



BIDDING DOCUMENT

MINISTRY OF EDUCATION

THE OPEN UNIVERSITY OF SRI LANKA

AND

**ACCELERATING HIGHER EDUCATION EXPANSION AND DEVELOPMENT
OPERATION (AHEAD)/THE OPEN UNIVERSITY OF SRI LANKA**

**Credit/Grant #: Government Grant
World Bank - 6026-LK/8743-LK**

Standard Bidding Document

For

**Designing, Purchasing, Supplying and Delivering, Installation and
Commissioning of the Hyperconverged Server Infrastructure and Backup
Solution (Total Solution) to The Open University of Sri Lanka**

IFB NO: AHEAD/CITES/OUSL/NCB/GOODS/2022/03

Client

Accelerating Higher Education Expansion and Development (AHEAD)
The Open University of Sri Lanka
P.O. Box 21, Nawala,

Name and Address of the Bidder

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VOLUME I

Section I. Instruction to Bidders

A. General

- | | | |
|---------------------------------|-----|---|
| 1. Scope of Bid | 1.1 | The Employer, as defined in the Bidding Data, invites bids for the Services, as specified in Section VI, Employer's Requirement. The name and identification number of the Contract is provided in the Bidding Data. |
| | 1.2 | The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date provided in the Bidding Data |
| 2. Qualification and Experience | 2.1 | All bidders shall provide in Section III, Technical Proposal Submission Form and Qualification and Experience Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary. |
| | 2.2 | If stated in the Bidding Data, all bidders shall include the following information and documents with their bids in Section III:

(a) List of Services performed during the last five years;

(b) Experience in Services of a similar nature during the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;

(c) Design, Implementation, Work plan and methodology

(d) List of major items of equipment proposed to carry out the contract

(e) Qualifications and experience of key staff proposed for the contract

(f) any other if listed in the Bidding Data |
| 3. Cost of Bidding | 3.1 | The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs. |
| 4. Site Visit | 4.1 | The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the site shall be at the Bidder's own expense |

B. Bidding Documents

5. Content of Bidding Document 5.1 The set of bidding documents comprises the documents listed below:
- Volume 1**
- Section I - Instructions to Bidders
Section IV - Conditions of Contract
Section VIII - Forms of Securities
- Volume 1I**
- Invitation for Bid
Section II - Bidding Data
Section III - Forms and Qualification Information
Section V - Contract Data
Section VI - Employer's Requirements
Section VII - Form of Bid and Activity Schedule
6. Clarification of Bidding Documents 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing at the Employer's address indicated in the invitation to bid.

C. Preparation of Bids

7. Language of Bid 7.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer shall be written in English Language.
8. Documents comprising the Bid 8.1 The Bidder shall submit the Bid under two separately sealed envelopes as follows:
- (a) The first envelope shall be clearly marked **"ENVELOPE 1 –QUALIFICATION AND EXPERIENCE INFORMATION"**; and
 - (b) The second envelope shall be clearly marked **"ENVELOPE 2 – "FINANCIAL BID"** and warning **"DO NOT OPEN, EXCEPT IN THE PRESENCE OF THE BIDDERS"**.
- 8.2 The Envelope 1, marked as **"QUALIFICATION AND EXPERIENCE INFORMATION"** shall include the originals of the following:
- (i) Volume 1 of the Bidding Document
 - (ii) Bid security if requested;

- (iii) Duly filled 'A' Schedules, "Qualification and Experience Information";
- (iv) Other information listed in Bidding Data; and
- (v) Any other information, bidder may wish to include

8.3 The Envelope 2, marked a "ORIGINAL OF FINANCIAL BID" shall include the originals of the following:

- (i) Duly filled and signed Price Bid Submission Form;
- (ii) Duly filled Activity Schedules

8.4 The two covers shall then be sealed in an outer Envelope. All inner and outer envelopes/covers shall:

- (a) be addressed to the Employer at the address provided in the Bidding Data;
- (b) bear the name and identification number of the Contract as defined in Bidding Data; and

9. Bid Prices

9.1 The Contract shall be for the Services, as described in the Employer's Requirements, Section VI, based on the priced Activity Schedule submitted by the Bidder.

9.2 The Bidder shall fill prices for all items of the Services described in the in Employer's Requirements, Section VI and listed in the priced Activity Schedule, Section VII. Items for which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other prices in the Activity Schedule.

9.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder. However, VAT shall be included separately.

10. Currency of Bid and Payment

10.1 The prices quoted by the Bidder shall be in Sri Lanka Rupees.

11. Bid Validity

11.1 Bids shall remain valid for the period specified in the Bidding Data.

11.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a

specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security (if submitted). A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security (if submitted) for the period of the extension, and in compliance with Clause 12 in all respects.

12. Bid Security

12.1

If indicated in the Bidding Data, the Bidder shall furnish, as part of the Bid, a Bid Security, in the amount specified in the Bidding Data and valid till the date specified in the Bidding Data.

12.2

If a Bid Security is requested under sub-clause 12.1 above, any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer.

12.3

The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 12.1.

12.4

The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security (if required).

12.5

The Bid Security may be forfeited:

- a. if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
- b. if the Bidder does not accept the correction of the Bid price, pursuant to Clause 22; or
- c. in the case of a successful Bidder, if the Bidder fails within the specified time limit to:
- d. sign the Contract; or
- e. Furnish the required Performance Security (If required)

13. Format and Signing of Bid

13.1

The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 8 of these Instructions to Bidders.

13.2

The original of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, all pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid

- 13.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initiated by the person or persons signing the Bid.

D. Submission Of Bids

14. Sealing and Marking of Bids

- 14.1 The outer envelope prepared in accordance with sub-clause 8.4 shall:
- (a) be addressed to the Employer at the address provided in the Bidding Data;
 - (b) bear the name and identification number of the Contract as defined in the Bidding Data; and
 - (c) Provide a warning not to open before the specified time and date for bid opening as defined in the Bidding Data.
- 14.2 In addition to the identification required in Sub-Clause 14.1, the envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened if required.
- 14.3 If the envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

15. Deadline for Submission of Bids

- 15.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 15.2 Employer may extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of the parties previously subject to the original deadline will then be subject to the new deadline.

16. Late Bids

- 16.1 Any Bid received by the Employer after the deadline prescribed in Clause 15 will be returned unopened to the Bidder.

E. Bid Opening and Evaluation

17. Bid Opening
- 17.1 The Employer will open the envelope marked, 'Envelope 1 – Qualification and Experience', in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the Invitation to Bid. The Bidders' representatives who are present shall confirm their attendance by signing the attendance sheet.
- 17.2 The Bidders' names, the presence (or absence) of Bid security, the presence (or absence) of the Financial Bid and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening.
- 17.3 The envelopes marked 'Envelope 2 – Financial Bid' will be opened after completing the evaluation of envelope marked 'Envelope 1 – Quality and Experience', in the manner described in Sub-Clause 21.2.
18. Clarifications of Bids
- 18.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, request any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 22.
19. Examination of Bids and Determination of Responsiveness
- 19.1 Prior to the detailed evaluation of bids, using the information provided in Envelope 1, the Employer will determine whether each Bid (a) is accompanied by the required securities (if requested); and (b c) is substantially responsive to the requirements of the bidding documents.
- 19.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and Employer's Requirements of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification

would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

- 19.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

20. Evaluation of Qualification and Experience

- 20.1 The Employer will evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 19.

- 20.2 A two-stage procedure will be adopted in detailed evaluation of substantial responsive Bids. The evaluation of qualifications and experience will be completed prior to any financial bid being opened. The Employer evaluates the Envelope 1 – Qualification and Experience on the basis of their responsiveness to the Employer’s Requirements, applying the evaluation criteria, and point system specified in Sub-Clause 20.3.

- 20.3 During the evaluation of Envelope 1 for qualification and experience, the Employer will determine whether the Bidders are qualified and whether work plan and methodology are substantially responsive to the requirements set forth in the Bidding Document. In order to reach such a determination, the Employer will examine the information supplied by the Bidders, and other requirements in the Bidding Document, taking into account the factors and point system outlined in the Bidding Data.

- 20.4 Each substantial responsive bid will be given a score as described under sub- clause 20.3. A Bid shall be rejected at this stage if it does not respond to important aspects of the Employer’s Requirements or if it fails to achieve an overall minimum of 70 points together with the minimum given against each criterion.

21. Evaluation of Financial Bid

- 21.1 After the evaluation of Envelope 1 is completed, the Employer shall notify those Bidders whose qualification and experience did not meet the minimum qualifying marks or were considered nonresponsive to the Employer’s Requirements, indicating that their envelope marked ‘Envelope 2 – Financial Bid’ will be returned unopened after completing the selection

process. The Employer shall simultaneously notify the Bidders that have secured the minimum qualifying marks, indicating the date and time set for opening the envelope marked 'Envelope 2 - Financial Bid'. The notification may be sent by registered letter, or facsimile.

21.2 The Envelope 2 shall be opened publicly in the presence of the Bidders' representatives who choose to attend. The name of the bidder, the Bid prices together with any discounts offered shall be read aloud and recorded when the envelopes marked 'Envelope 2 - Financial Bid' are opened.

21.3 Before evaluating the Financial Bid, the Employer will determine whether the Bid is signed properly. If the Bid is not signed properly it will be rejected at this stage.

21.4 In evaluating the Financial Bid, the Employer will determine for each Bid the Evaluated Bid Price by adjusting the Bid Price as follows:

- a) excluding Provisional Sums and the provision, if any;
- b) Correcting the arithmetical errors in-pursuant to Clause 22.
- c) Making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations or alternative offers.
- d) Applying any discounts offered by the Bidder.

21.5 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, alternative offers, and other factors that are in excess of the requirements of the Bidding document shall not be taken into account in Bid evaluation.

22. Correction of Errors

22.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

22.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If

the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub- Clause 12.5.

F. Award of Contract

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| 23. Award Criteria | 23.1 | Subject to Clause 24, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price. |
| 24. Employer's Right to accept any Bid and to reject any or all bids | 24.1 | Notwithstanding Clause 23, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action. |
| 25. Notification of Award and Signing of Agreement | 25.1 | The Bidder who's Bid has been accepted will be notified in writing, of the award by the Employer prior to expiration of the Bid validity period. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Service Provider in consideration of the Services provided by the Service provider as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price"). |
| | 25.2 | The notification of award will constitute the formation of the Contract. |
| | 25.3 | The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. |
| 26. Performance Security | 26.1 | If requested in the Bidding Data, within 14 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) stipulated in the Bidding Data, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract. |

27. Advance Payment and Security

27.1 The Employer will provide an Advance Payment not exceeding 30% of the Contract Price subject to the Service Provider submitting a guarantee acceptable to the Employer

A. General

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|---------------------------------|-----|---|
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(d) List of major items of equipment proposed to carry out the contract

(e) Qualifications and experience of key staff proposed for the contract

(f) any other if listed in the Bidding Data |
| 3. Cost of Bidding | 3.1 | The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs. |
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8. Documents comprising the Bid 8.1 The Bidder shall submit the Bid under two separately sealed envelopes as follows:
- (c) The first envelope shall be clearly marked
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- (d) The second envelope shall be clearly marked
"ENVELOPE 2 – "FINANCIAL BID" and warning "DO NOT OPEN, EXCEPT IN THE PRESENCE OF THE BIDDERS".
- 8.2 The Envelope 1, marked as **"QUALIFICATION AND EXPERIENCE INFORMATION"** shall include the originals of the following:
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(vii) Bid security if requested;

- (viii) Duly filled 'A' Schedules, "Qualification and Experience Information";
- (ix) Other information listed in Bidding Data; and
- (x) Any other information, bidder may wish to include

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- (iv) Duly filled Activity Schedules

8.4 The two covers shall then be sealed in an outer Envelope. All inner and outer envelopes/covers shall:

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10.1 The prices quoted by the Bidder shall be in Sri Lanka Rupees.

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specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security (if submitted). A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security (if submitted) for the period of the extension, and in compliance with Clause 12 in all respects.

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If indicated in the Bidding Data, the Bidder shall furnish, as part of the Bid, a Bid Security, in the amount specified in the Bidding Data and valid till the date specified in the Bidding Data.

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The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 12.1.

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The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security (if required).

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The Bid Security may be forfeited:

- f. if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
- g. if the Bidder does not accept the correction of the Bid price, pursuant to Clause 22; or
- h. in the case of a successful Bidder, if the Bidder fails within the specified time limit to:
 - i. sign the Contract; or
 - j. Furnish the required Performance Security (If required)

13. Format and Signing of Bid

13.1

The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 8 of these Instructions to Bidders.

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The original of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, all pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid

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D. Submission Of Bids

14. Sealing and Marking of Bids

- 14.1 The outer envelope prepared in accordance with sub-clause 8.4 shall:
- (a) be addressed to the Employer at the address provided in the Bidding Data;
 - (b) bear the name and identification number of the Contract as defined in the Bidding Data; and
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- 14.2 In addition to the identification required in Sub-Clause 14.1, the envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened if required.
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15. Deadline for Submission of Bids

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- 20.3 During the evaluation of Envelope 1 for qualification and experience, the Employer will determine whether the Bidders are qualified and whether work plan and methodology are substantially responsive to the requirements set forth in the Bidding Document. In order to reach such a determination, the Employer will examine the information supplied by the Bidders, and other requirements in the Bidding Document, taking into account the factors and point system outlined in the Bidding Data.

- 20.4 Each substantial responsive bid will be given a score as described under sub- clause 20.3. A Bid shall be rejected at this stage if it does not respond to important aspects of the Employer’s Requirements or if it fails to achieve an overall minimum of 70 points together with the minimum given against each criterion.

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- a) excluding Provisional Sums and the provision, if any;
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22. Correction of Errors

22.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

22.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If

the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub- Clause 12.5.

F. Award of Contract

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| 23. Award Criteria | 23.1 | Subject to Clause 24, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price. |
| 24. Employer's Right to accept any Bid and to reject any or all bids | 24.1 | Notwithstanding Clause 23, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action. |
| 25. Notification of Award and Signing of Agreement | 25.1 | The Bidder who's Bid has been accepted will be notified in writing, of the award by the Employer prior to expiration of the Bid validity period. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Service Provider in consideration of the Services provided by the Service provider as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price"). |
| | 25.2 | The notification of award will constitute the formation of the Contract. |
| | 25.3 | The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. |
| 26. Performance Security | 26.1 | If requested in the Bidding Data, within 14 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) stipulated in the Bidding Data, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract. |

27. Advance Payment and Security

27.1 The Employer will provide an Advance Payment not exceeding 30% of the Contract Price subject to the Service Provider submitting a guarantee acceptable to the Employer

Section IV. Conditions of Contract

1. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (b) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the Employer
- (c) "Contract" means the Contract signed by the Parties, to which these Conditions of Contract (CC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (d) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (e) "Employer" means the party who employs the Service Provider
- (f) "Party" means the Employer or the Service Provider, as the case may be, and "Parties" means both of them;
- (g) "Personnel" means persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof;
- (h) "Service Provider" is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (i) "Service Provider's Bid" means the completed bidding document submitted by the Service Provider to the Employer
- (j) "Employer's Requirements" means the Employer's Requirements of the service included in the bidding document submitted by the Service Provider to the Employer
- (k) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described

in Employer's Requirements, Section VI; and Schedule of Activities included in the Service Provider's Bid.

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of the Socialist Democratic Republic of Sri Lanka

1.3 Language

This Contract has been executed in English Language

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, to such Party at the address specified in the Contract Data.

1.5 Location

The Services shall be performed at such locations as are specified in Employer's Requirements and, where the location of a particular task is not so specified, at such locations, as the Employer may approve

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials specified in the Contract Data.

2. Commencement, Completion, Modification and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by either parties or such other later date as may be stated in the Contract Data.

2.2 Starting Date

The Service Provider shall start carrying out the Services seven (07) days after the date the Contract becomes effective, or at such other date as may be specified in the Contract Data

2.3 Intend Completion Date

Unless terminated earlier pursuant to Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the Contract Data. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.5 Force Majeure

2.5.1. Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and

which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event

2.5.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Employer

The Employer may terminate this Contract, by not less than fourteen (14) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause 2.6.1 and twenty eight (28) days' in the case of the event referred to in (f):

- (a) if the Service Providers do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing.
- (b) if the Service Provider become insolvent or bankrupt.
- (c) if, as the result of Force Majeure, the Service Provider/s are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

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- (d) if the Service Provider does not maintain a Performance Security in accordance with Clause 3.9;
 - (e) if the Service Provider has delayed the completion of the Services by the number of days for which the maximum amount of liquidated damages can be paid in accordance with Sub-Clause 3.8.1 and the Contract Data;
 - (f) If the Employer, in its sole discretion, decides to terminate this Contract.

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-two (42) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Providers are unable to perform a material portion of the Services for a period of not less than fifty six (56) days.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d),(e) of Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

3. Obligations of the Service Provider

3.1 General

The Service Providers shall perform the Services in accordance with the Employer's Requirements and the Activity Schedule, and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound

management practices, and employ appropriate advanced technology and safe methods. The Service Providers shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

3.3 Confidentiality

The Service Providers, their Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.

3.5 Service Providers' Actions Requiring Employer's Prior Approval

The Service Providers shall obtain the Employer's prior approval in writing before taking any of the following actions:

- a) entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C (" Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) Any other action that may be specified in the Contract Data.

3.6 Reporting Obligations

The Service Providers shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents prepared by the Service Providers to be the Property of the Employer

All plans, drawings, Employer's Requirements, designs, reports, and other documents and software submitted by the Service Providers in accordance with Clause 3.6 shall become and remain the property of the Employer, and the Service Providers shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Providers may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the Contract Data

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall

not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-Payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Clause 6.5.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Employer. The Performance Security shall be valid until a date 28 days from the Completion Date of the Contract.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

4.2 Removal and / or Replacement of Personnel

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.

(c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5.1 Assistance and Exemptions

5. Obligations of the Employer

The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as specified in the SCC.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6.1 Lump-sum Remuneration

6. Payments to the Service Provider

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Providers in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clauses 2.4 and 6.3.

6.2 Contract Price

The Contract Price is set forth in the Contract Data.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Clause 2.4, a breakdown of the lump- sum price is provided in Appendix D.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider and according to the payment schedule stated in the Contract Data. Unless otherwise stated in, the Contract Data, first payment shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period stated in the Contract Data. Any other payment shall be made after the conditions listed in the SCC for such payment

6.5 Interest on Delayed Payments

have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.

If the Employer has delayed payments beyond twenty-eight (28) days after the due date stated in the Contract Data, interest shall be paid to the Service Provider for each day of delay at the rate stated in the Contract Data.

7.1 Identifying Defects**7. Quality Control**

The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities.

7.2 Correction of Defects, and Lack of Performance Penalty

- a) The employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in clause 3.8

8.1 Amicable Settlements**8. Settlement of Disputes****8.2 Dispute Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2.1 Any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, which was no settled amicably in as with sub clause 8.2.1 above, shall be finally settled by arbitration in accordance with Arbitration Act No 11 of 1995.

8.2.2 The arbitral tribunal shall consist of a sole arbitrator, who shall be appointed in the manner provided under sub clause 8.2.3

8.2.3 The Party desiring arbitration shall nominate three arbitrators out of which one to be selected by the other Party within 21 Days of the receipt of such nomination. If the other Party does not select one to serve as Arbitrator within the stipulated period, then the Arbitrator shall be appointed in accordance with Arbitration Act No 11 of 1995, or any other amendments thereof.

