

**Tender Document**  
**for**  
**Selection of Agency for Operating**  
**English Language courses for DSEU in**  
**blended delivery model**

**दिल्ली कौशल एवं उद्यमिता विश्वविद्यालय**  
**DELHI SKILL AND ENTREPRENEURSHIP UNIVERSITY**  
**(A State University Established under Govt. of NCT of Delhi Act 04 of 2020)**  
**Integrated Institute of Technology Complex**  
**Sector 9, Dwarka, New Delhi – 110077**



**Delhi Skill and Entrepreneurship University**

**Request for Proposal for Operating English  
Language Courses for DSEU in blended  
delivery model  
Tender ID:2022\_DSEU\_21553\_1**

**for**

**Operating English Language Courses for DSEU in blended  
delivery model**

Final V1

**Delhi Skill and Entrepreneurship University**  
**Request for Proposal for Operating English Language**  
**Courses for DSEU in blended delivery model**  
**Tender ID: 2022\_DSEU\_215523\_1**

**For**

**Operating English Language Courses for DSEU in blended**  
**delivery model**

*Document Authentication*

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<i>IPR</i>	<i>Delhi Skill and Entrepreneurship University</i>
<i>Updated up to</i>	<i>07-01-2022</i>
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# 1. Section I: Notice Inviting Tender (NIT)

## 1.1 Notice Inviting Tender (NIT)

The Vice Chancellor, through the Registrar of the Delhi Skill and Entrepreneurship University (hereinafter referred to as 'the Authority', 'the Head of Procurement', and 'the Procuring Organisation' respectively), invites proposals (hereinafter referred as the 'bid(s)') for entering into a contract for Operating English Language Courses for DSEU in blended delivery model (hereinafter referred to as 'the Services'). This Request for Proposal for Operating English Language Courses for DSEU in blended delivery model, reference number, Tender ID: 2022\_DSEU\_215523\_1 (hereinafter referred to as 'the Tender Document'), gives further details.

## 1.2 The Tender Document

### 1.2.1 Bidders must read the complete 'Tender Document'.

This NIT is an integral part of the Tender Document and serves a limited purpose of invitation and does not purport to contain all relevant details for submission of bids. 'Tender Information Summary' (TIS) appended to this notice gives a salient summary of the tender information. Any generic reference to NIT shall also imply a reference to TIS as well. However, Bidders must go through the complete Tender Document for details before submission of their Bids.

### 1.2.2 Availability of the Tender Document

The Tender Document shall be shared via mail with all relevant organizations empanelled with the Delhi Skill and Entrepreneurship University. It shall be available after the date and time of the start of availability till the deadline for availability as mentioned in TIS. If the Procuring Entity happens to be closed on the deadline for submitting the bids as specified above, this deadline may or may not be extended upon the discretion of the procuring entity. Any query/ clarification regarding Tender Documents and submitting Bids may be addressed to the [Registraroffice@dseu.ac.in](mailto:Registraroffice@dseu.ac.in).

### 1.2.3 Clarifications

A Bidder requiring any clarification regarding the Tender Document may ask questions in writing/ electronically from Office/ Contact Person as mentioned in TIS, provided the questions are raised before the clarification end date mentioned in TIS (or if not mentioned, before 7 days of the deadline for the bid submission). This deadline may or may not be extended at the discretion of the Procuring Entity.

## 1.3 Eligibility Criteria for Participation in this Tender

**Tier 1 or Tier 2 organization empanelled for English Language sector with the Delhi Skill and Entrepreneurship University only.**

## 1.4 Pre-bid Conference:

As indicated in TIS, Bidders are requested to attend a Pre-bid conference for clarification on the Tenders' technical specifications and commercial conditions, on the time, date, and place

mentioned therein. Participation in such a Pre-bid Conference is not mandatory. If a bidder does not participate or submit any query, then no subsequent representations from them regarding the Technical/ commercial specifications/ conditions shall be entertained.

### **1.5 Submission of Bids:**

1. Tender document can be downloaded from [govtprocurement.delhi.gov.in](http://govtprocurement.delhi.gov.in) free of cost.
2. The offer bid submitted online/electronically through abovementioned government portal will be accepted. Bid received through any other means summarily rejected.
3. The Technical Bid and Commercial should be prepared in accordance with the requirements specified in this tender document and the format provided in the Bidding Forms of this document

### **1.6 Bid Opening**

Bids received shall be opened at the specified date and time given in TIS. If the office is closed on the specified date of opening of the bids, the opening shall be done on the next working day at the same time.

### **1.7 Disclaimers and Rights of Procuring Entity**

The issue of the Tender Document does not imply that the Procuring Entity is bound to select bid(s), and it reserves the right without assigning any reason to:

- a) reject any or all of the Bids, or
- b) cancel the tender process; or
- c) abandon the procurement of the Services; or
- d) issue another tender for identical or similar Services

*Note: For further details, please refer to appended TIS and the complete Tender Document.*

*Signed by  
Registrar  
Delhi Skill and Entrepreneurship University*

Appendix: Tender Information Summary (TIS)

## 2. Appendix to NIT: Tender Information Summary

Title: Operating English Language Courses for DSEU in blended delivery model  
(Ref ITB-clause 1.4)

<b>Tender Information Summary (TIS)</b>			
<b>1.0 Basic Tender Details</b>			
Tender Title	Operating English Language Courses for DSEU in blended delivery model		
Tender ID	2022_DSEU_215523_1		
Tender Type	<i>Limited Tender – Domestic</i>	Form of Contract	<i>Item Rate</i>
Tender Category	<i>Services</i>	No. of Covers	<i>Two Covers</i>
the Procuring Organisation:	<i>Delhi Skill and Entrepreneurship University</i>	The Procuring Entity:	<i>Purchase Division, Delhi Skill and Entrepreneurship University</i>
Authority on whose behalf Tender is invited	<i>Vice Chancellor</i>	Tender Inviting Authority (TIA)	<i>Registrar</i>
Address	<i>G/Floor, Integrated Institute of Technology Complex, Sector 9, Dwarka, New Delhi-110077</i>		
Appointing Authority for Arbitration	<i>Vice Chancellor</i>		
<b>2.0 Requirement Details</b>			
Contract Period:	<i>6 months</i>	<sup>1</sup> Form of Contract (ITB-clause 5.5)	<i>Unit-Rate (Output admeasurement)</i>
Schedule	<i>Refer Section IV: Schedule of Requirements</i>		
<b>3.0 Critical Dates</b>			
Published Date	<i>[29<sup>th</sup> Jan 2022]</i>	Bid Validity (Days from the date of Tender Opening)	<i>[90 days]</i>
Clarification Start Date & Time	<i>29.01.2022</i>	Clarification End Date & Time	<i>1.02.2022</i>
bid Submission Start Date & Time	<i>02.02.2022</i>	bid Submission Closing Date & Time	<i>16.02.2022</i>
Tender Opening (techno-commercial bid) Date & Time	<i>17.02.2022</i>	Tender Opening (Financial bid) Date & Time	<i>Will be communicated accordingly</i>
<b>4.0 Eligibility to Participate</b>			
Nature of Bidders eligible	<i>Empanelled as a partner of the Delhi Skill and Entrepreneurship University for the English Language sector either as a Tier 1 or Tier 2 organization</i>		
<b>5.0 Obtaining the Tender Document and clarifications</b>			
Cost of Tender Document (INR)	<i>[Not applicable]</i>		
Office/ Contact Person/ email for clarifications	<i>Office of Registrar, <a href="mailto:registraroffice@dseu.ac.in">registraroffice@dseu.ac.in</a></i>		
<b>6.0 Pre-bid Conference</b>			
Place, time, and date of the Pre-bid Conference	<i>01.02.2022 <a href="https://zoom.us/j/97439466667?pwd=NnZ5NnkrUW5KSkr5Q0FmVW00WWUxQT09">https://zoom.us/j/97439466667?pwd=NnZ5NnkrUW5KSkr5Q0FmVW00WWUxQT09</a></i>		

<sup>1</sup> Based on BOQ Template: Item-wise or Mixed or Item-rate Templates

Request for Proposal for Operating English Language Courses for DSEU in blended delivery model  
 - Tender ID: 2022\_DSEU\_215523\_1

Place, time, and date before which Written queries for the Pre-bid conference must be received	<i>Pre bid queries must be address to the Registrar at <a href="mailto:Registraroffice@dseu.ac.in">Registraroffice@dseu.ac.in</a> latest by 1.02.2022 1855 Hrs</i>		
<b>7.0 Preparation and Submission and Opening of Bids</b>			
Bids to be Addressed to	<i>Registrar, Delhi Skill and Entrepreneurship University</i>		
Tender Opening Place	<i>Delhi Skill and Entrepreneurship University; G/Floor, Integrated Institute of Technology Complex, Sector 9, Dwarka, New Delhi- 110077</i>		
Alternate Bids allowed or not	<i>Only one bid meeting the conflict-of-interest criteria (as mentioned in this document) shall be considered as valid from a bidder.</i>		
<b>8.0 Physical submission of Originals/ Self-attested copies of Originals of Scanned Documents uploaded</b>			
Physical documents required/ permitted to be submitted	<i>If asked</i>		
Deadline for physical submission of originals/ self-attested copies of Bids	<i>Will be communicated accordingly</i>		
<b>9.0 Documents relating to Bid Security (ITB-clause9.4) and Performance Security (ITB-clause 13.2.4)</b>			
Performance Security	<i>Applicable @ 3% of Order value</i>	Form of Security and to whom to be addressed	<i>[Not applicable]</i>
<b>Additional Clauses</b>			
<b>Clause</b>	<b>Description</b>		
Integrity Pact to be Signed and Submitted along with bid	<i>[No]</i>	Independent External Monitor, Name and Contact Details	<i>[NA]</i>
Price Variation	<i>[No]</i>	Advance Payments Provided	<i>[No]</i>
Quantity Splitting/ Parallel Orders ITB-clause 3.12.1.2	<i>[Yes]</i>	If yes, the Ratio of Distribution among L-1 and others	<i>In case of 2 bidders L1 - 60% L2 - 40%</i>

## **3. Section II: Instructions to Bidders (ITB)**

### **3.1 The Tender Document**

#### **3.1.1 Basic Tender Details**

This 'Request for Proposal for Operating English Language Courses for DSEU in blended delivery model' Document (hereinafter referred to as the 'the Tender Document') details the terms and conditions for entering into a contract for delivery of the Services (hereinafter called 'the Services') mentioned in Section IV: "Schedule of Requirements". Bidders must go through the Tender Document for further details. 'Tender Information Summary' (TIS) is appended to Section I: Notice Inviting Tender (NIT) for ready reference. The 'Services' may include incidental Goods and Works if so indicated. In this Tender Document, any generic reference to 'Services' shall be deemed to include such incidental Goods and Works.

#### **3.1.2 Interpretations, Definitions, Abbreviations and Document Conventions**

Section III: General Conditions of Contract (GCC), details Tenets of interpretation (GCC-clause 4.1.1), Definitions (GCC-clause 4.1.2), Document conventions (GCC-clause 4.1.3) and Abbreviations (GCC-clause 4.1.4), which shall also apply to the rest of the Tender Document.

#### **3.1.3 Overview of Contents**

- 1) The Sections, Forms and Formats comprising this Tender Document are described in ITB-clauses 3.1.4 and 3.1.5 below. Any generic reference to Tender Document shall also imply a reference to any/ all the sections, Forms, Formats or other files that comprise this Tender Document.
- 2) Bidder must submit the bid in the Forms/ Formats mentioned in ITB-clauses 3.1.5 below. The sections mentioned in ITB-clause 3.1.4 below need not be signed or returned by the bidders; however, Bidder must declare in his bid Form (Form 1) that he has read, understood, complied, and stands bound by all requirements of these sections:

#### **3.1.4 Sections of the Tender Document (need not be signed or uploaded)**

##### **3.1.4.1 Sections of the Tender Document (need not be signed or uploaded)**

The Tender Document contains the following sections, which are described in subsequent sub-clauses:

- 1) Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)
- 2) Section II: Instructions to Bidders (ITB)
- 3) Section III: General Conditions of Contract (GCC)
- 4) Section IV: Schedule of Requirements
- 5) Section V: Technical Evaluation Criteria
- 6) Section VI: Infrastructure set up available for Project
- 7) Section VII: Student allocation Methodology amongst successful bidders

#### 3.1.4.2 Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)

Section I – Notice Inviting Tender (NIT) and its Appendix – Tender Information Summary (TIS) provides a synopsis of information relevant for a Bidder to decide on participating in the Tender. Any generic reference to NIT shall also imply a reference to TIS as well. Bidders must fill up 'Form 3: Terms and Conditions - Compliance' regarding any deviations from this Schedule.

#### 3.1.4.3 Section II: Instructions to Bidders (ITB)

Section II: "Instructions to Bidders" - ITB along provides the relevant information as well as instructions to assist the prospective Bidders in preparation and submission of Bids. It also includes the mode and procedure adopted for receipt/ opening, scrutiny/ evaluation of Bids, and contract award.

#### 3.1.4.4 Section III: General Conditions of Contract (GCC)

Section III – General Conditions of Contract (GCC) describe the conditions that shall govern the resulting contract. In case of any conflict, provisions of GCC shall prevail over those in ITB. Bidders must fill up 'Form 3: Terms and Conditions - Compliance' regarding any deviations from terms and conditions in this and other Schedules.

#### 3.1.4.5 Section IV: Schedule of Requirements

Section IV: Schedule of Requirements describes the background, purpose/ objectives, description/ scope, deliverables/ outcomes, quantum, timelines of Services required etc. The requirements may consist of more than one service as well.

#### 3.1.4.6 Section V: Technical Evaluation Criteria

This Section lays down the Technical Evaluation Criteria for a bid/ Bidder to be considered a responsive bid/ bidder for further evaluation. Bids/ bidders not providing stipulated information shall be rejected as nonresponsive.

#### 3.1.4.7 Section VI: Infrastructure set up available for Project

This Section has been included to share with bidders further details of the infrastructure that will be made available for the project to support in determining their commercial outlay. The bidders are expected to carefully read the details below to understand the tentative batches that can be accommodated in each centre and develop an opinion on the resources required for smooth functioning of the courses

#### 3.1.4.8 Section VII: Student allocation Methodology amongst successful bidders

This Section has been included to share with bidders the method that would be followed to allocate students amongst successful bidders following the award of contract.

### **3.1.5 Forms (To be filled, digitally signed, and uploaded by Bidders)**

Please refer to ITB-clause 3.1.4 above to relate the following forms to the corresponding Sections.

- 1) Form 1: bid Form – (To serve as a covering letter to both the Techno-commercial and Financial Bids)
  - a. Form 1.1: Bidder Information
  - b. Form 1.2: Eligibility Declarations
- 2) Form 2: Technical Evaluation Criteria - Documentary evidence and following related forms needed to establish the Bidder's Technical qualifications as stipulated in Section V: Technical Evaluation Criteria. Besides the stipulated documents, other supporting documents, literature, pamphlets may also be attached.
  - i. Form 2.1: Details of Course Design and Content
  - ii. Form 2.2: Details of Delivery Model and Pedagogy
  - iii. Form 2.3: Personnel Deployment Plan
  - iv. Form 2.4: Details of internal assessments to be conducted
- 3) Form 3: Terms and Conditions - Compliance
- 4) Form 4: Checklist for the Bidders
- 5) Form 5: Format for Commercial Bid

## **3.2 Procuring Entity - Rights and Disclaimers**

### **3.2.1 The Procuring Entity**

Bids are to be addressed to the Registrar, Delhi Skill and Entrepreneurship University. The contract may designate, as required, counterpart Contract Manager (or Contract Management Team); interim/ ultimate Beneficiaries of Services and Paying authority who shall discharge designated function during contract execution.

### **3.2.2 Right to Intellectual Property and confidentiality:**

- 1) The Tender Document and associated correspondence are subject to copyright laws and shall always remain the property of the Procuring Entity and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. This condition shall also apply to bidders who do not submit a bid after downloading it or who are not awarded a contract in the process.
- 2) However, Bidders may share these to prepare and submit its bid with its employees, subcontractor(s), or holding Company. Bidders shall obtain from them an undertaking of confidentiality similar to that imposed on Bidder under this clause.
- 3) The obligation of the Bidders under sub-clauses above, however, shall not apply to information that:
  - a) now or hereafter is or enters the public domain through no fault of Bidder;
  - b) is legally possessed by Bidder at the relevant time and was not previously obtained, directly or indirectly, from the Procuring Entity; or
  - c) otherwise lawfully becomes available to Bidder from a third party that has no obligation of confidentiality.
- 4) The provisions of this clause shall survive completion or termination for whatever reason of the Tender Process or the contract.

### **3.2.3 Right to Reject any or all Bids**

The Procuring Entity reserves its right to accept or reject any or all Bids, abandon/ cancel the Tender process, and issue another tender for the same or similar Goods at any time before the award of the contract. It would have no liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for such action(s).

### **3.2.4 Disclaimers**

#### **3.2.4.1 Regarding Purpose of the Tender Document**

The Tender Document is neither an agreement nor an offer to prospective Bidder(s) or any other party hereunder. The purpose of the Tender Document is to provide the Bidder(s) with information to assist them in participation in this Tender Process.

#### **3.2.4.2 Regarding Documents/ guidelines**

The Tender Document, ensuing communications, and Contracts shall determine the legal and commercial relationship between the bidders/ contractors and the Procuring Entity. No other Government or Procuring Entity's document/ guidelines/ Manuals including its Procurement Manual (for internal and official use of its officers), notwithstanding any mention thereof in the Tender Document, shall have any locus-standee in such a relationship. Therefore, such documents/ guidelines/ Manuals shall not be admissible in any legal or dispute resolution or grievance redressal proceedings.

#### **3.2.4.3 Regarding Information Provided**

Information contained in the Tender Document or subsequently provided to the Bidder(s) is on the terms and conditions set out in the Tender Document or subject to which that was provided. Similar terms apply to information provided verbally or in documentary or any other form, directly or indirectly, by the Procuring Entity or any of its employees or associated agencies.

#### **3.2.4.4 Regarding Tender Document:**

- 1) The Tender Document does not purport to contain all the information Bidder(s) may require. It may not address the needs of all Bidders. They should conduct due diligence, investigation, and analysis, check the information's accuracy, reliability, and completeness, and obtain independent advice from appropriate sources. Information provided in the Tender Document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpreting the law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Procuring Entity, its employees and other associated agencies accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- 2) The Procuring Entity, its employees and other associated agencies make no representation or warranty for the accuracy, adequacy, correctness, completeness or reliability, assessment, assumption, statement, or information in the Tender Document. They have no legal liability, whether resulting from negligence or otherwise, for any loss, damages, cost, or expense that may arise from/ incurred/ suffered howsoever caused to any person, including any Bidder, on such account.

### **3.3 Bidders – Eligibility and Preferential Policies**

#### **3.3.1 Bidders**

Subject to provisions in the following clauses in this section and provisions in Tender Document, this invitation for Bids is open to all bidders who fulfil the 'Eligibility Criteria' stipulated in the Tender Document.

### **3.3.1.1 Sub-Contractors**

Subject to the restrictions outlined in this Tender Document, any Bidder may propose to sub-contract a part of the contract for specialised items of services, provided that the names and details of the sub-contracts are clearly stated in the bid submitted by Bidder and provided further that such sub-contractor should not circumvent the eligibility condition laid down below. Procurement of material hire of equipment or engagement of labour shall not be considered as sub-contracting. Despite any approval granted by the Procuring Entity for such arrangements, the Bidder/ Contractor shall be solely and directly responsible for executing sub-contracted portions of the contract. The total value of the sub-contracting portion of services must not exceed the per cent of the contract price as specified in the Tender Document/ Contract (if not so specified 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract.

### **3.3.2 Eligibility Criteria for Participation in this Tender**

**Tier 1 or Tier 2 organization empanelled for English Language sector with the Delhi Skill and Entrepreneurship University only.**

### **3.3.3 Conflict of Interest**

Any bidder having a conflict of interest, which substantially affects fair competition, shall not be eligible to bid in this tender. Bids found to have a conflict of interest shall be rejected as nonresponsive. Bidder shall be required to declare the absence of such conflict of interest in Form 1.2 - Eligibility Declarations. A bidder in this Tender Process shall be considered to have a conflict of interest if the bidder:

- 1) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- 2) receives or have received any direct or indirect subsidy/ financial stake from another bidder; or
- 3) has the same legal representative/ agent as another bidder for purposes of this bid. A Principal can authorise only one agent, and an agent also should not represent or quote on behalf of more than one Principals. However, this shall not debar more than one Authorised distributor from quoting equipment manufactured by an Original Equipment Manufacturer (OEM), in procurements under Proprietary Article Certificate; or
- 4) has a relationship with another bidder, directly or through common third parties, that puts it in a position to have access to information about or influence the bid of another Bidder or influence the decisions of the Procuring Entity regarding this Tender process; or
- 5) participates in more than one bid in this tender process. Participation in any capacity by a Bidder (including the participation of a Bidder as sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of all bids in which he is a party. However, this does not limit the participation of a non-bidder firm as a sub-contractor in more than one bid; or
- 6) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services that it provided (or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm), for the procurement planning (inter-alia preparation of feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc) of this Tender process; or
- 7) has a close business or family relationship with a staff of the Procuring Organisation who: (i) are directly or indirectly involved in the preparation of the Tender document or

specifications of the Tender Process, and/or the evaluation of bids; or (ii) would be involved in the implementation or supervision of resulting Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tender process and execution of the Contract.

### **3.4 The Schedule of Requirements and Form of Contract**

#### **3.4.1 Quotation for All Schedules and all Services**

Bidder must quote for all the Services in the Schedule of Requirement; otherwise, offered bid would be rejected as nonresponsive.

#### **3.4.2 Facilities to be Provided by the Procuring Entity**

<Refer Section IV: Schedule of Requirements>

#### **3.4.3 Contract Period**

The Services shall be contracted to be completed within a period of 6 months, unless terminated earlier as per the contract. In addition, at the option of the Procuring Entity, the contract period may be extended by six months. Notice of renewal shall be provided by physical/ digital means to the Service Provider no later than thirty (30) days before the contract end.

#### **3.4.4 Form of Contract**

##### **3.4.4.1 Form of Contract**

The Form of Contract shall be Unit-Rate (Output admeasurement - based on price per unit of quantity of Service)

##### **3.4.4.2 Unit-Rate (Output admeasurement) form of Contract**

###### **1) Unit-Rate form of Contract – Definite-delivery**

As is stipulated in TIS, this is a Unit-Rate (Output admeasurement – definite volume) form of Contract and:

- a) Section IV: Schedule of Requirement indicates the volume of required service outputs in specified units (Length, area, volume, hours/ days/ months etc.) as well as the contract Period (one year, unless otherwise stipulated) over which such volume shall be availed. Actual off-take of the volume of Services may be subject to a specified tolerance.
- b) The Bidders shall quote the per unit (e.g., length, area, volume, hourly/ daily/ monthly) price of outputs for the specified volume of service.
- c) The evaluation shall be done based on the total price of such specified volume of Services.

### **3.5 Bid Prices, Taxes and Duties**

#### **3.5.1 Prices**

##### **3.5.1.1 Competitive and Independent Prices**

- a) The prices should be arrived at independently, without restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i) those prices; or
  - ii) the intention to submit an offer; or
  - iii) the methods or factors used to calculate the prices offered.
- b) The prices should neither be nor shall be knowingly disclosed by the Bidder, directly or indirectly, to any other bidder or competitor before bid opening or contract award unless otherwise required by law.

##### **3.5.1.2 Price Components**

- 1) Bidder shall indicate in the Price Schedule all the specified components of prices shown therein, including the unit prices and total bid prices.

##### **3.5.1.3 Price Schedule**

- 1) Bidders are to upload only Form 5: Format for Financial Bid after entering the relevant fields without any alteration/ deletion/ modification of other portions of the sheet.
- 2) The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the Services to be delivered and the incidental goods/ works to be supplied, location of the bidder, site(s) of the delivery of Services, terms of delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour, Private Security Agencies, Mining & Forest of the bidder's country and in India.

##### **3.5.1.4 Provisions of GST**

- 1) Break up of different price elements, i.e., as per GST Act, shall be indicated separately, along with its associated HSN code and GST rate.
- 8) While quoting the basic rate, the bidder should offset the input credit available as per the GST Act.
- 9) Please refer to ITB-Clause 3.5.3 for further details.

##### **3.5.1.5 Currencies of Bid and Payment**

The currency of bid and payment shall be quoted by Bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees only.

##### **3.5.1.6 Non-compliance**

Tenders, where prices are quoted in any other way, shall be rejected as nonresponsive.

#### **3.5.2 Firm/ Variable Price**

Prices quoted by Bidder shall remain firm and fixed during the currency of the contract and not subject to variation on any account.

### 3.5.3 Goods and Services Tax (GST)

#### 3.5.3.1 GST Registration Status:

- 1) All the Bidders should ensure that they are GST compliant and their quoted tax structure/ rates are as per GST Act/ Rules. Bidder should be registered under GST and furnish GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under specific notification/ circular/ section/ rule issued by statutory authorities.
- 2) **GST Registration Number (15-digit GSTIN).** If the bidder has multiple business verticals in a state and has separate registration for each vertical, the GSTIN of each vertical concerned with the delivery of Services involved, as per the Schedule of Requirements and Price Schedule's scope must be quoted. If the services provided are from multiple states, the bidder should mention GST registration numbers for each state separately.
- 3) **Composition scheme:** If the Bidder has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.
- 4) **Exemption from Registration:** If a bidder is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. Bidder claiming exemption in this respect shall submit a valid certificate from practising Chartered Accountant (CA)/ Cost Accountant with Unique Document Identification Number (UDIN) to the effect that Bidder fulfils all conditions prescribed in notification exempting him from registration. Such bidder/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Procuring Entity directly to concerned authorities. Bidder should note that his offer would be loaded with the payable GST under the RCM. Further, Bidder should notify and submit to the Procuring Entity within 15 days from the date of becoming liable to registration under GST.

#### 3.5.3.2 HSN Code and GST Rate:

- 1) HSN (Harmonized System of Nomenclature) code for the goods provided in this Tender Document is only indicative. It shall be the responsibility of Bidder to ensure that they quote the exact HSN Code and corresponding GST rate for each activity of the Services being offered by them
- 2) As per the GST Act, the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). If the price is stated to be inclusive of GST, the current rate included in the price must be declared by the bidder.
- 3) If a Bidder asks for GST (and GST Cess if applicable) to be paid extra, the rate and nature of such taxes applicable should be shown separately. Bidders should quote 'GST' if payable extra on the total basic rate of each service and quoted GST in '%' inclusive of cess.
- 4) If GST, other taxes, duties are not specified, or column is left blank in the price schedule, it shall be presumed that no such tax/ levy is applicable or payable by the Procuring Entity.

### 3.5.4 Payments

#### 3.5.4.1 General

The payments shall be made as per the following schedule:

Sl No.	Deliverable	Payment
1.	On submission of Inception Report outlining approach and timelines for implementation of the Services	1% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students allotted for training to the bidder against the Tender
2.	15 days from start of the course against delivery of Batch Commencement letter clearly indicating the number of students enrolled	25% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in the said batch
3.	45 days from start of the course against delivery of Batch Commencement letter clearly indicating the number of students enrolled	25% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in the said batch
4.	15 days from end of the course and assessment being conducted by the bidder against delivery of Course Completion Report clearly indicating the students enrolled and students completing the course with their attendance records	49% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in said batch and completed the course with minimum 60% attendance

Note:

- 1) Enrolment of students is likely to be conducted on an ongoing basis across the period of the contract. Therefore, the payment will also be processed in tranches as per the commence of a batch and completion of the course by the batch as defined in Sl No. 1 to 4 above
- 2) The payment will be processed against deliverables submitted by the bidder as defined in the table above
- 3) All taxes deductible at source, if any, at the time of the release of payment, shall be deducted at source as per the current rate while making any payments.
- 4) The invoice amount would be paid after the evaluation of performance against the operation and after deducting penalties if any.

### 3.6 Obtaining the Tender Document; Corrigenda and Clarifications

#### 3.6.1 Obtaining the Tender Document

Bidders can obtain the Tender Document after the date and time of the start of availability till the deadline for availability. If the office happens to be closed on the deadline for the availability of the Tender Document, the deadline may be extended basis the decision of the Competent Authority of the Procuring Entity.

### **3.6.2 Corrigenda/ Addenda to Tender Document**

Before the deadline for submitting bids, the Procuring Entity may update, amend, modify, or supplement the information, assessment or assumptions contained in the Tender Document by issuing corrigenda and addenda. The corrigenda and addenda shall be published in the same manner as the original Tender Document. However, the bidders' responsibility is to check the website(s) for any corrigenda/ addenda. Any corrigendum or addendum thus issued shall be considered a part of the Tender Document. To give reasonable time to the prospective bidders to take such corrigendum/ addendum into account in preparing their bids, the Procuring Entity may suitably extend the deadline for the bid submission, as necessary. After the procuring entity makes such modifications, any Bidder who has submitted his bid in response to the original invitation shall have the opportunity to either withdraw his bid or re-submit his bid superseding the original bid within the extended time of submission.

### **3.6.3 Clarification on the Tender Document**

A Bidder may seek clarification of the Tender Document from Office/ Contact Person as mentioned in TIS, provided the clarifications are raised before the clarification end date mentioned in TIS (or if not mentioned, within 7 days before the deadline for the bid submission). The Procuring Entity shall respond within 5 working days of receipt of such a request for clarification. The query and clarification shall be shared via mail with all the prospective bidders. Any modification of the Tender Document that may become necessary due to the clarification shall be made by the Procuring Entity through an Addendum/ Corrigendum issued under the sub-clause above.

### **3.7 Pre-bid Conference**

- 1) If a Pre-bid conference is stipulated in the TIS, prospective bidders interested in participating in this tender may attend a Pre-bid conference to clarify the techno-commercial conditions of the Tenders at the venue, date and time specified therein. Participation in the Pre-bid conference is restricted to prospective bidders who have obtained the Tender Document.
- 2) Participation is not mandatory. However, if a bidder chooses not to (or fails to) participate in the Pre-bid conference or does not submit a written query, it shall be assumed that they have no issues regarding the techno-commercial conditions.
- 3) The date and time by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the TIS. If the dates are not mentioned, such date and time shall be 7 days before the date and time of the pre-bid conference.
- 4) The pre-bid conference may also be held online at the discretion of the Procuring Entity and the details for which will be communicated at the appropriate time.
- 5) After the Pre-bid conference, Minutes of the Pre-bid conference shall be shared via mail within seven days from the Pre-bid conference. If required, a clarification letter and corrigendum to Tender Document shall be issued, containing amendments of various provisions of the Tender Document, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Procuring Entity may suitably extend, as necessary, the deadline for the bid submission.

### **3.8 Preparation of Bids**

#### **3.8.1 The bid**

##### **3.8.1.1 Language of the bid**

The bid submitted by Bidder and all subsequent correspondence and documents relating to the bid exchanged between Bidder and the Procuring Entity shall be written in English or the Official Language. However, the language of any printed literature furnished by Bidder in connection with its bid may be written in any other language provided a translation accompanies the same in the bid language. For purposes of interpretation of the bid, translation in the language of the bid shall prevail.

##### **3.8.1.2 Acquaintance with Local Conditions and Factors**

The Bidder, at his own cost, responsibility, and risk, is encouraged to visit, examine, and familiarise himself with all the site/ local conditions and factors. The Bidder acknowledges that before the submission of the bid, he has, after a complete and careful examination, made an independent evaluation of the Site/ local conditions, infrastructure, logistics, communications, the legal, environmental, and any other conditions or factors, which would have any effect on the performance of the contract. Bidders shall themselves be responsible for compliance with Rules, Regulations, Laws and Acts in force from time to time at relevant places. On such matters, the Procuring Entity shall have no responsibility and shall not entertain any request from the bidders in these regards.

##### **3.8.1.3 Cost of Bidding**

The Bidder(s) shall bear all direct or consequential costs, losses and expenditure associated with or relating to the preparation, submission, and subsequent processing of their Bids, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any submission of samples, demonstrations, or presentations which the Procuring Entity may require, or any other costs incurred in connection with or relating to their Bids. All such costs, losses and expenses shall remain with the Bidder(s), and the Procuring Entity shall not be liable in any manner whatsoever for the same or any other costs, losses and expenses incurred by a Bidder(s) for participation in the Tender Process, regardless of the conduct or outcome of the Tender process.

##### **3.8.1.4 Interpretation of Provisions of the Tender Document**

The provisions in the Tender Document must be interpreted in the context in which these appear. Any interpretation of these provisions far removed from such context or other contrived or between-the-lines interpretation is unacceptable.

##### **3.8.1.5 Quote Quantities/ Prices in both Numerals and Words**

The bidders are advised to ensure that there is no ambiguity with regards to quantities/ rates/ amounts in numerical digits and words in the Bid

##### **3.8.1.6 Alternate Bids not Allowed.**

Conditional offers, alternative offers, multiple bids by a bidder shall not be considered. The Procuring Entity shall permit only one bid to be submitted.

### **3.8.2 Documents comprising the bid:**

#### **3.8.2.1 Techno-commercial bid/ Cover**

"Technical Bid" shall include inter-alia the original copies of duly signed or digitally signed copies of the following documents.

*No price details should be given or hinted at in the Technical bid:*

- 1) Form 1: Bid Form (to serve as covering letter and declarations applicable for both the Technical bid and Financial bid).
  - a. Form 1.1: Bidder Information;
  - b. Form 1.2: Eligibility Declarations;
- 2) Form 2: Technical Evaluation Criteria - Documentary evidence and following related forms needed to establish the Bidder's Technical qualifications as stipulated in Section V: Technical Evaluation Criteria. Besides the stipulated documents, other supporting documents, literature, pamphlets may also be attached.
  - a. Form 2.1: Details of Course Design and Content
  - b. Form 2.2: Details of Delivery Model and Pedagogy
  - c. Form 2.3: Personnel Deployment Plan
  - d. Form 2.4: Details of internal assessments to be conducted
- 3) Form 3: Terms and Conditions - Compliance. Bidder must comply with the entire commercial and other clauses of this Tender Document. Any deviations should be listed in a chart form without ambiguity or conditionality, along with justification and supporting documents. All such Statements and Documents shall be uploaded as Form 3. Even in case of no deviation, please fill in confirmations and nil deviation statements. If mentioned elsewhere in the bid, such deviations shall not be recognised and shall be null and void.
- 4) Form 4- Checklist for the Bidders: Bidder must also upload the Checklist given in the Tender Document to confirm that he has complied with all the instructions in the Tender Document, and nothing is inadvertently left out. This checklist is only for general guidance and is not comprehensive and does not absolve Bidder from complying with all the requirements stipulated elsewhere in the Tender Document.

#### **3.8.2.2 Financial bid/ Cover**

"Financial bid" shall comprise the Price Schedule (To be submitted separately in Form 5) and Boq considering all financially relevant details, including Taxes and Duties. No additional technical details, which have not been brought out in the Technical bid shall be brought out in the Financial bid.

### **3.8.3 Bid Validity**

- 1) Bids shall remain valid for a period not less than 90 days from the deadline for the bid submission stipulated in TIS. A bid valid for a shorter period shall be rejected as nonresponsive.
- 2) In case the day up to which the bids are to remain valid falls on/ subsequently declared a holiday or closed day for the Procuring Entity, the bid validity shall automatically be deemed to be extended up to the next working day.
- 3) In exceptional circumstances, before the expiry of the original time limit, the Procuring Entity may request the bidders to extend the validity period for a specified additional period. The request and the bidders' responses shall be made in writing or electronically. A bidder may agree to or reject the request. A bidder who has agreed to the Procuring Entity's request for extension of bid validity, in no case, he shall be permitted to modify his bid.

### **3.8.4 Non-compliance with these provisions**

Bids are liable to be rejected as nonresponsive if a Bidder:

- 1) fails to provide and/ or comply with the required information, instructions etc., incorporated in the Tender Document or gives evasive information/ reply against any such stipulations.
- 2) furnishes wrong and/ or misleading data, statement(s) etc. In such a situation, besides rejection of the bid as nonresponsive, it is liable to attract other punitive actions under relevant provisions of the Tender Document for violation of the Code of Integrity.

### **3.9 Signing and Submitting bids**

#### **3.9.1 Signing of bid**

The individual signing/ digitally signing the bid or any other connected documents should submit an authenticated copy of the document(s), which authorizes the signatory to commit and submit bids on behalf of the bidder in Form 1.1: Bidder Information.

#### **3.9.2 Submission of Bids.**

##### **3.9.2.1 Submission to the Registrar's Office**

The offer bid submitted online/electronically through abovementioned government portal will be accepted. Bid received through any other means summarily rejected.

- 1) A Two (2) envelope system shall be followed for the bid. The bids submitted, shall comprise of the following 2 covers
  - a. Envelope A: Technical Bid
  - b. Envelope B: Financial Bid
- 2) The Technical Bid and Commercial should be prepared in accordance with the requirements specified in this tender document and the format provided in the Bidding Forms of this document
- 3) The date and time of the deadline for the bid submission shall remain unaltered even if the specified date is declared a holiday for the Tender Inviting Officer.
- 4) The Procuring Entity may extend the deadline for the bid submission by issuing an amendment, in which case all rights and obligations of the Procuring Entity and the bidders previously subject to the original deadline shall then be subject to the new deadline for the bid submission.
- 5) Bid submitted through modalities other than those stipulated in TIS shall be liable to be rejected as nonresponsive.

##### **3.9.2.2 Implied acceptance of procedures by Bidders**

Submission of bid in response to the Tender Document is deemed to be acceptance of the procurement and tender procedures and conditions of the Tender Document.

##### **3.9.2.3 Late Bids**

The bidder shall not be able to submit his bid after the expiry of the deadline for the bid submission.

### **3.9.3 Modification, Resubmission and Withdrawal of Bids**

#### **3.9.3.1 Modification & Resubmission**

Once submitted, Bidder cannot view or modify his bid.

#### **3.9.3.2 Withdrawal**

- 1) The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn.
- 2) No bid should be withdrawn after the deadline for the bid submission and before the expiry of the bid validity period. If a Bidder withdraws the bid during this period, the Procuring Entity shall be within its right to enforce punitive actions provided in the Tender Document for such misdemeanour.

### **3.10 Bid Opening**

The date & time of the opening bid is as stipulated in TIS. Bids cannot be opened before the specified date & time, even by the Tender Inviting Officer, the Procurement Officer, or the Publisher. If the specified date of tender opening falls on is subsequently declared a holiday or closed day for the Procuring Entity, the Bids shall be opened at the appointed time on the next working day.

### **3.11 Evaluation of Bids and Award of Contract**

#### **3.11.1 General norms**

##### **3.11.1.1 Evaluation based only on declared criteria.**

The evaluation shall be based upon scrutiny and examination of all relevant data and details submitted by Bidder in its/ his bid and other allied information deemed appropriate by Procuring Entity. Evaluation of bids shall be based only on the criteria/ conditions included in the Tender Document.

##### **3.11.1.2 Infirmary/ Irregularity/ Non-Conformity/ Deviations - Substantive or Minor**

- 1) An infirmity/ irregularity or non-conformity/ exception/ deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
  - a) which affects in any substantive way the scope, quality, or performance standards of the Services;
  - b) which limits in any substantive way, inconsistent with the Tender Document, the Procuring Entity's rights or the Bidder's obligations under the contract; or
  - c) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
- 2) The decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive.
- 3) Variations and deviations and other offered benefits (Techno-commercial or Financial) above the scope/ quantum of Services stipulated in the Tender Document shall not influence evaluation of Bids. If the bid is otherwise successful, such benefits shall be availed by the Procuring Entity, and these would become part of the contract.

- 4) The Procuring Entity reserves the right to accept or reject bids with any minor deviations. Wherever necessary; the Procuring Entity shall convey its observation as per sub-clause below, on such 'minor' issues to Bidder by registered/ speed post/ electronically etc. asking Bidder to respond by a specified date. If Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

### **3.11.1.3 Clarification of Bids and shortfall documents**

- 1) During the evaluation of Techno commercial or Financial Bids, the Procuring Entity may, at its discretion, but without any obligation to do so, ask Bidder to clarify its bid by a specified date. Bidder should answer the clarification within that specified date (or, if not specified, 7 days from the date of receipt of such request). The request for clarification shall be submitted in writing or electronically, and no change in prices or substance of the bid shall be sought, offered, or permitted that may grant any undue advantage to such bidder.
- 2) If discrepancies exist between the uploaded scanned copies and the Originals submitted by the bidder, the original copy's text, etc., shall prevail. Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as non-responsive in addition to other punitive actions under the Tender Document for violation of the Code of Conduct.
- 3) The Procuring Entity reserves its right to, but without any obligation to do so, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the tender opening, and which have not undergone change since then and does not grant any undue advantage to any bidder.

### **3.11.1.4 Contacting Procuring Entity during the evaluation**

From the time of bid submission to awarding the contract, no Bidder shall contact the Procuring Entity on any matter relating to the submitted bid. If a Bidder needs to contact the Procuring Entity for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Procuring Entity during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and bid shall be liable to be rejected as non-responsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

### **3.11.2 Evaluation of Bids**

#### **3.11.2.1 Preliminary Examination of Bids - Determining Responsiveness**

A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements, without substantive deviation, reservation, or infirmity. Only substantively responsive bids shall be considered for further evaluation. Unless otherwise stipulated, the following are some of the crucial aspects for which a bid shall be rejected as nonresponsive:

- 1) The bid is not in the prescribed format or is not submitted as per the stipulations in the Tender Document.
- 2) Bidder is not eligible to participate in the bid as per laid down eligibility criteria;
- 3) The Services offered are not eligible as per the provision of this tender.
- 4) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the TIS.
- 5) The bid validity is shorter than the required period.
- 6) The bid departs from the essential requirements stipulated in the bidding document;

- 7) Bidder has not quoted all Services or against a service in Section IV: Schedule of Requirement
- 8) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations

### 3.11.2.2 The evaluation process in Single/ multiple Cover(s)

This Tender Process is for multiple (two or more) covers Bids. Initially, only the techno-commercial bids shall be opened on the stipulated date of opening of bids. After that, the techno-commercial evaluation shall be done whether these bids meet the eligibility & qualification criteria and techno-commercial aspects. Subsequent opening of financial bids and financial evaluation shall be done only of bids declared successful in techno-commercial evaluation.

### 3.11.3 Techno-commercial Evaluation

Only substantively responsive bids shall be evaluated for techno-commercial evaluation. In evaluating the techno-commercial bid, conformity to the eligibility/ qualification criteria and technical specifications in the Tender Document is ascertained. Additional factors incorporated in the Tender Document shall also be considered in the manner indicated therein. Bids with substantive techno-commercial deviations shall be rejected as nonresponsive. Procuring entity reserves its right to consider and allow minor deviations in technical and Commercial Conditions.

The Evaluation Methodology adopted by the Procuring Entity will be the Quality cum Cost Based Selection (QCBS) method. ii. Technical and Commercial bid will get weightage as under:

Technical bid score weightage	Commercial bid score weightage
70%	30%

The bid that obtains the highest Total Score (TS) value will be rated as the Successful Bidder.

#### 3.11.3.1 Evaluation of eligibility

Procuring Entity shall determine, to its satisfaction, whether the Bidders are eligible as per ITB-clause 3.3 and NIT-clause 1.3 above to participate in the Tender Process as per submission in Form 1.2: Eligibility Declarations. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as nonresponsive.

#### 3.11.3.2 Evaluation of Technical Criteria

Procuring Entity shall determine, to its satisfaction, whether the Bidders are qualified and capable in all respects to perform the contract satisfactorily as per submission in Form 2 and its sub-forms (2.1 to 2.4). The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

It is hereby stated that Bidders must score a minimum of 70 marks in Technical Evaluation to be considered as satisfactory for performing the contract

### **3.11.3.3 Evaluation of Conformity to Commercial and Other Clauses**

Bidder must comply with all the Commercial and other clauses of the Tender Document as per submissions in Form 3. The Procuring Entity shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the Tender Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder. Deviations from or objections or reservations to critical provisions such as those concerning Governing laws and Jurisdiction (GCC Clause 4.3), Contractor's Obligations and Restrictions of its Rights (GCC Clause 4.5), Performance Bond/ Security (GCC Clause 4.5.8), Force Majeure (GCC Clause 4.10.7), Taxes & Duties (GCC Clause 4.11.2), Defects Liability Period (GCC Clause 4.11.7) and Code of Integrity (GCC Clause 4.14) will be deemed to be a material deviation.

### **3.11.3.4 Declaration of Techno-commercially Suitable Bidders and Opening of Financial Bids**

Bids that succeed in the above techno-commercial evaluation by scoring a minimum of 70 marks shall be considered techno-commercially suitable, and financial evaluation shall be done only of such Bids. The list of such techno-commercially suitable bidders and a date/time and venue for the opening of their financial bids shall be declared via mail to all participant bidders.

### **3.11.4 Evaluation of Financial Bids and Ranking of Bids**

#### **3.11.4.1 Ranking of Financial Bids**

- 1) Evaluation of the financial bids shall be on the price criteria only. Financial Bids of all Techno-commercially suitable bids are evaluated and a Financial Bid Score (SF) in percentage shall be assigned to each Bid as follows:

Financial Bid Score (SF) in percentage for each bid shall be computed as follows:  $SF = 100\% \times (FL/ F)$ ; Where:

- F is the Total Bid Price quoted in the bid under consideration
  - FL is the Total Bid Price of the lowest Commercial Bid from amongst all technically qualified bidders
- 2) The Financial Bids shall be evaluated by Procuring Entity for completeness and accuracy. If there is a discrepancy between words and figures the amount in words shall prevail.
  - 3) Unless otherwise stipulated, the comparison of the responsive Bids shall be on total outgo from the Procuring Entity's pocket, to be paid to the contractor or any third party, including all elements of costs as per the terms of the proposed contract, duly delivered, commissioned, etc. as the case may be, including any taxes, duties, levies etc.
  - 4) If any bidder offers conditional discounts/ rebates in his bid or suo-motu discounts and rebates after the tender opening (techno-commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a bidder does become L-1 without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;
  - 5) Unless announced beforehand, the quoted price shall not be loaded based on deviations in the commercial conditions. If it is so declared, such loading of a financial bid shall be done as per the relevant provisions;
  - 6) evaluation of Bids shall include and consider the following taxes/ duties:
    - a. in the case of Services performed in India or incidental goods of foreign origin already located in India, GST & other similar duties, which shall be contractually

- payable, on the Services and incidental Goods, if a contract is awarded on the bidder;
- b. The offers shall be evaluated based on the GST rate quoted by each bidder, and the same shall be used for determining the inter-se ranking. The Procuring Entity shall not be responsible for any misclassification of HSN Number or incorrect GST rate if quoted by the bidder. Any increase in GST rate due to misclassification of HSN number shall have to be absorbed by the supplier; and
  - c. If GST is quoted extra, but with the provision that it shall be charged as applicable at the time of delivery, the offer shall be evaluated for comparison purposes by loading the maximum existing rate of GST for the product/ HSN code.
- 7) **Ambiguous Financial bid:** If the financial bid is ambiguous and leads to two equally valid total price amounts, it shall be rejected as nonresponsive.

#### 3.11.4.2 Cartel Formation/ Pool Rates

- 1) Unless the Procuring Entity decides this to be a case of Cartel/ Pool Rates, if more than one bidder quote the same total evaluated price, then the Procuring Entity reserves its right to distribute unequal quantities among the bidders - excluding one or more bidders based on considerations like performance/ financial capabilities, any extra features/ benefits offered etc.
- 2) If Procuring Entity decides this to be a case of Cartel/ Pool Rates, leading to "Appreciable Adverse Effect on Competition" (AAEC) as identified in Competition Act, 2002, as amended from time to time, It reserves its rights to:
  - a) order any quantity on any one or more bidders without assigning any reason thereof.  
And/ or
  - b) consider it as a violation of the Code of Integrity and reject the bid(s) as nonresponsive in addition to other punitive actions provided in this regard in the Tender Document. In addition to such remedies, the Procuring Entity also reserves the right to refer the matter to the Competition Commission of India (CCI) for obtaining necessary relief. In addition, the attention of the bidders is drawn to Chapter VI of the "The Competition Act 2002", which deals with Penalties. Such actions shall be in addition to other rights and remedies available to the Procuring Entity under the contract and Law.

#### 3.11.4.3 Reasonableness of Rates Received

Procuring Entity shall evaluate whether the rates received in the Bids in the zone of consideration are reasonable. If the rates received are considered abnormally low or unreasonably high, it reserves its right to take action as per the following sub-clauses or reject any or all Bids; abandon/ cancel the Tender process and issue another tender for identical or similar Services.

#### 3.11.4.4 Consideration of Abnormally Low Bids

An Abnormally Low bid is one in which the bid price, in combination with other elements of the bid, appears so low that it raises substantive concerns as to the Bidder's capability to perform the contract at the offered price. Procuring Entity shall in such cases seek written clarifications from the Bidder, including detailed price analyses of its bid price concerning scope, schedule, allocation of risks and responsibilities, and any other requirements of the Tender Document. If, after evaluating the price analyses, procuring entity determines that Bidder has substantively failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity shall reject the bid/ proposal, and evaluation shall proceed with the next ranked bidder.

### **3.12 Award of Contract**

#### **3.12.1 The Procuring Entity's Rights**

##### **3.12.1.1 Right to Vary Quantities at the Time of Award:**

At the time of contract award, the Procuring Entity reserves the right to increase or decrease without any change in the unit prices or other terms and conditions of the bid and the Tender Document, the quantum of Services originally stipulated in Section IV: Schedule of Requirements, provided this increase/ decrease does not exceed 25 (twenty-five) percent of tendered quantity (or any other percentage indicated in the Tender Document).

##### **3.12.1.2 Parallel Contracts or Splitting of Award**

University intends to register 30,000 (tentative number which may vary) or more candidate for this short term course and university will split the quantities of students in two bidder in the following ratio subject to the condition of submission of prior undertaking of agency to take courses for not less than 60% of total registered students.

The contract shall be awarded to L1 and L2 bidders identified basis QCBS as follows:

- L1 bidder – 60% of the total quantity
- L2 bidder – 40% of the total quantity

The Authority will offer for award of contract for 60% students to L-1 Bidder. The contract for remaining 40 % will be awarded to the L2 responsive Bidder who will agree to match the price of L1 Bidder (in case if L-2 has quoted higher value then L-1).

In case the L2 Bidder does not agree to match the price of L1 Bidder, L3 responsive Bidder would be asked to match the price of L1 Bidder and so on till such responsive Bidder agrees to match the price of L1 Bidder for Award of the remaining 40% students. In case none of the responsive Bidders other than L1 agree to match the price of L1 Bidder or there is only one responsive Bidder, in that case the contract of balance 40% contract will also be awarded to L1 Bidder. Authority's decision in this regard shall be final.

In case the price quoted by L2 is lower than the price of L1, then the L2 will be awarded to work at the price they have quoted.

The Authority may either choose to accept the proposal of the Selected Bidder or invite the Selected Bidder for negotiations.

These ratios are approximate, and the Procuring Entity reserves its right to vary quantities to suit capacity/ past performance of the bidder/relative ranking of the bids/ delivery period offered/ existing load of Bidder and other similar factors affecting smooth delivery of Services as per requirements.

It is hereby further specified, that as stated above, it is the intention of the University to register 30,000 students for this program and allot the work to bidders in the ratio of 60:40 as mentioned above. However, in the event, the University is unable to register minimum 30,000 students, the successful bidders will have to train the number of students allocated to them.

Further, given that 30,000 students are to be registered over the course of this project, the process to be followed for allocation of students to successful bidders is defined in Section VII of this

tender document. It is assumed that bidders, upon submitting their bid against this tender document, agree to the allocation method prescribed in the said section.

[Note: Term 'Quantity' mentioned above essentially refers to 'Number of students to be trained as defined in Section IV: Schedule of Requirements']

### **3.12.2 Letter of Award (Acceptance - LoA) and Signing of Contract**

#### **3.12.2.1 Selection of Successful Bidder(s)**

- 1) The Bidder with the highest Total Score according to Quality cum Cost Based System (QCBS) evaluation will be considered first for award of a contract by Procuring Entity, subject to the provision of Parallel Contract defined above.
- 2) As stated above, the Technical Bid Score will get a weightage of 70% (denoted by ST) and Financial Bid Score a weightage of 30% (denoted by SF) and bids will be ranked according to their combined Technical Score (TS) as follows:  
$$TS = ST \times 70\% + SF \times 30\%$$
- 3) The Bid, that obtains the highest Total Score (TS) value, will be rated as the Successful Bidder or L1 and accordingly L2, L3 and other bidders will be determined based on Total Score.
- 4) Description of variables used:
  - a. ST is the Technical Score for each Bid as calculated out of 100%
  - b. SF is the Total Commercial Score (normalized) for each Bid
- 5) An affirmative determination will be a prerequisite for the award of the Contract to the Bidder. A negative determination will result in the rejection of the Bidder's bid.

#### **3.12.2.2 Letter of Award (LoA)**

- 1) The Bidder, whose bid has been accepted and documents verified (at the discretion of Procuring Entity), shall be notified of the award by the Procuring Entity before the expiration of the bid validity period by written or electronic means. This notification (hereinafter and in the Conditions of Contract called the "Letter of Award - LoA") shall state the sum (hereinafter and in the contract called the "Contract Price") that the Procuring Entity shall pay the contractor in consideration of delivery of Services. The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below. The Procuring Entity, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.

#### **3.12.2.3 Performance Security**

- 1) Within 14 days (or any other period stipulated in ITB) of receipt of the Letter of Award (LoA, or the contract if LoA has been skipped), performance Security as per details in GCC-4.5.8 shall be submitted by the contractor to the Procuring Entity.
- 2) If the contractor, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award, besides taking any other administrative punitive action like 'Removal from List of Registered Suppliers' etc.
- 3) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required,

or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process. Provided that the Procuring Entity, on being satisfied that it is not a case of cartelization, and that the integrity of the procurement process has been maintained, may offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, if it is lower, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

#### **3.12.2.4 Signing of Contract**

- 1) Within seven working days, or such time as deemed appropriate by Procuring Entity, of receiving performance security, the Procuring Entity shall send the contract form duly completed and signed, in duplicate, by registered/ speed post or by suitable digital means to the successful Bidder.
- 2) If so asked by the Procuring Entity, the successful Bidder shall return the original copy of the contract, duly signed and dated, within seven days from the date of receipt of the contract, to the Procuring Entity by registered/ speed post or by a suitable digital means.
- 3) The contract shall be taken to be legally effective from the date of its signing. The contractor may point out to the Procuring Entity, in writing/ electronically, any anomalies noticed in the contract within seven days of its receipt.

#### **3.13 Grievance Redressal/ Complaint Procedure**

- 1) Bidder has the right to submit a complaint or seek de-briefing regarding the rejection of his bid, in writing or electronically, within 10 days of declaration of techno-commercial or financial evaluation results. The complaint shall be addressed to the Registrar.
- 2) Within 5 working days of receipt of the complaint, the Tender Inviting Officer shall acknowledge the receipt in writing to the complainant indicating that it has been received, and the response shall be sent in due course after a detailed examination.
- 3) The Tender Inviting Officer shall convey the final decision to the complainant within 15 days of receiving the complaint. No response shall be given regarding the confidential process of evaluating bids and awarding the contract before the award is notified, although the complaint shall be kept in view during such a process. However, no response shall be given regarding the following topics explicitly excluded from such complaint process:
  - a. Only a bidder who has participated in the concerned Tender Process, i.e., pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
  - b. Only a directly affected bidder can represent in this regard.
    - i. In case of pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review concerning the technical/ financial bid may be filed only by a bidder who has qualified in pre-qualification bid;
    - ii. In case a technical bid has been evaluated before the opening of the financial bid, an application for review concerning the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
  - c. Following decisions of the Procuring Entity shall not be subject to review:
    - i. Determination of the need for procurement.
    - ii. Complaints against performance standards except under the premise that they are either vague or too specific to limit competition
    - iii. Selection of the mode of procurement or bidding system;
    - iv. Choice of the selection procedure.
    - v. Provisions limiting the participation of bidders in the Tender Process, in terms of policies of the Government

- vi. Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government
- vii. The decision to enter into negotiations with the L-1 bidder; and
- viii. Cancellation of the Tender Process except where it is intended to subsequently re-tender the same Services.

### **3.14 Code of Integrity in Public Procurement, Misdemeanours and Penalties:**

Procuring authorities, bidders, suppliers, contractors, and consultants should observe the highest standard of integrity and not indulge in prohibited practices or other misdemeanours, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts. GCC-clause 4.14 (including the penalties prescribed therein) shall be considered to be part of this clause of ITB (even though it is not being reproduced here for the sake of brevity) and shall apply mutadis mutandis during the pre-award tender process.

## 4. Section III: General Conditions of Contract (GCC)

### 4.1 General

#### 4.1.1 Tenets of Interpretation

Unless where the context requires otherwise, throughout the contract:

- 1) The heading of these conditions shall not affect the interpretation or construction thereof.
- 2) Writing or written includes matter either whole or in part, in digital communications, manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal or digitally acceptable authentication, as the case may be.
- 1) Words in the singular include the plural and vice-versa.
- 2) Words importing the masculine gender shall be taken to include other genders, and words importing persons shall include any company or association or body of individuals, whether incorporated or not.
- 3) Terms and expression not herein defined shall have the meanings assigned to them in the contract Act, 1872 (as amended) or the Sale of Goods Act, 1930 (as amended) or the General Clauses Act, 1897 (as amended) or of INCOTERMS, (current edition published by the International Chamber of Commerce, Paris) as the case may be.
- 4) Any reference to 'Services' shall be deemed to include the incidental Works/ Goods also.
- 5) Any reference to 'Contract' shall be deemed to include all other documents (inter-alia GCC) as described in GCC-clause 4.2.5.
- 6) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.

#### 4.1.2 Definitions

In the contract, unless the context otherwise requires:

- 1) "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Processor Execution of a Contract for and on behalf of its principals.
- 2) "Beneficiary" (of Services/ Works) means the person for whom the Services/ Works are to be delivered as stipulated in the contract.
- 3) "bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in specific contexts) means an offer to supply goods, services or execution of works made as per the terms and conditions set out in a document inviting such offers.
- 4) "Bidder" (including the term 'Bidder', 'consultant' or 'service provider' in specific contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a Tender Process.
- 5) "Bill of Quantities" (including the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the bid.
- 6) "Commercial Bank" means a bank, defined as a scheduled bank under section 2(e) of the Reserve Bank of India Act, 1934.
- 7) "Contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', 'rate contract' or 'framework contract' or 'Letter of Award – LoA' (letter or memorandum communicating

- to the contractor the acceptance of his bid) or 'Agreement' or a 'repeat order' accepted/ acted upon by the contractor in specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
- 8) "Contractor" (including the terms 'Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder' in specific contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract;
  - 9) "Contract Manager" means the Procurement Officer or any other officer or a third-party agency who has been assigned the authority to take all actions on behalf of the Procuring Entity during the execution of the contract by the contractor;
  - 10) "Day", "Month", "Year" shall mean calendar day/ month or year (unless reference to financial year is clear from the context).
  - 11) "Drawing" means the drawing or drawings stipulated in or annexed to the Specifications or the Tender Document/ Contract;
  - 12) "Equipment" means the contractor's machinery and vehicles brought temporarily to the Site for the performance of Service.
  - 13) "General Conditions" means the General Conditions of Contract, also referred to as GCC.
  - 14) "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), in specific contexts), procured or otherwise acquired by a Procuring Entity. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods;
  - 15) "Government" means the Government of Delhi and includes agencies and Public Sector Enterprises under it, in specific contexts;
  - 16) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods or services or works, and comparing the same with the specified requirement to determine conformity.
  - 17) "Intellectual Property Rights" (IPR) means the rights of the intellectual property owner concerning a tangible or intangible possession/ exploitation of such property by others. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI).
  - 18) "Joint Venture" means a Joint Venture or a Consortium (that is an association of several persons, or firms or companies - also referred to as JV/C)
  - 19) "Materials" means all supplies, including consumables, used by the contractor for service performance or use by his staff.
  - 20) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term basis (for one year or more, excluding short-term stand-alone Services) for the performance of routine Services (e.g., Security Services, Horticultural Services, Janitor/Cooking/Catering/Management Services for Hostels and Guest Houses, Cleaning/Housekeeping Services, Errand/Messenger Services and so forth) that were traditionally being done in-house in the Government.
  - 21) "Parties": The parties to the contract are the "Contractor" and the "Procuring Entity", as defined in this clause;
  - 22) "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in specific

- contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;
- 23) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' including an award of Public-Private Partnership projects, in specific contexts) means the acquisition of Goods/ Services/ works by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration. The term "procure"/ "procured" or "purchase"/ "purchased" shall be construed accordingly;
  - 24) "Procuring Entity" means the entity in The Procuring Organization procuring Goods, Works, or Services;
  - 25) "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
  - 26) "Service(s)" (including the term 'Non-consultancy services' or 'Outsourcing of Services' in specific contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Services (non-Consultancy) involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis but does not include the appointment of an individual made under any law, rules, regulations, or order issued in this behalf. Any reference to Services shall be deemed to include the supply of goods or performance of consultancy service or small works, which are incidental or consequential to such services;
  - 27) "Specification" or "Technical Specification" means the drawing/ document/ standard or any other details governing the construction, manufacture or supply of goods or performance of services that prescribes the requirement to which goods or services have to conform as per the contract.
  - 28) "Signed" means ink signed or digitally signed with a valid Digital Signature as per IT Act 2000 (as amended from time to time). It also includes stamped, except in the case of Letter of Award or amendment thereof.;
  - 29) "Sub-Contractor" means a person or corporate body with an agreement with the contractor to carry out a specific part of the contract that may or may not include working on the Site.
  - 30) "Temporary Works" means works designed, constructed, installed, and removed by the contractor needed during the Services' performance.
  - 31) "Variation" means an instruction given by the Contract Manager, which varies the scope, quantum or performance standards of the Service performed.
  - 32) "Tender"; "Tender Document"; "Tender Enquiry" or "Tender Process": 'Tender Process' is the whole process from the publishing of the Tender Document till the resultant award of the contract. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc.) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically referred to as "Tender" or 'Tender Enquiry', which would be clear from context without ambiguity.
  - 33) "Works" refer to any activity involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery, and equipment.

#### 4.1.3 Document Conventions

All words and phrases defined in GCC-clause 4.1.2 are written as ‘Capitalised word’ and shall have the defined meaning. The rest of the words shall be as per grammar, inter-alia ‘Services’ shall indicate definition as given in the GCC while ‘services’ shall have usual dictionary meaning.

#### 4.1.4 Abbreviations:

Abbreviation	Definition
BOQ	Bill of Quantities
BSD	Bid Securing Declaration
DPIIT	Department for Promotion of Industry and Internal Trade
EFT	Electronic Funds Transfer
EPFO	Employees Provident Fund Organization
ESI	Employees State Insurance
GCC	General Conditions of Contract
GeM	Government e-Marketplace
GST	Goods and Services Tax
GSTIN	GST Identification Number
GTE	Global Tender Enquiry (International Competitive Bidding)
HSN	Harmonized System of Nomenclature
IEM	Independent External Monitor
IPR	Intellectual Property Rights
INR	Indian Rupee
ITB	Instructions To Bidders
JV	Joint Venture
JV/C	Joint Venture/ Consortium
LoA	Letter of Award (Acceptance)
MII	Make in India
MSE	Micro and Small Enterprises
MSME	Micro Small and Medium Enterprises
MSMED	MSME Development (Act)
NEFT	National Electronic Funds Transfer
NIT	Notice Inviting Tender
PAN	Permanent Account Number
PC	(Indian) Penal Code
PPD	Procurement Policy Division
PQB	Pre-Qualification Bidding
PVC	Price Variation Clause
RAP	Reverse Auction Process
RCM	Reverse Charge Mechanism
SC	Scheduled Caste
ST	Scheduled Tribe
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TIA	Tender Inviting Authority
TIS	Tender Information Summary

## **4.2 The Contract**

### **4.2.1 Language of Contract**

Unless otherwise stipulated, the contract shall be written in the Official Language or English. All correspondence and other contract documents, which the parties exchange, shall also be written/ translated accordingly in that language. For purposes of interpretation of the contract, the English documents/ translation shall prevail.

### **4.2.2 The Entire Agreement**

This Contract and its documents (referred to in GCC-clause 4.2.5 below) constitutes the entire agreement between the Procuring Entity and the contractor and supersedes all other communications, negotiations, and agreements (whether written or oral) of the Parties made before the date of this Contract. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not outlined in this Contract.

### **4.2.3 Severability**

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

### **4.2.4 Parties**

The parties to the contract are the contractor and the Procuring Entity, as defined in GCC-clause 4.1.2 above and as nominated in the contract.

### **4.2.5 Contract Documents and their Precedence**

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

- 1) Valid and authorized Amendments issued to the contract.
- 2) the Agreement consisting of the initial paragraphs, recitals and other clauses set forth immediately before the GCC and including the formats annexed to it and signatures of Procuring Entity;
- 3) the Letter of Award (LoA)
- 4) Final written submissions made by the contractor during negotiations, if any;
- 5) the GCC
- 6) the contractor's bid;

### **4.2.6 Modifications/ Amendments, Waivers and Forbearances**

#### **4.2.6.1 Modifications/ Amendments of Contract**

- 1) If any of the contract provisions must be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Procuring Entity, and no modified provisions shall be applicable unless such modifications have been done. No variation in or modification of the contract terms shall be made except by a written

amendment signed by the Procuring Entity. Requests for changes and modifications may be submitted in writing by the contractor to the Procuring Entity. At any time during the currency of the contract, the Procuring Entity may suo-moto or, on request from the contractor, by written order, amend the contract by making alterations and modifications within the general scope of the Contract.

- 2) If the contractor does not agree to the suo-moto modifications/amendments made by the Procuring Entity, he shall convey his views within 14 days from the date of amendment/modification. Otherwise, it shall be assumed that the contractor has consented to the amendment.
- 3) Any verbal or written arrangement abandoning, modifying, extending, reducing, or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Procuring Entity unless and until the same is incorporated in a formal instrument and signed by the Procuring Entity, and till then the Procuring Entity shall have the right to repudiate such arrangements.

#### **4.2.6.2 Waivers and Forbearance**

The following shall apply concerning any waivers, forbearance, or similar action taken under this Contract:

- 1) Any waiver of a Procuring Entity's rights, powers, or remedies under this Contract must be in writing, dated, and signed by an authorized representative of the Procuring Entity granting such waiver and must specify the terms under which the waiver is being granted.
- 2) No relaxation, forbearance, delay, or indulgence by Procuring Entity in enforcing any of the terms and conditions of this Contract or granting of an extension of time by Procuring Entity to the contractor shall, in any way whatsoever, prejudice, affect, or restrict the rights of Procuring Entity under this Contract, neither shall any waiver by Procuring Entity of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.

#### **4.2.7 Separate Contracts in Connection with Services**

The Procuring Entity shall have the right to let other contracts related to or linked with the Services. The contractor shall afford other contractors' reasonable opportunity to store their materials, execute their services/ works, and properly connect and coordinate their services. The contractor shall inspect services/ works of other contractors(s) and promptly report to the Contract Manager any defects that may hinder a proper execution of his Services to proper performance standards. The contractor's failure to inspect and report such defects shall constitute an acceptance of the other contractor's work as fit and proper for the performance of Contractor's services, except as to defects that may develop in the other contractor's work after such a provision Services.

### **4.3 Governing Laws and Jurisdiction**

#### **4.3.1 Governing Laws and Jurisdiction**

- 1) This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of India for the time being in force.
- 2) Irrespective of the place of delivery, or the place of performance or the place of payments under the contract, the contract shall be deemed to have been made at the place from which the Letter of Award (LoA, or the contract Agreement, in the absence of LoA) has been issued. The courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the contract.

#### **4.3.2 Changes in Laws and Regulations**

Unless otherwise stipulated in the contract, if after the last deadline for the bid submission (Techno-commercial), any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated, or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased, to the extent that the contractor has thereby been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

#### **4.4 Communications**

##### **4.4.1 Communications**

- 1) All communications under the contract shall be served by the parties on each other in writing, in the contract's language, and served in a manner customary and acceptable in business and commercial transactions.
- 2) The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later.
- 3) No communication shall amount to an amendment of the terms and conditions of the contract, except a formal letter of amendment of Contract, so designated.
- 4) Such communications would be an instruction or a notification or an acceptance or a certificate from the Procuring Entity, or it would be a submission or a notification from the contractor. A notification or certificate which the contract requires must be communicated separately from other communications.
- 5) The Contract Manager shall direct the order in which the several components of the Services shall be provided, and the contractor shall execute without delay all orders given by the Contract Manager from time to time. Still, the contractor shall not be relieved thereby from responsibility for the due performance of the Services in all respects.

##### **4.4.2 Persons signing the Communications**

For all purposes of the contract, including arbitration, thereunder all communications to the other party shall be signed by:

- 1) The person who has signed the contract on behalf of the contractor shall sign all correspondences. A person signing communication in respect of the contract or purported to be on behalf of the contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the contractor. If it is discovered at any time that the person, so signing has no authority to do so, the Procuring Entity reserves its right, without prejudice to any other right or remedy, to terminate the contract for default in terms of the contract and avail any or all the remedies thereunder and hold such person personally and/ or the contractor liable to the Procuring Entity for all costs and damages arising from such remedies.
- 2) Unless otherwise stipulated in the contract, the Contract Manager signing the contract shall administer the contract and sign communications on behalf of the Procuring Entity. Beneficiaries of Services and the Paying Authorities mentioned in the contract shall also administer respective functions during Contract Execution.

#### **4.4.3 Address of the parties for sending communications by the other party.**

For all purposes of the contract, including arbitration, thereunder the address of parties to which the other party shall address all communications and notices shall be:

- 1) The address of the contractor as mentioned in the contract, unless the contractor has notified change by a separate communication containing no other topic to the Procuring Entity. The contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid, and
- 2) The address of the Procuring Entity shall be the address mentioned in the contract. The contractor shall also send additional copies to officers of the Procuring Entity presently dealing with the contract.
- 3) In case of the communications from the contractor, copies of communications shall be marked to the Contract Manager and the Procuring Entity's officer signing the contract, and as relevant also to interim/ ultimate Beneficiaries of Services and the Paying Authorities mentioned in the contract. Unless already specified before the contract's start, the Procuring Entity and the contractor shall notify each other if additional copies of communications are to be addressed to additional addresses.

#### **4.5 Contractor's Obligations and restrictions on its Rights**

##### **4.5.1 Changes in Constitution/ financial stakes/ responsibilities of a Contract's Business**

The contractor must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract.

- 1) Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:
  - a. a new partner shall not be introduced in the firm except with the previous consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
  - b. On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the contract and avail any or all remedies thereunder.
  - c. If the contract is not terminated as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity in writing or electronically.

##### **4.5.2 Obligation to Maintain Eligibility and Qualifications**

The contract has been awarded to the contractor based on specific eligibility and qualification criteria. The contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the Procuring Entity within 7 days of it coming to the Contractor's knowledge. These changes include but are not restricted to:

- 1) Change regarding declarations made by it in its bid in Form 1.2: Eligibility Declaration

#### **4.5.3 Restriction on Potential Conflict of Interests**

- 1) Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
  - a. during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract.
  - b. after the termination of this Contract, such other activities as may be stipulated in the contract.
- 2) During the term of this Contract and after its termination, the contractor, and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the subject Service of this Contract and any continuation thereof) for any project resulting from or closely related to the subject Services of this Contract.

#### **4.5.4 Consequences of breach by Constituents of a Contractor**

Should the contractor or any of its partners or its Subcontractors or the Personnel commit a default or breach of GCC-clause 4.5.1 to 4.5.7, the Contractor shall remedy such breaches within 21 days, keeping the Procuring Entity informed. However, at its discretion, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies there under. The decision of the Procuring Entity as to any matter or thing concerning or arising out of GCC-clause 4.5.1 to 4.5.7 or on any question whether the contractor or any partner of the contractor firm has committed a default or breach of any of the conditions shall be final and binding on the contractor.

##### **4.5.4.1 In the case of Joint Venture/ Consortium**

In the event of default or breach of GCC-clause 4.5.1 to 4.5.7 by any member, in the execution of his part of Contract, the Procuring Entity shall be so notified within 30 days by the Lead Member, or in the case of the Lead Member being the defaulter, by the member nominated as Lead Member of the remaining Joint Venture. Within 60 days of the said notice, the Lead Member shall assign the work of the defaulting member to any other equally competent party acceptable to the Procuring Entity to ensure the execution of that part of the contract. Failure to comply with the above provisions or if the Lead Member himself defaults shall be lawful for the Procuring Entity to terminate the contract for default and avail any or all remedies thereunder.

#### **4.5.5 Assignment and Sub-contracting**

- 1) the contractor shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contractor any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.
- 2) The contractor shall notify the Procuring Entity in writing all subcontracts awarded under the contract if not already stipulated in the contract. In its original bid or later, such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract. Subcontract shall be only for bought out services and incidental goods/ works. Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations under GCC-clause 4.5.1 to 4.5.7, based on which Contract is awarded to him.
- 3) If the contractor sublets or assigns this Contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.

#### **4.5.6 Obligation to Indemnify Procuring Entity**

##### **4.5.6.1 For breach of IPR Rights**

- 1) the contractor shall indemnify and hold harmless, free of costs, the Procuring Entity and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Services provided by the contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the contract arising out of or in connection with:
  - a. any design, data, drawing, specification, or other documents or Services provided or designed by the contractor for or on behalf of the Procuring Entity.
  - b. The sale by the Procuring Entity in any country of the services/ products produced by the Services delivered by the contractor, and
  - c. The delivery of the Services by the contractor or the use of the Services at the Procuring Entity's Site
- 2) Such indemnity shall not cover any use of the Services or any part thereof other than for the purpose indicated by or to be reasonably inferred from the contract, neither any infringement resulting from the use of the Services or any part thereof, or any service/ products produced thereby in association or combination with any other service, equipment, plant, or materials not delivered by the contractor.
- 3) If any proceedings are brought, or any claim is made against the Procuring Entity arising out of the matters referred above, the Procuring Entity shall promptly give the contractor a notice thereof. At its own expense and in the Procuring Entity's name, the contractor may conduct such proceedings and negotiations to settle any such proceedings or claim, keeping the Procuring Entity informed.
- 4) If the contractor fails to notify the Procuring Entity within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its behalf at the risk and cost to the contractor.
- 5) At the contractor's request, the Procuring Entity shall afford all available assistance to the contractor in conducting such proceedings or claim and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.

##### **4.5.6.2 For Losses and Damages Caused by Contractor**

- 1) the contractor shall indemnify and keep harmless the Procuring Entity, from and against, all actions, suit proceedings, losses, costs, damages, charges, claims, and demands of every nature and description brought or recovered against the Procuring Entity because of any act or omission or default or negligence or trespass of the contractor, his agents, or employees despite all reasonable and proper precautions may have been taken, during the execution of the Services. The contractor shall make good at his own expense all resulting losses and/ or damages to:
  - a. the Services themselves or
  - b. any other property of the Procuring Entity or
  - c. the lives, persons, or property of others
- 2) In case the Procuring Entity is called upon to make good such costs, loss, or damages, or to pay any compensation, including that payable under the provisions of the Workmen's Compensation Act or any statutory amendments thereof; the amount of any costs or charges including costs and charges in connection with legal proceedings, which the Procuring Entity may incur about it, shall be charged to the contractor. All sums payable

by way of compensation under any of these conditions shall be considered as reasonable compensation to be applied to the actual loss or damage sustained and whether or not any damage shall have been sustained.

- 3) The Procuring Entity shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings, or in anticipation of legal proceedings being instituted consequent on the action or default of the contractor, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to Contractor, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise, and the incurring of any such expenses shall not be called in question by the contractor.

#### **4.5.7 Confidentiality, Secrecy and IPR Rights**

##### **4.5.7.1 IPR Rights**

All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Procuring Entity and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

##### **4.5.7.2 Confidentiality**

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Procuring Entity to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the Procuring Entity and shall not, without the prior written consent of Procuring Entity neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Procuring Entity, all copies of all such information in original shall be returned on completion of the contractor's performance and obligations under this contract.

##### **4.5.7.3 Secrecy**

If the contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the contract is marked as "Secret", the contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

##### **4.5.7.4 Obligations of the contractor**

- 1) Without the Procuring Entity's prior written consent, the contractor shall not use the information mentioned above except for the sole purpose of performing this contract.
- 2) The contractor shall treat and mark all information as confidential (or Secret – as the case may) and shall not, without the written consent of the Procuring Entity, divulge to any

person other than the person(s) employed by the contractor in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.

- 3) Notwithstanding the above, the contractor may furnish to its holding company or its Subcontractor(s) such documents, data, and other information it receives from the Procuring Entity to the extent required for performing the contract. In this event, the contractor shall obtain from such holding company/ Subcontractor(s) an undertaking of confidentiality (or secrecy – as the case may be) similar to that imposed on the contractor under the above clauses.
- 4) The obligation of the contractor under sub-clauses above, however, shall not apply to information that:
  - a. the contractor needs to share with the institution(s) participating in the financing of the contract;
  - b. now or hereafter is or enters the public domain through no fault of Contractor;
  - c. can be proven to have been possessed by the contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or
  - d. otherwise lawfully becomes available to the contractor from a third party that has no obligation of confidentiality.
- 5) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the contractor before the date of the contract in respect of the contract or the Tender Document or any part thereof.
- 6) The provisions of this clause shall survive completion or termination for whatever reason of the contract.

#### **4.5.7.5 Protection and Security of Personal Data**

- 1) Where the contractor is processing Personal Data, as a Data Processor or otherwise for the Procuring Entity, the contractor shall:
  - a. Process the Personal Data only as per instructions from Procuring Entity (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by Procuring Entity;
  - b. Comply with all applicable laws;
  - c. Process the Personal Data only to the extent, and in such manner as is necessary for the discharge of the contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
  - d. Implement appropriate technical and organisational measures to protect Personal Data against unauthorized or unlawful Processing and accidental loss, destruction, damage, alteration, or disclosure. These measures shall be appropriate to the harm which might result from any unauthorized or unlawful Processing, accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - e. Take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
  - f. Obtain prior written consent from the Authority to transfer the Personal Data to any sub-contractor for the provision of the Services;
  - g. Not cause or permit the Personal Data to be transferred, stored, accessed, viewed, or processed outside of India without the prior written consent of the Procuring Entity.
  - h. Ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.

- i. Ensure that none of the staff and agents publishes or disclose any personal data to any third parties unless directed in writing to do so by the Procuring Entity.
    - j. Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Procuring Entity or compliance with a legal obligation imposed upon the Procuring Entity;
  - 2) Notify the Procuring Entity (within five Working Days) if it receives;
    - a. a request from an employee of Procuring Entity to have access to his or other employees' Personal Data; or
    - b. a complaint or request relating to the Procuring Entity' obligations under the law;
  - 3) The provision of this clause shall apply during the contract Period and indefinitely after its expiry.

#### **4.5.8 Performance Bond/ Security**

- 1) Within fourteen days (or any other period mentioned in Tender Document or Contract) after the issue of Letter of Award (LoA or the contract, if LoA is skipped) by the Procuring Entity, the contractor shall furnish to the Procuring Entity, performance security, valid up to sixty days beyond the contract period after the date of completion of all contractual obligations by the contractor, including the Defect Liability obligations.
- 2) The amount of Performance security shall be @ 7% of the contract Price denominated in Indian Rupees or the currency of the contract and shall be in one of the following forms:
  - a. Unless otherwise stipulated in Tender Document or Contract, Account Payee Demand Draft or Fixed Deposit Receipt or Banker's Cheque is drawn on any commercial bank in India, favouring the authority mentioned in therein
  - b. Bank Guarantee issued by a commercial bank in India, in the prescribed form.
- 3) If the contractor, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award, besides taking any other administrative punitive action like 'Removal from List of Registered Suppliers' etc.
- 4) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Procuring Entity at its discretion at its discretion
  - a. to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or
  - b. without terminating the Contract:
    - i. recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contractor any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise howsoever as per GCC-clause 4.11.4, or
    - ii. treat it as a breach of contract and avail any or all availing any or all contractual remedies provided for breaches/ default.
- 5) In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within fourteen days of issue of the amendment.
- 6) The Procuring Entity shall be entitled, and it shall be lawful on his part,
  - a. To deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
    - i. any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Organisation or any part thereof

- ii. for any loss or damage recoverable from the contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect
  - b. and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
- 7) Subject to the sub-clause above, the Procuring Entity shall release the performance security without any interest to the contractor on completing all contractual obligations, including the Defect Liability obligations, if any. Alternatively, upon the contractor submitting a suitable separate Defect Liability Security for the duration of Defect Liability obligations, the original Performance Guarantee Security shall be released mutatis mutandis.
- 8) No claim shall lie against the Procuring Entity regarding interest on cash deposits or Government Securities or depreciation thereof.

#### **4.5.9 Labour Codes and Related Obligations**

##### **4.5.9.1 Independent Contractor**

The contractor's status shall be that of an independent contractor and Primary Employer of staff deployed during the contract by him or his sub-contractors or other associates. The contractor, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Procuring Organisation or Procuring Entity or Central or State Government or their agencies/ Enterprises, simply by Services delivered under this Contract.

##### **4.5.9.2 Obligations of the contractor under Labour Codes and Rules**

- 1) In cases where Services are to be performed by the contractor at the premises of the Procuring Entity or Beneficiary of Services, the contractor shall comply with the provisions of the Labour Codes including Code on Wages, 2019, The Industrial Relations Code 2020, Code on the Social Security 2020, and The Occupational Safety, Health and Working Conditions 2020, and Draft Rules made thereunder, as modified from time-to-time, wherever applicable and shall also indemnify the Procuring Entity from and against any claims under the aforesaid Labour codes and the Rules.
- 2) The contractor shall obtain a valid licence under the aforesaid Labour codes and the Rules as modified from time to time before the commencement of the contract and continue to have a valid licence until the completion of the contract. Any failure to fulfil this requirement, the Procuring Entity shall treat it as a breach of contract for default as per the contract and avail any or all remedies thereunder.
- 3) In respect of all labour directly or indirectly employed in the contract for the performance of the contractor's part of the contract, the contractor shall comply with or cause to comply with the provisions of the aforesaid Labour codes and the Rules wherever applicable. The contractor shall be solely responsible for submitting all the necessary returns under these Codes and the Rules.
- 4) The contractor shall pay the wages as per the Code on Wages to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. The contractor shall, notwithstanding the contract's provisions to the contrary, cause to be paid the wages to labour directly or indirectly engaged on the contract, including any engaged by his Sub-Contractors in connection with the said contract as if he had immediately employed the labour. The Procuring Entity shall, without any commitments or being obliged to do, may its

discretion, monitor that such payments are being made. The contractor shall be required to submit, every month, documentary evidence in the form of a Bank Statement of having transferred the gross minimum wages to each worker. Failure to do so shall entail Procuring Entity taking up any measure to ensure the payment of wages including, but not limited to, withholding contractor's on-account bills.

- 5) In every case in which, by virtue of the provisions of the aforesaid Labour codes and the Rules, the Procuring Entity is obliged to pay any amount of wages to a workman employed by the contractor or his Sub-Contractor in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Labour codes and the Rules or to incur any expenditure on account of the contingent liability of the Procuring Entity due to the contractor's failure to fulfil his statutory obligations under the aforesaid Labour codes and the Rules the Procuring Entity shall recover from the contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Procuring Entity under the aforesaid Labour codes and the Rules, the Procuring Entity shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/ or from any sum due by the Procuring Entity to the contractor whether under the contract or otherwise. The Procuring Entity shall not be bound to contest any claim made against it under the aforesaid Labour codes and the Rules except on the contractor's written request, and upon giving the Procuring Entity complete security for all costs, for which the Procuring Entity might become liable in contesting such claim. The decision of the Procuring Entity regarding the amount recoverable from the contractor as stated above shall be final and binding on the contractor.

#### **4.5.10 Permits, Approvals and Licenses**

Whenever the delivery of Services and incidental Goods/ Works requires the contractor to obtain permits, approvals, and licenses from local public authorities, it shall be the contractor's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to licences or environmental clearance if required. If requested by the contractor, the Procuring Entity shall make its best effort to assist the contractor in complying with such requirements in a timely and expeditious manner, without any dilution of the Contractor's responsibility in this regard.

#### **4.5.11 Accounting, Inspection and Auditing**

the contractor shall keep accurate and systematic accounts and records regarding the provision of the Services under this Contract, as per accounting principles prescribed in India.

### **4.6 Procuring Entity's Obligations**

#### **4.6.1 Facilities to be Provided by the Procuring Entity**

No Facilities (including Reference Documents, Medical facilities, Rooms, Furniture, Transport, Access to IT Services etc.) other than those stipulated explicitly in the contract shall be provided or loaned by the Procuring Entity to the contractor for performance of the contract. Whenever such assets are required to be issued to the contractor as per the contract, these would be issued only as per terms and conditions and against appropriate safeguards (including Insurances, Bank Guarantee, Indemnity Bonds, Retention Money etc.) specified therein. The contractor shall use such property for the execution of the contract and no other purpose whatsoever.

#### **4.6.2 Provision of Utilities at Site by Procuring Entity**

Unless otherwise stipulated in the contract, The Procuring Entity may supply without any obligation to do so, to the contractor part or whole of the quantity of the water and electricity required for the delivery of Services from the Procuring Entity's existing water/ electricity supply system at or near the site of Services on specified terms and conditions and on chargeable basis (unless specified otherwise), provided that the contractor shall arrange, at his own expense, to effect the connections and lay additional pipe/ power lines and accessories on the site. Nevertheless, it shall be the responsibility of the contractor to install adequate alternative arrangements to tide over outages in utilities or failure in supply by the Procuring Entity, and that the contractor shall not be entitled to any compensation- nor shall this be a reason for the delay in delivery of Services.

#### **4.6.3 Custody and Return of the Procuring Entity's Assets loaned to Contractor**

- 1) The contractors shall sign accountable receipts for all tools, plants and materials or other assets/ properties made over to him by the Contract Manager. All such assets shall be deemed to be in good condition when received by the contractor unless he has within twenty-four hours of the receipt thereof notified the Procuring Entity to the contrary. Otherwise, he shall be deemed to have lost the right to do so at any subsequent stage.
- 2) These assets shall remain the property of the Procuring Entity, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss from whatever caused while assets are possessed or controlled by the contractor, staff, workmen, or agents.
- 3) The contractor shall return all such assets in good order and repair, fair wear and tear excepted, before the completion/ closure/ termination of the contract and shall be responsible for any failure to account for the same or any damage done to that as assessed by the Procuring Entity whose decision shall be final and binding.

### **4.7 Scope of Services, Performance Standards and Quality Assurance**

#### **4.7.1 Scope of Services**

- 1) This contract is for the performance/ delivery of Services of the description, scope/ quantum, performance standards and quality outlined in the contract during the contract Period specified therein. Unless otherwise specified, the Services shall conform to performance and quality standards as stipulated in the contract or as per best standards in the market, where not so specified.
- 2) The contractor shall deliver Services and submit the reports, deliverables, outputs, and documents to the Procuring Entity.
- 3) The Services shall include all such work-elements not mentioned explicitly in this Contract, but that can be reasonably inferred from this Contract as being required for attaining Completion of the Services as if such items were expressly mentioned in this Contract.
- 4) **Incidental Works/ Goods:** If so stipulated, the contractor shall be required to perform/ deliver specified incidental Works/ Goods as an integral part of the Services in the contract.

#### **4.7.2 Performance Standards**

- 1) the contractor shall perform the Services as per Section IV: Schedule of Requirements, and carry out its obligations with all due diligence, efficiency, and economy, observing sound management practices, and employ appropriate advanced technology and safe

methods as per the performance standards and quality control parameters as stipulated in the contract. For matters where the contract does not specify any Standard, the Services delivered shall conform to National/ International Standards or generally accepted professional techniques and practices.

- 2) **The shortfall in Performance:** In cases where the performance or/and quality of Services is/are found to be unsatisfactory, Procuring Entity or his representatives shall impose damages for the shortfall in performance as per GCC-clause 4.10.5 below. This levy of damages shall not absolve the contractor from rectification or reperformance of the defective Service without further payment.

#### **4.7.3 Quality Control and Defect Liability**

- 1) The Procuring Entity shall check the quality of the Services and shall inspect the contractor's performance. The Procuring Entity shall promptly notify the contractor of any identified defects, requesting the correction of the notified defect within a reasonable time.
- 2) If the contractor has not corrected notified defect within the time stipulated in the Procuring Entity's notice, the Procuring Entity shall assess the cost of having the defect corrected. Without prejudice to any of its other remedies under this Contractor applicable law, procuring Entity shall be legally entitled to deduct such cost from the contract's payments, together with the damages for the shortfall in performance (as per clause above), a sum equivalent to the percentage stipulated in the contract.

#### **4.7.4 Contract Period and Option Clause**

##### **4.7.4.1 Contract Period**

Unless otherwise stipulated in the contract, the contract Period for which the Service shall be provided shall be 6 months from the effective date of the contract, unless completed earlier or terminated as per the contract.

##### **4.7.4.2 Option Clause**

If stipulated otherwise in the contract, the Procuring Entity shall have the right to exercise the following options, by written notification to the contractor no later than thirty (30) days before Contract end:

- 1) extend the contract Period
- 2) increase the ordered quantum of Services up to the percentage specified therein (or 25% if not specified) at any time, till the completion date of the contract, by giving reasonable notice and providing a reasonable extension in delivery period for increased quantum, even though the quantum ordered initially has been delivered in full before the completion Period.

#### **4.8 Measurement, Variations and Modifications**

##### **4.8.1 Quantities in Contract**

The quantities set out in the contract are the estimated quantities of the Services, and they shall not be taken as the actual and correct quantities of the Services to be executed by the contractor to fulfil his obligations under the contract. Payment shall be made for the actual quantities deployed/ delivered; however, payments shall not be made for quantities over and above those

indicated in the contract unless extra quantity has been asked in a written order by the contract manager.

#### **4.8.2 The admeasurement of Inputs and Services**

- 1) Measurements shall be recorded based on the contractor's day-to-day records and authenticated by the Contract Manager or his representative as updated per the agreed Works Programme.
- 2) The contractor shall be paid for the Services at the rates in the contract and extra Services at rates determined under GCC-clause 4.8.4 below on the measurements taken by the Contract Manager or his representative.

#### **4.8.3 Variations and Claims**

##### **4.8.3.1 Powers of Variations**

- 1) the Contract Manager, on behalf of the Procuring Entity, in consultation with the Contractor, order variations in writing to enlarge or extend, diminish, or reduce the Services or make any alterations in their design, inputs, site, quantities, sequence or timing, dimensions or the method of their execution or the combination and use of materials for the execution thereof or to order any additional service to be performed or any Services not to be performed. The contractor shall not be entitled to any compensation for any increase/reduction in the quantities of work but shall be paid only for the actual amount of work done. Such variations shall not be more than plus/ minus 25% of the value of the Contract and must be broadly within the original scope/ character and purpose of the original contract.
- 2) Unless otherwise stipulated, the accepted variation in the quantity of each contract item would be up to 25% of the quantity initially contracted. The contractor shall be bound to carry out the service at the agreed rates and shall not be entitled to any claim or compensation whatsoever up to the limit of 25% variation in the quantity of the individual item of services.
- 3) If the Contract Managers decide to increase the variation beyond 125% of Contracted quantity after internal approvals, the rates and acceptability shall be mutually agreed upon.

##### **4.8.3.2 Valuation of Variations**

The variation referred to in sub-clause above shall in no degree affect the validity of the contract; but shall be performed by the contractor as provided therein and be subject to the same conditions, stipulations, and obligations as if they had been initially and expressly included and provided for in the contract and the amounts to be paid therefore shall be calculated as per the Price Schedule. Any extra items/quantities of Services falling outside the purview of the provisions of Price Schedule above shall be paid for at the rates determined under GCC-clause 4.8.4 of these Conditions.

#### **4.8.4 Rates for Extra Items**

- 1) Any extra item of Service carried out by the contractor on the instructions of the Contract Manager which is not included in the Price Schedule shall be executed at the rate agreed upon between the Contract Manager and the contractor before the execution of such items of service.

- 2) The contractors shall be bound to notify the Contract Manager at least seven days before the necessity arises to execute such extra items of Services for which the Price Schedule/ Contract does not include rate or rates.
- 3) The rates payable for such extra items shall be decided at the meeting between the Contract Manager and Contractor, in as short a period as possible after the need for the extra item has come to the notice. In case the contractor fails to attend the meeting after being notified to do so or in the event of no settlement being arrived at, the Procuring Entity shall be entitled to execute such extra items of Service by other means, and the contractor shall have no claim for loss or damage that may result from such procedure.
- 4) Provided that if the contractor commences such items of Service or incurs any expenditure in this regard before the rates as determined and agreed upon as mentioned above, then and in such a case, the contractor shall only be entitled to be paid in respect of the Services carried out or expenditure incurred by him before the date of determination of the rates as aforesaid according to the rates as shall be fixed by the Contract Manager. However, if the contractor is not satisfied with the decision of the Contract Manager in this respect, he may appeal to the Registrar within 30 days of getting the decision of the Contract Manager, supported by analysis of the rates claimed. The Registrar's decision after hearing both the parties in the matter would be final and binding on the contractor and the Procuring Entity.

## 4.9 Deployment of Resources

### 4.9.1 Site and Assets thereon

#### 4.9.1.1 Site of Service Delivery

- 1) The site for Service delivery shall be the lands, spaces, and other places on, under, in or through which the Services are to be carried out and any other lands or places provided by the Procuring Entity for the contract.
- 2) No land or building or any other asset belonging to or in possession of the Procuring Entity shall be occupied by the contractor without the permission of the Procuring Entity. The contractor shall not use or allow to be used the site for any purposes other than executing or concerning the execution of the services.
- 3) **Facilities for Inspection:** the contractor shall afford the Contract Manager and his representative every facility for entering in and upon every portion of the site at all hours for inspection or otherwise and shall provide all facilities required for the purpose. The Contract Manager and his representative shall have free access to every part of the site and all places at which materials, tools, and plants are stored or prepared for the Services.
- 4) **Existing Roads and Waterways:** Existing roads or water courses shall not be blocked, cut through, altered, diverted, or obstructed in any way by the contractor, except with the permission of the Contract Manager. All compensations claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the contractor or his agent or his staff shall be recoverable from the contractor by deduction from any sums which may become due to him in terms of Contract, or otherwise according to law.
- 5) **Non-Obstruction of Access:** During the progress of Services in any street or thoroughfare, the contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reasons of the execution of the Services and shall react and maintain at his cost barriers, lights and

other safeguards as prescribed by the Contract Manager, for the regulation of the traffic, and provide security staff necessary to prevent accidents.

- 6) **No Obstruction to Flow of Work and Personnel of Procuring Entity:** Contractor shall arrange his work in consultation with the Contract Manager in such a manner to avoid obstruction to the normal flow of work and personnel of the Procuring Entity at the site, preferably utilising non-business hours for such obstructive or hazardous activities.

#### 4.9.1.2 Security Arrangements

- 1) The contractor shall with support from the Procuring Entity secure security arrangements at the site against unauthorised access/ trespass, pilferage, theft, leakage or misuse of property or belongings of his or his staff or Procuring Entity and its Staff by his staff or third parties or trespassers.
- 2) Preservation of Peace
  - a. the contractor shall take requisite precautions and use their best endeavours to prevent any riotous or unlawful behaviour by or amongst their workers and others, employed directly or through the petty contractors or sub-contractors for services, and for the preservation of peace and protection of the inhabitants and security of property in the neighbourhood of the site of services.
  - b. If the Procuring Entity stipulates maintenance of a special Police Force at or in the vicinity of the site during the tenure of service Contract, the expenses thereof shall be borne by the contractor and, if paid by the Procuring Entity, shall be recoverable from the contractor.
- 3) **Prohibition of Smoking and Intoxicants:** the contractor or his staff or any labour employed through sub-contractors or petty contractors shall be prohibited from Smoking in 'No Smoking Zone' and in Public Places and also prohibited from the use of any intoxicating substances including, but not limited to, intoxicating beverages during the service period or on-site or near the site or in any of the facilities, sites, buildings, encampments, or tenements owned, occupied by or within the control of the contractor or any of his employees. The contractor shall exercise influence and authority to the utmost extent to secure strict compliance with this condition.

#### 4.9.1.3 Safety Issues

- 1) the contractor shall be responsible for the safety of all activities on the Site.
- 2) The contractor shall be responsible for the safety of all persons employed by him on Site, directly or through petty contractors or Sub-Contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the contract manager or his representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the contractor in such cases expeditiously as per the Workmen's Compensation Act and other labour codes.
- 3) **Safety of Public and Third parties:** the contractor shall be *responsible for taking all precautions to ensure* the safety of the public and third parties, whether on public or Procuring Entity's property and shall post look out, such persons as may, in the opinion of the Contract Manager, be required to comply with regulations appertaining to the service. No explosives shall be used for the Services rendered or on the site by the contractor.

#### **4.9.1.4 Clearance of Site on Completion**

On completion of the services, the contractor shall clear away and remove all tools /plants and surplus materials, rubbish and temporary works of every kind and leave the whole of the site clean to the satisfaction of the Contract Manager.

- 1) If the contractor provides temporary huts on the Procuring Entity land for labour engaged by him to execute services, the contractor shall arrange for handing over vacant possession of the said land after the service is completed.
- 2) No final payment in settlement of the accounts for the Services shall be paid, held to be due or shall be made to the contractor till, in addition to any other condition necessary for final payment, site clearance shall have been affected by him.
- 3) In the event of failure on the part of the contractor to comply with this provision within 7 days after receiving notice for clearance of Procuring Entity's site and lands, the Contract Manager shall cause them to be removed through public sales of such materials and property or in such a way as deemed fit and convenient and cost as increased by supervision and other incidental charges shall be recovered from the contractor. If the contractor's labour refuses to vacate and has to be ejected following due process by the Procuring Entity, necessary expenses incurred by the Procuring Entity in connection shall be borne by the contractor. The Procuring Entity shall not be held liable for any loss or damage to the contractor's property as may be on the site and due to such removal.

#### **4.9.2 Key and Non-key Personnel**

##### **4.9.2.1 Key Personnel**

- 1) The titles agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the contractor's Key Personnel will be pre aligned with the Procuring Entity
- 2) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If it becomes necessary to replace any of the Key Personnel for any reason beyond the contractor's reasonable control, the contractor shall provide as a replacement a person of equivalent or better qualifications, subject to GCC-clause 4.9.2.1.

##### **4.9.2.2 Non-key Personnel**

- 1) the contractor must ensure deployment of non-key Personnel as required to ensure smooth execution of services. If the Contract Manager believes that the contractor is not employing sufficient staff and workers as is specified or otherwise for the proper execution of the Services, he shall issue a notice to the contractor for remedial measures. The contractor shall forthwith on receiving intimation to this effect deploy the additional number of staff and labour as specified by the Contract Manager immediately, and failure on the part of the contractor to comply with such instructions shall entitle the Procuring Entity to penalize the contractor for the shortfall in performance or terminate the contract as per the contract and avail all the remedies thereunder.
- 2) The contractor shall also deploy efficient and competent supervisory staff to give the necessary directions to his workers and to see that they provide their services desirably and adequately and shall employ only such supervisors, workers & labour in or about the execution of any of these Services as are careful and skilled in the various trades. Daily attendance records of such supervisors and labour shall be maintained.
- 3) Procuring Entity reserves its right to ask for additional manpower, and the contractor shall be contractually bound to provide such manpower at one week's advance notice.
- 4) Restrictions on the Employment of Retired Staff or Officers or Managers of Procuring Entity Services within One Year of their Retirement: the contractor shall not, himself be a

retired Government Manager of Gazetted rank, or engage any employee or associate who is a retired Government Manager of Gazetted rank, if such persons have not completed one year from the date of retirement, in connection with this Contract in any manner whatsoever without obtaining prior permission of the relevant authority. If the contractor is found to have contravened this provision, it shall constitute a breach of contract and Procuring Entity shall be entitled to terminate the contract and avail any or all the remedies thereunder.

- 5) The contractor shall, when he is not personally present on the site of the workplace, shall keep a responsible agent during working hours who shall, on receiving reasonable notice, present himself to the Contract Manager and orders given by the Contract Manager or his representative to the agent shall be deemed to have the same force as if they had been given to the contractor. Before absenting herself, the contractor shall furnish the name and address of his agent for this clause and failure on the contractor's part to comply with this provision at any time shall entitle the Procuring Entity to terminate the contract and avail any or all the remedies thereunder.

#### **4.9.2.3 Removal of Personnel on Orders of Contract manager**

- 1) If the Procuring Entity finds that any of the Personnel have (i) committed severe misconduct or have been charged with having committed a criminal act, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the contractor shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity, subject to sub-clause 2) below.
- 2) The contractor shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

#### **4.9.3 Materials Deployment**

- 1) Deployment of adequate inventory and supply chain of materials specified and provided in the contract necessary for the delivery of Services or Personnel deployed shall be of specified specification and quality and if not specified as per the best of market and business practices.
- 2) Except as the Procuring Entity may otherwise agree, no changes shall be made in such materials' deployment, inventory, or supply chain. If for any reason beyond the contractor's reasonable control, it becomes necessary to do so, the contractor shall provide a replacement by materials of equivalent or better quality.
- 3) In the event of the Contract Manager believing that the contractor is not employing on the Services sufficient materials/ inventory as is specified or otherwise for the proper execution of the Services within the prescribed procedure and time, the contractor shall forthwith on receiving intimation to this effect deploy additional materials/ inventory as specified by the Contract Manager immediately and failure on the part of the contractor to comply with such instructions shall entitle the Procuring Entity to penalize the contractor under shortfall in performance or terminate the contract as a breach of contract.

#### **4.10 Delivery of Services and delays**

##### **4.10.1 Works Programme**

- 1) Before commencement of the Services, the contractor shall submit for approval of the Contract Manager a Works Programme showing the Methods; schedule of delivery of

services, the deployment plans for Personnel and Materials for the execution of the services. The programme of delivery of Services amended as necessary by discussions with the Contract Manager shall be treated as the agreed Works programme for this Contract. The Services shall be carried out and monitored as per the approved Program as updated.

- 2) Unless otherwise stipulated in the contractor agreed between the parties, the Works Programme shall be based on round-the-clock (24X7) operations without violating statutory regulations.

#### **4.10.2 Compliance to Contract Manager's Instructions**

- 1) the Contract Manager shall direct the order in which the several components of the Services shall be provided, and the contractor shall execute without delay all orders given by the Contract Manager from time to time. Still, the contractor shall not be relieved thereby from responsibility for the due performance of the Services in all respects.
- 2) Any instructions or approval given by the Contract Manager's representative to Contractor in connection with the Services shall bind the contractor as though the Contract Manager had given it provided as follows -
  - a) Failure of the Contract Manager's representative to disapprove any work/ Services or materials shall not prejudice the power of the Contract Manager after that to disapprove such Services or material and order the rectification thereof.
  - b) If the contractor is dissatisfied because of any decision of the Contract Manager's representative, he shall be entitled to refer the matter to the Registrar through the Contract Manager, who shall there upon confirm or vary such decision.
- 3) **Compliance with Contractor's Request for Details:** the Contract Manager shall furnish with reasonable promptness, after receipt of the contractor's request, additional instructions regarding procedures, specifications or otherwise, necessary for the proper performance of the Services or any part thereof. All such procedures, specifications and instructions shall be consistent with the contract Documents and reasonably inferable from them.

#### **4.10.3 Commencement of Services**

- 1) **Effective Date of Contract:** Contractor shall commence the Services and shall proceed with due expedition and without delay, from the effective date of Contract (all dates of delivery shall be counted from such a date), which shall be the date mentioned as the effective date in the contract, or if not so mentioned 15 days from the date Contract has been signed by the Procuring Entity

#### **4.10.4 Time for Delivery of services and Extensions Thereof**

The time and uninterrupted delivery of Services shall be deemed to be the essence of the contract. Subject to any requirement in the contract as to the completion of any portions or portions of the Services before completion of the whole; the contractor shall fully and finally complete the whole of the services comprised in the contract within the period stipulated. If at any time during the currency of the contract, the contractor encounters conditions hindering the timely performance of services, the contractor shall promptly inform the Procuring Entity in writing about the same and its likely duration. He must make a request to the Procuring Entity for an extension of the delivery schedule. On receiving the contractor's communication, the Procuring Entity shall examine the situation and, at its discretion, may agree to extend the completion schedule, with or without liquidated damages and with and without denial clause by issuing an amendment to the contract in terms of the following clauses.

#### **4.10.4.1 Extension Due to Modification**

The Contract Manager might grant a reasonable extension of the completion date if any modifications ordered materially increase the time for delivery of the services. The contractor shall be responsible for requesting such extension of the date as soon as the cause thereof shall arise and, in any case, not less than one month before the expiry of the date fixed for completion of the services.

#### **4.10.4.2 Extension for Delay Not Due to Contractor**

- 1) If in the opinion of the contractor, the progress of Services has any time been delayed due to following reasons, then within 15 days of such happening causing delay, he shall give notice thereof in writing to the Contract Manager, but shall nevertheless do due diligence to bring down or make good the delays and to proceed with the services:
  - a. any act or neglect of other contractor employed by the Procuring Entity or in executing the work/service not forming part of the contract but on which Contractor's performance necessarily depends or
  - b. proceeding taken or threatened by or dispute with external third parties arising otherwise than from the contractor's own default etc. or
  - c. any act or neglect of Procuring Entity's employees or
  - d. delay authorized by the Contract Manager pending arbitration or
  - e. the contractor not having received in due time necessary instructions from the Procuring Entity for which he shall have especially applied in writing to the Contract Manager or his authorized representative.
  - f. hand over possession of the site or the necessary facilities/ documents/ data or instructions by the Procuring Entity to the contractor or
  - g. give the necessary notice to commence the services, or
  - h. any other delay caused by the Procuring Entity due to any other cause whatsoever.
- 2) the contractor may also indicate the period for which the Services is likely to be delayed and ask for a necessary extension of time. On receipt of such request from the contractor, the Contract Manager shall consider the same and grant such extension of time as in his opinion is reasonable regarding the nature and period of delay and the type and quantum of work affected thereby. No other compensation shall be payable for works so carried forward to the extended period. The same rates, terms, and conditions as the original Contract shall apply during the extended period.

#### **4.10.4.3 Extension of Time for Delay Due to Contractor**

- 1) If the contractor fails to deliver the Services within the fixed/ extended period for reasons other than those stipulated in GCC-clause 4.10.4.1 and 4.10.4.2 above, the Procuring Entity may, if satisfied that the service delivery can still be completed within a reasonable time, extend the period further.
- 2) On such extension, the Procuring Entity shall be entitled without prejudice to any other right and remedy available on that behalf to recover from the contractor as agreed damages and not by way of penalty Liquidated Damages as per GCC-clause 4.10.5 below.
- 3) Provided further, that if the Procuring Entity is not satisfied that the service can be completed by the contractor or in the event of failure on the part of the contractor to complete the service within the extension of time allowed further as aforesaid, the Procuring Entity shall be entitled without prejudice to any other right or remedy available in that behalf, treat the delay as a breach of contract and avail any or all the remedies thereunder, whether or not actual damage is caused by such default.

- 4) Inordinate Delays:** Delays due to the contractor of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays shall be noted as poor performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a poor performance. Such delays may be considered as a breach of the contract at the option of the Procuring Entity.

#### **4.10.5 Damages and Deductions Thereof**

##### **4.10.5.1 Right of the Procuring Entity to recover Damages.**

Procuring Entity shall be entitled to, and it shall be lawful for him to recover damages for the shortfall in performance and Liquidated damages as detailed in this clause from all payments due or any Performance Security or any retention money. This clause does not limit Procuring Entity from imposing more than one damages under the contract, and such damages shall be applied concurrently.

##### **4.10.5.2 Damages for Shortfall in Performance**

The Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, 0.5% percent of the delivered price (including elements of GST) of the defective Services, If the contractor fails to perform the Services as per performance standards and quality, without having to prove actual loss incurred.

##### **4.10.5.3 Liquidated damages**

- 1) Subject to GCC-clause 4.10.4, if the contractor fails to perform the Services within the time frame(s) incorporated in the contract, the Procuring Entity shall, without prejudice to other rights and remedies available to the Procuring Entity under the contract, deduct from the contract price, as liquidated damages for each week of delay or part thereof until actual delivery or performance, a sum equivalent to the 0.125% percent of the related bill of the Services. Besides liquidated damages during such a delay, the denial clause as per GCC-clause 4.10.5.4 shall also apply.
- 2) Any failure or delay by any sub-contractor, though their employment may have been sanctioned, shall not be admitted as a ground for any extension of time or for exempting the contractor from liability for any such loss or damage as aforesaid.

##### **4.10.5.4 Denial Clause:**

- 1) No increases in price on account of any statutory increase in or fresh Imposition of GST, or on account of any other taxes/ duty/ cess/ levy) leviable in respect of the Services and incidental goods/ works stipulated in the said Contract which takes place after the original delivery date shall be admissible on such of the said Services, as are delivered after the said date; and
- 2) Notwithstanding any stipulation in the contract for an increase in price on any other ground, including the price variation clause, no such increase after the original delivery date shall be admissible on such Services delivered after the said date.
- 3) Nevertheless, the Procuring Entity shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, or on account of any other Tax or duty or any other ground as stipulated in the price variation clause, which takes place after the expiry of the original delivery date.

#### **4.10.5.5 Limit on total Damages**

However, deduction on account of damages for delays and performance under this clause GCC 4.10.5, put together shall be subject to a maximum of 10% of the entire value of Contract of Services. Penalties/ liabilities outside this clause shall be covered by clause GCC 4.13.1.5.

#### **4.10.6 Suspension of Services**

##### **4.10.6.1 Suspension Ordered by Contract Manager**

the contractor shall, on the order of the Contract Manager, suspend the progress of the Services or any part thereof for such time or times and in such manner as the Contract Manager may consider necessary, and shall during such suspension, adequately protect and secure the site and assets so far as is necessary in the opinion of the Contract Manager. If such suspension is-

- 1) Provided for in the contract, or
- 2) Necessary for the proper execution of the Services or because of extraneous conditions or by some default on the part of the contractor and or
- 3) Necessary for the safety of the Services or any part thereof

##### **4.10.6.2 Extension of Time and Compensation**

the contractor shall not be entitled to the extra costs, if any, incurred by him during the period of suspension of the service, but in the event of any suspension ordered by the Contract Manager for reasons other than aforementioned and when each such period of suspension exceeds 14 days, the Contract Manager shall extend the time of service for completion of the Services as he may consider proper, having regard to the period or periods of such suspensions and such compensations as the Contract Manager may consider reasonable in respect of expenses incurred by the contractor during the periods of such suspension.

##### **4.10.6.3 Suspension Lasting More Than 3 Months**

If the Contract Manager suspends the Services or any part thereof for more than three months at a time, the contractor may serve a written notice on the Contract Manager requesting permission to proceed with the suspended part(s) of service. If such permission is not granted within 15 days from the receipt thereof, the contractor by further written notice may, treat the suspended part(s) of the service as deleted from the Contract. If the whole of the services has been suspended, he may treat it as a breach of the contract by the Procuring Entity and avail any or all remedies provided in this regard in the contract.

#### **4.10.7 Force Majeure**

- 1) On the occurrence of any unforeseen event, beyond the control of either Party, directly interfering with the delivery of Services arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the affected Party shall, within a week from the commencement thereof, notify the same in writing to the other Party with reasonable evidence thereof. Unless otherwise directed by the Procuring Entity in writing, the contractor shall continue to perform its obligations under the contract as far as reasonably practicable and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of

commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this Contract before such termination.

- 2) Notwithstanding the remedial provisions contained in GCC-clause 4.10.5 and 4.13, none of the Party shall seek any such remedies or damages for the delay and/ or failure of the other Party in fulfilling its obligations under the contract if it is the result of an event of Force Majeure.

#### **4.11 Prices and Payments**

##### **4.11.1 Prices**

###### **4.11.1.1 Firm Prices**

Unless otherwise stipulated in the contract, Prices shall be fixed and firm.

##### **4.11.2 Taxes and Duties**

- 1) the contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Services to the Procuring Entity.
- 2) If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all payments and deposit required taxes to respective authorities on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc.
- 3) **Payment of GST Tax under the contract:**
  - (a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery of Services shall be shown being made in the name, location/ state, and GSTIN of the beneficiary of the Services only, the location of the procurement office of the procuring entity has no bearing on the invoicing.
  - (b) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities at a later date, it (the contractor) shall refund to the Procuring Entity, the Procuring Entity's share out of such refund received by the contractor. The contractor shall also refund the appropriate amount to the Procuring Entity immediately after receiving the same from the concerned authorities.
  - (c) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess delivery of Services or revision in prices or any other reason under the contract shall be submitted to the Procuring Entity in compliance with GST provisions.
  - (d) GST shall be paid as per the rate at which it is liable to be assessed or has been assessed provided the provision of Services is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:
    - i. The Procuring Entity shall not pay a higher GST rate if leviable due to any misclassification of HSN number or incorrect GST rate incorporated in the contract due to contractor's fault. Wherever the contractor invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract,

- payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed.
- ii. However, the Procuring Entity shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law.
  - iii. Bidder is informed that he shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.
  - iv. In case of profiteering by the contractor relating to GST tax, the contractor shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.
- (e) The contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.
- (f) Liquidated damages or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due.
- 4) **Statutory Variation Clause:** Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period shall be borne by the contractor. The benefit of any reduction in GST rate must be passed on to the Procuring Entity during the original and extended delivery period. However, GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates takes place after the last date of bid submission.

#### 4.11.3 Terms and Mode of Payment

The payments shall be made as per the following schedule:

Sl No.	Deliverable	Payment
1.	On submission of Inception Report outlining approach and timelines for implementation of the Services	1% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students allotted for training to the bidder against the Tender
2.	15 days from start of the course against delivery of Batch Commencement letter clearly indicating the number of students enrolled	25% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in the said batch
3.	45 days from start of the course against delivery of Batch Commencement letter clearly indicating the number of students enrolled	25% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in the said batch

3.	15 days from end of the course and assessment being conducted by the bidder against delivery of Course Completion Report clearly indicating the students enrolled and students completing the course with their attendance records	49% of the value of the contract calculated as follows:  Value of contract = Per Student Expenditure Support * Number of students enrolled in said batch and completed the course with minimum 60% attendance
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Note:

- 1) Enrolment of students is likely to be conducted on an ongoing basis across the period of the contract. Therefore, the payment will also be processed in tranches as per the commence of a batch and completion of the course by the batch as defined in SI No. 1 to 4 above
- 2) The payment will be processed against deliverables submitted by the bidder as defined in the table above
- 3) All taxes deductible at source, if any, at the time of the release of payment, shall be deducted at source as per the current rate while making any payments.
- 4) The invoice amount would be paid after the evaluation of performance against the deployment, operation and after deducting penalties if any.
- 5) The payments shall be made in the manner as per Procuring Entity's payment procedures. Unless otherwise stipulated in the contract, payments above INR 5,000 (or any other threshold specified) to Contractors shall be made through EFT only. The contractor shall give his consent in a mandate form for receipt of payment through NEFT. In case of non-payment through EFT, or where the EFT facility is not available, payment may be released through cheque.
- 6) the contractor shall send its claim for payment in writing as per GST compliant Invoice and documents, when contractually due, along with relevant documents etc., as stipulated in Contract and a manner as also specified therein.
- 7) While claiming payment, the contractor is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the contractor for claiming that payment has been fulfilled as required under the contract.

**4.11.4 Withholding and lien in respect of sums claimed:**

- 1) Whenever any claim or claims for payment of a sum of money arises against the contractor, out of or under the contract, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain such sum or sums, in whole or in part pending finalisation or adjudication of any such claim from -
- 2) any security or retention money, if any, deposited by the contractor.
- 3) any sum(s) payable till now or hereafter to the contractor under the same Contract or any other contract with the Procuring Entity if the security is insufficient or if no security has been taken from the contractor.
- 4) Where the contractor is a partnership firm or a limited company, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/ limited company, as the case may be, whether in his capacity or otherwise.
- 5) It is an agreed term of the contract that the sum(s) of money so withheld or retained under the lien referred above shall be kept withheld or retained till the claim arising out of or under the contract is determined under clause GCC 12 and/ or 13. The contractor shall have no claim for interest or damages whatsoever on any account in respect of such

withholding or retention under the lien referred to supra and duly notified as such to the contractor.

- 6) **Lien in respect of Claims in other Contracts:** Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Procuring Entity or Government against any claim of the Procuring Entity or Government in respect of payment of a sum of money arising out of or under any other contract made by the contractor with the Procuring Entity or Government.

#### **4.11.5 Payments to Contractor**

##### **4.11.5.1 "On-Account" Payments**

the contractor shall be entitled to be paid as per the schedule above by way of "On-Account" payment, only for such Services, as in the opinion of the Contract Manager, the contractor has executed in terms of the contract. All payments due against the Contract Manager or his representative's certificates of measurements shall be subject to any deductions, which may be made under the contract, always provided that the Contract Manager may by any certificate make any correction or modification in any previous certificate, which he may have issued. The Contract Manager may withhold any certificate if the Services or any part thereof are not being carried out as per the contractual performance standards.

##### **4.11.5.2 On Account Payments Not Prejudicial to Final Settlement**

"On-Account" payments made to the contractor shall be without any prejudice to the final settlement of the accounts (except where measurements are noted explicitly in the Measurement Book as "Final Measurements" and the contractor has signed it such). They shall in no respect be considered or used as evidence of any facts stated in or to be inferred from such accounts nor of any particular quantity of service having been executed nor of the manner of its execution being satisfactory.

##### **4.11.5.3 Preconditions for Passing the Bills**

- 1) the Contract Manager shall ensure and cross-check with all relevant records before passing the bills of the contractor. Upon verification of the records by Procuring Entity, payments can be released to the contractor.
- 2) the Contract Manager shall ensure that the contractor submits all the relevant records related to statutory obligations and agreement conditions for claiming monthly bills.

#### **4.11.6 Completion Certificate and Final payment**

##### **4.11.6.1 Completion Certificate**

Upon a written intimation from the contractor, the Contract Manager shall issue a certificate of completion duly indicating the date of completion after satisfying himself of the following. The Contract Manager may also issue such a certificate indicating the date of completion concerning any part of the service (before the completion of the whole of service), which has been completed to the satisfaction of the Contract Manager:

- 1) that the whole of the Services to be done under the provisions of the contracts have been completed or when any such certificate is given in respect of part of a service, such part shall be considered completed.

- 2) that they have been inspected by him since their completion and found to be in good and substantial order,
- 3) that such completed services have satisfactorily passed any final test or tests that may be prescribed,
- 4) that all properties, works and things, removed, disturbed, or damaged in consequence of the Services have been adequately replaced and
- 5) that the contractor has returned in good condition, all assets loaned or hired from the Procuring Entity and has given a satisfactory account of payments made to or retained by the Procuring Entity for such loaned/ hired assets,
- 6) that the contractor has made good and satisfied in conformity with the contract all expenses and demands:
  - a. incurred by or made upon by the Procuring Entity.
  - b. for or in respect of damages or losses from or in consequence of the services.

#### **4.11.6.2 Approval Only by Completion Certificate:**

No certificate other than completion certificate referred to in sub-clause above shall be deemed to constitute approval of any service or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the contractor any part thereof or of the accuracy of any claim or demand made by the contractor or of additional varied Services having been ordered by the Contract Manager nor shall any other certificate conclude or prejudice any of the powers of the Contract Manager.

#### **4.11.6.3 Cessation of Procuring Entity's Liability**

After the issue of Completion Certificate, the Procuring Entity shall not be liable to the contractor for any matter arising out of or in connection with the contract for the delivery of the Services, unless the contractor shall have claimed in writing in respect thereof before the issue of the Completion Certificate for service in Contract.

#### **4.11.6.4 Unfulfilled Obligations**

Notwithstanding the issue of Completion Certificate for service, the contractor and the Procuring Entity shall remain liable for the fulfilment of any obligation incurred under the provision of the contract before the issue of the Completion Certificate for service, which remains unperformed at the time such certificate is issued. The contract shall be deemed to remain in force till the nature and extent of any such obligations are determined.

#### **4.11.6.5 Final Payment**

The contractor shall submit a Final bill on the Contract Manager's certificate of completion regarding the services. The Final payment shall be made as per the following calculations to the contract or after receiving a clear "No Claim Certificate" signed from him:

- 1) the total quantity of service executed by the contractor up to the completion date based on the Contract Manager or his representative's certified measurements.
- 2) priced at the rates in the Price Schedule in the contract and for extra works on rates determined under GCC-clause 4.8.4 of these Conditions.
- 3) necessary adjustment for any payments already made or retained
- 4) any deduction which may be made under the contract,
- 5) a complete account of all claims Contractor may have on the Procuring Entity, and the Contract Manager gave a certificate in writing that such claims are correct,

#### **4.11.6.6 No Claim Certificate and Release of Contract Securities**

The contractor shall submit a 'No-claim certificate' to the Procuring Entity in such form as shall be required by the Procuring Entity after the Services are finally admeasured and before the final payment/ performance securities are released. The Procuring Entity shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the contractor. The contractor shall not be entitled to make any claim whatsoever against the Procuring Entity under or arising out of this Contract, nor shall the Procuring Entity entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" Certificate in favour of the Procuring Entity. The Contactor shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

#### **4.11.6.7 Post Payment Audit**

Notwithstanding the issue of Completion Certificate and release of final Payment, the Procuring Entity reserves the right to carry out within 180 days (unless otherwise stipulated in the contract) of such completion/ final payment, a post-payment audit and/ or technical examination of the Services and the final bill including all supporting vouchers, abstracts etc. If any over-payment to the contractor is discovered due to such examination, the Procuring Entity shall claim such amount from the contractor.

#### **4.11.6.8 Signature on Receipts for Amounts**

Every receipt for money, which may become payable, or for any security which may become transferable to the contractors, under the contract, shall if signed in the partnership name by any one of the partners of a Contractor's firm, be a suitable and sufficient discharge to the Procuring Entity in respect of the sums of money or security purported to be acknowledged thereby. In the event of death of any contractor, partners during the pendency of the contract, every receipt by anyone of the surviving constituents shall be suitable and sufficient discharge as aforesaid. Nothing in this Clause shall be deemed to prejudice or effect any claim that the Procuring Entity may hereafter have against the legal representative regarding any breach of any contract conditions by any contractor partner/member so dying. Nothing in this clause shall be deemed to prejudice or effect the respective rights or obligations of the contractor partners/ members and the legal representatives of any deceased Contractor partners/ members.

#### **4.11.7 Defects Liability Period**

- 1) the contractor warrants that the Services have been delivered as per description, scope/ quantum, performance standards and quality outlined in the contract. This Defect Liability shall be in effect for a period stipulated in the contract (or if not specified for ninety (90) days) from completing the Services. The contract shall be deemed alive during this period, even if final payment and/ or Performance Guarantee has been released.
- 2) During the Defects Liability Period, upon discovering any deficiencies in outputs/ outcomes attributable to a shortfall in scope/ quantum, performance standards and quality of the performed Services, the Procuring Entity shall give written notice to the contractor.
- 3) Upon receiving such notice, the contractor shall, within 21 days (or within any other period, if stipulated in the contract), expeditiously remedy or reperform the Services or parts thereof, free of cost, at the site.
- 4) If the contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if stipulated in the contract), it shall amount to breach of

Contract, and the Procuring Entity shall proceed to take such remedial action(s) as deemed fit by it as detailed.

#### **4.11.8 Payment Against Time-Barred Claims**

All claims against the Procuring Entity shall be legally time-barred after three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity is entitled to, and it shall be lawful for it to reject such claims.

#### **4.11.9 Commissions and Fees**

The Service Provider shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of this Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

#### **4.12 Resolution of Disputes**

##### **4.12.1 Conciliation of disputes**

The Contractor and Procuring Entity shall endeavour their best to amicably settle all disputes arising out of or in connection with the agreement to be entered for the execution of the Assignment in the following manner:

- a. The Party raising a dispute shall address to the other Party a notice requesting an amicable settlement of the dispute within seven (7) days of receipt of the notice.
- b. The matter will be referred for negotiation between the Registrar, and the Contractor.

##### **4.12.2 Arbitration**

However, if the disputes are not resolved by joint discussions then the matter will be referred for adjudication to a sole arbitrator appointed by the Vice Chancellor of the University. The award of the sole arbitrator shall be final and bind on all the parties. The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996 as amended from time to time. The matter shall then be resolved between them and the agreed course of action documented within a further period of 15 days.

The "Arbitration Notice" should accurately set out the disputes between the parties along with the intention of the aggrieved party to refer such disputes to arbitration. All notices by one party to the other in connection with the arbitration shall be in writing. The arbitrators shall hold their sittings at New Delhi. The arbitration proceedings shall be conducted in English language. Subject to the above, the courts of law at New Delhi alone shall have the jurisdiction in respect of all matters connected with the Contract/Agreement even though other Courts in India may also have similar jurisdictions. The arbitration award shall be final, conclusive, and binding upon the Parties and judgment may be entered thereon, upon the application of either party to a court of competent jurisdiction. Each Party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrator, shall be shared equally by the Parties.

The Contractor shall not be entitled to suspend the Service/s or the completion of the job, pending resolution of any dispute between the Parties and shall continue to render the Service/s in accordance with the provisions of the Contract/Agreement notwithstanding the existence of any dispute between the Parties or the subsistence of any arbitration or other proceedings.

#### **4.13 Defaults, Breaches, Termination, and closure of Contract**

##### **4.13.1 Termination due to Breach, Default, and Insolvency**

###### **4.13.1.1 Defaults and Breach of Contract**

In case the contractor undergoes insolvency or receivership; neglects or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

- 1) **Default in Performance and Obligations:** if the contractor fails to deliver any or all of the Services or fails to perform any other contractual obligations within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity.
- 2) **Insolvency:** If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- 3) **Liquidation:** if the contractor is a company being wound up voluntarily, or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

###### **4.13.1.2 Notice for Default:**

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies.

###### **4.13.1.3 Terminations for Default**

- 1) **Notice for Termination for Default:** In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per sub-clause above, the Procuring Entity, if so decided, shall by written Notice of Termination for Default sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor.
- 2) Such termination shall not prejudice or affect the rights and remedies, including under sub-clause below, which have accrued and/ or shall accrue to the Procuring Entity after that.
- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All Defect Liability obligations, if any, shall continue to survive despite the termination.

#### **4.13.1.4 Contractual Remedies for Breaches/ Defaults or Termination for Default**

If there is an unsatisfactory resolution within this period, the Procuring Entity shall take one; or more of the following contractual remedies.

- 1) Temporary withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
- 2) Call back any loaned property or advances of payment, if any, with a levy of interest at the prevailing rate (MIBID - Mumbai Interbank Bid Rate).
- 3) Recover liquidated damages and invoke denial clause for delays.
- 4) Encash and/ or Forfeit performance or other contractual securities.
- 5) Prefer claims against insurances, if any.
- 6) Terminate Contract for default, fully or partially including its right for Risk-and-Cost Procurement as per following sub-clause.
- 7) **Risk and Cost Procurement:** In addition to termination for default, the Procuring Entity shall be entitled, and it shall be lawful on his part, to procure Services similar to those terminated, with such terms and conditions and in such manner as it deems fit at the "Risk and Cost" of the contractor. Such Risk and Cost Procurement must be contracted within six months from the breach of Contract. The contractor shall be liable for any loss which the Procuring Entity may sustain on that account provided the procurement, or, if there is an agreement to procure, such agreement is made. The contractor shall not be entitled to any gain on such procurement, and the manner and method of such procurement shall be in the entire discretion of the Procuring Entity. It shall not be necessary for the Procuring Entity to notify the contractor of such procurement. It shall, however, be at the discretion of the Procuring Entity to collect or not the security deposit from the firm/ firms on whom the contract is placed at the risk and cost of the defaulted firm.
- 8) Initiate proceedings in a court of law for the transgression of a law, tort, and loss, not addressable by the above means.

#### **4.13.1.5 Limitation of Liability**

Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the contractor to the Procuring Entity, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Procuring Entity concerning IPR infringement.

#### **4.13.2 Termination for Default/ Convenience of Procuring Entity and Frustration**

##### **4.13.2.1 Notice for Determination of Contract**

- 1) The Procuring Entity reserves the right to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience or frustration of Contract as per sub-clause below, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall specify that the termination is for the convenience of the Procuring Entity or the frustration of the contract. The notice shall also indicate inter-alia, the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.
- 2) Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All Defect Liability obligations, if any, shall continue to survive despite the termination.

- 5) The Services and incidental goods/ works that can be delivered or performed within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Services and incidental goods/ works, the Procuring Entity may decide:
  - a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
  - b) To cancel the remaining portion of the Services and incidental goods/ works and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Services and incidental goods/ works.

#### 4.13.2.2 Frustration of Contract

- 1) **Notice of Frustration Event:** Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether as a result of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration as in the sub-clause above.
- 2) However, the following shall not be considered as such a supervening cause
  - a. Lack of commercial feasibility or viability or profitability or availability of funds
  - b. if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

#### 4.13.3 Closure of Contract

The contract shall stand closed upon

- 1) successful performance of all obligations by both parties, including completion of Defect Liability obligations and final payment.
- 2) termination and settlements after that, if any, as per clause 4.13.1 or 4.13.2 above.

### 4.14 Code of Integrity in Public Procurement; Misdemeanours and Penalties

#### 4.14.1 Code of Integrity

Procuring authorities as well as bidders, suppliers, contractors, and consultants - should observe the highest standard of ethics and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) **"Corrupt practice"** - making offer, solicitation or acceptance of a bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the Tender Process or to otherwise influence the Tender Process;
- 2) **"Fraudulent practice"** - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information, for participation in a tender process or to secure a Contract, or in the execution of the contract;

- 3) **“Anti-competitive practice”** - any collusion, bid-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;
- 4) **“Coercive practice”** - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;
- 5) **“Conflict of interest”** –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the Tender Process or for personal gain;
- 6) **“Obstructive practice”** - materially impede procuring entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity’s rights of audit or access to information;

#### **4.14.2 Obligations for Proactive Disclosures:**

- 1) Procuring authorities, bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to *suo-moto* proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.
- 2) Any bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or by the Ministry/ Department of the Delhi Skill and Entrepreneurship University from participation in Tender Processes. Failure to do so shall amount to a violation of this code of integrity.

#### **4.14.3 Misdemeanours**

The following shall be considered misdemeanours - if a bidder/ contractor either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) violates the code of Integrity mentioned in GCC-clause 4.14.1 or the Integrity Pact (if included in the Tender/ Contract);
- 2) has been convicted of an offence:
- 3) under the Prevention of Corruption Act, 1988; or
- 4) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
- 5) It is determined by the Government of India to have doubtful loyalty to the country or national security consideration.
- 6) Employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants or employs a government officer within one year of his retirement, who has had business dealings with him in an official capacity before retirement; or

#### **4.14.4 Penalties for Misdemeanours**

Without prejudice to and in addition to the rights of the Procuring Entity to other remedies as per the Tender-documents or the contract, If the Procuring Entity concludes that a (prospective) bidder/ contractor directly or through an agent has violated this code of integrity or committed a misdemeanour in competing for the tender or in executing a contract, the Procuring Entity shall be entitled. It shall be lawful on his part to take appropriate measures, including the following:

##### **4.14.4.1 if his bids are under consideration in any procurement**

- 1) calling off of any pre-contract negotiations, and;
- 2) rejection and exclusion of Bidder from the Tender Process

##### **4.14.4.2 if a contract has already been awarded**

- 1) Termination of Contract for Default and availing all remedies prescribed thereunder;
- 2) Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
- 3) Recovery of payments including advance payments, if any, made by the Procuring Entity along with interest thereon at the prevailing rate (MIBID - Mumbai Interbank Bid Rate);

##### **4.14.4.3 Remedies in addition to the above:**

In addition to the above penalties, the Procuring Entity shall be entitled, and it shall be lawful on his part to:

- 1) File information against Bidder or any of its successors, with the Competition Commission of India for further processing, in case of anti-competitive practices;
- 2) Initiate proceedings in a court of law against Bidder or any of its successors, under the Prevention of Corruption Act, 1988 or the Indian Penal Code or any other law for transgression not addressable by other remedies listed in this sub-clause.
- 3) Remove Bidder or any of its successors from the list of registered suppliers for a period not exceeding two years. Suppliers removed from the list of registered vendors or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal.
- 4) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.
- 5) Debar a bidder/ contractor from participation in future procurements as follows:
  - a. Procuring Organization may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its procuring entities for a period not exceeding two years commencing from the date of debarment for misdemeanours listed in sub-clause GCC 4.14.3-1) above. The Procuring Organization shall maintain such a list which shall also be displayed on their website.
  - b. Procuring Organization may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its procuring entities for a period not exceeding three years commencing from the date of debarment for misdemeanours listed in sub-clause GCC 4.14.3 - 2) or3) above.

## 5. Section IV: Schedule of Requirements

Tender Title: Operating English Language Courses for DSEU in blended delivery model

### 1. Context

**1.1.** The Government of NCT of Delhi is deeply committed to improving the quality of education, in particular skill-based education, in Delhi. It has therefore set up the Delhi Skill & Entrepreneurship University (DSEU), which is envisioned as a world-class institution that provides quality education focused on market readiness of its trainees while providing a trained and employable human resource that can drive Delhi's and the nation's economic growth.

**1.2.** In order to support this vision, DSEU also aims to leverage the expertise of non-governmental and private partners to provide high quality education to its students. Such partnerships would potentially combine the management, accountability, and flexibility for innovation offered by private operators, with public funding and regulation to ensure universal, affordable, and non-discriminatory access to all students.

**1.3.** In this context, DSEU invites the organizations empanelled with it, for the English Language Sector either as Tier 1 or Tier 2 organizations, to develop and operate trainings for 30,000 students in communicative English for employability in physical face to face model of delivery.

### 2. Trainee personas and expected outcomes

The contractors are expected to develop and operate courses for the demographic described below:

Particulars	Course
Learner demographic and English proficiency	Learners will be from: <ul style="list-style-type: none"> <li>• The age group of 16-35 years</li> <li>• Having some history of formal school education (completed class 10/12 or equivalent technical education)</li> <li>• With some familiarity with the language having the ability to read, write and speak basic English</li> <li>• However, do not possess proficiency or confidence in English communication</li> <li>• And are looking to improve proficiency in communicative English particularly to aid in better employability</li> <li>• Gain confidence in communicating in the language</li> <li>• Ex: Delivery agents, Sales BDs, tele calling agents, etc.</li> </ul>
Expected outcomes	The course should aim to enable learners to: <ul style="list-style-type: none"> <li>• Significantly enhanced comfort and confidence in conversing in everyday workplace English</li> <li>• Improved diction and oration in English</li> <li>• Basic improvement in written English – somewhat enhance vocabulary as well as improved sentence construction</li> <li>• Produce simple connected text on topics which are familiar or of personal interest</li> <li>• Describe experiences and events, dreams, hopes &amp; ambitions and briefly give reasons and explanations for opinions and plans.</li> </ul>

### **3. Description of Scope of Services**

The scope of services of the contractors would be to support DSEU and perform the following functions:

#### **3.1. Obligations of Contractors**

The contractors will be expected to independently operate 40-50 centres (each with 4 or more classrooms with a minimum capacity of 30 students per class) under the overall guidance and supervision of DSEU and in accordance with relevant laws, regulations, ordinances, and statutes. The contractors are expected to train a minimum of 30,000 students in a face-to-face physical delivery model, during the course of 6 months of the contract extendable at the discretion of the Vice Chancellor of DSEU.

The contractors shall be responsible for:

##### **3.1.1. Student and Batch Management –**

- a. DSEU will undertake the publicity and mobilization and the contractors will support DSEU for the same by participation in the counselling of students chosen. Contractors are expected to provide videos, brochures, expert views to help DSEU share the same with candidates.
- b. Contractors will also be expected to set up a small call centre to answer applicant queries as they seek admissions into the course.
- c. All records including but not limited to those pertaining to basic details, attendance, class progress, assessment, and training outcomes, must be maintained and shall be forwarded to DSEU on a regular basis. All such records must be maintained online as a part of the ERP/MIS launched by DSEU.
- d. Batching of interested students will be done in conjunction with DSEU. The Contractors is expected to undertake batching that leads to optimal learning and delivery for students. It is DSEU's expectation that the ideal batch size is less than or equal to 30.

##### **3.1.2. Soft Infrastructure and Teaching Learning Material (TLMs)**

- a. While DSEU will provide the basic infrastructure (rooms, student and faculty seating, white/green board) for the CoE, the Contractors must equip it with all other soft infrastructure and TLMs. All student specific TLMs will be printed and disseminated by the Contractors. The printing shall be of high quality and DSEU reserves the right to examine the materials for quality.
- b. The centre will operate as an extension of DSEU and will carry the signage of DSEU.
- c. The Contractors is expected to have access to relevant digital platform for effectively conducting digital component of the classes online.

##### **3.1.3. Delivery of Courses**

- a. The Contractors shall be responsible for all aspects of the training including quality of training delivery, day to day operations etc. required for the training. The list of faculty will be approved by DSEU. DSEU reserves the right to request for faculty replacement if faculty is not deemed fit for the course. Contractors must ensure that the faculty provided has significant relevant experience in the field of communicative English and also has experience with the Contractors itself in prior assignments before being offered to DSEU.
- b. The Contractors are not allowed to provide training through a franchisee arrangement.
- c. The delivery of this course is expected to primarily be in a face-to-face model. However, a part of the course may also be delivered as a self-learning module but the same should **not exceed 30%** of the total course duration

- d. Similar, the delivery of the courses is expected to be done physically. However, a part of the course may also be delivered online but the same should **not exceed 30%** of the total course duration. However due to the prevailing COVID pandemic, DSEU may make suitable exceptions on a case-by-case basis.

#### **3.1.4. Content & Curriculum**

- a. The Contractors will create structured and customized physical as well as multimedia curriculum and content for the courses based on market needs and demands.
- b. While the Contractors will be responsible for the content & curriculum creation, relevant faculty from DSEU will be consulted and involved in the whole process. The final course curriculum as well as any modifications thereafter must be formally approved by DSEU.
- c. It is expected that the course will be of a duration ranging from 2-4 months with **100 to 130 contact hours**.
- d. The courses should focus on building communicative English skills and confidence amongst students to speak and converse in the English language.
- e. The courses should also focus on use of English for enhancing employability of students and could include modules critical for employability such as professional behaviour, professional writing, personal grooming, etc.
- f. It is expected that modules focusing on Communicative English skills and Employability oriented skills will form part of 30-40% of the duration of the course.

#### **3.1.5. Faculty & Trainers**

- a. The Contractors must recruit and deploy faculty, trainers, technicians, and support/admin/maintenance staff as required for each course as per approval accorded by DSEU.
- b. Persons deployed as faculty and trainers by the Contractors must be certified instructors in possession of requisite knowledge, skills, and experience in their domain.
- c. The courses must be taught by certified trainers having relevant industry and/or academic experience.

#### **3.1.6. Assessments**

- a. The Contractors are expected to conduct periodic internal assessments to form a baseline of skill level of incoming students and track progress from time to time. The assessment framework, duration, frequency, and mode must be pre aligned with DSEU in advance. Further the requisite data of the outcome must also be shared with DSEU
- b. DSEU will however be responsible for a final independent examination upon course completion which will lead to a certification from DSEU. The contractors will be expected to logistically support DSEU in conducting the final examination for the students trained by them which may or may not be held in the same centre where the students have undergone the course. Logistical support will include supporting in batch management for examination, invigilation, answer sheet review, etc. However, it is hereby clarified that the final examination is not linked to the contractor's payments.

### **3.2. Obligations of DSEU**

The following shall be obligations of DSEU:

#### **3.2.1. Mobilisation**

- a. Prior to initiation of training, DSEU will lead ground-level mobilization of students. The Contractors will make available requisite support needed in terms of the details of the program etc. to allow for the publicity.

#### **3.2.2. Infrastructure**

- a. DSEU shall provide the necessary building for setting up the centre for training at mutually suitable location. The buildings that will be provided will be DSEU University campuses as well as Delhi Government schools and will be distributed across the length and breadth of the city of Delhi. A total of 40-50 buildings (Centres) will be allocated for this project.
- b. Each building will have at least 3 to 4 functional classrooms and will be equipped with basic infrastructure to conduct classes including desks, chairs, functional toilets, utilities (water & electricity), etc. Each classroom will be able to accommodate a batch of 30 students at a given point of time.
- c. A caretaker will be made available at each centre on a part-time basis to support this infra. Contractor is required to bring in any other infrastructure required to facilitate classroom delivery

### **3.2.3. Fees and payments**

- a. DSEU will independently determine the course fees to be charged to the student. DSEU will also be the only authority that may collect from the prospective students, the fee prescribed for the courses / training programs
- b. Contractors cannot enter into any financial transaction directly with students in relation to the delivery of English Language courses covered under this tender

### **3.2.4. Final Examination & Certification**

- a. DSEU will be responsible for conducting an independent final assessment of all trainees either on its own or via an independent third party. The trainees will accordingly be certified by DSEU post successful completion of the examination.

### **3.2.5. Monitoring performance**

- a. DSEU shall undertake regular monitoring of the centres as well as perform regular reviews on the quality of training of trainees. DSEU will further setup a review mechanism as needed to jointly assess the implementation of the project with the Contractors. DSEU has the right to terminate the agreement at any point of time due to poor delivery, fraudulent practices, non-adherence to training standards and any other serious issues that may arise with periodic reviews, inspections as needed etc. DSEU may also appoint independent agencies to evaluate the program whenever needed

## **4. Contract Period:**

The Services shall be contracted to be completed within a period of 6 months, unless terminated earlier as per the contract. In addition, at the option of the Procuring Entity, the contract period may be extended by six months. Notice of renewal shall be provided by physical/ digital means to the Service Provider no later than thirty (30) days before the contract end.

## 6. Section V- Technical Evaluation Criteria

Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note for Bidders: Regarding this Schedule, the technical evaluation will be done via the means of a technical presentation. Bidders shall submit the following documents to demonstrate the approach and methodology that will be followed to execute the Services under this contract. The bidders shall be called for a technical presentation to present their approach and methodology and answer any questions from the panel of experts formed for technical evaluation.*

*Form 2.1: Details of Course Design and Content*

*Form 2.2: Details of Delivery Model and Pedagogy*

*Form 2.3: Personnel Deployment Plan*

*Form 2.4: Details of internal assessments to be conducted*

<b>Criteria for evaluating approach and methodology</b>	<b>Relevant marks</b>	<b>Please submit evidence in</b>
<p><b>1. Course design and content:</b> The bidders must submit the details of the course that is proposed to be run in the centres provided by DSEU which should among other aspects include:</p> <ul style="list-style-type: none"> <li>i. the duration in hours and months of the course</li> <li>ii. details of modules that would be included in the course (kindly attached full syllabus/ list of modules)</li> <li>iii. highlight employability skills related modules if any</li> <li>iv. sample reference material that would be provided to facilitators and/or students</li> <li>v. any other aspect the bidder finds relevant</li> </ul>	25	Form 2.1
<p><b>2. Delivery model and Pedagogy:</b> The bidder must submit in detail the plan to deliver the project and the method in which the teaching-learning will take place. This at a minimum shall include at a minimum:</p> <ul style="list-style-type: none"> <li>i. the split between face-to-face delivery, self-learning, peer learning, etc.</li> <li>ii. the split between physical delivery vs online delivery</li> <li>iii. the supporting tools used e.g., textbooks, peer group discussion, online activities, etc.</li> <li>iv. any other aspect the bidder finds relevant</li> </ul>	25	Form 2.2
<p><b>3. Key personnel planning:</b> The bidder must submit the details of the personnel that will be deployed for the delivery of the courses which shall include:</p> <ul style="list-style-type: none"> <li>i. The number and profiles of trainers that will be deployed</li> <li>ii. Any other details the bidder finds relevant</li> </ul>	15	Form 2.3: Personnel Deployment Plan
<p><b>4. Project Management Unit:</b> The bidder must submit details of its plan to manage the delivery of Services under this contract which shall include:</p> <ul style="list-style-type: none"> <li>i. The number and profiles of the team that will be deployed for overseeing the delivery of services</li> <li>ii. Key activities/ mechanism that will be adopted to manage the delivery of services effectively and efficiently</li> </ul>	15	Form 2.3: Personnel Deployment Plan

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iii. Any other details the bidder finds relevant		
<b>5. Internal assessments:</b> The bidder must demonstrate and share details of the mechanism that would be followed to continuous assess and evaluate the progress of learners during the course which shall at a minimum include: <ul style="list-style-type: none"> <li>i. The frequency and method of conducting internal assessments including before initiating the course, during the course and post course completion</li> <li>ii. Frameworks adopted for designing internal assessments</li> <li>iii. Delivery method of internal assessments</li> <li>iv. Any other details the bidder finds relevant</li> </ul>	<i>20</i>	Form 2.4

## 7. Section VI Infrastructure set up available for Project

Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note for Bidders: This Section has been included to share with bidders further details of the infrastructure that will be made available for the project to support in determining their commercial outlay. The bidders are expected to carefully read the details below to understand the tentative batches that can be accommodated in each centre and develop an opinion on the resources required for smooth functioning of the courses.*

Total number of buildings (centres) earmarked for the project = 40-50 across Delhi  
Number of classrooms in each building = 4 classrooms

Number of hours classroom will be available (weekday) = 3 hours/day in evening  
Number of hours classroom will be available (weekend) = 8 hours/day  
Total number of hours classroom will be available (weekly) = 25 to 30 hours

Number of batches that can be accommodated (@10 hours) = 3 batches  
Number of students that can be accommodated (@30/batch) =  $30 \times 3 = 90$  students

Number of students that can be accommodated in each centre = 4 classrooms  $\times$  90 = 360 students

Therefore with ~360 students being accommodated in each centre simultaneously and 40-50 centres being made available, a total of ~14,000-18,000 students will be trained at a given point of time.

With a course duration of ~100 to 130 hours, it is assumed the bidders will at a minimum be able to run two full 3-month programs at the allotted centres, thereby training  $2 \times 14,000-18,000$  students i.e., a total of 28,000 to 36,000 students over a period of 6 months

Centres will be allocated to each bidder by DSEU based on the number to be trained by each bidder and batch size that can be accommodated in each centre.

## **8. Section VII Student allocation Methodology amongst successful bidders**

Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note for Bidders: This Section has been included to share with bidders the method that would be followed to allocate students amongst successful bidders. As part of this project, DSEU aims to train 30,000 students. These students will not be registered in one go but rather over the duration of the project at different points of time. Given this ongoing nature of registrations, the students will be allocated to the successful bidders according to the process defined below:*

As mentioned in Schedule VII above, ~50 centres have been earmarked for the project. These centres will have similar capacity per centre and will be allocated to the successful bidders as follows:

- i. 60% centres (~30 centres) to L1 bidder
- ii. 40% centres (~20 centres) to L2 bidder

The above centres will not be operationalized (opened for admissions) in one go to accommodate 30,000 students. Rather the centres will be operationalized in smaller batches of 5 to 10 centres at a time over a period of 6 months. Every time a set of centres is operationalized, the centres will be selected in the above specified ratio i.e.

- i. 60% of the centres will be from the centres allotted to L1 bidder and
- ii. 40% of the centres will be from those allotted to L2 bidder

Further only after the admissions for one batch of centres is completed i.e. at least 70% of the seats have been filled, will the admissions for the second batch of centres be initiated. This will be done to ensure that on an ongoing basis the number of students allotted to bidders is in the ratio of 60:40 in accordance with the terms of the RFP.

However, it is further clarified that as stated in clause 3.12.1, in the event, the University is unable to register minimum 30,000 students, the successful bidders will have to train the number of students allocated to them. The University will try to ensure the allocation takes place in the ratio of 60:40 as defined in the RFP.

## **9. BIDDING FORMS**

**Form 1: Bid Form (Covering Letter)**

(To be submitted as part of Technical bid, along with supporting documents, if any)  
(on Bidder's Letterhead)  
(Strike out alternative phrases not relevant to you)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Empanelment Reference No. \_\_\_\_\_

Date.....

To

The Registrar

Delhi Skill and Entrepreneurship University

[G/Floor, Integrated Institute of Technology Complex, Sector 9, Dwarka, New Delhi- 110077]

Ref: Your Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

Sir/ Madam,

Having examined the abovementioned Tender Document, we, the undersigned, hereby submit/ upload our Techno-commercial and Financial bid (Price Schedule) for the performance of Services and incidental Goods/ Works in conformity with the said Tender Documents.

(Please tick appropriate boxes or strike out sentences/ phrases not applicable to you)

**1) Our Eligibility and Qualifications to participate**

We comply with all the eligibility criteria stipulated in this Tender Document, and the relevant declarations are made along with documents in Form 1.2 of this bid-form.

**2) Our Bid to deliver Services:**

We offer to deliver the subject Services in conformity with Section IV: Schedule of Requirements of the Tender Document.

**3) Prices:**

We hereby offer to perform the Services at our lowest prices and rates mentioned in the separate Financial Bid. It is hereby confirmed that the prices quoted therein by us are:

- a. based on terms of delivery and delivery schedule confirmed by us; and
- b. based on the terms and mode of payment as stipulated in the Tender Document. We have understood that if we quote any deviation to terms and mode of payment, our bid is liable to be rejected as nonresponsive, and
- c. The prices in this offer have been arrived at independently, without restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i. those prices; or
  - ii. the intention to submit an offer; or
  - iii. the methods or factors used to calculate the prices offered.

- d. The prices in this offer have neither been nor shall be knowingly disclosed by us, directly or indirectly, to any other bidder or competitor before bid opening or contract award unless otherwise required by law.

**4) Affirmation to terms and conditions of the Tender Document:**

We have understood the complete terms and conditions of the Tender Document. We accept and comply with these terms and conditions without reservations, although we are not signing and submitting some of the sections of the Tender Document. Deviations, if any, are submitted by us in Form 3: 'Terms and Conditions - Compliance'.

**5) Abiding by the Bid Validity**

We agree to keep our bid valid for acceptance for a period up to 90 days, as required in the Tender Document, or for a subsequently extended period, if any, agreed to by us, and are aware of penalties in this regard stipulated in the Tender Document in case we fail to do so.

**6) Non-tempering of Tender Document**

We confirm that we have not changed/ edited the contents of the Tender Document. We realise that any such change noticed at any stage, including after the contract award, shall be liable to punitive action in this regard stipulated in the Tender Document. We also confirm that copies of documents/ affidavits/ undertakings submitted along with our Technical bid are valid, true, and correct to the best of our knowledge and belief. If any dispute arises related to the validity and truthfulness of such documents/ affidavits/ undertakings, we shall be responsible for the same. Upon accepting our Financial bid, we undertake to submit for scrutiny, on-demand by the Procuring Entity copies of all such certificates, documents, affidavits/ undertakings.

**7) A Binding Contract:**

We further confirm that, if our bid is accepted, all such terms and conditions shall continue to be acceptable and applicable to the resultant contract, even though some of these documents may not be included in the contract Documents submitted by us. We do hereby undertake that, until a formal Contract is signed or issued, this bid, together with your written Letter of Award, shall constitute a binding contract between us.

**8) Performance Guarantee and Signing the contract**

We further confirm that, if our bid is accepted, we shall provide you with performance security of the required amount stipulated in the Tender Document for the due performance of the contract. We are fully aware that in the event of our failure to deposit the required security amount and/ or failure to execute the agreement, the Procuring Entity has the right to avail any or all punitive actions laid down in this regard, stipulated in the Tender Document.

**9) Signatories:**

We confirm that we are duly authorized to submit this bid and make commitments on behalf of the Bidder. Supporting documents are submitted in Form 1.1 annexed here with. We acknowledge that our digital/digitized signature is valid and legally binding.

**10) Rights of the Procuring Entity to Reject bid(s):**

We further understand that you are not bound to accept the lowest or any bid you may receive against your above-referred Tender Document.

.....

Request for Proposal for Operating English Language Courses for DSEU in blended delivery model  
- Tender ID: 2022\_DSEU\_215523\_1

(Signature with date)

.....  
(Name and designation)  
Duly authorized to sign bid for and on behalf of  
[name & address of Bidder and seal of company]

**Form 1.1: Bidder Information**

(To be submitted as part of Technical bid)  
(on Company Letterhead)  
(Along with supporting documents, if any)

Bidder's Name \_\_\_\_\_  
[Address and Contact Details]

Empanelment Reference No. \_\_\_\_\_ Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note: Bidder shall fill in this Form following the instructions indicated below. No alterations to its format shall be permitted, and no substitutions shall be accepted. Bidder shall enclose certified copies of the documentary proof/ evidence to substantiate the corresponding statement wherever necessary and applicable. Bidder's wrong or misleading information shall be treated as a violation of the Code of Integrity. Such Bids shall be liable to be rejected as nonresponsive, in addition to other punitive actions provided for such misdemeanours in the Tender Document.*

(Please tick appropriate boxes or strike out sentences/ phrases not applicable to you)

**1) Bidder/ Contractor particulars:**

- a) Name of the Company: .....
- b) Corporate Identity No. (CIN): .....
- c) Place of Registration/ Principal place of business .....
- d) Complete Postal Address: .....
- e) Pin code/ ZIP code: .....
- f) Telephone nos. (with country/ area codes): .....
- g) Mobile Nos.: (with country/ area codes): .....
- h) Contact persons/ Designation: .....
- i) Email IDs: .....

**2) Taxation Registrations:**

- a) PAN number: .....
- b) Type of GST Registration as per the Act (Normal Taxpayer, Composition, Casual Taxable Person, SEZ, etc.): .....
- c) GSTIN number: .....in Contractor and Service Site States
- d) Registered/ Certified Offices from where the Services would be supported and Place of Service Site for GST Purpose: .....
- e) Contact Names, Nos. & email IDs for GST matters (Please mention primary and secondary contacts): .....

*Documents to be submitted: Self-attested Copies of PAN card and GSTIN Registration.*

**3) Authorization of Person(s) signing the bid on behalf of the Bidder**

- a) Full Name: \_\_\_\_\_
- b) Designation: \_\_\_\_\_
- c) Signing as:
  - A sole proprietorship firm. The person signing the bid is the sole proprietor/ constituted attorney of the sole proprietor,
  - A partnership firm. The person signing the bid is duly authorised being a partner to do so, under the partnership agreement or the general power of attorney,
  - A company. The person signing the bid is the constituted attorney by a resolution passed by the Board of Directors or in pursuance of the Authority conferred by Memorandum of Association.
  - A Society. The person signing the bid is the constituted attorney.
  - Other, please specify \_\_\_\_\_

**4) Bidder's Authorized Representative Information**

- a) Name:
- b) Address:
- c) Telephone/ Mobile numbers:
- d) Email Address:

(Signature with date)

.....  
(Name and designation)  
Duly authorized to sign bid for and on behalf of  
[name & address of Bidder and seal of company]  
DA: As above

**Form 1.2: Eligibility Declarations**

(To be submitted as part of Technical bid)  
(On Company Letterhead)  
(Along with supporting documents, if any)

Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

Bidder's Name \_\_\_\_\_  
[Address and Contact Details]

Empanelment Reference No. \_\_\_\_\_ Date.....

**Eligibility Declarations**

We hereby confirm that we comply with all the stipulations of NIT-clause 1.3 and ITB-clause 3.3.2 and declare as under and shall provide evidence of our continued eligibility to the Procuring Entity as may be requested:

We solemnly declare that we \_\_\_\_\_ are empanelled as a partner of the Delhi Skill and Entrepreneurship University for the English Language sector either as a

- Tier 1 organization
- Tier 2 organization

and are eligible to bid for this tender

.....  
(Signature with date)

.....  
(Name and designation)  
Duly authorized to sign bid for and on behalf of  
.....  
.....  
[name & address of Bidder and seal of company]

*(Please tick appropriate box above and kindly attach a copy of the letter for empanelment received from the Delhi Skill and Entrepreneurship University)*

### **Form 2.1 Details of Course Design and Content**

*The bidders must submit the details of the course that is proposed to be run in the centres provided by DSEU which should among other aspects include:*

- i. the duration in hours and months of the course*
- ii. details of modules that would be included in the course (kindly attached full syllabus/ list of modules)*
- iii. highlight employability skills related modules if any*
- iv. sample reference material that would be provided to facilitators and/or students*
- v. any other aspect the bidder finds relevant*

**Form 2.2 Details of Delivery Model and Pedagogy**

*The bidder must submit in detail the plan to deliver the project and the method in which the teaching-learning will take place. This at a minimum shall include at a minimum:*

- i. the split between face-to-face delivery, self-learning, peer learning, etc.*
- ii. the split between physical delivery vs online delivery*
- iii. the supporting tools used e.g., textbooks, peer group discussion, online activities, etc.*
- iv. any other aspect the bidder finds relevant*

**Form 2.3: Personnel Deployment Plan**

(To be submitted as part of Technical bid)  
(on Company Letterhead)

Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

Bidder's Name\_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No.\_\_\_\_\_ Date.....

*Note to Bidders: Indicate the number of facilitators/ trainers required to perform the services along with the details of the Project Management Team that will ensure effective delivery of services.*

**A. Key Personnel – Facilitators**

*Note to Bidders: At a minimum, 5 CVs must be provided for the facilitators that will be brought in for the project*

No.	Name	Man-Months	Qualification/ Certification/ Licence/ Training	Work Experience in a similar position in similar Projects (Yr.)	Work Experience Total (Yr.)
1					
2					
3					
4					
5					

***CVs of Key Personnel***

Name of Bidder		
Position		
Personnel information	Name:	Date of birth:
	Qualification/ Certification/ Licence/ Training	
Present employment	Name of employer:	
	Address of employer:	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer
Summarize professional experience over the last 10 years, in reverse chronological order. Indicate technical and managerial experience relevant to the project.		
<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant teaching and management experience</b>

**B. Project Management Unit**

*Note to Bidders: The bidders must mention details of the team that will be brought in for overall Project Management to ensure proper delivery of services and at a minimum, the resume of the project manager and 1-2 support staff must be attached as part of this form*

Sr. No.	Name	Man-Months	Qualification/ Certification/ Licence/ Training	Work Experience in a similar position in similar Projects (Yr.)	Work Experience Total (Yr.)
1					
2					
3					
4					
5					
6					

***CVs of Key Personnel***

Name of Bidder		
Position		
Personnel information	Name:	Date of birth:
	Qualification/ Certification/ Licence/ Training	
Present employment	Name of employer:	
	Address of employer:	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer
Summarize professional experience over the last 10 years, in reverse chronological order. Indicate technical and managerial experience relevant to the project.		
<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant teaching and management experience</b>

**Form 2.4 Details of internal assessments to be conducted**

*The bidder must demonstrate and share details of the mechanism that would be followed to continuously assess and evaluate the progress of learners during the course which shall at a minimum include:*

- i. The frequency and method of conducting internal assessments including before initiating the course, during the course and post course completion*
- ii. Frameworks adopted for designing internal assessments*
- iii. Delivery method of internal assessments*
- iv. Any other details the bidder finds relevant*

**Form 3: Terms and Conditions- Compliance**

(To be submitted as part of Technical bid)  
 (on Company Letterhead)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note to Bidders: Fill up this Form regarding Terms and Conditions in the Tender Document, maintaining the same numbering and structure. Add additional details not covered elsewhere in your bid in this regard.*

Sl. No.	Ref of Tender Document Section, Clause		Subject	Confirmation/ Deviation/ Exception/ reservation	Justification/ Reason
	Section	Clause/ sub-clause			

We shall comply with, abide by, and accept without variation, deviation, or reservation all terms and conditions of the Tender Document, except those mentioned above. If mentioned elsewhere in our bid, contrary terms and conditions shall not be recognised and shall be null and void.

.....  
 (Signature with date)

.....  
 (Name and designation)  
 Duly authorized to sign bid for and on behalf of

.....  
 [name & address of Bidder and seal of company]  
 DA: If any, at the option of the Bidder.

**Form 4: Checklist for Bidders**

(To be submitted as part of Technical bid)  
(on Company Letterhead)

Bidder's Name\_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No.\_\_\_\_\_ Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Operating English Language Courses for DSEU in blended delivery model

*Note to Bidders: This checklist is merely to help the bidders to prepare their bids, it does not override or modify the requirement of the tender. Bidders must do their own due diligence also.*

Sr	Documents submitted, duly filled, signed	Yes/ No/ NA
<b>Envelope A: Techno Commercial Bid</b>		
1.	Form 1- Bid Form (to serve as covering letter and declarations applicable for both the Techno-commercial and Financial bid)	
2.	Form 1.1: Bidder Information along with Power of attorney and Registration Certificates etc.	
3.	Form 1.2: Eligibility Declarations, along with supporting documents (i.e., Empanelment letter received from DSEU_	
4.	Form 2.1: Details of Course Design and Content proposed for the Project	
5.	Form 2.2: Details of Delivery Model and Pedagogy to be adopted for the Project	
6.	Form 2.3: Details of Personnel Deployment Plan	
7.	Form 2.4: Details of Internal Assessments to be conducted	
8.	Form 3: Terms and Conditions compliance	
9.	Form 4: This Checklist	
<b>Envelope B: Financial Bid</b>		
1.	Form 5: Format for Financial Bid	

.....  
(Signature with date)

.....  
(Name and designation)

Duly authorized to sign bid for and on behalf of.....

[name & address of Bidder and seal of company]

**Form 5: Format for Financial Bid**

(To be placed in Financial Bid cover)

To

Registrar,  
Delhi Skill and Entrepreneurship University,  
Integrated Institute of Technology Complex,  
Sector 9, Dwarka, New Delhi

Having examined the Tender document, the receipt of which is hereby duly acknowledged, I/We, the undersigned, offer to provide the services as required and outlined in the Tender Operating English Language Courses for DSEU in blended delivery model

I/ We have carefully read and understood the terms and conditions of the Tender and I/we do hereby undertake to provide the services as per terms and conditions mentioned in Tender.

1. I/we are hereby submitting our complete Financial Bid as per the prescribed format.
2. I/we hereby agree to train the requisite number of students allocated to me/us as per the Schedule of Requirements, in English language, at a **Per Student Expenditure Support** stipulated below.
3. Our Commercial Bid is inclusive of statutory taxes, duties, and charges and levies as applicable, except GST, which shall be charged at the rate stipulated below as per the prescribed regulations.

Particulars	Amount in figures	Amount in words
Per Student Expenditure Support (A)		
GST rate (B)		
Total Per Student Expenditure Outlay for DSEU (A+B)		

4. The Commercial Bid has been signed by the Authorized Signatory and shall be binding upon me/us.
5. It is hereby confirmed that I/We are entitled to act on behalf of our corporation / company / firm / organization and empowered to sign this document as well as such other documents, which may be required in this connection.

Yours sincerely,  
Dated:  
(Signature)

(In the capacity of)  
Duly authorized to sign the Tender Response for and on behalf of:  
(Name and Address of Company)  
Seal/Stamp of bidder

**Delhi Skill and Entrepreneurship University  
Request for Proposal for Operating English Language  
Courses for DSEU in blended delivery model  
Tender ID: 2022\_DSEU\_215523\_1  
For Procurement of  
Operating English Language Courses for DSEU in  
blended delivery model**

