideration although the party/parties are willing to work in the aforesaid Package(s), in case the party/parties are able to match the price of the L1 bidder in other Package." Since the work to be completed in limited time frame, if the bidder is unable to complete the work in defined time frame, EESL reserves the rights to award the work to any party/parties in addition to existing party, which was found suitable during evaluation as per evaluation criteria mentioned in the bid.

A. Declaration letter to be submitted stating their preparedness, ability and project plan to achieve minimum of 600 Nos of streetlight installations per division per day irrespective of wattages in BOQ.

Successful bidder should submit the **detailed implementation schedule** within 7 days of the LOA. Further, please note that award of Divisions/ULBs/Circles to successful bidders will be at sole discretion of EESL. In case, there is any deviation in Installation schedule of 1<sup>st</sup> Batch of Lights (i.e. 25% of total ordered quantity), a time period of 7 days will be provided to successful bidder to improve its position. If no corrective action is taken by the successful bidder to improve its performance for which EESL is sole judge and at unfettered discretion of EESL, the successful bidder is banned for doing business with EESL for six months, Letter of Award shall be short-closed/ cancelled/ diverted to other successful bidder/s. Submission of details of manpower deployment and other resources (ladder mounted vehicles etc.)

- Installation [Weekly commitments should be given for Street Lights. The plan should be given for each of the ward of the Division as may be applicable].



Performance of the successful bidder during installation phase shall be measured in line with the compliance of above mentioned timelines & Completion of Field Survey in entire Division/ULBs within 7 days of LOA.

The performance of the vendor will be continuously assessed throughout the tenure and if it is perceived that the vendor might not able to meet the project timelines and/or his performance as per the above-mentioned criteria is not up to the mark, EESL may cancel the order completely or partly without prejudice to his right, at the sole risk and cost of the vendor.

**EESL reserves the right to disqualify the bidder from participating in the subsequent tenders based on the performance rating measured against above.**

## PART C - SPECIAL CONDITIONS OF CONTRACT

**Special conditions will prevail upon the instruction to Bidders and other terms and conditions**

### **1. Terms of Payment:**

<u>Period of Payment</u>	<u>Payment Terms</u>	<u>Condition of Payments</u>
Installation Phase (A)	100 % of LoA rates for Dismantling, Installation and commissioning shall be made to the BIDDER within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL after completion of every 3000 Lights of installation; subject to fulfilment of contractual obligations. (In case of last stage of completion of installation, payment shall be made on submission of Bill/invoice of completion of installation of last lot of LED Street Lights or 3000 LED Street Lights whichever is lower.)	After Submission of Jointly verified Installation report by the ULB and EESL's/ representative
Maintenance Phase (B):	100% of LoA rates (per month) for the repair and maintenance of installed LED SLs/FLs by EESL shall be made to the bidder within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL after completion for all installed lights; subject to fulfilment of contractual obligations.  Bidder to ensure to raise the invoice on monthly basis with the supporting documents.	Submission of report by ULB and EESL's representative for Satisfactory performance on monthly basis.
IDC (c):	100 % of LoA rates for IDC Supply, Installation and commissioning shall be made to the BIDDER within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL and ULB after completion	After Submission of Jointly verified Installation report by the ULB and EESL's representative

- a) During the maintenance phase, the BIDDER should raise bill (s) on monthly basis to the EESL during maintenance phase. All bills shall be submitted to concern Engineer in charge for verification/ certification for work along with satisfactory performance certificate from respective ULBs and other necessary statutory records, challans, slips wages record etc. before submission of bill(s) for payment. All the payment during the maintenance phase will be released on monthly basis during the contract period.

- b) The Bills shall be certified by the Engineer-In-Charge or its Authorized representative. The certification of Bills by the Engineer in charge shall mean that all the jobs specified wherever in the contract / Annexure has been carried out by the BIDDER satisfactorily which shall hold good for payments of Bills.
- c) Relevant Certificate/document to be submitted by the successful bidder for Minimum wages paid by the BIDDER to their employees.
- d) Successful bidder has to sign a Contract agreement with EESL within 07 days of issuance of LoA.
- e) EESL reserves right to cancel the bid without giving any reason.

**Conditions of Payment:**

- A. The payment shall be processed only upon receipt of (i) acceptance of LoA and signing of contract agreement; (ii) submission of CPG as per tender documents in addition to deliverable documents.
- B. The Consultant/Agency must submit all the documents/reports as per the deliverables of this tender document. If work is not completed within the timelines as mentioned in the Scope of Work/ Deliverable or as provided by EESL, then respective payments will be done after deductions of the LD (Liquidated Damages) amount as per the relevant LD clause or other amounts as per terms & conditions.
- C. The amount will be payable in Indian Rupees as per payment milestones/ terms after successful completion of services rendered as per the deliverables mentioned in scope of work.
- D. No advance payment shall be made.
- E. Agency will raise/submit GST Invoice as per prescribed format in GST law or as per the law for the time being in force, only after compliance of Payment Terms and its certification by EESL Officer in charge (OIC) or its authorized representative.
- F. The Fee shall be inclusive of all charges except applicable GST, which shall be paid extra. Taxes should be indicated separately on the invoice.
- G. Payment shall be released upon the passing of GST- ITC to EESL within prescribed timeframe in GST Law and after deduction of all applicable Taxes (Direct and indirect).
- H. The payment will be made within 30 days from compliance of Payment Terms as mentioned above.

**2. Evaluation Criteria:**

- a. Bidder(s) has to submit the Price bid as per the “**Price bid format**” attached as **Annexure-I**. The prices have to be submitted online through E Procurement portal. Prices submitted elsewhere in the bid/ offer shall not be considered valid.

**Revealing of prices by the bidder in any form at any stage during the tender process shall lead to rejection of offer.**

- b. Tender will be evaluated on overall L1 basis. (Column 6 Only)
- c. Techno-commercially suitable Bidder who has quoted the Lowest Price (L1) shall be considered for further processing of Letter of Award. Price bid should be un-conditional, failing which the bid shall be summarily rejected.
- d. Splitting of order shall not be done. Entire work shall be awarded to L1 bidder.
- e. Price will remain firm till the execution of the contract.
- f. Further, in case a party is not able to submit the required reports as per scheduled timelines, EESL reserves the right to hire another agency at the risk and cost of such non-performing bidder.
- g. In the event of tie in prices between two or more bidders, the bidder with higher turnover will be given preference in ranking & award. Avg. of last two financial years shall be considered for arriving at turnover for comparison in such cases to break the tie.

### **3. Applicable GST/Payment towards Taxes & Duties:**

Prices shall be exclusive of all applicable GST. However, IT as per applicable rate will be deducted from your bills as Tax Deduction at Source (TDS).

Employer is liable for and shall pay only applicable GST on various components of prices. Implementing Partners are required to quote their prices inclusive of all taxes and duties except applicable GST. The Input Tax Credit (ITC) available, if any, under the GST Law as per the relevant Government policies wherever applicable shall be taken into account by the Implementing Partner while quoting bid price. EESL's liability shall be only for applicable GST, if any, issued by the Employer. The Employer will, however, be entitled to any decrease in the Contract Price which may be caused due to lower payable Taxes and Duties amount in case of delivery of Goods/ Installation beyond the original delivery/Installation dates. Therefore, in case of delivery of Goods/Installation beyond the original delivery/ Installation dates, the liability of the Employer shall be limited to the lower of the payable Taxes and Duties amount which may work out either on schedule date or actual date of dispatch of Goods/ Installation.

Notwithstanding anything above or elsewhere in the contract, in event that input Tax credit of the GST charged by the supplier, is denied by the tax authorities to the employer for reasons associated with non-compliance/incorrect compliance by the supplier, the employer shall be entitled to recover such amount from the supplier by way of adjustment from any of the subsequent invoices submitted by the supplier to the employer. In addition to the amount of GST, the employer shall be entitled to recover interest and penalty, in case any interest/or penalty is imposed by the tax authorities on the employer for incorrect/wrong avaiment of input tax credit. The employer shall determine whether the denial of credit is linked to the non-compliance/indirect compliance of the supplier and the said determination shall be binding on the supplier.

No increase in Taxes and Duties (*in case of change*), which are payable as per the

Contract, shall be allowed beyond the original delivery/ Installation dates unless specifically stated in the Time Extension Letter

**4. Contract duration:**

Co-terminus with project as per MoU signed between EESL, H&UDD and JKPDD i.e., 54 months from the date of LoA or February 2027, whichever is earlier.

**5. Adjudicator:**

Adjudicator under the contract shall be appointed by the Appointing Authority i.e. MD (EESL). If the bidder does not accept the Adjudicator proposed by EESL, it should so state in its bid form and make a counter proposal of an adjudicator. If on the day the contract agreement is signed, the EESL and Bidder have not agreed on the appointment of adjudicator, the adjudicator shall be appointed, at the request of either party, by the appointing authority specified.

**6. Arbitration: In case the Contractor is a Public Sector Enterprise or a Government Department**

In case the Contractor is a Public Sector Enterprise or a Government Department, the dispute shall be referred for resolution in Permanent Machinery for Arbitration (PMA) of the Department of Public Enterprise, Government of India. Such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

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

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

& Conciliation Act, 1996 and any and all amendment thereunder. The language of arbitration shall be English, cost of arbitration shall be borne equally by the Parties and the venue of arbitration shall be Delhi, India. Notwithstanding any reference to the Arbitration herein, Parties shall continue to perform their respective obligations under the Contract, except for the matter under dispute pursuant to Arbitration proceedings.

## 7. Contract Performance Guarantee (CPG) / Contract Performance Security (CPS)

Within twenty-eight (28) days of the receipt of the Notification of Award (LOA) of Contract from EESL, the bidder(s) shall furnish Security Deposit (SD)/Contract Performance Guarantee (CPG) in the form of a DD/Bank Guarantee (BG)/ e-BG of value equalling 3 % of the total Contract value. The SD/CPG Bank Guarantee must be valid to cover Entire Contract Period from the date of NoA/LoA+ three (3) months' Claim period.

Any delay in submission of SD/CPG or SFMS confirmation whichever is later shall be deemed as accruing of financial benefit to the bidder(s) and EESL may take necessary interest penalty recovery action (interest @ State Bank of India's MCLR + 2 %) from the payments due to the bidder(s) for the period of delay. However, this provision does not bind EESL in any way from proceeding against the bidder(s) (including forfeiture of EMD, cancellation of the LOA, etc.) for non-compliance towards non-submission of the SD/CPG.

In case where CPG has been called for more than 3 years then vendor can submit CPG in two parts, first for 3 Years + claim period and balance PBG will be submitted to contracts department prior to six months of expiry of previous CPG. In this regard further an undertaking has to be submitted by vendor that if vendor fails to provide second BG then EESL can impose the penalty and forfeit the Bank Guarantee. In case of submission of new CPG, following para may be added in the new CPG to maintain continuity:

*"We undertake to pay you, upon your first written demand (at any time during entire duration of the contract including Contract period prior to issuance of this Bank Guarantee) under the Contract, without cavil or argument, any sum or sums within the limits as mentioned aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein."*

The BG shall be from any Nationalized Bank/other scheduled Private banks/International banks, to be from among the list of banks given at Annexure I of Section-6. In case of international bidder(s), the CPG BG could be from any such international bank having a branch in India or a Nationalized Indian bank having a branch in the country of origin of the international bidder(s) mentioned in Annexure I. The International Bidders are also required to enclose with their CPG BG a letter of BG confirmation from a corresponding Indian bank. EESL shall at its discretion have recourse to the said Bank Guarantee for the recovery of any or all



amount due from the bidder(s) in connection with the contract including of replacement warranty obligations.

Failure of the bidder(s) to comply with the requirements of IFB/Tender/NIT/LOA shall constitute enough grounds for the annulment of the award and forfeiture of the SD/CPG.

BG will be released on Closure of Contract.

This Bank Guarantee shall be effective only when BG issuance message is transmitted by the issuing bank through SFMS to ICICI Bank include unique identifier EESL543840944 in field 7037 of the SFMS cover messages with IFSC Code ICIC0000007.

BG advising message - IFN 760COV / IFN 767COV via SFMS	
Field Number	Particulars ( to be mentioned in Row 1)
7037	EESL543840944

#### 8. ADHERENCE TO SCOPE OF WORK/TERMS OF REFERENCE:

Subsequent to an award of work being placed against your quotation, received in response to this 'enquiry', if it is found that the services are not in accordance with scope of work or not satisfactory owing to any reason of which we shall be the sole judge, we shall be entitled to cancel the contract and award the work to other bidder and recover the loss, if any. EESL shall recover the losses by forfeit the security deposit, furnished by the bidder against the contract.

9. The Bidder shall be deemed to have examined the Bid document, to have obtained his own information in all matters whatsoever that might affect carrying out the Works in line with the Scope of Work specified in the document at the offered rates and to have satisfied himself to the sufficiency of his Bid. The bidder shall be deemed to know the scope, nature and magnitude of the work and requirement of materials, equipment, tools and labour involved, wage structures and as to what all works, he has to complete in accordance with the Bid documents irrespective of any defects, omissions or errors that may be found in the Bid documents.
10. Subsequent to an order being placed against your quotation, received in response to this 'enquiry', if it is found that the Services are not of the right quality or not in accordance with our Scope/ specifications (required by us) or not satisfactory owing to any reason of which we shall be the sole judge, EESL shall be entitled to reject the Services, cancel the contract and buy our requirement from the open market / other

sources and recover the loss, if any, from the Bidder reserving to ourselves the right to forfeit the security deposit, furnished by the Bidder against the contract.

**11. Quantity Variation:**

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 Contractor under this Clause would be to increase the Contract Price as originally set forth in Contract Price of the Contract Agreement by more than Twenty (20) percent, the Supplier/contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the EESL accepts the Supplier's/Contractor's objection, then EESL and the Supplier/Contractor shall agree on specific rates for valuation of the change.

As long as overall variation remains **within + 20% of the contract price and within +20% of the quantity of each item**, the rate of individual contract items and other Terms & Conditions of the contract shall remain unaltered.

In case overall contract price increases by more than 20%, all such items, where executed/anticipated quantity has exceeded/is expected to exceed that's specified in the contract by more than 20%, will be identified. In respect of all such items while the quantity originally specified in the contract +20% extra shall be paid at unit rate available in the Contract, the payment for the balance quantity shall be released at a rate to be decided after mutual agreement.

**15. Safety:**

- 1) The BIDDER shall bear all expenses/cost to be incurred towards salary, allowances, perks, traveling allowances, advances, insurance, safety measures, PPE, security, transportation and all other misc. expenses etc. of their employees/ workmen during the tenure of installation & AMC. Also, the BIDDER shall be solely responsible for making payment for Hospitalization, Compensation thereof in case of any accident & injury.
- 2) The BIDDER shall issue Identity Cards to their employees deployed for execution of the assigned works in the district with the consent of Engineer in charge.
- 3) The BIDDER should ensure that there are no disputes regarding service, payment etc. of the persons engaged by him, anytime during the currency of the contract. At no point of time during the currency of contract, the BIDDER's employees shall insist upon the EESL for employment, wages, and allowances or any other related matter, payment etc.
- 4) The BIDDER to deploy their manpower immediately for carrying out the work as specified above.
- 5) The BIDDER shall not deploy the manpower below the age of 18 years.



- 6) The BIDDER shall not deploy the female manpower between 7 PM to 6 AM.
- 7) The BIDDER shall be directly responsible for any / all disputes arising between him and his persons and keep the EESL indemnified against all losses, damages and claims arising thereof. The BIDDER shall resolve any dispute of their manpower. All the legal dues of their manpower is to be paid on due date or within 8 days on the termination of manpower.  
All safety wears (PPE) required for the BIDDER's manpower during the execution of work such as safety shoes, safety helmets, hand gloves, safety belt, dust mask, goggles etc. must be provided by the BIDDER at his own cost and he shall ensure that his employees regularly use such safety gears while executing the work.
- 8) The BIDDER shall be responsible for discipline of his manpower and shall adhere to the disciplinary procedure set by the COMPANY at site. The EESL shall be at liberty to object to the presence of any representative or employees of the BIDDER at the site, if in the opinion of the EESL such manpower has done any act of misconduct or negligence or otherwise undesirable, then the BIDDER shall remove such a person objected to and provide a competent replacement immediately.
- 9) Bidder must Deduct and deposit ESI and PF contribution. Copies of the same shall be submitted.
- 10) Contractor shall ensure proper adaption of COVID-19 guidelines and implementation of same over ground.

**16. Liquidated Damage (LD):**

**Penalties and Liquidated damages on default of Bidder:**

- (i) If the Identified Agency fails to perform the work within the specified time period or any extension granted thereof in writing, with respect to successful completion of work, the Identified Agency shall pay to EESL as liquidated damages and not as penalty, a sum of One percent (0.5%) of the invoice value for each week of delay or part thereof.
- (ii) The total amount of liquidated damages for delay under the Project shall be limited to a maximum of Ten percent (10%) of the total value of work of the Project.
- (iii) The Liquidated Damage will not be applicable for the period if delay is not on Identified Agency(ies) part. Alternatively, EESL may cancel the prejudice to his right under the alternatives mentioned above.
- (iv) Alternatively, EESL reserves the right to procure the services from elsewhere at the sole risk at the cost of successful Identified Agency and recover all such extra cost incurred by EESL in procuring the services from resources available including Empanelment Performance Guarantee or any other sources etc. Further, if any extra cost is incurred by EESL due to delay in work completion by the party beyond the completion time as per Letter of Award, the same shall also be recovered invoice, Empanelment Performance Guarantee, etc.

Or

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

**17. Prices shall remain firm during contract.**

**18. Compliance with all Statutory Regulations:**

- i. Compliance of all the statutory requirements as may be required w.r.t the activities to be performed to execute the scope of work under the subject LOA including the requirements under Contract Labor Acts, safety of the workmen deployed, etc., shall be the responsibility of the successful bidder including all the expenditure incurred for the same. This includes all the requirements w.r.t the workmen under Sub-contractor(s) also. The successful bidder shall submit the documentation to EESL, on monthly basis, as required under the applicable statutory requirements.
- ii. Successful bidder shall indemnify EESL for any accident, injury met by its labor, employee or any other person working for him. Any compensation sought by its labor, employee or any other person working for him shall be paid by successful bidder as per settlement solely. EESL has no role to play in this matter.
- iii. The successful bidder, at their own cost, shall arrange disposal of failed LED Lamps/Various part of the Luminaires as per the relevant provisions of various acts/regulation in force from time to time.

**19. Submission of Reports:**

Following Reports shall be submitted by the successful bidder, as per the instructions of EIC:

- a. **Daily Progress Reports** – during installation stage (via email)
- b. **Submission of signed copy of Installation reports** - weekly basis
- c. **Daily Fault Reporting and Rectification Status Reports** – during repair and maintenance period.
- d. Receipt of Dismantled Luminaires on daily basis duly certified by the ULB representative & EESL.
- e. **Stock Report**: Daily during Implementation and weekly during maintenance period
- f. Monthly Progress Reports during installation stage
- g. **Completion Certificate after completion of installations for each 1000 Lights installation, based on this bill will be processed**
- h. Monthly Fault Rectification Reports during repair and maintenance phase
- i. **Any other Reports as may be directed by EIC**  
Final Report Formats shall be informed by EIC at appropriate

**20. Withholding of Bidder:**

In case of failure to honor its bid after emerging as successful bidder, the bidder will be withhold from participating in EESL's tenders for a period of one year from the date of communication of such withholding to the bidder. During this tenure, the bidder will be barred from participation in EESL tendering process. However, bidder has to continue the unexecuted work of the other prevailing work if any under the current running contracts. Simultaneously, the EMD submitted by such bidder against the subject tender will be forfeited. If bidder is exempted from submission of EMD, then the EMD amount will be adjusted from the payments due to the contractor against other running contracts. If there is no running contract of the bidder/ no payment dues of the bidder, then EESL reserves the right to take any legal remedy as deemed fit to recover the penalty equivalent to EMD amount through legal means.

21. **Bid Security/Earnest Money Deposit (EMD)**

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

The bidder shall furnish, as part of its bid, a bid security in a separate envelope (ITB sub 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 "Energy Efficiency Services Limited" payable at New Delhi or a bank guarantee as per format in Section 6. 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 EESL may ask the bidder to extend the validity of bid security.

Any bid not accompanied by an acceptable bid security, shall be rejected by EESL 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 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 for Tender Conditions inter alia including exemption of tender fee, Bid Security etc. applicable for MSE and Start-ups, please refer **Section 2:**

The bid security may be forfeited if:

- a) If the bidder withdraws its bid during the period of bid validity as specified in the bid / RFP document. (Banning policy as per Annexure-IV of RfP document)
- b) If the bidder does not accept computational/arithmetical error correction made

by EESL and as explained in “Financial Evaluation” section of the Bid/ RfP document.

- c) If the bidder does not accept assumptions, estimations etc. used for evaluation of bids as specified by EESL in tender documents and revision of his bid accordingly, in case other assumptions are used. If the bidder does not accept the sharing as specified in the bid.
- d) If the Bidder refuses to withdraw, without any cost to the EESL, any deviation not listed in Attachment 5 but found elsewhere in the bid; or
- e) In the case of successful bidder, if the bidder fails within the specified time limit:
  - To sign the contract agreement within 28 days of placement of LoI/Award letter.
  - To furnish the required performance security, in accordance with the tender document.

**PRICE BID - Srinagar Municipal Corporation:****Annexure – 1:**

(For Reference Purpose Only. Please fill the prices in excel sheet available at e-portal only).

**Name of Work:** Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir.

Sr. No.	Description of work	Proposed Quantity	Unit of Measurement (UOM)	Base Price per Unit Qty. (In Rs.)	No. of Months	Total price [excluding GST] on (In Figures)
1		2	3	4	5	6=4×2×5
1	Dismantling, retrofit/installation and commissioning of LED Lights (A)	37121	Per Light	Please fill the prices in excel sheet available at e-portal only	1	
	<b>Maintenance cost</b>					
2	Repair, Operation and Maintenance of LED street lights for 54 Months period (B)	42121	Per Light Per Month for 54 Months		54	
	Total Cost (Installation+ Maintenance cost for 54 Months) C=A+B	-	Per Light		-	
<b>Total Cost (In Words)</b>						

**Buyback for Srinagar Municipal Corporation**

S. No.	Description of Work	Proposed Quantity	Unit of Measurement (UOM)	Base Price Per Unit Qty. (In Rs.)	Total Price [Excluding GST] on (In Figures)	Total Price [Excluding GST] (In Words)
	1	2	3	4	5=4×2	6
1	Buyback of dismantled conventional/old luminaires	42121	Per Light			

### Other terms and conditions

1. The Bidder has to quote for complete works by filling individual line items i.e., PART A+B.
2. For the purpose of calculation the number of months in row 1 has been kept as 01 Nos. only.
3. The Bidder shall indicate in the Price Bid, the unit prices in Rs. (INR) and total Bid prices of the Goods & Services in the prescribed format only. Bidders shall quote for the complete requirement of Goods and Services specified under the Contract on a single responsibility basis, failing which such Bids will not be taken into account for evaluation and will not be considered for award.
4. The bidder should compulsorily quote for all heads in the price-bid format for which separate analysis/ reasonable estimation of all heads should be done by the bidder before quoting the rates in the financial bid. Any contravention may lead to rejection of offer submitted.
5. Any other item as required for commissioning the system for reliable and efficient operation to be provided within the quoted price.
6. The above prices are exclusive only of GST. Successful bidder mandatorily registered himself under GST act.
7. The price mentioned in Price Bid table is inclusive of all the costs as per the scope of supplies/ work. Cost of transportation, loading/ unloading, P&F, transit, insurance, handling, delivery at site etc. and of all the applicable taxes (except GST only), duties, levies, etc. any other charges on any account/ incidental to services shall be inclusive in the Prices and no separate claim in this regard will be entertained by the EESL.
8. The bidder shall submit PAN and GST number in support of claim of GST.
9. Bidders to quote for all items in each bid otherwise their bid will be rejected.
10. If there is a discrepancy between words and figures, the amount written in words will prevail.
11. Please note that, the maintenance cost per Light for 54 Months (as per price bid table) quoted by bidder should be mandatorily be at least 1.5 times the installation cost per Light. In case, the quoted cost of maintenance per Light for 04 year 06 months is not at least 1.5 times the Installation cost, then EESL at its own discretion will divide the quoted price of installation and maintenance proportionally.
12. Prices will remain firm till the execution of the contract.
13. **Please provide HSN/SAC code related to items/services.**

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

(SEAL)

Signature of Tenderer or  
Their Authorized Representative: \_\_\_\_\_

Dated  
:

Name & Address of Tenderer: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-Mail: \_\_\_\_\_

## Annexure

### BOM form

Broad Guideline Table: Monthly O&M Per Point/Month Calculation																
1. For Sample Only   2. Not to be Submitted by Bidders   3.This table is only for Internal Calculation of Bidders, if they intend to use it																
Project Name	Example: 1 Division, 4 ULB									ULB List		4W big	3W	2W	People	
Number of lights	100000									ULB	100000	0	0	0	0	
												0	0	0	0	
EXPENSES												0	0	0	0	
CAPITAL COST	Cost/ unit	Qty	Total Cost									0	0	0	0	
4W vehicle		25	0									0	0	0	0	
3W vehicle		0	0									0	0	0	0	
2W vehicle		25	0									0	0	0	0	
Office Setup charges		1	0									0	0	0	0	
Total			0									0	0	0	0	
					Working days/month	26	days			Total Lamps	100000	0	0	0	0	
MONTHLY FIXED COST	Cost/Month	Qty (as per requirem ent)	Fixed Cost/month		Cost Recovery Period for vehicles	36	months			No. of lamps per person	#DIV/0!					
Office Rent		1	0							Note: Change the number of 2W/3W/4W to change the no. of lamps per person						

4W cost recovery	0	25	0		Note: Adjust Cost recovery period to account for Vehicle Maintenance / Annual FC / Insurance											
3W cost recovery	0	0	0													
2W cost recovery	0	25	0													
Project Head (Per Division)		1	0													
Project Manager (Per ULB)		4	0													
Team Lead / Supervisor (Per 5 Installation and Maintenance teams)		25	0													
Project Engineer (Per 20000 Lights)		5	0													
Ward-In-Charge (Per 20 Wards)		20	0													
Store Incharge/Computer Operator		4	0													
Total			0													
OPERATING COST	Cost/Month	Qty	Op Exp/Month													
Office Expenses (Water, Power, Internet, consumables)		1	0													
Refreshment Exp (Daily tea, snacks) [Rs.100 per team]		50	0													



Fuel for 4W		25	0													
Fuel for 3W		0	0													
Fuel for 2W		25	0													
Total			0			10%	10%									
					Cost per Lamp	Overheads	Profit	Total								
Total Operation Cost / month			0		0	0	0	0								
	Cost/Month	Qty	Exp/Month													
Material Consumables		5000	0		0	0	0	0								
					TOTAL COST PER LAMP PER YEAR			0								
					TOTAL O&M COST PER YEAR			0								
Annual % Increase in O&M Charges	5%															
	Year 1	Year 2	Year 3	Year 4	Year 5						TOTAL					
Cost per lamp per year	0	0	0	0	0						0					
O&M COST per year	0	0	0	0	0						0					

\*\*\*\*\*

**PART D - Eligibility and Qualifying Requirements (QR)-DIC & R&M Srinagar Municipal Corporation**

**A. Eligibility Criteria:**

<b>Sl. No.</b>	<b>Eligibility finalised based on deliberation of QR Committee</b>	<b>Documents to be Submitted for Compliance by the Bidders</b>
<b>1.</b>	<p>Bidder should be a Single Entity means a limited company (as defined in the Companies Act, 1956 and further amendment thereof)</p> <p align="center">OR</p> <p>A registered partnership firm (registered under section 59 of the Partnership Act, 1932 and further amendment thereof)</p> <p align="center">OR</p> <p>A limited liability partnership (under the Limited Liability Partnership Act, 2008 and further amendment thereof)</p> <p align="center">OR</p> <p>Proprietorship firm</p> <p><b>(No Consortium is allowed in the tender)</b></p>	<p>Copy of certificate of incorporation / Memorandum of Association / Article of Association</p> <p align="center">OR</p> <p>A registered Partnership Deed</p> <p align="center">OR</p> <p>LLP registration certificate issued by registrar of Companies</p> <p align="center">OR</p> <p>In Case of Proprietor GST Registration and PAN Card Copy is to be submitted.</p>
<b>2.</b>	<p>PPP MII guidelines issued by Govt. of India shall be applicable for this tender.</p> <p>Only Class-I Local Suppliers with 60% minimum local content are eligible to bid in this tender in conformance with the order for "Public procurement (Preference to make in India) to provide for Purchase preference (linked with local content in respect of Power sector" issued vide ref no. A-1/2021-FSC-Part (5) GoI, MOP Dated 16.11.2021</p>	<p>Documents to be submitted by Bidder</p> <p>The Bidder shall give a self-certification in his bid in the given format, indicating the percentage of Local Content and certifying that the item offered meets the Local Content requirement for 'Class -I local supplier' and shall give details of the location(s) at which value addition is made.</p>

Sl. No.	Eligibility finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
	NOTE: - Only Class-I suppliers as defined in the above tender are eligible to take part in this bidding process.	Further, in case of tenders above Rs. 10 Cr, the 'Class-I local supplier' shall provide a certificate from statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of Local Content as per the format in this RfP Documents.
3.	<p>Pursuant to Order No. F. No 6/18/2019-PPD dated-23-July-2020 from Department of Expenditure, Ministry of Finance, the applicant should be either of the following:</p> <ul style="list-style-type: none"> <li>Not from a country which shares a land border with India</li> <li>OR</li> <li>Applicant from a country which shares a land border with India and registered with Competent Authority in accordance with order mentioned above.</li> </ul> <p>The definition of "Bidder" from a country which shares a land border with India shall be as in paragraph 8 of the above mentioned order. Further, all the guidelines mentioned to this above order shall be applicable to this Tender. Bidder shall carefully go through the same and ensure its eligibility as per the said order.</p>	Bidder to submit a Declaration as per the format given in this RfP Document.
4.	Not to be blacklisted by Central/State/UT Government or any Public sector entities for the tender item/work.	To submit Self Declaration duly signed and stamped on Company's Letter Head.
5	<p>Bidder must have valid '<b>B' Class or higher Electrical Contractor</b> certification issued by competent Government Authority.</p> <p>License/certificate issued by the competent Government authority establishing the equivalence of class 'B' or higher shall also be considered, wherever class is not categorically mentioned on the license.</p>	<p>Certificate issued by Competent Government Authority.</p> <p>OR</p> <p>Copy of renewal application duly acknowledged by the authorities shall be submitted along with the bid in event of license getting expired.</p>

Sl. No.	Eligibility finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
	<p>Contractor(s) shall ensure that their license is valid as on last date of submission of bid. In event of expiry, the contractor(s) shall furnish the proof that they have submitted the application for renewal of License as on last date of submission of bid.</p> <p><b>Note:</b></p> <ol style="list-style-type: none"> <li><i>In event of non-submission of valid class 'B' or higher electrical license or its renewal application duly acknowledged by the office of competent Government Authority, their Bid shall be out rightly rejected.</i></li> <li><i>It is the responsibility of the contractor to keep the license valid during the execution of the contract for the complete contract duration, in event of order.</i></li> </ol>	

#### B. Qualifying Requirements:

S. No.	QR finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
1	<p><b>QUALIFICATION OF THE BIDDER</b></p> <p>Qualification of bidder will be based on meeting the minimum pass/fail criteria specified below regarding the Bidder's Technical Experience and Financial QR as demonstrated by the Bidder's responses in its Bid.</p> <p>Subcontractors' technical experience and financial resources shall not be taken into account in determining the Bidder's compliance with the qualifying criteria. <b>The bid can be submitted by an individual firm only (i.e., Sole bidder) Consortium not allowed.</b></p>	

S. No.	QR finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
1.1	Technical Experience	
1.1.1	<p>Bidder should have successfully executed / completed <b>‘Similar work’</b> in the last 3 years, as on the originally scheduled date of bid opening (i.e., date of bid opening as per NIT) in <b>DISCOMS (both private &amp; Government Distribution Company) /Government Department/Public Sector Undertaking (PSU)/ Urban Local Body (ULB)</b></p> <ul style="list-style-type: none"> <li>· Single Work Order valued not less than <b>Rs. 2.02 Crore</b></li> <li style="text-align: center;">OR</li> <li>· Two Work Orders each valued not less than <b>Rs. 1.26 Crore</b></li> <li style="text-align: center;">OR`</li> <li>· Three Work Orders each valued not less than <b>Rs. 1.01 Crore</b></li> </ul> <p><b>‘Similar Work’ means “Repair &amp; Maintenance work of Street Lights or CCMS work or LT 440 volts’ work/HT 11 KV/ Electrical Project execution works in any Power Distribution Utilities/ DISCOMS/ ULBs/or any other Govt. Organization.”</b></p> <p><i>Note:</i></p> <ol style="list-style-type: none"> <li>Orders executed for DIC work of Street Lights &amp; flood Lights shall also be considered under the definition of ‘Similar work’.</li> </ol>	<p>Documentary evidence shall be furnished along with the bid. Documentary evidence should be submitted in the form of copies of relevant work orders/ contract agreement/ purchase order along with copies of any document in respect of satisfactory execution/ completion certificate of each of those purchase orders/ work orders such as</p> <ul style="list-style-type: none"> <li>(i) Successful completion*</li> <li style="text-align: center;">(OR)</li> <li>(ii) any other documentary evidences that can substantiate the successful execution of each of the purchase order/ work order submitted.</li> </ul> <p><b>Work orders along with its evidence for successful completion / execution shall be from any DISCOMS (both private &amp; Government Distribution Company) /Government Department/Public Sector Undertaking (PSU)/ Urban Local Body (ULB) which will only will be considered for evaluation.</b></p> <p><i>*Successful means certificate issued by the client without any adverse remarks.</i></p>

S. No.	QR finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
	<p>2. The work “executed” mentioned above means the bidder should have achieved the criteria specified above even if the total contract is started earlier and/or is not completed / closed. However, the work executed /completed must include “Similar work” as above.</p> <p>3. In case of orders under execution, the value of work executed as on the originally scheduled date of bid opening (i.e., date of bid opening as per NIT) as certified by the Client shall be considered. However, the work executed must include “Similar work” as above.</p> <p>4. All the above works should have executed by the bidder directly as a contractor and not as subcontractor.</p>	
<b>1.2 Financial QR:</b>		
1.2.1	<p>Bidders should have an Average Annual Turnover (ATO) of not less than <b>Rs. 75.63 Lakhs</b> during the last 3 Financial Years.</p> <p><b>Note:</b></p> <p>It may be noted that existence of Bidder for 1 FY will suffice the purpose. Accordingly, for calculation of ATO the audited financial figures as available shall be considered, however, in case of ATO for less than 3 years the financial figures for available years shall be averaged out for 3 years (i.e., total available Turnover shall be divided by 3) for Financial QR compliance.</p>	<p>Duly authorized copy of audited financials for preceding last three Financial Year is to be submitted by bidder.</p> <p>ATO means revenue from operations.</p>
1.2.2	<p>Bidder shall have liquid assets (L.A) or/ and evidence of access to or availability of credit facilities of not less than <b>Rs. 63.02 Lakhs</b></p>	<p>Duly authorized copy of audited financials for preceding last three Financial Year is to be submitted by bidder (<b>Balance Sheet of</b></p>

S. No.	QR finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
	<p>(Balance Sheet of immediate last financial year would be considered for this calculation.)</p> <p>Note: The LA for the bidder shall be calculated from the Audited Financial Statement as per the following:</p> <p><b>L.A= [Current Assets- Inventory]</b></p>	<p>immediate last financial year would be considered for this calculation.)</p> <p style="text-align: center;"><b>OR</b></p> <p>Certification from Bank regarding availability of credit facilities of not less than <b>Rs. 63.02 Lakhs</b></p> <p>Such Certificates should have been issued not earlier than three months prior to originally scheduled date of bid opening (i.e., date of bid opening as per NIT).</p> <p><b>Format of Certificate is enclosed as Annexure-IV.</b></p>
1.2.3	<p>The net worth of the bidder in immediate last financial year should not be less than 100% of paid-up share capital or capital.</p> <p><i>Additionally, in case of Proprietor/Partnership, Net Worth may be considered negative in case closing capital of immediately preceding year is</i></p>	<p>Duly authorized copy of audited financials for preceding last three Financial Year is to be submitted by bidder.</p>

S. No.	QR finalised based on deliberation of QR Committee	Documents to be Submitted for Compliance by the Bidders
	<p><i>less than average closing capital of previous 3 financial years including immediate preceding year.</i></p> <p><b>Note:</b></p> <p>It may be noted that existence of Bidder for 1 FY will suffice the purpose. Accordingly, for calculation of Net worth the audited financial figures as available shall be considered. (e.g., for considering net-worth calculations, if bidder is in existence for 2 Years' and Audited Financial Statements for both years are available then average of 2 years shall be considered. Similarly, if only one-year Audited Financial Statements is available the same will be considered for net-worth calculations). Same Philosophy shall be applicable for Proprietor/partnership firms also.</p>	

**C. Notes to the QR:**

Sl. No.	Finalised based on deliberation of QR Committee
1.	<p><b>Financial QR:</b></p> <p>The Bidder shall also furnish documentary evidence/ declaration regarding Financial re-structuring of the company, if any. If the opening of the bids or the ascertainment of qualification is carried out after 30<sup>th</sup> September, the bidder shall be required to submit the complete annual reports together with Audited statement of accounts of the company for the immediately preceding Financial Year except in cases where the Board of the Company/ Registrar of Companies has granted extension of time for finalization of accounts, for which the bidder has to submit requisite documentary evidence. In case of Bidder's failure to submit the same along with the Bid or subsequently pursuant to Clarification, the Bid shall be rejected.</p>



Sl. No.	Finalised based on deliberation of QR Committee
	<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• In case of proprietorship/ partnership (as applicable as per sl.no-1 of Eligibility Criteria), ITR along with management signed accounts to be submitted if audit is not required.</li> <li>• In case of Proprietor / Partnership firm, where auditing of Balance Sheet is not required, the date of ITR (if extended) to be considered. Proof of extension from the Income Tax Department to be submitted by the bidder.</li> </ul>
2.	For Start-up firms as per Gazette Notifications dated: 17-Feb-2016, G.S.R. 180 (E) and MSEs relaxation will be given in this tender as per Clause No. 2.4 of Section-2 of this tender.
3.	<p><b><u>In case of holding company:</u></b> - The holding subsidiary relationship should be in existence for at least one year as on the date of submission of the bids.</p> <ul style="list-style-type: none"> <li>• “In case bidder is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the bidder can be considered acceptable provided the bidder furnishes the following further documents on substantiation of its qualification:</li> <li>• Copies of the unaudited unconsolidated financial statements of the Bidder along with copies of the audited consolidated financial statements of the Holding Company with a letter of undertaking from holding company supported by Board pledging unconditional and financial support. Irrevocable in the format enclosed in Attachemnt-9 of Section-6, Forms &amp; Procedures.</li> <li>• A certificate from the CEO/CFO of the holding company, stating that the unaudited consolidated financial statements form part of the Consolidated Annual Report of the Company.</li> <li>• In case a bidder does not satisfy the financial criteria, the holding company would be required to meet the stipulated turn over requirements, provided that the net worth of such holding company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the holding company. In such an event, the bidder would be required to furnish along with its bid, a letter of Undertaking from the holding company, supported by the Board Resolution, as per the format enclosed in the bid documents (Attachemnt-9 of Section-6, Forms &amp; Procedures), pledging unconditional and irrevocable financial support for the execution of the Contract by the bidders in case of award.</li> <li>• In case the Bidder meets the requirement of Net worth based on the strength of its Subsidiary(ies) and/or Holding Company and/or Subsidiaries of its Holding Companies wherever applicable, the Net worth of the Bidder and its Subsidiary(ies) and/or Holding</li> </ul>

Sl. No.	Finalised based on deliberation of QR Committee
	<p>Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% of their total paid up share capital. However individually, their Net worth should not be less than 75% of their respective paid up share capitals.”</p> <ul style="list-style-type: none"> <li>• The supporting documents in support of above Qualification Requirement should be submitted along with tender document, otherwise Techno-commercial offer submitted by the bidder is liable to be considered as non-responsive.</li> <li>• All the required documents must be properly annexed and submitted as mentioned above with necessary details in brief</li> </ul>

xxxxxxxxxxxxxxxxx The End xxxxxxxxxxxxx



## SECTION 5

### 1. Measurement and Verification (M&V)

Not Applicable for this tender

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<b>NIT/BID Document No.:-</b> EESL/NRC/-J&K/2022-23/SLNP/DIC-SMC/OTE/222303001 Dated: 21/03/2023	SECTION - 5 (M & V)	Page 1 of 1
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## SECTION-6

### Forms & Procedures

#### List of Contents

Sr. No	Attachment No	Name of Form
1	Attachment No-1	Bid Form (Format of Application)
2	Attachment No-2	Form for Submitting BG Format in lieu of EMD
3	Attachment No-3	Power of Attorney
4	Attachment No-4	Certificate Regarding Acceptance of Important Terms & conditions
5	Attachment No-5	Deviation Statement
6	Attachment No-6	Form of acceptance of fraud prevention policy
7	Attachment No-7	Proforma of letter of undertaking(in case of Holding Company)
8	Attachment No-8	Real time gross settlement (RTGS)/ National Electronic Fund Transfer (NEFT)
9	Attachment No-9	Compliance Matrix/ CHECK - LIST FOR BIDDERS
10	Attachment No-10	Format for Affidavit of Self certification regarding Local Content in line with PPP-MII order and MoP Order, if applicable
11	Attachment No-11	Certification by the Bidder as per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order)
12	Attachment No-12	Format for filling details related to Qualifying Requirement (QR) along with certificate.
13	Attachment No-13	Certificate regarding non- debarment for false declaration of local content
14	Attachment No-14	Certificate regarding non debarment / blacklisting/disqualification
15	Attachment No-15	Proforma of bank guarantee for contract performance
16	Attachment No-16	Form of Undertaking by the Joint Venture Partners (if applicable)
16	Attachment - A	Format for Notification of Award to be issued to successful Agency/Consultant/Contractor on letterhead paper of the Employer

Sr. No	Attachment No	Name of Form
17	Attachment - B	Format for Contract Agreement to be signed between successful Agency/Consultant/Contractor and Employer on INR 100/- non-judicial Stamp Paper

**List of Appendix to Contract Agreement**

Sr. No	Appendix To Contract Agreement	Name of Form
1	Appendix No-1	Terms and procedures of payment
2	Appendix No-2	Price adjustment
3	Appendix No-3	Insurance requirements
4	Appendix No-4	Time schedule
5	Appendix No-5	List of approved subcontractors
6	Appendix No-6	Scope of Works and Supply by the Employer
7	Appendix No-7	List of Documents for Approval or Review
8	Appendix No-8	Guarantees, liquidated damages for non - performance
9	Appendix No-9	Contract Co-ordination procedure
10	Appendix No-10	Summary of Contract Price for Services for complete scope of the Work as per RFP Documents

**BID FORM (FORMAT OF APPLICATION)**

To,  
 Cluster Head (NRC)  
 Energy Efficiency Services Limited.  
 (A JV of PSUs of Ministry of Power, Govt. of India)  
 Core-5, 4<sup>th</sup> Floor, SCOPE Complex,  
 Lodhi Road, New Delhi-110003

Subject: - .....

**Date:-xx-xx-2023**

Dear Sir,

1.0 With Reference to your subject IFB/RfP, we are pleased to submit our bid/proposal for the Package as mentioned under “Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir” in a sealed cover as detailed below:

2.0 Packet-I of Envelope 1:

- (a) **Bid Fee:** Fee towards cost of RfP Documents as per clause ITB 1.4 or documentary evidence as mentioned in Annexure-II of RFP in support of exemption of Document Fee.
- (b) **Bid Security Fee/Earnest Money Deposit:** In the form of Banker's Cheque / Demand Draft drawn in favour of “Energy Efficiency Services Limited” or in the form of Bank Guarantee as per prescribed format at **Attachment-2** in section 6 or documentary evidence as mentioned in Annexure-II of RFP in support of exemption of Bid Security/EMD.

3.0 Packet-II of Envelope 1:

- (a) Attachment 1: Bid Form
- (b) Attachment 2: Form for Submitting BG Format in lieu of EMD
- (c) Attachment 3: Power of Attorney
- (d) Attachment 4: Certificate regarding acceptance of important terms and conditions
- (e) Attachment 5: Deviation statement
- (f) Attachment 6: Form of acceptance of EESL fraud prevention policy
- (g) Attachment 7: An undertaking by Holding Company (As Applicable).
- (h) Attachment 8: Format for details regarding RTGS/NEFT Payments
- (i) Attachment 9: Compliance Matrix/ Check – List for Bidders
- (j) Attachment 10: Certificate Regarding Declaration of Local Content
- (k) Attachment 11: “Restrictions on procurement from a Bidder of a country which shares a land border with India” Certification by the Bidder per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order)
- (l) Attachment-12: Details regarding Qualifying Requirement /Eligibility criteria as per Part-D (Section-4).
- (m) Attachment-13: Declaration duly signed on Company Letter Head Pad with company's seal 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 general financial rules.
- (n) Attachment-14: Certificate regarding non debarment / blacklisting/disqualification
- (o) Techno-commercial bid as indicated in bid document. Documentary evidence regarding bidder's qualifications to perform the contract as required in qualifying Requirement

- 4.0 Envelope 2: Price Bid (duly filled in electronic template as available on the e-portal)
- 5.0 We confirm that we have quoted as per instructions and terms and conditions of tender/RfP documents. Further, it is certified that in line with clause 1.1.2 of Section-2 (ITB) no conflict of interest exists as on date and if in future such a conflict of interest arises, we will intimate the same
- 6.0 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 & duties except applicable GST. The GST shall be paid extra at actual
- 7.0 We further declare that additional conditions, variations, deviations, if any, found in the proposal save those pertaining to any rebates offered, shall not be given effect to.
- 8.0 We undertake, if our bid is accepted, we shall commence the work immediately upon your Notification of Award to us, to achieve completion of work within the time specified in the bidding documents.
- 9.0 We agree to abide by this bid for a period Six Months from the date of opening of bids as stipulated in the RfP 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 issuance of Notification of Award.
- 10.0 Until a formal contract is prepared and executed between us, this bid, together with your written acceptance thereof in the form of your Notification of Award shall constitute a binding contract between us.
- 11.0 We understand that you are not bound to accept the lowest or any other bid you may receive.
- 12.0 We declare that we are registered, as applicable, with ESIC, EPF and Miscellaneous Provisions Act 1952 and will comply with Employees Compensation Act, 1923 and Minimum Wages Act, 1948
- 13.0 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 without 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.:  
LAND LINE NO.:

**Our correspondence details are:**

1	Name of the bidder	
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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	

**Note: In case of non-submission of this Bid form, bid will be rejected**



**Form for Submitting BG Format in lieu of EMD**

(To be stamped in accordance with Stamp Act, if any, of the country of the issuing Bank)

Bank Guarantee No. ....

Date.....

To:

Energy Efficiency Services Limited.  
(A JV of PSUs of Ministry of Power, Govt. of India)  
Core-3, 6<sup>th</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 Energy Efficiency 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

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 EESL in any manner) ?	
h)	In case of deviations in text of BG, which materially affect the right of EESL, 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?	

#### ANNEXURE-A

#### 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

**(D) 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
59.	Bank of Bahrain& Kuwait	75.	Development Bank of Singapore
60.	Mashreq Bank	76.	Bank of Ceylon
61.	Bank of Nova Scotia	77.	Bank International Indonesia
62.	The Bank of Tokyo-Mitsubishi UFJ Limited.	78.	Arab Bangladesh Bank
63.	Calyon Bank	79.	Cho Hung Bank
64.	BNP Paribas	80.	China Trust Bank
65.	Barclays Bank	81.	MIzuho Corporate Bank Ltd.
66.	Citi Bank	82.	Krung Thai Bank
67.	Deutsche Bank	83.	Antwerp Diamond Bank N.V. Belgium
68.	The Hong Kong and Shanghai Banking Corporation Ltd.	84.	Internationale Nederlanden Bank N.V. (ING Bank)
69.	Oman International Bank	85.	Bank of China Ltd.
70.	SocieteGenerale		

**(E) PUBLIC SECTOR BANK**

Sl. No.	Name of Banks	Sl. No.	Name of Banks
86.	IDBI Ltd.		

**Note:** Any Addition/Deletion/Modification/ in Bank list shall be as per changes in second schedule List of above categories of Bank by RBI from time to time.

Tender Document No/Package No:

Dated:

Package Details.....

**POWER OF ATTORNEY**

**BIDDER TO ATTACH THE POWER OF ATTORNEY IN THEIR OWN FORMAT**

Tender Document No/Package No:

Dated:

**(CERTIFICATE REGARDING ACCEPTANCE OF IMPORTANT CONDITIONS)**

Bidder's Name&amp; Address

To,  
 Cluster Head (NRC)  
 Energy Efficiency Services Limited.  
 (A JV of PSUs of Ministry of Power, Govt. of India)  
 Core-5, 4th 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 5 of GCC
Settlement of Disputes	-	Clause 6 of GCC
Terms of payment	-	Clause 12 of GCC
Performance Security	-	Clause 13.3 of GCC
Taxes and Duties	-	Clause 14 of GCC
Completion Time Guarantee	-	Clause 26 of GCC
Defects Liability	-	Clause 27 of GCC
Functional Guarantee	-	Clause 28 of GCC
Patent Indemnity	-	Clause 29 of GCC
Limitations of Liability	-	Clause 30 of GCC
Project information, Estimation, Assumptions and conditions for Evaluation	-	As per Tables in price bid

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 EESL.

Date:  
Place:

Signature:  
Printed Name:

Designation:  
Common Seal

NAME OF WORK.....

BIDDING DOCUMENT NO.....

**(Deviations Statement)**

Bidder's Name and Address:

To,

Cluster Head (NRC)  
 Energy Efficiency Services Limited.  
 (A JV of PSUs of Ministry of Power, Govt. of India)  
 Core-5, 4th 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
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A. COMMERCIAL DEVIATIONS:

B. TECHNICAL DEVIATIONS:

Date : (Signature).....

Place : (Printed Name).....

(Designation).....

(Common Seal) .....

**Note:**

1. Continuations sheets of like size and format may be used as per Bidder's requirement.
2. In case of non-submission of this Attachment, the bid shall be considered as no deviation bid.



**FORM OF ACCEPTANCE OF FRAUD PREVENTION POLICY**  
**(On the letter head)**

**To:**

Cluster Head (NRC)  
 Energy Efficiency Services Limited.  
 (A JV of PSUs of Ministry of Power, Govt. of India)  
 Core-5, 4th Floor Scope Complex,  
 Lodhi Road, New Delhi - 110003

Sub: Letter of Acceptance of EESL Fraud Policy  
 Ref: NIT/RFP 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)**

**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,

Cluster Head (NRC)  
Energy Efficiency Services Limited.  
(A JV of PSUs of Ministry of Power, Govt. of India)  
Core-5, 4th 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 EESL.

4.0 We are herewith enclosing a copy of the Board Resolution in support of this undertaking.

**Witness:**

**Yours faithfully,**

(1) .....

(Signature of Authorized Signatory)

on behalf of the Holding Company

(2) .....

Name & Designation .....

Name of the Holding Company .....

(Seal of Holding Company)

**REAL TIME GROSS SETTLEMENT (RTGS)/ NATIONAL ELECTRONIC FUND  
TRANASFER (NEFT)**

From: M/s \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Sub: RTGS/NEFT Payments

We are agree 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	
GSTIN of Supplier	
PAN No. of Supplier	

A cancelled cheque against above bank account number is also being enclosed.

Encl: As above: -

Confirmed by Banker  
of supplier  
With Seal

Signature

With stamp & Address

**Compliance Matrix/ CHECK – LIST FOR BIDDERS**

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

Sr. No.	Detail/Terms & Conditions	Applicable For	Attached		Reasons for non-compliance/remarks
			Yes	No	
1	Bid Fee (If Applicable)	Indian Bidders			
2	EMD (If Applicable)	Indian Bidders			
3	Bid Fee exempted for being MSE/Start-up	Indian Bidders			
	EMD exempted for being MSE/Start-up	Indian Bidders			
	In case of claiming exemption in submission of Bid Fee and EMD, Relevant Certificate of MSEs/Start-up certificate from DIPP (Refer Section-2) is required to be submitted	Indian Bidders			
	In case of claiming exemption in submission of Bid Fee and EMD, enclose proof of being a manufacturer of tendered. Relevant document issued by competent Govt. Authority/Body shall be submitted.	Indian Bidders			
	In case of Start-up, Business Eligibility certificate (for item tendered) is also required to be submitted	Indian Bidders			
	In case of SC/ST entrepreneurs belonging to MSE, documentary proof to be submitted	Indian Bidders			
	In case of Women entrepreneurs belonging to MSE, documentary proof to be submitted	Indian Bidders			
5	Duly signed and company sealed copy of whole tender document and subsequent amendments (if any)	Indian Bidders			
6	Duly filled up and attached Technical (Unpriced) Bid and all applicable formats of tender document.	Indian Bidders			
7	Acceptance of important terms and conditions in line with ITB clause 4.6 as per format attached as Attachment-4,	Indian Bidders			
8	Separate sheet(s) of deviation (Attachment-5) If any, from the tender conditions with seal and signature of authorized personnel.	Indian Bidders			
9	Form of acceptance of EESL fraud prevention policy and declaration as per Attachment- 6	Indian Bidders			
10	CERTIFICATE REGARDING DECLARATION OF LOCAL CONTENT (As per attachment 10 of the tender document)	Indian Bidders			

9	Certification by the Bidder per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order) (as per format in Attachment -11 of Section-6)	Indian Bidders			
10	GST Registration Certificate and PAN Card Copy.	Indian Bidders			

**NOT TO BE PRINTED ALONG WITH ABOVE TABLE**

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.

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

..... **Name of the Tender**.....;

**Date:**

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

That I will agree to abide by the terms and conditions of the Public Procurement (Preference to Make in India) Order, 2017 of Government of India issued vide Notification No: P-45021/2/2017 -BE-II dated 15/06/2017, its revision dated **16/09/2020** (hereinafter **PPP-MII order**),

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

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

.....

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

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

....., is ..... percent (%).

That the goods/services/works supplied by me for .....

....., meet the 'Local Content' requirement as defined in the PPP-MII order **and MoP order for 'Class -I local supplier'**.

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

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

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

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

For and on behalf of..... (Name of firm/entity)  
 Authorized signatory (To be duly authorized by the Board of Directors)  
 <Insert Name, Designation and Contact No.>



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

Dear Sir,

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

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

and any subsequent modifications/ Amendments, if any.

In line with the provisions of the PPP-MII Order and MoP Order, M/s. ....[Enter the name of the Bidder] [hereinafter, “Class-I Local Supplier”] have submitted an Affidavit of self-certification to M/s. Energy Efficiency Services Limited [hereinafter, EESL] regarding Local Content in Goods/Services/Works to be supplied by the “Class-I Local Supplier” for “Design, Manufacture, Testing and Supply of 2 Lakh Nos. of 10 Watt Rechargeable Emergency Inverter LED Bulb with 2 years’ warranty on Rate Contract Basis for Pan India Delivery”.

wherein they have agreed to abide by the terms and conditions of the PPP-MII Order and MoP Order:

Further, in line with the PPP-MII Order, the statutory auditor or cost auditor of the company (in the case of companies) or a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) shall provide a certificate giving the percentage of Local Content in the Goods/Service/Works to be supplied by the “Class-I Local Supplier” for “Design, Manufacture, Testing and Supply of 2 Lakh Nos. of 10 Watt Rechargeable Emergency Inverter LED Bulb with 2 years’ warranty on Rate Contract Basis for Pan India Delivery”.

Accordingly, we, the Statutory Auditor(s) / Cost auditor of the “Class-I Local Supplier” a practicing cost accountant or practicing chartered accountant [choose as applicable], certify that the Local Content as defined under the PPP-MII and MoP Order, in the Goods/Service/Works to be supplied by the “Class-I Local Supplier” for “Design, Manufacture, Testing and Supply of 2 Lakh Nos. of 10 Watt Rechargeable Emergency Inverter LED Bulb with 2 years’ warranty on Rate Contract Basis for Pan India Delivery” is ..... percentage [specify the percentage of Local content].

For and on behalf of,

Date:

<<Statutory Auditor’s/Cost auditor’s/Cost accountant’s/Chartered accountant’s attestation>>

Firm Reg No. Membership No.

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

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

- 1.0 We have read and understood the provisions of Order no. F.No.6/18/2019-PPD (Order Public Procurement no.1) dated 23/07/2020 regarding “Restriction under Rule 144(xi) of General Financial Rules” and F.No.6/18/2019-PPD (Order Public Procurement no.2) dated 23/07/2020 regarding “Exclusions from Restriction under Rule 144(xi) of General Financial Rules” issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India [hereinafter collectively “**DoE Order**”] and any subsequent modifications/ Amendments, if any.
- 2.0 Particularly, we, the Bidder, have read the clause regarding restrictions on procurement from a ‘Bidder of a country which shares a land border with India’ and on sub-contracting to contractors from such countries.
- 3.0 We certify that we, the bidder is not from such a country or, if from such a country, has been registered **as per provisions of the requisite Order/Circular/Document** with the Competent Authority and will not subcontract any work to a subcontractor/sub vendor from such countries unless such subcontractor/sub vendor fulfils all requirement in this regard and is eligible to be considered. [*Where applicable, evidence of valid registration by the Competent Authority shall be attached.*]
- 4.0 We further declare that any misrepresentation or submission of false/forged document/information in this regard shall be dealt with as per the provisions of RfP Documents and/or EESL’s policy and procedures.

**Date:**

**Printed Name:**

**Place:**

**Designation:**

**Format for filling details related to Eligibility Conditions and Qualifying Requirement (QR):**

*(This format is required to be submitted by the Bidder along with data/details/documents submitted in support of meeting criteria for eligibility conditions and QR)*

Eligibility Conditions		
Sl. No.	Details	Declaration by the Bidder (Declare/Tick (√) whichever is applicable)
1.	Status of the Bidder	
a.	Bidder should be a Single Entity means a limited company (as defined in the Companies Act, 1956 and further amendment thereof)	<input type="checkbox"/>
b.	A registered partnership firm (registered under section 59 of the Partnership Act, 1932)	<input type="checkbox"/>
c.	A limited liability partnership (under the Limited Liability Partnership Act, 2008)	<input type="checkbox"/>
1.1	Details of Documents submitted as evidence for aforesaid status	(....fill in no. and date of Documentary evidence....)
2.	<p>PPP MII guidelines issued by Govt. of India shall be applicable for this tender.</p> <p>Only Class-I Local Suppliers with 60% minimum local content are eligible to bid in this tender in conformance with the order for “Public procurement (Preference to make in India) to provide for Purchase preference (linked with local content) in respect of Power sector” issued vide ref no. A-1/2021-FSC-Part (5) GoI, MOP Dated 16.11.2021</p> <p>NOTE: - Only Class-I suppliers as defined in the above tender are eligible to take part in this bidding process.</p>	<p>Attachment 10 is attached</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
3.	<p>Pursuant to Order No. F. No 6/18/2019-PPD dated-23-July-2020 from Department of Expenditure, Ministry of Finance, the applicant should be either of the following:</p> <ul style="list-style-type: none"> <li>Not from a country which shares a land border with India</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>Applicant from a country which shares a land border with India and registered with Competent Authority in accordance with order mentioned above.</li> </ul> <p>The definition of “Bidder” from a country which shares a land border with India shall be as in paragraph 8 of the above mentioned order. Further, all the guidelines mentioned to this above order shall be applicable to this Tender. Bidder shall carefully go through the same and ensure its eligibility as per the said order.</p>	<p>Attachment 11 is attached</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
4.	Not to be blacklisted by Central/State/UT Government or any Public sector entities for the tender item/work duly signed and stamped at company's Letter Head.	<p>Submitted Self Declaration on Company's Letter Head</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>

Qualifying Requirement		
Sl. No.	Details	Declaration by the Bidder (Declare/Tick (√) whichever is applicable)
1.1.1	Mention no. and date of Contract for which Documentary Evidence is attached in respect of work experience for 'Similar Work' in line with the QR Sr. No. 1.1.1	(--fill in Contract No. and its Date-----)
a)	Mention Name and Address of Client along with Contact details of concerned person	(--fill in requisite details----- --)
b)	<p>Whether Scope of Work under above referred Contract at sl. no. 1.1.1 includes below mentioned similar work:</p> <p><b>"Similar Work" means experience of Repair &amp; Maintenance work of Street Lights or CCMS work or LT 440 volts' work/HT 11 KV/ Electrical Project execution works in any Power Distribution Utilities/ DISCOMS/ ULBs/or any other Govt. Organization."</b></p> <p><i>Note:</i></p> <ol style="list-style-type: none"> <li>Orders executed for DIC work of Street Lights &amp; flood Lights shall also be considered under the definition of 'Similar work'.</li> <li>The work "executed" mentioned above means the bidder should have achieved the criteria specified above even if the total contract is started earlier and/or is not completed / closed. However, the work executed /completed must include "Similar work" as above.</li> <li>In case of orders under execution, the value of work executed as on the originally scheduled date of bid opening (i.e., date of bid opening as per NIT) as certified by the Client shall be considered. However, the work executed must include "Similar work" as above.</li> <li>All the above works should have executed by the bidder directly as a contractor and not as subcontractor.</li> </ol>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
	Bidder should have successfully executed / completed 'Similar work' in the last 3 years	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
	Single Work Order/Two Work Orders/Three Work Orders executed/completed in last three years.	----- Value in INR Crores
c)	Value of Work Order	----- -

d)	Date of execution/completion	....DD/MM/YYYY...
----	------------------------------	-------------------

Sl. No.	Details	Declaration by the Bidder (Declare/Tick (✓) whichever is applicable)
1.2.1	Average Annual Turnover (ATO) during the last 3 Financial Years (i) Financial Year 1 (ii) Financial Year 2 (iii) Financial Year 3	INR..... INR..... INR.....
1.2.1.1	Duly authorized copy of audited financial statements for preceding last three Financial Year is submitted	Yes <input type="checkbox"/>  No <input type="checkbox"/>
1.2.2	Liquid Assets (L.A) as on 31st March of last available Year.	INR.....
1.2.2.1	Certification from Bank regarding availability of credit facilities is submitted.	Yes <input type="checkbox"/>  No <input type="checkbox"/>
1.2.3	Net worth of the bidder in immediate last financial year	INR.....
2	Bidder is Start-up/MSE as per relevant policy/guidelines of Government of India.	MSE <input type="checkbox"/>  Start-up <input type="checkbox"/> None <input type="checkbox"/>
2.1	Documentary Evidence Submitted in support of sl. no.2 above	(...fill in name of Documentary Evidence....)

I hereby declare that data/details as filled-in hereinabove are true and correct, in case of any misrepresentation by us suitable action may be taken by EESL as per the provision of RFP Documents and EESL's Policy and Guidelines.

Signature:

Name:

Designation:

For and on behalf of M/s.....

**CERTIFICATE REGARDING NON- DEBARMENT FOR FALSE DECLARATION OF  
LOCAL CONTENT  
[On the Letter Head]**

To,  
Cluster Head (NRC)  
Energy Efficiency Services Limited.  
(A JV of PSUs of Ministry of Power, Govt. of India)  
4<sup>th</sup> Floor, CORE –5, Scope Complex, Lodhi Road, New Delhi 110003

**Sub: Certificate regarding non debarment for false declaration of Local Content**

**Ref: NIT/Bid Document No: .....**

Dear Sir/Madam,

We certify that we are not under debar list/undergoing debarment period on account of breach of the code of integrity under rule 175(1)(i)(h) of General Financial Rules for giving false declaration of local content.

Thanking You,

Yours faithfully,

Signature

.....  
Printed Name.....

Seal.....

Date:

Place:

**CERTIFICATE REGARDING NON DEBARMENT / BLACKLISTING/DISQUALIFICATION**  
**[On the Letter Head]**

To,  
 Cluster Head (NRC)  
 Energy Efficiency Services Limited.  
 (A JV of PSUs of Ministry of Power, Govt. of India)  
 4<sup>th</sup> Floor, CORE –5, Scope Complex, Lodhi Road, New Delhi 110003

**Sub: Certificate regarding non debarment / blacklisting/disqualification**

**Ref: NIT/Bid Document No: .....**

Dear Sir/Madam,

We certify that we have not been black-listed/debarred/dis-qualified by any regulatory/ statutory body/ Central/State/UT Government or any Public sector entities for tendered services. We further certify that we have read the contents of the Fraud Prevention Policy of EESL (available on website of EESL i.e. [www.eeslindia.org](http://www.eeslindia.org)) 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.....

Seal.....

Date:

Place:



(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,

Energy Efficiency Services Limited.  
(A JV of PSUs of Ministry of Power, Govt. of India)  
Core-5, 4th Floor Scope Complex,  
Lodhi Road, New Delhi - 110003

Dear Sirs,

In consideration of the EESL, (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 extent 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.

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

Signature

.....

Bank's Rubber Stamp

.....

Official Address

.....

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)	
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 EESL in any manner)?	
h)	In case of deviations in text of BG, which materially affect the right of EESL, 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

• **Nationalized 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

**C. Foreign Banks**

S.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.	45.	IDFC Bank.
46.	South Indian Bank		

**E. Other Public Sector Banks**

Sl.No.	Name of Banks	Sl. No.	Name of Banks
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45.	IDBI Ltd.		
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**Note:** Any Addition/Deletion/Modification/ in Bank list shall be as per changes in second schedule List of above categories of Bank by RBI from time to time.

**FORM OF UNDERTAKING BY THE JOINT VENTURE PARTNERS (If Applicable)**  
**(On Non-Judicial Stamp Paper of Appropriate Value if required)**

THIS JOINT DEED OF UNDERTAKING executed on this..... day of..... Two Thousand and..... by ..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "Party No.1" which expression shall include its successors, executors and permitted assigns) and M/s.....a company incorporated under the laws of.....andhaving its Registered Office at..... (hereinafter called the "Party No.2" which expression shall include its successors, executors and permitted assigns ) for the purpose of making a bid and entering into a contract [hereinafter called the "Contract" {in case of award}] against the NIT/ICB No.....for ... .. *(insert name of the Tender)*... .. of Energy Efficiency Services Limited, a Company incorporated under the Companies Act of 1956 having its registered office at NFL Building, 5th & 6th Floor, Core - III, SCOPE Complex, Lodhi Road, New Delhi - 110003 (hereinafter called the "Purchaser").

WHEREAS the Party No.1 and Party No.2 have entered into an Agreement dated .....

AND WHEREAS the Purchaser invited bids as per the above mentioned Specification for the design, manufacture, Supply of Equipment Materials stipulated in the bidding documents under subject **Tender i.e.**.....

AND WHEREAS Clause 19, Section-ITB and BDS (documents establishing the Qualification of Bidder) & Qualification Criteria in Section-3 forming part of the bidding documents, inter-alia stipulates that an Undertaking of two qualified manufacturers as partners, meeting the requirements of Qualification Criteria in Section-3, as applicable may bid, provided, the Joint Venture fulfills all other requirements under Clause 4 of ITB and Qualification Criteria in Section-3 and in such a case, the Bid Submission Sheets shall be signed by all the partners so as to legally bind all the Partners of the Joint Venture, who will be jointly and severally liable to perform the Contract and all obligations hereunder.

The above clause further states that this Undertaking shall be attached to the bid and the Contract performance guarantee will be as per the format enclosed with the bidding document without any restrictions or liability for either party.

AND WHEREAS the bid is being submitted to the Purchaser vide proposal No.....dated..... by Party No.1 based on this Undertaking between all the parties; under these presents and the bid in accordance with the requirements of Clause 19, Section-ITB and BDS (documents establishing the Qualification of Bidder) & Qualification Criteria in Section-3, has been signed by all the parties.

NOW THIS UNDERTAKING WITNESSETH AS UNDER:

In consideration of the above premises and agreements all the parties of this Deed of Undertaking do hereby declare and undertake:

1. In requirement of the award of the Contract by the Purchaser to the Joint Venture Partners, we, the Parties do hereby undertake that M/s..... the Party No.1, shall act as Lead Partner and further declare and confirm that we the parties to the Joint Venture shall jointly and severally be bound unto the Purchaser for the successful performance of the Contract and shall be fully responsible for the design, manufacture, Supply, and successful performance of the equipment in accordance with the Contract:
2. In case of any breach or default of the said Contract by any of the parties to the Joint Venture, the party(s) do hereby undertake to be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.
3. Further, if the Purchaser suffers any loss or damage on account of any breach in the Contract or any shortfall in the performance of the equipment in meeting the performances guaranteed as per the specification in terms of the Contract, the Party(s) of these presents undertake to promptly make good such loss or damages caused to the Purchaser, on its demand without any demur. It shall not be necessary or obligatory for the Purchaser to proceed against Lead Partner to these presents before proceeding against or dealing with the other Party(s), the Purchaser can proceed against any of the parties who shall be jointly and severally liable for the performance and all other liabilities/obligations under the Contract to the Purchaser.
4. The financial liability of the Parties of this Deed of Undertaking to the Purchaser, with respect to any of the claims rising out of the performance or non-performance of the obligations set forth in this Deed of Undertaking, read in conjunction with the relevant conditions of the Contract shall, however not be limited in any way so as to restrict or limit the liabilities or obligations of any of the Parties of this Deed of Undertaking.
5. It is expressly understood and agreed between the Parties to this Undertaking that the responsibilities and obligations of each of the Parties are given as in the bid. It is further undertaken by the parties that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities of the Parties under the Contract.
6. It is also understood that this Undertaking is provided for the purposes of undertaking joint and several liabilities of the partners to the Joint Venture for submission of the bid and performance of the Contract. and that this Undertaking shall not be deemed to give rise to any additional liabilities or obligations, in any manner or any law, on any of the Parties to this Undertaking or on the Joint Venture, other than the express provisions of the Contract.
7. This Undertaking shall be construed and interpreted in accordance with the provisions of the Contract.
8. In case of an award of a Contract, we the parties to this Deed of Undertaking do hereby agree that we shall be jointly and severally responsible for furnishing a Contract performance security from a bank in favour of the Purchaser in the currency/currencies

of the Contract. In case of award on us, the delineation of scope of work shall be as per the following:

Sl. No.	Scope of Work to be executed by	
	Party No.-1	Party No.-2

9. It is further agreed that this Deed of Undertaking shall be irrevocable and shall form an integral part of the bid and shall continue to be enforceable till the Purchaser discharges the same or upon the completion of the Contract in accordance with its provisions, whichever is earlier. It shall be effective from the date first mentioned above for all purposes and intents.

IN WITNESS WHEREOF, the Parties to this Deed of Undertaking have through their authorised representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of .....

For Lead Partner (Party No.-1)

has been affixed in my/ our

For and on behalf of M/s .....

presence pursuant to Board of

Director's Resolution dated .....

Name .....

Designation .....

(Signature of the authorized  
representative)

Signature .....

**WITNESS :**

**I.** .....

**II.** .....

Common Seal of .....

For Party No.-2

has been affixed in my/ our

For and on behalf of M/s.....

presence pursuant to Board of



Director's Resolution dated .....

(Signature of the authorized  
representative)

Name .....

Designation .....

Signature .....

**WITNESS :**

**I.** .....

**II.** .....

Common Seal of .....

For Party No.-3

has been affixed in my/ our

For and on behalf of M/s .....

presence pursuant to Board of

Director's Resolution dated .....

Name .....

Designation .....

(Signature of the authorized  
representative)

Signature .....

**WITNESS:**

**I.** .....

**II.** .....

## FORM OF POWER OF ATTORNEY FOR JOINT VENTURE (if applicable)

(On Non-Judicial Stamp Paper of Appropriate Value if required)

KNOW ALL MEN BY THESE PRESENTS THAT WE, the Partners whose details are given hereunder..... have formed a Joint Venture under the laws of ..... and having our Registered Office/Head Office at ..... (hereinafter called the 'Joint Venture' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) acting through M/s. .... being the Partner incharge do hereby constitute, nominate and appoint M/s. .... a Company incorporated under the laws of ..... and having its Registered/Head Office at ..... as our duly constituted lawful Attorney (hereinafter called "Attorney" or "Authorized Representative" or "Partner In-charge") to exercise all or any of the powers for and on behalf of the Joint Venture in regard to Specification No.....; Package ....., the bids for which have been invited by Energy Efficiency Services Limited, a Company incorporated under the Companies Act of 1956 having its registered office at NFL Building, 5th & 6th Floor, Core - III, SCOPE Complex, Lodhi Road, New Delhi - 110003, INDIA (hereinafter called the "Purchaser") to undertake the following acts:

- i) To submit proposal and participate in the aforesaid Bid Specification of the Purchaser on behalf of the "Joint Venture".
- ii) To negotiate with the Purchaser the terms and conditions for award of the Contract pursuant to the aforesaid Bid and to sign the Contract with the Purchaser for and on behalf of the "Joint Venture".
- iii) To do any other act or submit any document related to the above.
- iv) To receive, accept and execute the Contract for and on behalf of the "Joint Venture".
- v) To receive payment on behalf of the "Joint Venture".
- vi) To authorize any other partners of the Joint Venture, if necessary, to receive payments under the contract.

It is clearly understood that the Partner In charge shall ensure performance of the Contract(s) and if one or more Partner fail to perform their respective portions of the Contract(s), the same shall be deemed to be a default by all the Partners.

It is expressly understood that this Power of Attorney shall remain valid binding and irrevocable till completion of the Warranty Period in terms of the Contract.

The Joint Venture hereby agrees and undertakes to ratify and confirm all the whatsoever the said Attorney / Authorised Representative quotes in the bid, negotiates and signs the Contract with the Purchaser and/or proposes to act on behalf of the Joint Venture by virtue of this Power of Attorney and the same shall bind the Joint Venture as if done by itself.

IN WITNESS THEREOF the Partners Constituting the Joint Venture as aforesaid have executed these presents on this ..... day of ..... under the Common Seal(s) of their Companies.

for and on behalf of  
the Partners of Joint Venture

.....  
.....  
.....

The Common Seal of the above Partners of the Joint Venture:

The Common Seal has been affixed there unto in the presence of:

**WITNESS**

1. Signature.....

Name .....

Designation .....

Occupation .....

2. Signature.....

Name .....

Designation .....

Occupation .....

**Notification of Award**

*[Format for Notification of Award to be issued to successful Agency/Consultant/Contractor on letterhead paper of the Employer]*

Ref. No.:

Date:

.....(*insert Consultant's/Agency's/Contractor's Name & Address*) .....

.....

Attn.: Mr.....

Sub.: Notification of Award for ..... (*insert name of the Tender*) ..... Specification No.:  
.....

(Project Funding: Domestic).

Dear Sir,

## 1.0 REFERENCE

This has reference to the following:

1.1 RfP documents for the subject package issued to you vide our letter Ref. No.  
..... dated .....,

1.1.1 Amendment/Errata No. .... to RfP Documents issued to you vide our letter no.  
..... dated .....

(*Applicable only if any Errata/Amendment to the RfP Documents has been issued subsequently*)

1.1.2 Clarifications to the RfP Documents, pursuant to pre-Bid conference held on .....,  
issued to you vide our letters no. .... dated ..... (*Use as applicable*)

(*Applicable only if any clarification to the RfP Documents has been issued subsequently*)

(*INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE  
MADE TO THE AGENCY/CONSULTANT/CONTRACTOR AFTER ISSUANCE OF RfP  
DOCUMENTS UP TO BID OPENING*)

1.2 First envelope of your Bid submitted for the subject package under Bid reference no.  
..... dated ..... was opened on ..... (*Use as applicable*)

1.3 Intimation for Opening of Second Envelope issued to you vide our letter no. ....  
dated .....

1.4 Second Envelope of your Bid under Bid/Proposal reference no. .... dated  
..... was opened on..... (*Use as applicable*)

- 1.5 (to be inserted if applicable) Post bid discussions we had with you on various dates from ..... to ..... resulting into the Minutes of Meeting/ Record Notes of Post Bid Discussions enclosed as APPENDIX (NOA)-1 with this Notification of Award.

## 2.0 AWARD OF CONTRACT AND ITS SCOPE

- 2.1 We confirm having accepted your Bid (referred to at para 1.3 & 1.5 above) read in conjunction with all the specifications, terms & conditions of the RfP Documents (referred to at para 1.2, 1.2.1 & 1.2.2 [modify as applicable] above) and specific confirmations recorded in the Record Notes of Post Bid Discussions (referred to at para 1.6 above), and award on you the Contract for ..... (insert name of the Tender) ..... The scope of work inter-alia includes..... (Indicate brief Scope of Work) ..... as detailed in the documents referred hereinabove.

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the RfP Documents and/or your Bid but are necessary for the successful completion of your scope under the Contract for ..... (insert name of Tender) ....., unless otherwise specifically excluded in the RfP Documents or in this NOA.

## 3.0 CONTRACT PRICE

- 3.1 The total Contract Price for the entire scope of work under this Contract shall be ..... (Specify the currency and the amount in figures & words) ..... as per the following break-up:

Sl. No.	Price Component	Amount
1	Supply Component	
a	Ex Works Price	
2	Services Component	
a	Local Transportation, in-transit Insurance etc.	
b	Any other Service	
2	<b>Total</b>	

- 3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract.
- 4.0 You are required to furnish at the earliest a Performance Security(ies), as per the RfP Documents, for an amount of ..... (Specify the value) ..... i.e. equal to 10% (Ten percent) of the Contract Price, and valid upto and including ..... and any other securities as per the RfP Documents.
- (In case any other performance security is required to be furnished, the same is to be mentioned here)
- 5.0 All the bank guarantees shall be furnished from an eligible bank as described in the RfP Documents.

- 6.0 The schedule for Completion of entire scope of works covered under ..... (*insert name of Tender*) .... shall be ... (*indicate the completion schedule*) .... months from the date of issue of this Notification of Award for all contractual purposes.
- 7.0 This Notification of Award constitutes formation of the Contract and comes into force with effect from the date of issuance of this Notification of Award.
- 8.0 You shall enter into a Contract Agreement with us within twenty-eight (28) days from the date of this Notification of Award.
- 9.0 This Notification of Award is being issued to you in duplicate. We request you to return its duplicate copy duly signed and stamped on each page including the enclosed Appendix as a token of your acknowledgement.

Please take the necessary action to commence the work and confirm action.

Yours faithfully,

For and on behalf of

.....(*Name of the Employer*) .....

(*Authorized Signatory*)

Enclosures (if Applicable):

APPENDIX (NOA) – 1 - Record Notes of Post - Bid Discussions held on various dates from ..... to .....

**Contract Agreement**

*[Format for Contract Agreement to be signed between successful Agency/consultant/Contractor and Employer on INR 100/- non-judicial Stamp Paper]*

CONTRACT AGREEMENT BETWEEN .....(Name of Employer) ..... AND M/s. .... (Name of Agency/Consultant/Contractor) .....

THIS CONTRACT AGREEMENT No. .... (also referred to as 'Contract') is made on the .... day of ..... 20....

BETWEEN

(1) .....(Name of Employer) ..... a company incorporated under the laws of Companies Act 1956 and having its Registered Office at ..... (registered address of the Employer) ..... and its Corporate Office at .....(address of the Employer)..... (hereinafter called "the Employer" and also referred to as "....(insert abbreviated name of the Employer) .....")

and

(2) M/s .....(Name of Agency/Consultant/Contractor) ....., a company incorporated under the laws of Companies Act 1956 and having its Principal place of business at ..... (Address of Agency/Consultant/Contractor) ..... and Registered Office at .....(Registered address of Agency/Consultant/Contractor) ..... (hereinafter called "the Agency" / "the Consultant" and also referred to as ".....(insert abbreviated name of the Consultant) .....").

WHEREAS the Employer desires to engage the Agency/Consultant/Contractor for ..... (Indicate brief scope of work) ..... for the complete execution of the ..... (insert name of Package along with name of the Project)..... as detailed in the Contract Document, and the Consultant has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

1.1 Contract Documents

The following documents shall constitute the Contract between the Employer and the Agency/*Consultant/Contractor*, and each shall be read and construed as an integral part of the Contract:

#### VOLUME – A

1. This Contract Agreement and the Appendices thereto.
2. Notification of Award Ref. No. .... dated .....

#### VOLUME – B

3. Complete “RfP Documents” read in conjunction with Amendments .... to ..... to the RfP Documents.

#### VOLUME – C

4. Proposal Submitted by the Agency/*Consultant/Contractor*.

(Only relevant extracts are attached herewith for easy reference. Should the circumstances warrant, the original Proposal along with the enclosures thereof, shall be referred to.).

#### 1.2 Order of Precedence

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

#### 1.3 Definitions (Reference Conditions of Contract Clause 1.0.1)

- 1.3.1 Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the Conditions of Contract.

### Article 2. Contract Price and Terms of Payment

#### 2.1 Contract Price

The Employer hereby agrees to pay to the Agency/*Consultant/Contractor* the Contract Price in consideration of the performance by the Agency/*Consultant/Contractor* of its obligations hereunder. The Contract Price shall be the aggregate of ..... (*amount in words*) ..... (*.....(amount in figures) .....* ), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract price is as under:

Sl. No.	Price Component	Amount
1	Supply Component	
a	Ex Works Price	
2	Services Component	
a	Local Transportation, in-transit Insurance etc.	
b	Any other Service	
2	<b>Total</b>	



The detailed break-up of Contract Price is given in the relevant Appendices hereto.

## 2.2 Terms of Payment (Reference Conditions of Contract Clause 13.0.0)

The terms and procedures of payment according to which the Employer will reimburse the *Agency/Consultant/Contractor* are given in Appendix 1 (Terms and Procedures of Payment) hereto.

## Article 3. Effective Date for Determining Time for Completion

### 3.1 Effective Date (Reference Conditions of Contract Clause 1.0.1)

The Time of Completion of entire scope of work shall be determined from the date of the Notification of Award i.e., from .....

## Article 4. Appendices

The Appendices listed in the List of Appendices, as mentioned below, shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

### List of Appendices

Appendix 1	Terms and Procedures of Payment
Appendix 2	Price Adjustment
Appendix 3	Insurance Requirement
Appendix 4	Time Schedule
Appendix 5	List of Approved Subcontractors
Appendix 6	Scope of Works and Supply by the Employer
Appendix 7	List of Documents for Approval or Review
Appendix 8	Guarantees, Liquidated Damages for Non - Performance
Appendix 9	Contract Co-ordination Procedure
Appendix 10	Summary of Contract Price for Services for complete scope of the work as per RfP Documents

IN WITNESS WHEREOF the Employer and the *Agency/Consultant/Contractor* have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by for and  
on behalf of the Employer

.....

Signature

Signed by for and  
on behalf of the  
*Agency/Consultant/Contractor*

.....

Signature

.....

Title

in the presence of

.....

Title

in the presence of

## Appendix-1 to Contract Agreement

### TERMS AND PROCEDURES OF PAYMENT

In accordance with the provisions of GCC clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on price schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties. The Contractor may make applications for payment in respect of part deliveries as work proceeds.

#### 1. TERMS OF PAYMENT

<u>Period of Payment</u>	<u>Payment Terms</u>	<u>Condition of Payments</u>
Installation Phase (A)	100 % of LoA rates for Dismantling, Installation and commissioning shall be made to the BIDDER within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL after completion of every 3000 Lights of installation; subject to fulfilment of contractual obligations. (In case of last stage of completion of installation, payment shall be made on submission of Bill/invoice of completion of installation of last lot of LED Street Lights or 3000 LED Street Lights whichever is lower.)	After Submission of Jointly verified Installation report by the ULB and EESL's/ representative
Maintenance Phase (B):	100% of LoA rates (per month) for the repair and maintenance of installed LED SLs/FLs by EESL shall be made to the bidder within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL after completion for all installed lights; subject to fulfilment of contractual obligations.  Bidder to ensure to raise the invoice on monthly basis with the supporting documents.	Submission of report by ULB and EESL's representative for Satisfactory performance on monthly basis.
IDC (c):	100 % of LoA rates for IDC Supply, Installation and commissioning shall be made to the BIDDER within 30 Days from the date of submission of original bill/invoice duly certified/ verified by representative of EESL and ULB after completion	After Submission of Jointly verified Installation report by the ULB and EESL's representative

- a) During the maintenance phase, the BIDDER should raise bill (s) on monthly basis to the EESL during maintenance phase. All bills shall be submitted to concern Engineer in charge for verification/ certification for work along with satisfactory performance certificate from respective ULBs and other necessary statutory records, challans, slips wages record etc. before submission of bill(s) for payment. All the payment during the maintenance phase will be released on monthly basis during the contract period.
- b) The Bills shall be certified by the Engineer-In-Charge or its Authorized representative. The certification of Bills by the Engineer in charge shall mean that all the jobs specified wherever in the contract / Annexure has been carried out by the BIDDER satisfactorily which shall hold good for payments of Bills.
- c) Relevant Certificate/ document to be submitted by the successful bidder for Minimum wages paid by the BIDDER to their employees.
- d) Successful bidder has to sign a Contract agreement with EESL within 07 days of issuance of LoA.
- e) EESL reserves right to cancel the bid without giving any reason.

**Conditions of Payment:**

- a) The payment shall be processed only upon receipt of (i) acceptance of LoA and signing of contract agreement; (ii) submission of CPG as per tender documents in addition to deliverable documents.
- b) The Consultant/Agency must submit all the documents/reports as per the deliverables of this tender document. If work is not completed within the timelines as mentioned in the Scope of Work/ Deliverable or as provided by EESL, then respective payments will be done after deductions of the LD (Liquidated Damages) amount as per the relevant LD clause or other amounts as per terms & conditions.
- c) The amount will be payable in Indian Rupees as per payment milestones/ terms after successful completion of services rendered as per the deliverables mentioned in scope of work.
- d) No advance payment shall be made.
- e) Agency will raise/submit GST Invoice as per prescribed format in GST law or as per the law for the time being in force, only after compliance of Payment Terms and its certification by EESL Officer in charge (OIC) or its authorized representative.
- f) The Fee shall be inclusive of all charges except applicable GST, which shall be paid extra. Taxes should be indicated separately on the invoice.
- g) Payment shall be released upon the passing of GST- ITC to EESL within prescribed timeframe in GST Law and after deduction of all applicable Taxes (Direct and indirect).
- h) The payment will be made within 30 days from compliance of Payment Terms as mentioned above.

**1.1 Payment towards Taxes and Duties**

Employer is liable for and shall pay only applicable GST on various components of prices. Suppliers are required to quote their prices inclusive of all taxes and duties except

applicable GST. The Input Tax Credit (ITC) available, if any, under the GST Law as per the relevant Government policies wherever applicable shall be taken into account by the Implementing Partner while quoting bid price. EESL's liability shall be only for applicable GST.

No increase in Taxes and Duties (in case of change), which are payable as per the Contract, shall be allowed beyond the original delivery/ Installation dates unless specifically stated in the Time Extension Letter, if any, issued by the Employer. The Employer will, however, be entitled to any decrease in the Contract Price which may be caused due to lower payable Taxes and Duties amount in case of delivery of Goods/ Installation beyond the original delivery/Installation dates. Therefore, in case of delivery of Goods/Installation beyond the original delivery/ Installation dates, the liability of the Employer shall be limited to the lower of the payable Taxes and Duties amount which may work out either on schedule date or actual date of despatch of Goods/ Installation

Notwithstanding anything above or elsewhere in the contract, in event that input Tax credit of the GST charged by the supplier, is denied by the tax authorities to the employer for reasons associated with non-compliance/incorrect compliance by the supplier, the employer shall be entitled to recover such amount from the supplier by way of adjustment from any of the subsequent invoices submitted by the supplier to the employer. In addition to the amount of GST, the employer shall be entitled to recover interest and penalty, in case any interest/or penalty is imposed by the tax authorities on the employer for incorrect/wrong availing of input tax credit. The employer shall determine whether the denial of credit is linked to the non-compliance/indirect compliance of the supplier and the said determination shall be binding on the supplier.

**Note: In any case, EESL shall not fund the subject project from its own resources.**

**\*\*End of Appendix-1\*\***

## **Appendix-2 to Contract Agreement**

### **PRICE ADJUSTMENT**

The Contract price shall remain **FIRM** and **FIXED** and shall not be subject to Price adjustment for the entire duration of the Contract, in accordance with the provisions of the RfP documents.

**\*\*End of Appendix-2\*\***

**INSURANCE REQUIREMENTS (If applicable)****A) Insurances to be taken out by the Contractor**

In accordance with the provisions of GCC, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld. The inability of the insurers to provide insurance cover in the sums and with the deductibles and other conditions as set forth below, shall not absolve the Contractor of his risks and liabilities. However, in such a case the Contractor shall be required to furnish to the Employer documentary evidence from the insurer in support of the insurer's inability as aforesaid.

**(a) Transit Insurance Policy****(I)(i) Transit Insurance Policy for indigenous equipment**

Transit Insurance Policy shall be taken wherein only inland transit is involved for the movement of Goods/Plant and Equipment including mandatory Spares supplied from within India. The policy shall cover movement of Goods/ Plant and Equipment including mandatory Spares from the manufacturer's works to the final destination site. Inland Transit Clause (ITC) 'A' along with Strike Riots & Civil Commotion (SRCC) extension cover shall be taken.

Amount	Deductible Limits	Parties insured	From	To
100% of Supply/Ex Works Price Component of Contract Price of all the Goods /Plant and Equipment including mandatory Spares (if any) to be supplied from within India plus GST, if additionally payable.	Nil	Contractor & Employer	Manufacturer warehouse	Project's warehouse store at final destination or Site location

**Note: Deductibles, if any, shall be to the Contractor's account**

- (II) If during the execution of Contract, the Employer requests the Contractor to take any other add-on cover(s)/ supplementary cover(s) in aforesaid insurance, in such a case, the Contractor shall promptly take such add-on cover(s)/ supplementary cover(s) and the charges towards such premium for such add-on cover(s)/ supplementary cover(s) shall be reimbursed to the Contractor on submission documentary evidence of payment to the Insurance company. Therefore, charges towards premium for such add-on cover(s)/ supplementary cover(s) are not included in the Contract Price.

- (III) The Contractor shall take the policy in the joint names of Employer and the Contractor. The policy shall indicate the Employer as the beneficiary. However, if the Contractor is having an open policy for its line of business, it should obtain an endorsement of the open cover policy from the insurance company indicating that the dispatches against this Contract are duly covered under its open policy and include the name of the Employer as jointly Insured in the endorsements to the open policy.

B) Insurances to be taken out by the Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Amount	Deductible limits	Parties Insured	From	To
_____ NIL _____				

-- End --

**\*\*End of Appendix-3\*\***

## TIME SCHEDULE

1. The Project Completion Schedule shall be as follows:

Sl. No.	Activity	Completion period/Delivery Schedule
1.	Dismantling, Installation (Retrofit), Commissioning, Repair and Maintenance of LED Street lights in Srinagar Municipal Corporation (SMC), Jammu & Kashmir as per Scope of Work under Section-4(Part-B) of Bidding Document.	<p><b>a. Detailed Field Survey</b></p> <ul style="list-style-type: none"> <li>Completion of Field Survey in entire Division/ULBs within 7 days of issuance of LOA.</li> </ul> <p><b>b. Installation and Commissioning of LED Streetlight</b></p> <p>Entire material to be delivered, installed, and commissioned Within 8 weeks of issuance of LoA for Srinagar Municipal Corporation.</p> <p>Maintenance of Streetlights for 54 months or Feb 2027 whichever is earlier.</p> <p>Above para may be read in detail at point number 5 of Part -B Section 4.</p>

- 1.1 The activity(ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like Dismantling, Retrofit, Repair, Design, engineering, manufacturing, supply, installation, factory testing, transportation to site, site testing and commissioning, etc. of the Facilities or specific part thereof (where specific parts are specified in SCC). The network shall conform to the above Project Completion Schedule.

The successful Bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalize the same with the Employer as per the requirement specified in Technical Specifications, which shall form a part of the Contract.

- 1.2 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful Bidder.
- 1.3 **Time for Completion is the essence of Contract.**

**\*\*End of Appendix-4\*\***



**LIST OF APPROVED SUBCONTRACTORS (If applicable)**

The following Subcontractors/Sub-Suppliers are approved for carrying out the work /items under the Contract as indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

<b>Work/Items under Contract</b>	<b>Approved Subcontractors</b>	<b>Nationality</b>

**\*\*End of Appendix-5\*\***

**SCOPE OF WORKS AND SUPPLY BY THE EMPLOYER**

The following personnel, facilities, works and supplies will be provided/supplied by the Employer.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel Charge to Contractor – None

-----NIL-----

Facilities Charge to Contractor - None

-----NIL-----

Electricity and Water Charge to Contractor – None

-----NIL-----

Works Charge to Contractor - None

-----NIL-----

Supplies Charge to Contractor – None

-----NIL-----

**\*\*End of Appendix-6\*\***

**LIST OF DOCUMENTS FOR APPROVAL OR REVIEW**

Pursuant to GCC, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager the following documents for:

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

Note:

Bidder shall furnish the exhaustive list, which shall be discussed and finalized for incorporation into the Contract Agreement.

**\*\*End of Appendix-7\*\***

**GUARANTEES, LIQUIDATED DAMAGES FOR NON – PERFORMANCE**

**As applicable as per Technical Specs**

**CONTRACT CO-ORDINATION PROCEDURE**

**To be provided at the time of signing of Contract Agreement.**

# 16. FORMAT FOR EVIDENCE OF ACCESS TO OR AVAILABILITY OF CREDIT/FACILITIES

## BANK CERTIFICATE

This is to certify that M/s. \_\_\_\_\_ (insert Name & Address of the Contractor) \_\_\_\_\_ who have submitted their bid to .....(insert name of the Employer)..... against their tender specification Vide ref. No. .... for ..... (insert name of the package alongwith the project name) ..... is our customer for the past ..... years.

Their financial transaction with our Bank have been satisfactory. They enjoy the following fund based and non fund based limits including for guarantees, L/C and other credit facilities with us against which the extent of utilization as on date is also indicated below:

Sl. No.	Type of Facility	Sanctioned Limit as on Date	Utilisation as on Date

This letter is issued at the request of M/s. \_\_\_\_\_.

Signature \_\_\_\_\_

Name of Bank \_\_\_\_\_

Name of Authorised  
Signatory \_\_\_\_\_

Designation \_\_\_\_\_

Phone No. \_\_\_\_\_

Address \_\_\_\_\_

SEAL OF THE BANK