

SECTION-2

INSTRUCTIONS TO THE BIDDER (ITB)

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SECTION-2**INSTRUCTIONS TO THE BIDDER (ITB) / CONSORTIUM OF BIDDERS**

Name of the Work : Design, Supply, Installation, Testing, Commissioning & provide Warranty Services of 9,347,000 Nos. Solar Home Lighting System for Member Countries of International Solar Alliance (ISA).

NIT/Bid Document No.: **EESL/06/2020-21/ICB-ISA-SHLS/20216011** Dated: - 14.07.2020

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

A. The Bidding Documents

1.1 The bidding documents include the following

Section-1	Invitation for Bids (IFB)
Section-2	Instructions to Bidder (ITB)
Section-3	General Conditions of Contract
Section-4	Special Conditions of Contract (SCC) explaining in detail technical specifications, scope of work for supply/supply and installation & Commissioning/Consultancy, drawings, documents in support of bidder's qualifications (Qualifying Requirement), and Online Price Bid format.
Section-5	Measurements and Verification
Section-6	Forms & Procedure Format of Bid Form. Format for submitting BG format in lieu of EMD. Format for Power of Attorney. Format for Certificate regarding acceptance of important terms and conditions. Format for Deviations Statement. Format for submission of Contract Performance Guarantee (CPG). Form of acceptance of Fraud Prevention Policy. Format for submitting BG for Advance Payment, wherever applicable. Format for RTGS/NEFT payments. Format for Declaration of quantity. Format for Pre-bid query

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
2. "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

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- with the terms and conditions hereof.
3. "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";
 4. "Bid Security" shall mean the unconditional and irrevocable Earnest Money Deposit to be submitted along with the Bid by the Bidder under ITB Clause 2.4 of this Bid;
 5. "Bidding Company" shall refer to such single/consortium company that has submitted the Bid in accordance with the provisions of this Bid;
 6. "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;
 7. "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.
 8. "Chartered Accountant" shall mean a person practicing in Member Country or a firm whereof all the partners practicing in Member Country as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act, 1949;
 9. ~~"Company" shall mean a body incorporated in India under the Companies Act, 1956;~~
 10. "Contract" means the agreement entered into between the ISA Member Country Nodal Agency 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;
 11. "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.
 12. "Completion of Work" means that the Project/Works have been completed operationally and structurally and Commissioning has been attained as per Technical Specifications.
 13. "Commissioning" means successful operation of the Project/Works by the Contractor, for the purpose of carrying out Guarantee Test(s).
 14. "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;
 15. "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.
 16. "Day" means calendar day;
 17. "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.
 18. "Eligibility Criteria" shall mean the Eligibility Criteria as set forth in Section 3: Technical & Special Conditions of Contract of this BID;
 19. "Engineer-in-Charge" shall mean the person designated from time to time by the ISA Member Country Nodal Agency and shall include those who are expressly authorized by him to act for and on his behalf for operation of this Contract;
 20. "Effective Date" means the date from which the Time for Completion shall be determined;
 21. "GCC" means the General Conditions of Contract contained in this section;
 22. "GHI" shall mean Global Horizontal Irradiation.
 23. "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;
 24. "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.
 25. "ICC" shall mean International Chamber of Commerce
 26. "The Government" means the Government of Member Country or its Prospective Member Country
 27. "IEC" shall mean specifications of International Electro-technical Commission;

28. "EESL" shall mean Energy Efficiency Services Limited;
29. "MCNA" Shall mean ISA Member Country Nodal Agency authorized by Member Country
30. "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.
31. "NFP" shall mean National Focal Point
32. "CMC" shall mean Comprehensive Maintenance Contract;
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 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 ISA Member Country Nodal Agency'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 ISA Member Country Nodal Agency 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 International Electrotechnical Commission (IEC).
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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency to perform the services.

- 50. EMD: Earnest Money Deposit
- 51. EoI: Expression of Interest
- 52. SCC: Special Conditions of Contract
- 53. LoI: Letter of Intent
- 54. LoA: Letter of Acceptance
- 55. MoU: Memorandum of Understanding
- 56. MoP: Ministry of Power
- 57. EESL: Energy Efficiency Services Ltd
- 58. O&M: Operation & Maintenance
- 59. RfP: Request for Proposal
- 60. R&M: Repair & Maintenance
- 61. SD: Security Deposit
- 62. CPG: Contract Performance Guarantee
- 63. PMA: Project Management Agency
- 64. SHLS: Solar Home Lighting System
- 65. SB: Selected Bidder (s)

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 Member Country Standard Time.
4. Different parts of this contract are to be taken as mutually explanatory and supplementary to each other and if there is any differentiation between or among the parts of this contract, they shall be interpreted in a harmonious manner so as to give effect to each part.
5. The table of contents and any headings or sub headings in the contract has been inserted for case of reference only & shall not affect the interpretation of this agreement.

1.2 Clarification on Bidding Documents

A prospective Bidder requiring any clarification to the bidding documents may notify EESL in writing or by post or by telex or email) at EESL's mailing address indicated below. 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 EESL. Written copies of 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:
General Manager (BD),
Energy Efficiency Services Limited,
Core-3, Scope Complex, New Delhi - 110003

Email: agdsm@eesl.co.in; eproc@eesl.co.in

Whenever the bidder is silent about the acceptance of Tender Document/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 Tender Document/IFB conditions and no further correspondence seeking specific confirmation about acceptance of these conditions shall be made.

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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

At any time prior to the deadline for submission of bids, 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 on EESL and ISA website in writing 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 Tender Document/ Tender documents from the website <https://eesl.eproc.in>. The payment would be accepted in the form of ~~crossed Demand Draft (DD)/Pay Order~~/online payment, ~~payable at par at New Delhi, in favour of "Energy Efficiency Services Limited"~~ as specified in Section-1

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~~/online payment in favour of "Energy Efficiency Services Limited" payable at New Delhi along with the bid.

B. Preparation of Bids

2.1 Procedure for Submission of Bid/Tender Document.

~~Single Stage Single Envelope Bidding Process: (Standard practice if adopted, however, not applicable in this tender)~~

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~~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/Tender Document 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~~

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format as Attachment 2 of Section 6 (Forms & Procedures). **(Only EMD and Bid document fee related document to be submitted by post in sealed envelope super-scribed with Tender Document/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 2nd 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 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/Tender Document 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: (applicable in this tender document)

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 Online Payment ~~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 Tender Document/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 2nd 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.

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Envelope-III should contain Price Bid, to be submitted in 3rd 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 EESL office on or before the deadline for submission of the bid. Every envelope (3 inner and 1 outer) should be superscripted with Bid/Tender Document number and date, content of envelope i.e. bid security/price bid etc , name of work and Bid opening date.

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

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

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

2.2 Cost of Bid/ Tender Document

The Bidder or Consortium of bidders shall bear all costs associated with the preparation and submission of its Bid/Tender Document, including cost of presentation for the purposes of clarification of the bid, if so desired by 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/Tender Document 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)

Amount of Bid Security: Bid Security/Earnest Money deposit as mentioned in Section 1 is to be submitted.

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 ~~Demand Draft~~/online payment 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/ISA may ask the bidder to extend the validity of bid security. "The decision to extend the bid submission date shall rest solely with EESL/ISA."

Any bid not accompanied by an acceptable bid security, shall be rejected by EESL as being non-responsive and returned & further their bid document will not be opened. Also, tender cost shall not be refundable in such cases.

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.

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The bid securities of unsuccessful bidders will be returned as promptly as possible after the award is made to lowest evaluated technically acceptable bidder. While returning the EMD, any foreign currency gain/losses shall be borne by the bidder. Bidders may take suitable action to hedge/cover the fluctuation risk.

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.

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.
- b) If the bidder does not accept computational/arithmetical error correction made by EESL and as explained in "Financial Evaluation" section of the Bid/ Tender Document 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 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 15 days of placement of LoI/Award letter.
 - To furnish the required performance guarantee, in accordance with the tender document.

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 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 EESL and returned to the Bidder without being opened.

2.7 Deviations,

There shall be no Deviations entertained from the terms and conditions of bidding documents or technical specifications ~~shall be listed only in Attachment 5 to the bid. The Bidder shall also provide the additional price, if any, for withdrawal of the deviations. However, the attention of the bidders is drawn to the provisions of ITB sub-clause 4.6 regarding the rejection of bids that are not substantially responsive to the requirements of the bidding documents.~~

~~Bidders may further note that except for the deviations listed in Attachment 5, the bid shall be deemed to comply with all the requirement in the bidding documents and the bidders shall be required to comply with all such requirements of bidding documents and technical specifications without any extra cost to 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 EESL, the bidder shall withdraw these deviations listed in Attachment 5 at the cost of withdrawal stated by bidder in its bid. In case the bidder does not withdraw the~~

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~~deviations proposed, if any, at the cost of withdrawal stated in the bid, its 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 but not limited to 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 ISA Member Country Nodal Agency 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 USD only.

2.10 Period of Validity of Bid

Bids shall remain valid for a period of 180 days after the closing date prescribed by EESL for the receipt of bids. A bid valid for a shorter period may be rejected by EESL as being non responsive. In exceptional circumstances, 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.

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2.12 Contents of the Tender Document/Bid

The Bidder or consortium of bidders is expected to examine all instructions, forms, terms & conditions and scope of work in the Tender Document/bid documents. Failure to furnish all information required or submission of an Tender Document/bid document not substantially responsive to the Tender Document/bid document in every respect will be at the bidder's risk and may result in the rejection of the Tender Document/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 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 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, ISA 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 Tender Document/ bid document shall mean the one who has signed the bid/Tender Document 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.

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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 EESL's contact address.

2.18 Inspection / Checking / Testing

All materials / equipments manufactured by the bidder/consortium of bidders against the Letter of Award shall be subject to inspection, check and/or test by ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency 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, ISA Member Country Nodal Agency 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

ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency.

2.21 Taxes, Levies and Duties

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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 ISA Member Country Nodal Agency.

~~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 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 **ISA MEMBER COUNTRY NODAL AGENCY** without levy of LD. Tentative time schedule is enclosed in the Tender Document/ 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 the bidder in time against its 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 bidder alone shall be liable for damages, infringement and shall keep ISA MEMBER COUNTRY NODAL AGENCY indemnified in that regard in the event of any equipment/ material or part there of supplied by the bidder is involved in any suit or other proceedings held to constitute infringement and its used is enjoyed, the bidder shall, at his own expenses, either procure for ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY, the order may be cancelled. Such cancellation, would be without any liability

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whatsoever on the part of ISA MEMBER COUNTRY NODAL AGENCY. In the event of such cancellation, the bidder shall refund any amount advanced or paid to the bidder by ISA MEMBER COUNTRY NODAL AGENCY and deliver back any materials issued to bidder 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 ISA MEMBER COUNTRY NODAL AGENCY, 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 ISA MEMBER COUNTRY NODAL AGENCY and the aggregate liability of the Implementing Partner to the ISA MEMBER COUNTRY NODAL AGENCY, 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 ISA MEMBER COUNTRY NODAL AGENCY with respect to patent infringement or as specified in SCC.

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, Tender Document 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, Tender Document/ bid document no./package no. and date and bid opening date.

3.2 Deadline for submission of bids

Bids must be received by 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 (SCM),
Energy Efficiency Services Limited,
Core-3, Scope Complex, New Delhi - 110003
Email: eproc@eesl.co.in

Date of submission of bids: As mentioned in Section 1

Date of bid opening: As mentioned in Section 1

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 EESL, the bids will be received up to the appointed time on the next working day.

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:

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Any bid received by EESL after the bid submission deadline prescribed by 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

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 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 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 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.

EESL will prepare minutes of the bid opening.

4.2 Clarification on Bids

During bid evaluation, 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.

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.

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, 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,

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

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

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

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 EESL, and may not subsequently be made responsive by the bidder by correction of the nonconformity.

4.7 Technical Evaluation

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, EESL will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account, inter alia the following factors:

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- 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 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. 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.

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 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 ISA Member Country Nodal Agency 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 will be used if necessary. If such a price is not given

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in Attachment 5, 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 SCC.~~

~~The above date will be the effective date specified in the contract agreement. Bidders are required to quote 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 ISA Member Country Nodal Agency

~~Where bids include the undertaking of work or the provision of services or facilities by ISA Member Country Nodal Agency in excess of the provisions allowed for in the bidding documents, ISA Member Country Nodal Agency 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 Contacting the ISA Member Country Nodal Agency

Subject to ITB Clause 20, no Bidder shall contact the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency in the ISA Member Country Nodal Agency'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, EESL will determine to its satisfaction whether the bidder selected as having submitted the lowest evaluated responsive bid/or bidder giving highest return to ISA MEMBER COUNTRY NODAL AGENCY, 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.

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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 Tender Document forms in section 4 to the bid, as well as such other information as 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 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA Member Country Nodal Agency 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, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY failing which his bid security will be forfeited. Further, ISA MEMBER COUNTRY NODAL AGENCY 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 bidder, if any, at the cost of withdrawal stated in the bid, its 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 ISA Member Country Nodal Agency to terminate the other Contract also at the risk and the cost of the Contractor

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5.3 Quantity Variation

ISA MEMBER COUNTRY NODAL AGENCY or ISA 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

ISA MEMBER COUNTRY NODAL AGENCY or ISA 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 ISA MEMBER COUNTRY NODAL AGENCY may increase this quantity, if required.

5.5 EESL/ISA/ISA Member Country Nodal Agency's right to accept any bid and to reject any or all bids

EESL or ISA or ISA Member Country Nodal Agency 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 EESL's action.

5.6 Letter of Intent / Letter of Award

Prior to the expiration of the period of bid validity, ISA MEMBER COUNTRY NODAL AGENCY 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, ISA MEMBER COUNTRY NODAL AGENCY will promptly notify each unsuccessful bidder and will discharge its bid security.

5.7 Cancellation

ISA MEMBER COUNTRY NODAL AGENCY or ISA 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.

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Signing the Contract Agreement

At the same time as ISA MEMBER COUNTRY NODAL AGENCY notifies the successful Bidder that its bid has been accepted, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY. Contract agreement will contain agreement on stamp paper, bid documents and bidder's offer etc.

5.9 Performance security

Within twenty-eight (28) days after receipt of the letter of award, the successful bidder shall furnish the performance security for 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 ISA MEMBER COUNTRY NODAL AGENCY.

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 ISA MEMBER COUNTRY NODAL AGENCY may make the award to the next lowest evaluated bidder or call for new bids.

5.10 Corrupt or Fraudulent practices:

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

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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, ISA MEMBER COUNTRY NODAL AGENCY reserves the right to recover from the bidder a sum as specified in Section-4. (Scope of Work – Penalty clause)

Alternatively, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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, ISA MEMBER COUNTRY NODAL AGENCY 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 Member Country. The Courts of ICC Chamber 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, ISA MEMBER COUNTRY NODAL AGENCY 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. ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY and the Implementing Partner, if imposed on the Plant and Equipment including Type Test and Mandatory Spares manufactured within ISA MEMBER COUNTRY NODAL AGENCY'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~~

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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 ISA MEMBER COUNTRY NODAL AGENCY.

8.3 If any tax exemptions, reductions, allowances or privileges is available to the Implementing Partner in the country where the Site is located, ISA MEMBER COUNTRY NODAL AGENCY 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 decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Implementing Partner in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from. However, these adjustments would be restricted to direct transactions between ISA MEMBER COUNTRY NODAL AGENCY 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:

9.1 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 ISA MEMBER COUNTRY NODAL AGENCY 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, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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

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

- improper operation or maintenance of the Facilities by ISA MEMBER COUNTRY NODAL AGENCY
- Operation of the Facilities outside specifications provided in the Contract.
- Normal wear and tear.

10.3 ISA MEMBER COUNTRY NODAL AGENCY 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. ISA MEMBER COUNTRY NODAL AGENCY shall afford all reasonable opportunity for the Implementing Partner to inspect any such defect.

10.4 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY, 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, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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), ISA MEMBER COUNTRY NODAL AGENCY may, following notice to the Implementing Partner, proceed to do such work, and the reasonable costs incurred by ISA MEMBER COUNTRY NODAL AGENCY in connection therewith shall be paid to ISA MEMBER COUNTRY NODAL AGENCY by the Implementing Partner or may be deducted by ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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.

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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 ISA MEMBER COUNTRY NODAL AGENCY upon completion of the necessary changes, modifications and/or additions, and shall seek ISA MEMBER COUNTRY NODAL AGENCY's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, ISA MEMBER COUNTRY NODAL AGENCY 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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency. (SCC and the Technical Specifications shall specify what inspections and tests the ISA Member Country Nodal Agency requires and where they are to be conducted). The ISA Member Country Nodal Agency 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 Bidder 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 Bidder data shall be furnished to the inspectors at no cost to the ISA Member Country Nodal Agency.

12.3 Should any inspected or tested Goods fail to conform to the specifications, the ISA Member Country Nodal Agency may reject and the Bidder shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the ISA Member Country Nodal Agency.

12.4 The ISA Member Country Nodal Agency'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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency, the Bidder shall supply operation and maintenance manuals together with drawings of the goods and equipment. These shall be in such detail as will enable the ISA Member Country Nodal Agency 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.

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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 ISA Member Country Nodal Agency.

12.9 It shall be the obligation of the Bidder to train and familiarize the designated person by the ISA Member Country Nodal Agency in regard to the operation manual and drawings.

13.0 Insurance

13.1 The Goods supplied under the Contract shall be fully insured 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. Further, refer Responsibility Matrix of Price Bid Table for considerations to be taken.

14.0 Transportation, Demurrage Wharfage, Etc.

14.1 Contractor is required under the Contract to transport the Goods to place of destination defined as Site. Transport to such place of destination in Member Country 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 ISA MEMBER COUNTRY NODAL AGENCY for any accident, injury met by its labour, employee or any other person working for bidder. Any compensation sought by its labour, employee or any other person working for bidder shall be paid by successful bidder as per settlement solely. ISA MEMBER COUNTRY NODAL AGENCY 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 ISA Member Country Nodal Agency'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 5 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 ISA Member Country Nodal Agency with respect to the failure to meet the contractual guarantees.

15.5. The ISA Member Country Nodal Agency 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

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lie on the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency.

16.0 Termination for Default

16.1 The ISA Member Country Nodal Agency 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 Contractor within any extension thereof granted by the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

16.5 In the event the ISA Member Country Nodal Agency terminates the Contract in whole or in part, pursuant to GCC Clause 22.1, the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY or the Implementing Partner within fifty-six (56) days of such reference, the decision shall become final and binding upon ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 Apex Court shall be jointly appointed by ISA MEMBER COUNTRY NODAL AGENCY and the Implementing Partner as adjudicator under the Contract. Failing agreement between the two within twenty eight (28) days, the new retired judge of Apex Court 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

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under the contract. This cost shall be divided equally between ISA MEMBER COUNTRY NODAL AGENCY and the Implementing Partner.

17.2 Arbitration (to be held at International Chambers of Commerce – ICC)

17.2.1 If either ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY 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
- ISA MEMBER COUNTRY NODAL AGENCY shall pay the Implementing Partner any monies due to the Implementing Partner.

~~18.0 MSME Bidder~~ (Not Applicable)

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

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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~~

~~19.1 The ISA Member Country Nodal Agency 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

Shall be as per Section-4

~~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 in tender Tender Document.~~

~~20.3 The Consultant shall work together with third parties wherever commissioned by the ISA Member Country Nodal Agency. The ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency has suspended the Services *Force Majeure* or because the ISA Member Country Nodal Agency, with the prior consent of ISA MEMBER COUNTRY NODAL AGENCY, 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 appropriate form that is acceptable to the ISA Member Country Nodal Agency, bearing in mind the requirements of tender/Tender Document/Letter of Award.

20.3 REPORTING

20.3.1 The Consultant shall inform the ISA Member Country Nodal Agency promptly of all extraordinary circumstances that arise *during the performance of the services and of all matters* requiring ISA MEMBER

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COUNTRY NODAL AGENCY 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 ISA Member Country Nodal Agency.

20.4.2 The ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency, 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 ISA MEMBER COUNTRY NODAL AGENCY.

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 ISA Member Country Nodal Agency's request. In this case, the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency under this Contract.

20.5.2 The Consultant shall specify and provide respective contact data to the ISA Member Country Nodal Agency - 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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency up to the time of such violation as well as compensation for any and all losses and damages incurred by the ISA Member Country Nodal Agency as a result of such cancellation.

22.0 COMMENCEMENT AND COMPLETION

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

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 ISA Member Country Nodal Agency,

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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 ISA Member Country Nodal Agency agreement with the work. Neither party shall make any further claims.

24.0 SUSPENSIONS OR TERMINATION

24.1 The ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency. 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 ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency, the ISA Member Country Nodal Agency 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 ISA Member Country Nodal Agency shall be entitled to demand compensation for the direct damages caused by the default.

25.0 REMUNERATION OF THE CONSULTANT

25.1 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

Terms of Payment shall be made according to the conditions set out in the Special Conditions (section-4) or as agreed upon.

27.0 METHOD OF PAYMENT

Payment shall be made according to the conditions set out in the Special Conditions (section-4) or as agreed upon.

28.0 INSURANCE AGAINST LIABILITY AND DAMAGES

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28.1 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 ISA Member Country Nodal Agency 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.

ISA MEMBER COUNTRY NODAL AGENCY 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 ISA MEMBER COUNTRY NODAL AGENCY shall pay for it..

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

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