

**ELECTRONICS SECTOR SKILLS COUNCIL  
OF INDIA**

**REQUEST FOR PROPOSAL**

FOR

EXECUTING THE SOLAR PHOTOVOLTIC  
POWER GENERATION SYSTEM OF COMMON  
UTILITY CENTER

OF

ESSCI at ELCINA EMC, BHIWADI, RAJASTHAN

23 September 2024

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# 1 INTRODUCTION

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- I. **ELECTRONICS SECTOR SKILLS COUNCIL OF INDIA (hereinafter referred to as 'ESSCI or Client')** is setting up a Greenfield Common Utility Center (CUC), in ELCINA EMC at Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan.
- II. ESSCI is a Not-for-Profit Organization, registered under the Indian Companies Act, 1956. The Council has been promoted by six Associations i.e., CEAMA, ELCINA, IESA (formerly ISA), IPCA, MAIT and ELCOMA, with financial support from National Skill Development Corporation (NSDC). Its focus is on establishing an effective and efficient ecosystem for developing and imparting of outcome-oriented skills for the Electronics Systems, Design and Manufacturing Industry (ESDM).
- III. In the proposed CUC, ESSCI plans to set up basic design and testing facilities along with Capacity Building Facilities for Upcoming ESDM Segments like Drones, Semi-conductors, AI, IOT, 5G etc.
- IV. The CUC is spread in a total area of 4,200 sq. mtr and the land is under possession of ESSCI.
- V. ESSCI already started Implementation of the CUC with civil construction, electrical works HVAC works, Interior works, to make the CUC functional.
- VI. In order to streamline all the project activities and implement the CUC in the best spirit, ESSCI has appointed "Edgerise Global Private Limited" (**hereinafter referred to as 'ERG or PMC'**) as the Project Management Consultants for this project.
- VII. **Through this Request for Proposal (RFP), ESSCI looks forward to appoint an agency/ company/ firm (hereinafter called as 'Solar Contractor') for undertaking Solar Photo Voltic Power Generation System for the project.**
- VIII. The broad scope of work considered in this Project for Solar Works which is elaborated in Chapter 5 of this RFP.
- IX. BOQs, and other specifications related to the work to be undertaken in this project are provided in **Annexure-1** of this Request for Proposal (RFP) document.

## 2 DEFINITIONS AND INTERPRETATION

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### I. Definitions

“Affected Party” shall have the meaning ascribed to it in this RFP.

“Confidential Information” shall have the meaning ascribed to it in this RFP.

“Site” means Plot nos. D2 & D3, ELCINA Electronics Manufacturing Cluster, SPL-1, Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan – 301019

“Architect” means the agency/company/firm selected, engaged and appointed by ESSCI for undertaking the Project work of this RFP.

“Group Companies” means two or more enterprises which directly or indirectly have shareholding as defined in the FDI Policy Circular of 2020

“Dispute” shall have the meaning ascribed to it in this RFP.

“Force Majeure Event” shall have the meaning ascribed to it in this RFP.

“PMC” means Project Management Consultant of ESSCI.

**“Project” shall mean Execution of Solar PV Power Generation System of Common Utility Center of ESSCI as mentioned in this RFP, provided through BOQs, DBR and other specifications.**

“Services” shall mean all of the services outlined in this RFP.

### II. Interpretations

In this RFP, unless the context otherwise requires:

any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;

any reference to the singular shall include the plural and vice versa;

the headings are inserted for ease of reference only and shall not affect the interpretation of this RFP;

where any party comprises two or more persons, any obligations of that party in, under or arising from this RFP, is undertaken by or binding upon such two or more persons jointly and severally;

references to any party to this RFP includes its successors-in-business and assignees;

any references to this RFP or any other document shall be construed as references to this RFP or that other document as amended, varied, novated, supplemented or replaced from time to time.

### 3 CRITICAL INFORMATION AND IMPORTANT DATES

- I. ESSCI invites bidders to submit the technical and financial offer to participate for Solar works in accordance with the conditions and manner prescribed in this RFP document.
- II. Bidder agencies are advised to study this RFP document carefully before submitting their proposals. Submission of a proposal in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications.
- III. Important dates and information

S. No	Information	Details
1	RFP release date	23 <sup>rd</sup> September 2024
2	Last Date for submission of written queries for clarification (if any) in the given format	By 4.00 PM of 26 <sup>th</sup> September 2024
3	Clarifications on queries (through email)	By 27 <sup>th</sup> September 2024
4	Last date (deadline) for submission of bids – both hard copy and soft copy	By 4.00 PM of 3 <sup>rd</sup> October 2024
5	Technical Bid Opening and Technical Presentation	4 <sup>th</sup> October 2024
6	Financial Bid Opening	7 <sup>th</sup> October 2024
7	Finalisation of Successful Bidder	By 10 <sup>th</sup> October 2024
8	Bid validity period	30 Days
9	Contact person for queries	Mr. Varun Bhatia • E - <a href="mailto:varun@essc-india.org">varun@essc-india.org</a> • M- +91-9319992398
10	Addressee and address at which proposal in response to RFP notice is to be submitted ( <b>both, <u>Soft Copy on the given emails and Hard Copy on the given address</u></b> )	Mr. Varun Bhatia <b>Email:</b> <a href="mailto:varun@essc-india.org">varun@essc-india.org</a> <b>Address:</b> ESSCI, 155, 2 <sup>nd</sup> Floor, ESC House, Okhla Industrial Area, Phase 3, New Delhi – 110020

## 4 LETTER OF INVITATION

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Date: 19/09/2024

RFP No.: ESSCI/ RFP/ 2024-25/CUC/02

- I. The Chief Executive Officer, Electronics Sector Skills Council of India (hereinafter referred to as the “ESSCI”) invites proposals from eligible bidders/agency/company/firm (the “Solar Contractor”) for undertaking the services as detailed in the above sections of this RFP (the “Services”). The Bidder needs to submit the proposals; the selected Bidder shall be responsible to undertake Solar PV Power Generation System as per the BOQs and other Specifications for the proposed Common Utility Center at ELCINA EMC in Bhiwadi in the state of Rajasthan as per the terms and conditions set out in the RFP Document.
- II. Bidder will be selected on Quality and Cost Based Selection (QCBS) system basis and procedures described in this RFP.
- III. Proposals must be submitted on or before the time and date specified in the Bidding Schedule, with **Technical Bid to be submitted in soft copy format by email (pdf) and in hard copy format (in a sealed envelope) and Financial Bid to be submitted in hard copy format (in a sealed envelope, separate to that of Technical Bid) as well as in Soft Copy (IN PASSWORD PROTECTED PDF- password should be more than 8 characters) by In-person/ Post/ Speed Post/ Courier Services only.** ESSCI shall not be responsible for any delay in submission of proposal.
- IV. Evaluation of Proposals – The evaluation of Proposals would be carried out in three stages:
  - Stage 1: Evaluation of Technical Proposal
  - Stage 2: Evaluation of Financial Proposal
  - Stage 3: Evaluation based on QCBS System
- V. The Technical Proposal should comprise of all the documents/ proofs of works accomplished as specified in the RFP. The Financial Proposal should be submitted as specified and, in the format, mentioned in Chapter 12 of this RFP. In case the details furnished by the Bidder as per RFP are incomplete/ inadequate, the proposal shall be summarily rejected.
- VI. Participants can download the RFP document from website of ESSCI ([www.essc-india.org](http://www.essc-india.org)) or the same can be purchased by hand from the office of ESSCI. **An amount of Rs. 2,500 (INR Two Thousand Five Hundred Only) shall be paid as Tender fee along with Bid Submission in the form of Demand Draft.** The DD should be in favour of Electronics Sector Skills Council of India, and payable at New Delhi must be submitted along with Bid. **In case of non- submission of DD, the bid will be considered invalid.**
- VII. **Earnest Money Deposit (EMD): Refundable Earnest Money Deposit (EMD) by way of Demand Draft drawn in favour of “Electronics Sector Skills Council of India” for an amount of Rs. 50,000/- (Indian Rupees Fifty Thousand Only) to be submitted along with**

**the Bid.** EMD of selected Agency will be retained & will be returned after submission of Performance Bank Guarantee. EMD of all other agencies will be returned after successful signing of Project Agreement with the selected Agency. **In case of non- submission of EMD DD, the bid will be considered invalid.**

- VIII. **Performance Bank Guarantee (PBG):** Post selection of successful Bidder the Bidder would be required to submit a Performance Bank Guarantee (PBG) of a value of 10% of the Total Fee of Work awarded.
- IX. Upon selection of the successful Bidder, ESSCI will promptly notify the other Agencies that their Proposals have been unsuccessful.
- X. The Bidder should satisfy all the terms and conditions laid down here under in relation to this RFP. All conditional bids/ proposals will be rejected.
- XI. Notwithstanding all or any of the conditions mentioned, ESSCI has the right to reject any bid without assigning any reason whatsoever.

## 5 SCOPE OF WORK

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The Solar Contractor would carry out detailed Solar works of the 'Project' and to this effect, provide the following services –

- I. Execution of Solar Photo Voltaic Power Generation System as mentioned in the BOQs.
- II. The Solar Contractor is responsible for the whole process, execution of work, final delivery of the project, and the cost of the project. All municipal docking work and docking with other project participants (if any) are led by the Solar Contractor. **ESSCI will only assist and pay relevant government fee with formal invoices and bills.**
- III. The description of the scope of work here is only for general guidance. The specific engineering quantity should be completed by the bidder itself and the engineering quantity list shall be prepared and accompanied by drawings to show the engineering quantity to the PMC for confirmation and approval of the implementation.
- IV. After completion, ESSCI needs all warranty documents, all equipment/ items operation manuals and operation and maintenance manuals, all product and material information, etc.



## 6 ELIGIBILITY CRITERIA FOR BIDDERS

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- I. National/international well-known companies registered under the Societies Act / Corporate Act / Limited Liability Partnership Firm/ Partnership Firm/ Proprietor Firm, having at least three years of work experience in the native/global general contracting services sector with a valid Tax number, Shop and Establishment certificate, certificate of registration/ incorporation etc.
- II. The Bidder including its group companies should have minimum average annual turnover of INR 1.00 Crores during the last three financial years –2021-22, 2022-23 and 2023-24 or 2020-21, 2021-22, 2022-23.
- III. Bidder or its sub-Contractors should have completed at least 3 Solar Photo Voltic Power Generation works in infrastructure/ industrial/ Educational/ Residential Projects in India in last 5 years.
- IV. Bidder or its sub-Contractors should have proven and demonstrated experience, expertise, and resources in providing general contracting services in these areas for well-known organizations in the private and/or public sector.
- V. Bidder or its sub-Contractors should not be currently blacklisted from any of the public/ private companies. (Declaration is required from the bidder on his letter head.)

*All requested and relevant documents, as mentioned in this Eligibility Criteria section, need to be enclosed in the Bid.*

## 7 TECHNICAL EVALUATION CRITERIA

S. No.	Description	Criteria for point allotment	Max. Marks
1	At least three years of experience in general contracting and Solar works  <b>(CIN and GST to be submitted)</b>	Relevant supporting documents to be submitted	10
2	The Bidder (including Group Companies) should have <b>minimum average annual turnover of INR 1.00 Crores</b> during the last three financial years. <b>(The bidder needs to provide the financial statements in terms of audited Balance Sheet and Profit &amp; Loss account for the last three years as mentioned).</b>	$\geq$ INR 8 Crores = 10 Marks $\geq$ INR 3 Crores < 8 Crores = 7 Marks $\geq$ INR 1 Crore < 5 Crores = 03 Marks < INR 1 Crore = 00 Marks	10
3	Relevant Projects completed and under implementation in India in last 5 years  <b>(Relevant Work Orders of similar capacity or above to be submitted)</b>	10 marks for each project (max.4 projects) of value > INR 50 Lakhs OR 5 marks for each project (max. 8 projects) of value < INR 50 Lakhs)	40
4	Adherence to every detailed specification and requirement laid down in the Technical Section (BOQs) given in this RFP.	The evaluation committee will conduct a detailed comparative evaluation.	15
5	Project Planning, Approach & Methodology with reference to the Scope of Work. The assigned work should be based on latest market standards. (Detailed Approach & Methodology to be submitted on company Letter Head)	Evaluation will be based on the quality of submissions and understanding of the assignment.	15
6	The number of professionals working in India with professional titles on the company roster, their relevant education background, etc.	The evaluation committee will conduct a comparative evaluation.	10
#	<b>TOTAL</b>		<b>100</b>

**Note: The Bidder must submit all the relevant supporting documents for the points mentioned in the above table of Technical Evaluation Criteria.**

**Minimum qualifying marks under Technical Criteria is 60**

## 8 SELECTION CRITERIA

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- I. The Bidder must score a minimum of 60 marks out of the total 100 marks in the technical evaluation to be considered for further evaluations
- II. Selection of the Bidder shall be based on a Quality & Cost Based Selection (QCBS) system– 50:50 [Technical marks (T): Financial marks (F)] and procedures as described in this RFP.
- III. In final Evaluation, the weightage of the Technical Bid would be 50%. The weightage of the Financial Bid would be 40%. The Financial Marks would be determined by the formula:  
**Financial Marks (F) = 50 X [(Financial Quote given by the Lowest bidder)/ (Financial Quote Given by the Bidder)]**
- IV. The Bids would be finally evaluated on Total marks determined by following formula:  
**Total Marks (M) = (0.5x T) + F**  
Where, T = Technical marks (out of 100) awarded to the bidder, F = Financial Marks
- V. The Bidder obtaining highest Total Marks (M) would be selected.
- VI. The decision of the Evaluation Committee in this regard will be final.

## 9 DELIVERY TIMELINES

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The Bidder would carry out the services as per the BOQs and other details as provided in this RFP in accordance with the following delivery timelines –

- The basic timelines would be of 30 days starting from the day of the confirmation on email extendable to additional 15 days provided having valid and compelling reasons. The work will run parallel to the ongoing construction and other activities in the project.
- Any time beyond the above specified will attract a penalty of 0.1% of cost for delay per day to a maximum up to 5%. Any further delay won't be accepted and can lead to termination of contract.

## 10 PAYMENT TERMS AND CONDITIONS

- I. The selected Solar Contractor shall be required to mobilize adequate manpower for completing the works of CUC, as mentioned in this RFP, and submit an activity plan along with the information on timeframe to ESSCI immediately after its engagement.

The selected Solar Contractor is required to maintain a minimum of 20% fund always readily available so that expenses to be made in the project must never suffer

- II. The fee release structure shall be as follows:

S. No.	Milestone	Payment as % of total cost payable
1	Mobilisation Advance on signing of Work Order	10%
2	Approval of Shop Drawings	10%
3	During execution of project in 3 instalments of 20% each, on 30% completion, 60% completion and 90% completion with work proofs	60%
4	On final completion	20%
#	<b>TOTAL</b>	<b>100%</b>

*#In line to the above given Payment Milestone Table, a payment equivalent to 5% of every Invoice, will be withheld while paying the particular bill by ESSCI **OR** a Performance Security BG of equivalent total amount of all Invoices can be submitted by the Solar Contractor while submitting the first Bill. The withheld amount of Invoices or equivalent Performance Security BG will be withheld for a period of 1 year from completion of Work as a performance security guarantee. The Performance security amount/BG will be returned after completion of Defect Liability Period of One Year.*

- III. Expenses during study/work towards transportation, study material, hand-holding, lodging/boarding, remuneration for staff, medical expenses, insurance etc. will be borne by the Agency/ Solar Contractor. ESSCI will not reimburse any expense incurred in connection with above items.
- IV. Expenses related to electricity, water etc. will be borne by the Solar Contractor.
- V. GST & other taxes viz. TDS, TCS wherever required and due on the charges for the services being provided by the Solar Contractor, is required to be deposited by the Solar Contractor to the government time-to-time and submit the proof of same with ESSCI as required and ESSCI will deduct TDS, TCS as per the provision of Income Tax and will share the deposit proof to the Solar Contractor. The Solar Contractor will provide proof of payment for EPF ESIC for their employees/Labour at site, with list of employee/Labour every month and returns filed with the department will be shared on monthly basis by the Solar Contractor.
- VI. The selected Solar Contractor will be responsible for getting all the required government & statutory approvals, permissions (if any).

- V. Expenses related to all government/ departmental approvals, permissions, certifications etc. (if any) till final works for the project needs to be borne by the Solar Contractor. **ESSCI will only assist and pay relevant government fee with formal invoices and bills if any required for the project.**

# 11 GENERAL TERMS AND CONDITIONS

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## I. OBLIGATION & RIGHTS

### **The Solar Contractor's Obligations**

- i) During its performance of obligations under this Contract, Solar Contractor shall work earnestly and diligently to undertaken activities assigned for the Project. Solar Contractor shall provide the services in a diligent manner and in compliance with all the applicable laws in this regard.
- ii) Solar Contractor shall timely complete the works within the scope of work set forth in this RFP, and during performance of their obligations, Solar Contractor shall regularly report to PMC on their progress of Project work during contracted period.
- iii) The facilities and goods supplied by ESSCI (if any) for the use of Solar Contractor are the ESSCI's properties. In case of completion or termination of management work, Solar Contractor shall hand over such facilities and remaining goods to the ESSCI immediately upon request by ESSCI.
- iv) During contract period or after termination of contract, no disclosure of confidential information related to or in connection with the works of this Project and the Contract is allowed without prior consent of the party concerned.
- v) Solar Contractor shall submit to PMC the resumes and working hours of its key resources who are responsible for the project, which shall constitute integral part of this Contract upon confirmation by ESSCI, and no senior resource shall be replaced without prior consent by the PMC.
- vi) Solar Contractor shall submit to PMC various documents together with CD ROM or other electronic media of such documents at the same time.

### **ESSCI & PMC Obligations**

- i) During its period of responsibility, the Solar Contractor shall perform its obligations under the Contract for Works, and compensate ESSCI for any economic loss suffered by ESSCI due to the Solar Contractor's negligence.
- ii) PMC shall provide the information related to project specific management work to the Consultant for free within agreed time.
- iii) PMC and ESSCI shall reply in writing to the matters submitted and requested in writing by the Solar Contractor for response within agreed time in Special Contract Conditions. In the case the Solar Contractor calls Third Party for providing related information, ESSCI shall be liable to communicate the same to Third Party and forward such information to the Solar Contractor.
- iv) PMC is the authorized representative agency of ESSCI who is competent for project management work and to act as its liaison for contacting with the Solar Contractor.
- v) ESSCI shall timely notify the Solar Contractor it has chosen for contracting about management power granted by it to the PMC, as well as division of functions and management authorities of the PMC's key personnel, and specify the same in detail in the contract it signed with Third Party.

### **Solar Contractor's Rights**

Within the range of contract, ESSCI will grant following power to the Solar Contractor, it is acceptable to confirm by email:

1. During its management works, Solar Contractor may submit written report to PMC if Solar Contractor is uncertain about the information provided by PMC.
2. During its management works, Solar Contractor has the right to ask Third Party with prior consent of PMC to check or inquire the matters related to management works.
3. During its management works, Solar Contractor has the right to make site investigation of the site.
4. Solar Contractor has the right to make suggestions on the form and content of work contract.

### **ESSCI's & PMC's Rights**

ESSCI and PMC have following rights:

1. ESSCI & PMC reserves the rights to add or de-scope any of the item's cover/ not covered in the BOQs and necessary for the project, in terms of betterment or economies of scale.
2. ESSCI & PMC have the right to inquire Solar Contractor about its work progress and related content.
3. ESSCI & PMC have the right to expound its opinion and suggestion on specific problems.
4. When ESSCI deems that Solar Contractor's management staffs for this Project failed to perform under contract, or lack of professional skills and incompetent to perform their duties, or they colluded with Third Party and led to ESSCI suffering economic loss, ESSCI has the right to request the Solar Contractor to replace such management staffs, or terminate this Contract and claim against Solar Contractor for corresponding liability for damage.
5. ESSCI has the right to select General Solar Contractor for this Project and sign contract with him.
6. ESSCI has the right to make final recognition for contract and cost management results, as well as final approval of related works.
7. PMC has the right to ask Solar Contractor to submit monthly work report as well as various epical reports within the scope of its management works.

### **Solar Contractor's Responsibilities**

- i) Solar Contractor's period of responsibility is valid period of contract. If contracted date is overdue as a result of postponement or delay of work progress to which Solar Contractor is not accountable, both Parties shall agree validity of the contract in question under this Contract.
- ii) During its period of responsibility, Solar Contractor shall perform its obligations set forth in the Contract for Works, and compensate ESSCI for economic loss suffered by ESSCI, provided that aggregate amount of such compensation shall not exceed total amount of contract (Except tax).
- iii) In the case Solar Contractor fails to check or respond to the problem raised by PMC/ESSCI or Third Party on a timely basis, and which resulted in failure of whole or



partial performance of this Contract, Solar Contractor shall be liable to ESSCI for all the losses/damages suffered by ESSCI in this regard.

- iv) In the case Solar Contractor makes groundless claim against ESSCI for compensation, Solar Contractor shall compensate ESSCI for any and all out-of-pocket expenses by ESSCI as a result of such claim for compensation or other demand.
- v) In case of failure of whole or partial performance of this Contract for commissioned management as a result of force majeure, neither party is liable; provide however, Solar Contractor is liable to compensate ESSCI for related matters from breach of Clause iv.

#### **ESSCI's Responsibilities**

- i) ESSCI shall perform its obligations under the work contract, bear the responsibility for breach of contract, and compensate Solar Contractor for any loss to which ESSCI is accountable.
- ii) In the case ESSCI makes groundless claim against Solar Contractor for compensation, ESSCI shall compensate Solar Contractor for any and all out-of-pocket expenses by Solar Contractor as a result of such claim for compensation or other demand.

## **II. PAYMENTS TO THE SOLAR CONTRACTOR**

- ESSCI reserves the right to withhold payment of the relevant invoice which is due to the Solar Contractor arising under this RFP in the event that the Solar Contractor fails to comply with any of its material obligations as specified herein which affects the services covered under this RFP.
- If required by the applicable law, ESSCI is entitled to make a deduction or withholding on any payment under this RFP. Upon the Solar Contractor's request, ESSCI shall furnish appropriate documentation to the Solar Contractor for the purpose of claiming tax credits in this regard.
- ESSCI is entitled to review and evaluate the monthly report in consideration of any and all efforts of the Solar Contractor made under this RFP including, but not limited to, efficiency, following up of management process, deliverables, schedules, milestones and capability of personnel ("Monthly Review"). ESSCI is entitled to modify or adjust the monthly report based on a mutual agreement with the Solar Contractor during the process of the above Monthly Review, and send a notice to the Solar Contractor along with the adjusted monthly report mentioning the invoice and/or the amount ESSCI should pay.
- ESSCI will not be obligated to pay any charges that are not explicitly stated and enumerated in this RFP.

#### **GST Compliances:**

- GST shall include the Central Goods and Services Tax ('CGST'), the State Goods and Services Tax ('SGST') and/or the Integrated Goods and Services Tax ('IGST') as may be applicable.
- Solar Contractor shall be responsible to raise a proper tax invoice which is in compliance

from GST perspective. Vendor shall raise an invoice on ESSCI only on the address and other details communicated by ESSCI.

- In due compliance of its obligations, Solar Contractor shall remit the GST so charged (if any) from ESSCI, subject to a valid invoice / debit note, to the appropriate government authority and file GST returns as prescribed, within the statutory timeline, mentioning all appropriate and relevant information on the GSTN platform.
- In case of any non-compliance in this regard, Solar Contractor shall be liable for all the expenses/claims/losses to ESSCI including but not limited to the Interest/penalty charged by the authorities and shall indemnify ESSCI in this regard.
- In case of advance payment made by ESSCI, as evidence of receipt of such payment, Solar Contractor shall issue a receipt voucher or any other relevant document mentioning all the particulars as prescribed under GST.

#### **TDS compliance:**

- In the event that any payment to be made in respect of any invoice is subject by law to any withholding tax, ESSCI shall make payment to Solar Contractor of the amount owing, less a deduction for such withholding tax and shall account to the relevant tax authority for the withholding tax. ESSCI shall timely provide to Solar Contractor evidence from the relevant tax authority of the proof of payment of the said withholding tax as per provisions of law applicable from time to time.
- Solar Contractor shall also provide documentary proof of all said statutory compliance related to PF, ESI etc. of its Employee deputed at the site to ESSCI.
- Solar Contractor alone shall be responsible and liable for payment of salaries/wages, emoluments and other amounts including benefits, bonus, retrenchment compensation, provident fund, ESI, gratuity and any other payments and dues of its Personnel/employees as per statutory provisions. ESSCI shall have right to call for and examine books of account, statutory records and documents required under the law to be maintained for the above purpose.
- Solar Contractor shall be under an obligation to keep itself registered under Contract Labour (Regulation) Act, 1973 during the currency of the agreement and to provide a copy of the certificate of registration for the consideration and record of ESSCI.
- Solar Contractor alone shall be responsible for compliance with all statutory provisions relating to the employment of such Personnel, including but not restricted to those of the Industrial Disputes Act, 1947, Payment of Wages Act, Payment of Bonus Act, Payment of Gratuity Act, The Workmen Compensation Act, The Minimum Wages Act, Provident Fund, ESIC, Professional tax and such other laws, rules and regulations as may from time to time be applicable to Solar Contractor's personnel/employee by reason of rendering the Said Services hereunder.

### **III. INSURANCE**

- During the validity period of the agreement, Solar Contractor shall maintain effective

comprehensive commercial and general liability insurance and professional compensation insurance for its on-site personnel in accordance with the type and amount of insurance required by government regulations and other requirements etc. Solar Contractor should also maintain employer liability insurance in accordance with the law.

- The Solar Contractor shall ensure that the insurance policies are taken from reputed insurers acceptable to and agreed to by ESSCI in advance, and that the level of coverage and other terms of insurance are acceptable to and agreed to by ESSCI. The Solar Contractor shall supply to ESSCI, upon request, copies of such insurance coverage and evidence for the fact that the relevant premiums have been paid.
- The Solar Contractor shall comply (and shall ensure its personnel comply) with all terms and conditions of the insurance policies held at all times. If coverage under the insurance policies lapse or not be renewed or be changed in any material way, or if the Solar Contractor is aware of any reason for which the coverage under the policies may lapse or not be renewed or be changed in any material way, the Solar Contractor shall duly notify ESSCI without delay.

#### **IV. INFORMATION, DOCUMENTS AND CONFIDENTIALITY**

##### **INFORMATION AND DOCUMENTS**

- The Solar Contractor must submit the Team Structure and work ramp-up plan for the Project along with all relevant documents during the Bid submission.
- General timelines of working at site will be from 8am to 6pm. While in certain activities and whenever required by ESSCI, working will also be carried out during night.
- The Solar Contractor must arrange its own office space for its employees within the site
- All the design changes at site will be provided by the Solar Contractor. Also, all the as built drawing will be the responsibility of the Solar Contractor.
- Each & every work methodology needs to be provided by Solar Contractor and further approval of PMC & ESSCI needs to be taken at least one week before starting the corresponding work.
- In case any material changes due to design or non-availability of specified material, the rate of that item will be modified accordingly. The modification will be based on standard market rate.
- All the materials for the works shall be arranged by the Solar Contractor at his own cost.
- All the material collected by the Solar Contractor during execution of work or otherwise shall be properly stacked & arranged as directed by the Engineer-in-charge.
- Solar Contractor shall have to make their own arrangement for water & electricity at the site of work. The water should be fit for drinking in case the authority supplies the water,

the Solar Contractor shall have to pay charges at rate fixed by the Governing Authority.

- With each lot of material arranged by the Solar Contractor for work, he shall produce proper receipt of purchase from the manufacturer.
- The Solar Contractor in a register at site shall keep complete accounting of material purchased and consumed. All Register at site shall have machine numbered pages.
- The Solar Contractor shall provide at his own cost proper storage facility for the materials brought by him to prevent any loss, damage or deterioration of the same.
- The Solar Contractor shall confine his equipment storage of materials operation of his works & people to the limits as directed by the PMC and shall not unnecessarily spread over the premises with his materials and hutment.
- The Solar Contractor shall make arrangement for watch & ward of the material at his own cost.
- Samples makes of materials/equipment's and item of work shall have to be got approved by the Solar Contractor from PMC before execution.
- The Solar Contractor shall, at all times, keep PMC fully informed as to its progress in relation to the performance of the Services, and shall promptly make available and deliver to PMC all such information, data, drawings and documents in relation thereto as PMC may reasonably request from time to time.
- All information, data, drawings and documents developed or prepared by the Solar Contractor in the performance of the Services shall forthwith become the absolute property of ESSCI. ESSCI shall be entitled to use or copy (and/or arrange for others to use or copy) such information, data, drawings and documents for the Project and for the purpose for which they are intended, and ESSCI need not obtain the Solar Contractor's permission to so use or copy, and/or to arrange for others to so use or copy, all such information, data, drawings and documents related to the Project.
- Except for standard specifications, details and designs previously used on other projects by the Solar Contractor, the copyright in relation to all information, data, drawings and documents developed or prepared by the Solar Contractor during the course of performing the Services shall forthwith vest in ESSCI, and the Solar Contractor shall not use them for any purpose other than for the performance of such Services.
- All information, data, drawings and documents of ESSCI of which the Solar Contractor may become possessed or aware, shall remain the absolute property of ESSCI and the Solar Contractor shall only be entitled to use the same for the performance of the Services under this Agreement.

## **CONFIDENTIALITY & INTELLECTUAL PROPERTY**

- The Solar Contractor shall ensure that it and all of its personnel, sub Contractors, representatives and agents shall not, without having first obtained on each occasion the express prior written approval of ESSCI:
  - Issue, disseminate, publish, cause to publish or divulge to any third party, alone or in conjunction with any other person, any Confidential Information (*as defined below*) including article, press release, drawing, photograph, illustration or any other publicity relating to the Agreement or the Project generally, or use such information for any purpose other than the performance of the Services, and shall not disclose any such Confidential Information to any third party except as may be required by any applicable law or by order of a court of competent jurisdiction, or a regulatory or governmental body having jurisdiction over the Parties, provided that the Solar Contractor shall give prompt notice to ESSCI of any such order so as to give adequate opportunity to object to such order.

**And**

- Take, or permit to be taken, any photograph of the Project, the Site or any part thereof, other than photographs required by the Solar Contractor for record purposes.

For the context of this Article, “Confidential Information” shall mean any information not generally known to the public including, but not limited to, the generality of all proprietary information, technical data, trade secrets, know-how, research, product development and marketing plans, supplier and customer lists, implementation strategies, developments, inventions, discoveries, concepts, methods or processes, whether or not patented or patentable, technology, copyrights, designs, plans, drawings, inventory and financial data and information including, but not limited to, process for acquiring approvals, whether or not marked as “Confidential” (and such other information normally understood to be confidential or otherwise designated as such in writing by either Party) that the other Party is obligated to keep confidential. “Confidential Information” shall also mean any other document or information of ESSCI or of any supplier or customer of or with whom ESSCI has an agreement concerning the confidentiality of information, whether or not such document or information is contained in or hereafter placed in either Party’s database.

- The Solar Contractor shall not cause or permit any activity which may damage or endanger any of the intellectual property rights of ESSCI or assist or allow others to do so.
- The Solar Contractor shall not, in any manner, use any of the trademarks or service marks of ESSCI in any of its publications, brochures or in any other manner without the prior written consent of ESSCI.

**V. INDEMNITY AND LIMITATION OF LIABILITY**

- The Solar Contractor agrees to indemnify and hold harmless ESSCI from and against any and all liabilities, losses, damages, costs and expenses (including, but not limited to,

attorneys' fees) arising out of or associated with the Services provided under the Agreement. The Solar Contractor shall also be liable for the liabilities arising from or relating to the Agreement and for damages, without any limitation, arising from (a) wilful misconduct; or (b) indemnification against third party claims for infringement; or (c) breach of confidentiality obligations; or (d) personal injury or death resulting from negligence.

- In addition to the generality of the foregoing, in case the Solar Contractor commits any breach of the terms and conditions hereof, then, without prejudice to ESSCI's other remedies provided herein or at law or equity, including termination of the Agreement forthwith without assigning any reason and getting the Services by or through any other agency, the Solar Contractor shall: (a) promptly investigate the underlying causes of the failure to meet the service level and other agreed requirements and prepare and deliver to ESSCI a report on the causes; and (b) take whatever action is reasonably necessary to minimize the impact of the failure and to correct the causes of the failure, and advise ESSCI of the status of remedial actions.
- Should the Solar Contractor fail to meet or be delayed in meeting any of its responsibilities set forth in the Agreement, the Solar Contractor shall reimburse and keep ESSCI reimbursed in respect of all reasonable direct and evidenced additional costs and expenses incurred as a result of such failure or delay. Such additional cost shall be paid by the Solar Contractor within one (1) month upon receiving a written notification from ESSCI.
- It is agreed by the Solar Contractor that all the advice and/or suggestions from the Solar Contractor to ESSCI are based on the professional expertise of the Solar Contractor in the Solar works business and various communications with relevant authorities by the Solar Contractor, and the Solar Contractor shall indemnify and compensate ESSCI for any/all loss and/or delays caused by any incorrect advice or suggestion and /or any false or misleading or incomplete information from the Solar Contractor to ESSCI.
- Save as otherwise provided in the Agreement, neither PMC nor ESSCI or any of its officers, employees, directors, representatives or affiliates shall be liable to the Solar Contractor for any indirect, incidental, punitive, exemplary or consequential losses/damage including, but not limited to, loss of anticipated business or profit, loss of revenue, loss of business opportunity, or any other indirect financial or economic loss even if foreseeable and resulting from the negligence of any party involved in working of the Project.
- Notwithstanding anything to the contrary contained in the Agreement, the aggregate liability of ESSCI in respect of any claims raised by the Solar Contractor for liabilities arising under this Contract shall not exceed any undisputed amount which has been become due but not paid to the Solar Contractor.

## **VI. FORCE MAJEURE**

- Any of the following events which prevent a party ("Affected Party") from performing any of its obligations for a continuous period of not less than seven (7) days from the date of

its occurrence shall mean and be considered as events that are beyond the control and/or prediction of the Affected Party (“Force Majeure Event”):

- i. Natural calamities, earthquake, flood, thunderstorm and fire;
  - ii. War, war-like situation, terrorist activities, embargo and commotion;
  - iii. Action of a government department including, but not limited to (a) acts of expropriation, (b) compulsory acquisition or takeover by any government department of the Site or any part thereof, (c) lockdown under disaster management act, (d) stop of activities due to pollution surge or any other reason.
- Neither Party shall be liable for the non-performance or delay in performance of its obligation or costs or penalties or termination for default if, and to the extent that, the delay in performance or other failure to perform its obligations under the Agreement is the result of an event of any Force Majeure Event, provided that a written notice is given by the Affected Party to the other Party promptly. However, the Affected Party shall take all necessary measures to mitigate the loss and damages of the other Party.
  - If the Force Majeure Event subsists for over one hundred and twenty (120) days from the date of occurrence of such event, a discussion shall be held between the Parties to discuss and assess suitable alternatives for the implementation of the Agreement. If the Force Majeure Event subsists for more than one hundred and eighty (180) days from the date of occurrence of the event and/or the Parties cannot reach an agreement to an alternative necessary for the implementation of this Agreement, either Party hereto shall have the right to terminate the Agreement by serving the other Party with a written notice to such effect.

#### **VII. RIGHT TO HIRE**

The Solar Contractor agrees that ESSCI is entitled to solicit or hire for employment, employ, or accept the services of any Contractor personnel, on a case-to-case basis. The Solar Contractor shall cooperate in relieving such employee and provide any necessary information or assistance required by ESSCI for the hiring of such employee.

#### **VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws and regulations of India.

#### **IX. LANGUAGES USED IN THE PROJECT**

All reports, documents and other communications pertaining to this Agreement shall be in the English language.

#### **X. ASSIGNMENT OF THE AGREEMENT**

ESSCI shall have the right to assign the benefits of the Agreement to any of its associate companies. The Solar Contractor shall not have the right to assign this Agreement or make any arrangement for the vicarious performance of its obligations and responsibilities without the prior written consent of ESSCI, nor to transfer or sub-contract to any third parties the works and benefits to this Agreement or any part thereof.

## **XI. TERMINATION OF AGREEMENT**

- This Agreement may be terminated under either of the following circumstances and in the following manner:
    - In the event that the Solar Contractor commits any material breach of the terms and conditions hereof, ESSCI may, without prejudice to ESSCI's other remedies provided under law or equity, terminate the Agreement by giving at least fifteen (15) days' prior written notice of its intention to terminate the Agreement to the Solar Contractor. Such notice shall specify the breach or default complained of, and if the Solar Contractor fails to remedy such breach or default within the notice period of fifteen (15) days, then the Agreement shall terminate at the end of the said fifteen (15) days period.
- OR**
- ESSCI may terminate the Agreement, in whole or in part, at any time for its convenience by thirty (30) days' notice in writing to the Solar Contractor.
- Upon termination as mentioned in this RFP, the Solar Contractor shall be paid for the Services satisfactorily performed before and up to the date of termination, including any reimbursable expenses then due and payable by ESSCI. Upon the receipt of such payment, the Solar Contractor shall have no claims against ESSCI under the Agreement.
  - In the event of the appointment of the Solar Contractor being terminated for whatever reasons, and upon the settlement of all outstanding fees and reimbursable expenses due and payable to the Solar Contractor at that time in accordance with the Agreement, the Solar Contractor shall hand over all documents and intellectual properties developed for this Project to ESSCI, who shall have the right to use such documents for the completion of the Project or otherwise.

## **XII. NOTICES**

All notices or communications in connection with the Agreement shall be given in writing and may be served by hand delivery, or by courier, or by email to the following address:

*If to ESSCI*

Address: 155, 2<sup>nd</sup> Floor, ESC House, Okhla Industrial Area, Phase 3, New Delhi  
Email: [varun@essc-india.org](mailto:varun@essc-india.org)

or to such other address or email address as the Party has communicated by notice to the other Party in the above manner.

Any notice, approval, consent or other formal communication shall be deemed to have been given or made:

- a. if hand delivered, at the time of delivery; or
- b. if sent by courier, on the working day after the date of dispatch; or
- c. if by email, when it is sent to the correct email address.

## **XIII. ARBITRATION**



All claims, disputes, differences and other matters in question between the Parties hereto arising out of interpretation or effect of any Article or Articles relating to the Agreement, or as to the performance or non-performance or breach of the terms in connection with any rights or duties or obligations of any Party hereunder, or as to any other dispute touching the contents of the Agreement or these presents, whether contractual or tortious (each a "Dispute"), shall be promptly and in good faith be negotiated by the Parties with a view to its amicable resolution and settlement. If the Dispute is not resolved within thirty (30) days from when the negotiation between the Parties first starts, the Dispute shall be resolved through the process of Arbitration. The Arbitration shall be conducted as per Indian Arbitration and Conciliation Act, 1996 or its latest enactment. Both ESSCI and Solar Contractor shall choose their nominee Arbitrators. These Arbitrators shall then together and mutually appoint their presiding Arbitrator. The decision shall be binding on both ESSCI and Solar Contractor. All the proceedings shall be conducted at Delhi. The language of arbitration shall be in English. The cost of arbitration shall be borne by the parties equally.

The Parties agree to continue to perform all their obligations under the Agreement whilst pending the finalizations of the arbitration or by the court of competent jurisdiction, save and except the obligations under dispute that are referred to arbitration or the court.

#### **XIV. COMPLIANCE WITH LAWS**

In carrying out its responsibilities under the Agreement, the Solar Contractor shall comply with all applicable laws of India and the states, municipalities and other localities (including all applicable labour and employment laws) in which it operates. The Solar Contractor further agrees that it will not pay, offer or promise to pay, or authorize the payment, directly or indirectly, of any monies or anything of value to any person, employee or government official for the purpose of inducing or rewarding any favourable action.

#### **XV. NO COMMISSION**

The Solar Contractor undertakes not to receive any commission or other benefit or advantage from any others in respect of the Services to be provided by it hereunder and shall act at all times in the best interest of Client.

Without prejudice to the generality of the foregoing, the Solar Contractor shall not receive any fee or charges from any land owner, Solar Contractor, builder/developer or any other agency, due to, or in connection with the subject matter of the Agreement. In the event that the Solar Contractor is in breach of this section or if ESSCI comes to reliably know that the Solar Contractor has engaged in corrupt, fraudulent, collusive or coercive practices in dealing with any party in relation to performing the Services as set out in the Agreement, then ESSCI may, after giving seven (7) days' notice to the Solar Contractor, terminate the Agreement and may debar the Solar Contractor and/or its directors and shareholders from carrying on any ongoing or future business with ESSCI, either directly or indirectly, in addition to the rights available to ESSCI under law to take any appropriate legal action.

The Solar Contractor also agrees to fully indemnify ESSCI if ESSCI suffers any loss due to any such corrupt, fraudulent, collusive or coercive practices of the Solar Contractor.

Additionally, the entire charges payable to the Solar Contractor shall be forfeited and shall be retained by ESSCI and any payments already made shall be returned to ESSCI by the Solar Contractor.

Further, in case of the termination as aforesaid, ESSCI shall be entitled to get the remaining Services completed by another Solar Contractor or agency and the Solar Contractor shall be liable to reimburse the additional service fee, related costs and expenses incurred by ESSCI for getting the remaining Services completed. Such additional service fee, related costs and expenses shall be paid by the Solar Contractor on demand within one month (1) upon receiving a written notification from ESSCI.

The Solar Contractor shall not, during the term of the Agreement, deal with or seek to transfer in favour of any prospective third party, any property/properties that are identified and under negotiation in terms of the Agreement.

**XVI. INDEPENDENT STATUS**

The Solar Contractor is not authorized to contract, directly or indirectly, on behalf of ESSCI, or to make any commitment which would be binding on ESSCI. The Solar Contractor shall not make any statements, representations or warranties about ESSCI, save to the extent expressly authorized in advance by ESSCI. The Solar Contractor shall conduct its activities and Services in a manner which will not adversely affect ESSCI's interests or reputation in any manner. The Solar Contractor will, for all purposes, be deemed to be an independent Solar Contractor, contracting with ESSCI on a "principal to principal" basis. No employment is created by virtue of this Agreement between ESSCI and the Solar Contractor or any of its employees, agents or representatives, and nothing in the Agreement is intended to or will result in either Party becoming or being treated as a representative, agent or partner of the other. Accordingly, no employee of the Solar Contractor shall claim employment with ESSCI in any manner whatsoever.

**XVII. WAIVER**

No delay or failure by either Party in exercising any of its rights, or the acquiescence or knowledge thereto shall operate as a release or waiver of its rights, except in the specific instance for which it is expressly given.

**XVIII. SEVERABILITY**

If any provision of the Agreement is declared or held by any judicial or other competent authority to be void or otherwise unenforceable, the remaining provisions shall remain in full force and effect. The invalid provision shall be severed from the Agreement without affecting the remaining provisions and the validity of the Agreement. The Parties shall attempt to find a new provision to replace the invalid or unenforceable part to the extent it is possible. The new provision shall be as close to the Parties' original intentions as possible.

**XIX. AMENDMENTS, ALTERATIONS AND VARIATIONS**

No alteration of or amendment to the provisions of the Agreement shall be valid unless made in writing and signed by both the Solar Contractor and ESSCI.

**XX. ANNEXURES AND PRECEDENCE**

All annexures attached to the Agreement form an integral part hereof. In the event of an inconsistency between the Agreement and the terms of an Annexure, the inconsistency shall be resolved by giving precedence to the terms of the Agreement.

Annexure 1: **BILL OF QUANTITIES (BOQS) & MAKE LIST**

Annexure 2: **ALL RELATED DBR and LOAD SHEET**

Annexure 3: **CODE OF INTEGRITY**

Annexure 4: **NON-DISCLOSURE UNDERTAKING**

**XXI. ENTIRE AGREEMENT**

The Agreement embodies the entire, sole and exclusive agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes and cancels all prior discussions, negotiations, agreements and understandings between the Parties, whether written or oral, as to such subject matter.

## 12 FINANCIAL PROPOSAL SUBMISSION FORM

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### FINANCIAL PROPOSAL

(Location, Date)

From: (Name of Bidder)

To: (Name & Address of ESSCI)

Sir/Madam

**Subject: Selection of Solar Contractor for Solar Works of the proposed Common Utility Center to be constructed at D2&D3, ELCINA EMC, Bhiwadi, Rajasthan.**

We, the undersigned, offer to provide the Solar works for the above in accordance with your Request for Proposal dated [February 01 2023], and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal, **inclusive of all taxes**, is for the amount Rs. \_\_\_\_\_ (both in words & numbers).

Our financial proposal shall be binding upon us subject to the modifications resulting from contract negotiations, up to expiration of the validity period of the Proposal, i.e., [Date].

Yours Faithfully,

Authorized Signature:

Name and Title of Signatory:

Name of the Bidder:

Address:

# 13 ANNEXURES

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## ANNEXURE – 1

### **BILL OF QUANTITIES (BOQ'S), DRAWINGS**

CLICK ON THE LINK GIVEN BELOW OR COPY & PASTE THE LINK IN URL OF YOUR BROWSER TO  
DOWNLOAD THE RELEVANT FILES

**LINK:**

[https://drive.google.com/drive/folders/1YH0LM4YbATXA0LPWjG8Vm-Kr8vxFZhn3?usp=drive\\_link](https://drive.google.com/drive/folders/1YH0LM4YbATXA0LPWjG8Vm-Kr8vxFZhn3?usp=drive_link)

**CODE OF INTEGRITY**

I, \_\_\_\_\_, S/o \_\_\_\_\_, (Designation) of \_\_\_\_\_ (Name of Agency) \_\_\_\_\_, a private limited/ limited company having its registered office at \_\_\_\_\_ – Pin \_\_\_\_\_, India (“Solar Contractor”) do hereby solemnly affirm and declare that \_\_\_\_\_ (Name of Agency) \_\_\_\_\_, its directors, employees, agents, workers shall be bound by the Code of Integrity as under:

**1. General Principles**

- 1.1 Strictly abide by applicable laws and regulations, rules, and policies on fair trading, integrity and self-discipline, and anti-corruption, uphold the principles of integrity and good faith, adhere to recognized business ethics and professional ethics, and never engage in and resist dishonest behaviors.
- 1.2 Proactively establish and improve the internal integrity policy and regulations, set up a disciplinary inspection or integrity supervision department and allocate a reporting phone number and contact person to conduct integrity inspection and handle violations of laws and discipline.
- 1.3 Educate all staff members on integrity, and enhance their awareness and self-discipline, to create a culture of honesty and integrity in the company.

**2. Solar Contractor’s commitments**

- 2.1 Solar Contractor and its staff members shall not provide any direct or indirect bribes in any form to the staff members of ESSCI’s or its affiliates (hereinafter collectively referred to as "ESSCI's staff members"), including but not limited to:
  - 1) Offering cash, cash equivalents, or valuables to ESSCI's staff in any form.
  - 2) Paying the bills or reimburse expenses that should be borne by the staff of ESSCI.
  - 3) Without the prior written consent of ESSCI, organizing or inviting ESSCI's staff to participate in the following activities, including but not limited to travel, expensive entertainment, and meetings held at scenic spots for the purpose of tourism, unless the relevant expenses are borne by ESSCI.
  - 4) Allowing relatives or other stakeholders referred by ESSCI's staff members to engage in businesses related to the cooperation agreements signed between the Parties (hereinafter referred to as the "Contract")
  - 5) Other behaviors or activities that could be reasonably inferred as bribery, including prohibited activities that are explicitly stipulated as bribery by relevant laws and regulations
    - i. Solar Contractor shall not establish any entity with ESSCI’s staff or their immediate relatives or allow ESSCI's staff or their immediate relatives to participate or invest in entity of Solar Contractor.
    - ii. Before and during the development of business, Solar Contractor shall on its own initiative, report and truthfully disclose to ESSCI the following

circumstances when Solar Contractor knows or should know such circumstances:

- 6) ESSCI's former staff members become direct investors or shareholders of Solar Contractor within five years after their resignation.
- 7) ESSCI's former staff members take management positions (including manager, deputy manager, financial officer, cooperative project leader, secretary of the board of directors of a listed company, director, or other positions as stipulated in articles of association) at Solar Contractor within five years after their resignation.
- 8) ESSCI's staff or their spouses or immediate relatives carry out economic cooperation and exchanges with Solar Contractor.

ESSCI has the right, at its sole discretion, to decide whether to (or continue) the cooperation based on the abovementioned information disclosed by Solar Contractor.

- i. Solar Contractor and its staff members shall refuse any requests from ESSCI's staff members for the content specified in the "Solar Contractor's Obligations" section of the RFP and shall be obliged to report such requests to ESSCI. If Solar Contractor or its staff members fail to refuse and report such bribe requests from ESSCI's staff members and, instead, grant such bribe requests, such bribe requests shall be deemed as bribery by Solar Contractor and ESSCI shall bear all corresponding liabilities.
- ii. Solar Contractor warrants that it shall not, for the benefit of itself or others or for other purposes, induce or instigate ESSCI's staff members to act in violation of provisions hereof, duties, or professional ethics, including but not limited to bribing other relevant parties through ESSCI's staff members and inducing ESSCI's staff members to participate in bribery.
- iii. If Solar Contractor is allowed to subcontract any work in accordance with relevant agreements, Solar Contractor shall supervise subContractors and undertake that the sub Contractors comply with the Agreement. If a breach of the Agreement by a sub Contractor causes losses to ESSCI, Solar Contractor shall be jointly and severally liable.

### **3. Reporting Channels and Rewards**

#### **3.1 ESSCI's reporting channels**

3.1.1 Solar Contractor shall actively support ESSCI's integrity culture building. If Solar Contractor or its staff find that ESSCI's staff have conducted actions considered as bribery or other dishonest behaviors as specified herein, Solar Contractor shall immediately report to ESSCI via the following channels.

- 1) Email: [varun@essc-india.org](mailto:varun@essc-india.org)
- 2) Address: 155, 2nd Floor, ESC House, Okhla Industrial Area, Phase 3, New Delhi- 20

3.2 Once the information provided by the whistleblower is verified by ESSCI, ESSCI has the right to reward the whistleblower as appropriate according to its relevant system.

- 3.3 ESSCI shall give priority to continuing cooperation with Solar Contractor under the same conditions if Solar Contractor's report is verified to be true and if Solar Contractor has strictly abided by the Code of Integrity.
- 3.4 ESSCI shall keep the identities of all reporters strictly confidential and protect them against any attacks or retaliation.



**NON-DISCLOSURE UNDERTAKING**

I, \_\_\_\_\_, S/o \_\_\_\_\_, (Designation) of \_\_\_\_\_ (Name of Agency) \_\_\_\_\_, a private limited/ limited company having its registered office at \_\_\_\_\_ – Pin \_\_\_\_\_, India (“Solar Contractor”) do hereby solemnly affirm and declare that \_\_\_\_\_ (Name of Agency) \_\_\_\_\_, its directors, employees, agents, workers shall be bound by the Non-Disclosure Undertaking as under:

**1. Purpose**

The Parties are executing or wish to discuss and explore a business cooperation relating to Solar Contractor’s services for ESSCI Project at D2 & D3, ELCINA EMC, Slalrpur, Bhiwadi, Rajsathan of ESSCI (“Purpose”) and in connection with the Purpose, ESSCI and Solar Contractor has disclosed, and may further disclose certain information.

**2. Confidential Information****2.1 Definition**

“Confidential Information” shall mean any information disclosed by either Party and/or its Affiliates to the other Party and/or its Affiliates, (i) in discussions relating to that information, regardless whether those discussions occur prior to, concurrent with, or following disclosure of the information, or (ii) in writings, electronic, magnetic or other tangible forms, provided that such information is marked with the name, sign, trade mark, or trade name of the ESSCI or is otherwise clearly and conspicuously marked as proprietary or confidential, or (iii) orally or in other intangible form, provided that such oral information is designated as proprietary or confidential at the time of disclosure, and (iv) any information, regardless of the means of disclosure, that by its nature is the type of information normally considered proprietary or confidential. Confidential Information includes, but is not limited to, any information on sales data, marketing, distribution, business plans and other commercial terms and conditions, technical, financial, managerial, legal (including but not limited to information relating to licensing, litigation, mediation, or arbitration), personnel and labour, business or the company’s development strategy of information or data, as well as any Party’s technology, engineering design, circuit design, manufacturing methods, formulation, process procedures, technical specifications, computer programs, software, databases, source code, physical coding, design, ideas, drawings, samples, models, photos, prices, contracts, application to government departments, content development, programming, specifications, manuals, business plans, diagrams, flow charts, customer lists and related information, marketing plans, cargo channels, financial and tax reports, any similar information and the existence of the Agreement, its terms, the fact that the Parties are discussing the Purpose, and oral and written communications between the Parties regarding the Purpose, all of which shall be deemed Confidential Information.

**2.2 Exceptions**

The Confidential Information shall not include any information that: (i) was already known at the time of its disclosure hereunder, or becomes thereafter publicly known otherwise than through wrongful act or omission by the Solar Contractor; (ii) was rightfully known by or in the lawful possession of the Solar Contractor prior to or at the time of disclosure; (iii) is rightfully obtained at any time by the Solar Contractor from a third party without restrictions in respect of disclosure

or use; (iv) is independently developed by the Solar Contractor without any use of Confidential Information from ESSCI as proven by the written records of the Solar Contractor.

### 2.3 Compelled Disclosure

Notwithstanding anything contained herein to the contrary, if the Solar Contractor is required by any government or judicial order, to disclose any of the Confidential Information, the Solar Contractor must immediately notify ESSCI in writing of the requirement. The Solar Contractor must: (i) to the extent practicable, where the ESSCI Disclosing Party requests, assist and permit ESSCI to oppose or restrict disclosure; and (ii) in any event to the extent practicable, where disclosure is required by government or judicial order, make disclosure on terms which will preserve the strictest confidentiality of the Confidential Information.

## 3. Confidentiality Obligations

- 3.1 The Solar Contractor agrees that it shall use the Confidential Information only for the Purpose defined herein.
- 3.2 The Solar Contractor may disclose the Confidential Information to its employees or respective Affiliates to the extent strictly necessary for the Purpose defined herein. In such an event, an employee or the respective Affiliates of the Solar Contractor may only use the Confidential Information to the same extent the Solar Contractor is permitted to do so under the Agreement, and the Solar Contractor hereby warrants and undertakes to ensure that such employee and the Affiliates shall be bound by written obligations of confidentiality no less stringent than the provisions in the Agreement. The Solar Contractor shall be fully liable to ESSCI for any action or inaction on the part of any such employee or Affiliate that receives Confidential Information pursuant to the provisions of this Clause. For the avoidance of doubt, the Solar Contractor shall not disclose the Confidential Information to any other third Parties without the ESSCI's prior written permission. For the purpose of this Agreement, an "Affiliate" of a Party means a company or other legal entity that controls, is controlled by, or is under common control with such Party, but any such company or other legal entity shall be deemed to be an Affiliate only as long as such control exists. For the purposes of this definition, "control" shall mean direct or indirect ownership of more than fifty percent (50%) of the voting power, capital, or other securities of the controlled or commonly controlled entity.
- 3.3 The Solar Contractor agrees to exercise at least the same degree of care as it uses with regard to its own Confidential Information in protecting the ESSCI's Confidential Information, but in no event less than a reasonable degree of care.
- 3.4 The Solar Contractor undertakes to notify ESSCI immediately upon becoming aware of any breach of this Agreement by the Solar Contractor or by anybody to whom the Solar Contractor has disclosed the Confidential Information and to give all necessary assistance in connection with any steps which the ESSCI may wish to take to prevent or stop such breach or threatened breach.
- 3.5 The Solar Contractor shall not reverse engineer or disassemble the Confidential Information, and shall not seek any intellectual property by using the Confidential Information.

## 4. No License

Nothing contained in this Undertaking shall be construed as granting or conferring upon the Solar Contractor or its Affiliates, whether expressly or impliedly, any right by license or otherwise under any proprietary or statutory right of the other Party or its Affiliates existing prior to, or coming into existence after, the Effective Date of this Undertaking.

## 5. No Obligation

Disclosure or receipt of Confidential Information herein shall not constitute or imply any promise to create an agency, joint venture, partnership, or any other formal business relationship between the Parties, to purchase or provide any goods or services, or to enter into any other business arrangement.

**6. No Warranty**

All Confidential Information is provided "AS IS" and without any warranty, expressed or implied, or otherwise, as to the accuracy, completeness, or fitness for special purpose.

**7. Return**

All documents and other tangible objects containing or representing Confidential Information that have been disclosed by ESSCI to Solar Contractor, and all copies or extracts thereof or notes derived therefrom that are in the knowledge of Solar Contractor, shall be and remain the property of ESSCI and shall be promptly returned to ESSCI or destroyed (with proof of such destruction), each upon (i) ESSCI's written request, or (ii) expiration or termination of the Service Agreement. In spite of the return or destruction of Confidential Information, the Solar Contractor and its employees are subject to the restriction of this undertaking until the termination of the Solar Contractor's confidentiality obligations as agreed upon in the Service Agreement.

**8. Miscellaneous**

- 8.1 No delay or failure by either Party to exercise any of its powers, rights, or remedies under this Undertaking shall operate as a waiver of any of them, nor shall any single or partial exercise of any such powers, rights, or remedies preclude any other. Any waiver by ESSCI of any provisions of this Undertaking shall not be construed as a waiver of any other provision of this Undertaking, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstances, whether past, present, or future. Furthermore, the remedies provided for in the Service Agreement and Undertaking are cumulative and not exclusive of any provided by law.
- 8.2 No provision of this undertaking may be amended or otherwise modified except by a writing signed by ESSCI.