

ANNEXURE I

PROJECT DETAILS

Name of the project	250 TPD Organic Fraction of Municipal Solid Waste & other Biodegradable waste based Bio-CNG (Compressed Biogas-CBG) project
Project Location	Rajkot
Site Google co-ordinates	*Will be intimated
Area of land	10 acres
Capacity of the Plant	250 TPD Organic Fraction of Municipal Solid Waste & other Biodegradable waste (expandable in future)
Products	Compressed BioGas (CBG)
	Bio CO2
	Fermented Organic Manure (FOM)
Major Installations within the plant (tentative)	Municipal Solid waste segregation Equipment, Pretreatment system, Digestors, Buffer tanks, BioGas Enrichment system (upgradation / purification), Biogas flaring system, Gas storage balloon, Compressor, Storage Cascades, CO2 liquefaction plant, Solid liquid separator, Fertilizer processing & packaging plant, Effluent Treatment plant, Laboratory, Control room, SCADA etc.
Timeline for Design, Engineering, Procurement, installation and commissioning of entire project	Max. 12 months (approx.)
Product standards	CBG: IS 16087:2016 Automotive fuel grade
	CO2: Food grade
	Solid & Liquid Manure: FCO

ANNEXURE II

QUALIFICATION CRITERIA

The OE & PMC to consider below mentioned minimum and tentative manpower deployment for timely Engineering, Execution & Completion of the project. The exact requirement will be communicated by ATBL Project In-charge to the OE & PMC as & when required.

OE & PMC to submit the resume of manpower for approval of the ATBL after award of the contract

Proposed Position	No. of Person	Qualification	Experience
Owner's Engineer services			
Deployment of Process/ Mechanical Expert	1	Degree in Engineering – Mechanical/ Process	At least 07 years of experience in Process, design, engineering execution & commissioning of Minimum 100 TPD capacity of Municipal solid waste based- Biogas, Bio-Methanation, Waste to Energy projects, specialized in MSW segregation, Anaerobic digestion process, Pretreatment, Biogas purification technologies, Zero liquid discharge & Manure composting system
Deployment of Electrical Expert	1	Degree in Engineering – Electrical	At least 10 years of experience with design & execution in Hydrocarbon Industry i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc.
Deployment of Architect (Civil & Structural) Expert	1	Degree in Engineering – Civil/ Architect	At least 10 years of experience with executing projects in Hydrocarbon Industry i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc.

Project Management Consultancy (PMC)			
Project Co-Ordinator	1	Degree in Engineering	At least 10 years of experience in executing EPC projects in Biogas/ Power/ Hydrocarbon Industry (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery etc.
Project Incharge (Overall Construction, Execution & Commissioning)	1	Degree in Engineering – Mechanical	At least 10 years of experience in executing EPC projects in Biogas/ Power/ Hydrocarbon Industry/ Oil & Gas i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc
Discipline Manager- Civil, QA & QC	1	Degree in Engineering – Civil	At least 10 years of experience in executing EPC projects in Power/ Hydrocarbon/ Oil & Gas Industry i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc.
Discipline Manager- Electrical, Instrumentation & PLC, QA & QC	1	Degree in Engineering – Electrical	At least 10 years of experience in executing EPC projects in Power/ Hydrocarbon/ Oil & Gas Industry i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc.
EHS Manager	1	Diploma HSE	At least 10 years of experience in Site supervision and HSE compliances from Power/ Oil & Gas/ Hydrocarbon Industry i.e. Hydrocarbon Process Plants, Pipelines (Hydrocarbon/ Crude / Oil / Gas), Petrochemical Plant, CBG Plant, LPG Plant, Refinery, CGD, etc.

ANNEXURE III

ADDITIONAL REQUIREMENTS

S. No	Requirements	Explanations
1	Experience in Biogas projects (Biogas to Electricity, Biogas to Biomethanation)	
2	Experience in MSW based Biogas projects (Biogas to Electricity, Biogas to Biomethanation)	
3	Experiences with different technologies	
	Segregation	
	Pretreatment	
	Digester	
	Biogas upgradation system	
	BioCO ₂	
	Management of Liquid digestate	
	Management of Solid digestate	
4	Proposed timeline	
	Design & Engineering	
	Procurement, Construction, Execution and commissioning of entire project	
5	Estimated Project cost	
6	Experienced Manpower in MSW based Biogas, Biomethanation projects (specialization in MSW segregation, Anaerobic digestion process, Pretreatment, Biogas purification technologies, ETP, Zero liquid discharge & Manure composting system)	

ANNEXURE III

ADDITIONAL REQUIREMENTS FROM OE

S. No	Requirements	Explanations
1	Experience in Biogas projects (Biogas to Electricity, Biogas to Biomethanation)	
2	Experience in MSW based Biogas projects (Biogas to Electricity, Biogas to Biomethanation)	
3	Experiences with different technologies	
	Segregation	
	Pretreatment	
	Digester	
	Biogas upgradation system	
	BioCO2	
	Management of Liquid digestate	
	Management of Solid digestate	
4	Proposed timeline	
	Design & Engineering	
	Procurement, Construction, Execution and commissioning of entire project	
5	Estimated Project cost	
6	Experienced Manpower in MSW based Biogas, Biomethanation projects (specialization in MSW segregation, Anaerobic digestion process, Pretreatment, Biogas purification technologies, ETP, Zero liquid discharge & Manure composting system)	



GENERAL TERMS AND CONDITIONS (DOMESTIC CONSULTANCY SERVICES)

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1. Definitions

1.1 Unless the context otherwise requires, the terms capitalized and used herein or in any other document which is part of the SO Documents and the defined terms set forth in this Clause 1, together with their respective grammatical variations and cognate expressions, shall have the meanings specified herein:

Acceptable Bank	shall mean a 'scheduled bank' in India (as set forth in the Second Schedule to the Reserve Bank of India Act, 1934), excluding any co-operative or gramin (rural) bank.
Advance Payment Bank Guarantee	shall mean unconditional and irrevocable first demand bank guarantee(s) provided by the Consultant to the Employer in terms of Clause 8, to secure the advance payment(s) made by the Employer to the Consultant.
Affiliate	shall mean, with respect to any Party, any Person which directly or indirectly, Controls, is Controlled by or is under common Control with it.
Applicable Laws	shall mean: <ul style="list-style-type: none"> (a) any law, legislation, statute, act, by-law, rule, regulation, memorandum, circular, resolution, ordinance, order, decree, protocol, notification, policy, administrative guideline, ruling, instruction, directive, code, consent, license, approval, permit, bilateral or international treaty or any interpretation thereof by any Government Authority or by any Person acting under the authority of any Government Authority, as may be applicable from time to time to the SO Documents, and to the exercise, performance and discharge of the respective rights and obligations of the Parties, or to the Parties, as the context may require; and (b) judgments, decrees, injunctions, writs, orders or like actions of any court, tribunal, government department or other administrative, judicial or quasi-judicial body or agency or instrumentality of competent jurisdiction, having the force of law in India, as may be applicable from time to time.
Applicable Permits	shall mean any waiver, exemption, building, variance, franchise, permit, authorization, approval, license or similar order which may be required to be obtained or maintained under Applicable Laws in relation to all or any part of the Scope of Work or any part incidental thereto, from any Government Authority, agency, authority, court or other body having jurisdiction over all or any part of the Services to be performed pursuant to the terms of the SO Documents.
Bank Guarantees	shall mean, collectively, the Advance Payment Bank Guarantee and Contract Performance Bank Guarantee, as may be applicable, provided by the Consultant in accordance with Clause 8.
Basic Price	shall mean the amount payable by the Employer to the Consultant for performance of the Scope of Work, determined in accordance with Clause 4, which shall be inclusive of applicable Taxes (except GST), all operating expenses, gratuity amounts, insurance charges, margin, overheads, charges for bank guarantees and all other costs associated with performance of the Scope of Work and other obligations under the SO Documents, unless specified otherwise in the Service Order.
Change	shall have the meaning ascribed to the term in Clause 10.1.
Change in Law	shall mean the occurrence of any of the following after the Effective Date: <ul style="list-style-type: none"> (a) enactment, modification or repeal of any Applicable Laws in India; (b) any change in the interpretation or enforcement of any Applicable Laws by a decision rendered by the Supreme Court of India; or (c) increase or decrease in the relevant rates of applicable GST in India,

	provided that "Change in Law" shall not include any:
	(i) change in the interpretation or application of any Applicable Laws except as provided in (b) above;
	(ii) enactment, modification, repeal, interpretation or application of any Applicable Laws of India which increases market prices of equipment, commodities, raw materials and manpower in general, used in the performance of Services;
	(iii) such event of Change in Law listed in points (a), (b) and (c) above, which occurs during the time period of delay in the performance of the Consultant's obligations, for reasons not attributable to the Employer; and
	(iv) implication on the SO Price arising out of currency fluctuations.
Change Proposal	shall have the meaning ascribed to the term in Clause 10.3.
Codes and Standards	shall mean the latest applicable international and Indian codes and standards that would be applicable for services and works of a similar type and specification as the Services.
Completion	shall mean the completion of the Scope of Work pertaining to the Services, in accordance with the terms of the SO Documents.
Completion Schedule	shall mean the time specified in the Service Order (as extended in accordance with the terms herein), within which the Completion as a whole (or completion of a Milestone, where a separate time for completion of performance of such Milestone has been prescribed) is to be achieved in accordance with the terms of the SO Documents.
Confidential Information	shall have the meaning ascribed to the term in Clause 40.1.
Consultant	shall mean the successful bidder who is awarded the SO Documents and which is a company validity existing as per the provisions of Companies Act, 2013; or a proprietor in case the bidder is a sole proprietorship; or a partnership firm registered under the Applicable Laws.
Consultant IP	shall have the meaning ascribed to the term in Clause 28.1.
Consultant's Representative	shall have the meaning ascribed to the term in Clause 14.2(a).
Contract Performance Guarantee	Bank shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Consultant to the Employer in terms of Clause 8, to secure the performance by the Consultant of the Scope of Work for a time period as specified in the Service Order.
Control	shall mean, with reference to a Person, the possession, directly or indirectly, of the power or authority to direct or cause the direction of the day to day affairs, management or policies of such Person, whether through the ownership of voting securities, by any agreement with respect to voting of securities, by any other agreement conferring control over management or policy decisions, by virtue of the power to control the composition of the board of directors or managers of such Person, or otherwise.
Defect(s)	shall mean any defect or deficiency in the Services on account of non-conformance of the Services with the requirements stipulated in the Scope of Work and the terms of the SO Documents.
Delay Damages	Liquidated shall have the meaning ascribed to the term in Clause 21.1.
Disclosing Party	shall have the meaning ascribed to the term in Clause 40.1.

Discrepant Amount	shall have the meaning ascribed to the term in Clause 6.4(b).
Discrepant Amount Notice	shall have the meaning ascribed to the term in Clause 6.4(a).
Effective Date	shall mean the date of issuance of the Service Order by the Employer to the Consultant, unless otherwise specified in the Service Order.
Employer	shall mean the company issuing the Service Order, including its legal successors and assigns.
Employer IP	shall have the meaning ascribed to the term in Clause 28.2.
Employer's Representative	shall have the meaning ascribed to the term in Clause 14.1(a).
ESG	shall have the meaning ascribed to the term in Clause 23.1.
Final Invoice	shall mean the invoice in respect of all outstanding amounts raised by the Consultant upon Completion, as may be specified in the Service Order.
Force Majeure	shall have the meaning ascribed to the term in Clause 32.1.
Good Industry Practice	shall mean standards, methods, techniques and procedures that are employed by leading, reasonable and prudent service providers engaged in the performance of services which are similar to the Services.
Government Authority	shall mean the Government of India, any state government, any local, regional, territorial or municipal government or quasi government, ministry, government department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial, regulatory or administrative body or any other state utility having or purporting to have jurisdiction over the SO Documents, or any portion thereof and performance of the obligations and exercise of rights of the Parties in accordance with SO Documents, or any matter arising from or in connection with the SO Documents.
GST	shall mean the applicable goods and services tax and/or any compensation or cess payable in terms of the Central Goods and Service Tax Act, 2017, the State Goods and Services Tax Acts passed by the States in the Republic of India, Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017, the Goods and Service Tax (Compensation to States) Act, 2017, or any other statute or ordinance issued as a part of the regime applicable to goods and services and the rules, notifications and circulars under each of the foregoing for the time being in effect, as applicable to the Scope of Work performed under the SO Documents.
GTC	shall mean these general terms and conditions.
Intellectual Property Rights	shall mean all patent, trademark, copyright, design rights, trade secret, mark or any other intellectual property rights (whether registered or not, existing now or in the future) including copyright, patents, designs, trade marks (including service marks), business names, domain names, know-how, Confidential Information, inventions, concepts, software licenses, object code, technology development work, software objects, moral rights, trade secrets, processes, methods and other analogous rights applicable to or utilised during the performance of the Services, licensed, granted or assigned by the Consultant or any Consultant's Affiliate to, or otherwise vested in the Employer pursuant to the terms of the SO Documents.
Interim Order	Change shall have the meaning ascribed to the term in Clause 10.5.
Invoice	shall have the meaning ascribed to the term in Clause 6.3(a)(i).
Key Personnel	shall have the meaning ascribed to the term in Clause 15.1(a).

Losses	shall mean all costs, damages, liabilities, verdicts, judgements, settlements, fines, penalties and expenses (including court costs and expenses and reasonable costs and expenses of legal counsel) with respect to actions, suits, demands, causes of action, claims or investigations incurred by an indemnified party in connection with an event to which it is entitled to indemnity under the SO Documents (including any court costs and expenses and reasonable costs and expenses of legal counsel incurred by such indemnified party for legal action to enforce such indemnity obligations).
Milestone	shall mean the milestones indicating completion of specified portions of the Services, as may be specified in the Service Order.
Other Contractor	shall mean the contractors, consultants and/or advisers other than the Consultant to whom orders have been placed by the Employer and shall include their respective successors and permitted assigns.
Party	shall mean the Employer or the Consultant, as applicable.
Person	shall mean individuals, firms, companies, corporations, trusts, government entities, joint ventures and other bodies, whether incorporated or not.
Price Schedule	shall mean the schedule annexed to the Service Order, setting out the prices payable in respect of the Services.
Receiving Party	shall have the meaning ascribed to the term in Clause 40.1.
Scope of Work	shall mean all referred standards, various technical guidelines, quality standards, technical documents, specifications, provisions and requirements which pertain to the method and manner of performing the Services and to the quantities and qualities pertaining to the performance of the Services, including provision of any reports or deliverables, as set out in the annexure which may be identified as 'Price Schedule' or 'Scope of Work' and attached to the Service Order, as may be amended or modified from time to time.
Service Order	shall mean the service order issued by the Employer.
Services	shall mean the services and such other activities required to be performed by the Consultant pursuant to the Service Order in accordance with the Scope of Work and all other terms and conditions stipulated in the SO Documents.
Site	shall mean any location or premises of the Employer, which may be designated as the place for the performance of the Services (or any part thereof), as specified in the Service Order.
SO Documents	shall mean and include the Service Order and the GTC along with any annexures, schedules and documents that are referred in or attached to the Service Order.
SO Price	shall mean the Basic Price plus applicable GST, payable to the Consultant for performance of its obligations under the SO Documents, as specified in the Service Order.
Taxes	shall mean and include taxes, duties, levies, cess, GST, royalty and other similar imposts by whatever name called, whether in the nature of indirect tax or direct tax and whether or not imposed at the federal, state, municipal or any other level.
Term	shall have the meaning ascribed to the term in Clause 9.1.
TPIA	shall mean the third party inspection agency appointed and/or authorized by the Employer for carrying out review of the Services.

2. Interpretation of SO Documents

- 2.1 Subject to the order of precedence as set out below, all documents forming part of the SO Documents are intended to be correlative, complementary and mutually explanatory. The SO Documents shall be read

and construed together as a single document and where these documents are at variance with each other, for the purpose of interpretation, the priority of the documents shall be in the following sequence:

- (a) The Service Order.
- (b) The Scope of Work, including all Schedules and other documents attached thereto.
- (c) The GTC.
- (d) Any other Schedules and Annexures forming part of the SO Documents.

2.2 In the event of any inconsistency between the:

- (a) text of the Clauses, the Annexures and the Scope of Work hereto, the text of the Clauses shall prevail;
- (b) text of the Scope of Work and the Annexures hereto, the text of the Scope of Work shall prevail; and
- (c) provisions and particulars of one Annexure and those of any other Annexure, the provisions and particulars of the Annexure more specific to the provision which is inconsistent shall prevail.

2.3 Notwithstanding the sub-division of the SO Documents into sections, every part of each document shall be deemed to be supplementary to and complementary of each other.

2.4 All headings and marginal notes to the items of the GTC, the Service Order, the Scope of Work or to any other document forming part of the SO Documents are solely for the purpose of giving a concise indication of the general subject matter thereof and not a summary of the contents. Such headings and marginal notes shall not be deemed to be part of or be used in the interpretation or construction of the said document.

2.5 Words incorporating the singular only shall also include the plural and vice-versa where the context requires. Words of any gender are deemed to include the other gender(s).

2.6 The term 'Clause', 'Schedule' or 'Annexure' refers to a specified clause, schedule or annexure of the GTC, unless otherwise expressly specified.

2.7 Reference to the words 'include', 'including' and 'included' shall be construed without limitation.

2.8 For the purposes of the SO Documents, the words and abbreviations that have well-known technical or trade meanings used but not defined in the SO Documents, shall be construed in accordance with such recognized technical or trade meanings.

2.9 Reference to any Applicable Laws or to any provision thereof shall include references to any such Applicable Laws as it may be amended, supplemented or re-enacted from time to time (whether before or after the date of the SO Documents) and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

2.10 The SO Documents are a joint draft product of the Parties, and any rule of statutory interpretation interpreting agreements against a party primarily responsible for drafting the agreement shall not be applicable to the SO Documents.

2.11 All approvals provided by a Party under the SO Documents shall be in writing and, for the purposes of the SO Documents, 'in writing' shall mean and include printing, electronic mail and letters.

2.12 Any reference to the SO Documents shall include all amendments, changes and modifications made to the SO Documents in accordance with the provisions hereof.

3. Scope of Work

3.1 The Consultant shall be bound to ensure that the Services and the performance thereof is compliant with the Scope of Work and Codes and Standards, as set out in the SO Documents.

3.2 The Consultant shall, unless specifically excluded in the SO Documents, perform all such incidental work and activities with respect to such items not specifically mentioned in the SO Documents but can be reasonably inferred as required or necessary to complete the Scope of Work, as if such work, activities and/or items were expressly mentioned in the SO Documents. However, the Consultant shall not perform

any extra or additional work and activities which do not form part of or can be inferred from the Scope of Work, unless such additional work is included in the SO Documents by way of an amendment.

- 3.3 In performing the Scope of Work, the Consultant shall comply with the directions of the Employer and/or the Employer's Representative. If the Consultant renders any advice to the Employer during the performance of the Scope of Work, the Consultant shall be bound by such advice and shall be liable for the same, notwithstanding that the Employer may, at its discretion, decide whether to accept, reject or implement the Consultant's advice.
- 3.4 The Consultant agrees and acknowledges that it has entered into the SO Documents after due and careful inquiry of all matters relating hereto and has satisfied itself in respect of all pertinent matters which may have a bearing upon the performance of the Services, including:
- (a) the nature, quality and magnitude of Services to be performed;
 - (b) availability of personnel and resources;
 - (c) the relevant Applicable Laws and all risks, conditions and applicable restrictions;
 - (d) general and local conditions, including conditions at the site where the Services are to be performed; and
 - (e) access to the Site in the manner set out in the SO Documents.
- 3.5 The Consultant acknowledges that the conditions referred to in Clause 3.3 and those pertaining to the Services and/or the SO Documents generally have been taken into consideration for determining the SO Price and other terms and conditions set out in the SO Documents. The Consultant shall further be deemed to have obtained all necessary information as to the risks and contingencies which may influence or affect the performance of the Services. The Consultant's failure to acquaint itself and/or consider any applicable condition, situation, requirement or other matter referred to under this Clause or those pertaining to the Scope of Work or the SO Documents shall not relieve the Consultant from performing its obligations under the SO Documents, nor entitle the Consultant to any variation in accordance with Clause 10 herein.
- 3.6 Before entering into the SO Documents, the Consultant shall conduct a conflict check, to ensure that the interests of the Employer do not compete or conflict with the interests of other clients of the Consultant. In case where the interests of the Employer conflicts with the interests of other clients of the Consultant, in relation to the Scope of Work, then the Consultant shall inform the same to the Employer before entering into the SO Documents. In case of presence of any such conflict as prescribed in this Clause 3.6, then the Consultant shall either ensure that services are not provided to such other clients of the Consultant or ensure that adequate safeguards, which are designed to facilitate the protection of each client's interests, including mechanism for geographical and operational separation, allocation of work to separate teams and/or separate access controls over data, computer servers and electronic mail systems, are put in place.
- 3.7 The Employer shall, if necessary, make available to the Consultant all such information that is relevant for the performance of the Services and other obligations set out in the SO Documents, other than the SO Documents itself. The Consultant hereby acknowledges and agrees that the Employer does not assume any responsibility in respect of, or warrant, guarantee or make any representation as to any information supplied pursuant to this Clause 3.7, including the accuracy, completeness, interpretation or adequacy of such information. The Employer shall also not be liable to the Consultant in relation to any claim pertaining to or in connection with the information supplied by the Employer, any action or inaction taken by the Consultant in respect of such information or the non-provision of any other information by the Employer. The Consultant further agrees that it shall protect, indemnify and hold the Employer harmless from and against any and all Losses arising directly or indirectly from or incurred by reason of the use of the information supplied by the Employer by any Person to whom the Consultant has supplied such data and information or any portion thereof.

4. Basic Price

- 4.1 The Basic Price shall be as specified in the Service Order. Unless otherwise provided for in the Service Order or agreed otherwise by the Employer, the Basic Price shall remain firm and no escalation to the Basic Price shall be allowed during the Term of the SO Documents, including any extensions thereto.

- 4.2 The Consultant shall be deemed to have satisfied itself as to the correctness and sufficiency of the Basic Price, which shall, except as otherwise provided for in the SO Documents, cover all its obligations under the SO Documents. Unless otherwise provided for in the Service Order, the Basic Price shall be inclusive of all applicable Taxes (except GST), gratuity amounts, all operating expenses, insurance charges, margin, overheads, charges for Bank Guarantees and all other costs associated with the performance of the Services and other obligations under the SO Documents.

5. Project Administration

The Consultant agrees and acknowledges that it shall, as may be agreed between the Parties and specified in the Service Order, perform the duties of engineer, employer's representative, project manager or other analogous role under any other works contract, entered by the Employer with Other Contractors, as a part of the Scope of Work under the SO Documents. The Consultant shall also adhere to such other works contract, entered by the Employer with the Other Contractors, wherein the obligations of engineer, employer's representative, project manager or other analogous role, to be performed by the Consultant under this Clause 5, is stated. If an ambiguity or discrepancy is found between such other works contract and the SO Documents, then the Consultant shall inform the same to the Employer, in writing, indicating the effect of such ambiguity or discrepancy and the Employer shall, as soon as reasonably practicable, take measures to rectify such ambiguity or discrepancy and where necessary, shall propose Change in accordance with Clause 10.

6. Payment Terms

- 6.1 The SO Price shall be payable as per the terms specified in the Service Order. The Consultant agrees that it shall not be entitled to payment of idling, down-time or any other analogous charges in respect thereof, for any reason whatsoever.

- 6.2 Unless otherwise specified in the Service Order, the mode of payment through which the Employer shall make payments under the SO Documents shall be wire transfer. Any bank charges incurred with respect to such payments shall be to the respective accounts of the Parties. No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Services or any part(s) thereof or otherwise relieve the Consultant of its obligations under the SO Documents. All payments payable by the Employer to the Consultant under the SO Documents shall be made subject to any deductions or withholdings required under Applicable Laws and the Employer shall provide the Consultant with the relevant documents or certificates required under Applicable Laws in connection with such deductions or withholdings.

6.3 Invoicing

The Consultant may raise Invoices for claiming payment of the SO Price, in accordance with the stipulations set out in the Service Order and the manner as set out below. The Consultant shall ensure that all Invoices raised under the SO Documents are correct and complete. Unless otherwise specified in the Service Order, the Consultant shall raise all Invoices in an electronic format and comply with the Applicable Laws in this respect, including the relevant procedure pertaining to e-invoicing. Any Invoice issued by the Consultant, in any manner other than the manner prescribed under the SO Documents shall be deemed to be an incorrect Invoice and shall not be eligible for any payments under the Service Order.

(a) Invoicing mechanism for payment on milestone basis

- (i) Upon completion of each Milestone, the Consultant shall raise and submit a written invoice to the Employer for the pro-rata payment of the SO Price corresponding to the Milestone completed by the Consultant ("**Invoice**").
- (ii) The Invoice shall be in a manner and form as acceptable to the Employer and shall provide the detailed breakup of the total value attributable to the completed Milestone (including any expenses incurred and the location where such expenses were incurred and the personnel incurring such expenses, which are to be reimbursed by the Employer in accordance with the Service Order).
- (iii) All Invoices shall be verified and approved by the Employer prior to payment. The Employer shall not be obligated to make payments against Invoices unless they are fully supported by documents as may be prescribed in the Service Order and have been verified and confirmed by the Employer.

(b) *Final Payment*

The Final Invoice shall be drawn up by the Consultant in the form approved by the Employer and shall include all outstanding claims. The Consultant hereby waives, any and all outstanding amounts with reference to any part of the Services and/or any outstanding claims that are not claimed by the Consultant in the Final Invoice. The Consultant shall submit to the Employer, such certificates as may be specified in the Service Order, along with the Final Invoice, in a form and manner as may be specified in the Service Order.

6.4 *Discrepant Amounts*

- (a) In the event the Employer finds any discrepancy in any Invoice raised by the Consultant, the Employer shall issue a written notice of such discrepancy to the Consultant ("**Discrepant Amount Notice**") and the reasons thereof, within a reasonable time period from the date of time period of receipt of the Invoice by the Employer.
- (b) The Employer shall, in such an event, pay such part of the Invoice value which is not discrepant, in accordance with the payment terms specified in the Service Order, and withhold that part of the Invoice value which is discrepant ("**Discrepant Amount**") till such time that the discrepancy is resolved between the Parties.
- (c) Notwithstanding anything to the contrary in the SO Documents, the payment of any Invoice by the Employer shall not prejudice, at any point of time, any rights of the Employer under the SO Documents, including the right of the Employer to notify any discrepancy in respect of any amounts therein, as may be identified by way of any audit or inspection, that may have been conducted subsequent to the payment of such Invoice. In the event any such discrepancy is identified in relation to any Invoice that has already been paid by the Employer, the Employer shall have the right to adjust any amount that may be due and payable by the Consultant, in accordance with Clause 43.
- (d) Upon receipt of a Discrepant Amount Notice in relation to any Discrepant Amount from the Employer, if the Employer's view on the Discrepant Amount is accepted by the Consultant, the Consultant shall provide a revised Invoice to the Employer after excluding the Discrepant Amounts. If the Consultant intends to dispute the Employer's view on the Discrepant Amount, the Consultant shall provide documentary evidence to the Employer within fifteen (15) days of receipt of the Discrepant Amount Notice in respect of such Discrepant Amount, to enable the Employer to confirm the acceptance or rejection of the Discrepant Amount within fifteen (15) days. If the Consultant's documentary evidence is accepted by the Employer, the Employer shall accept the Invoice originally raised by the Consultant and make the payment of the Discrepant Amount in accordance with the payment terms specified in the Service Order, from the date of submission of the documentary evidence by the Consultant.
- (e) In the event that the Parties are unable to resolve any issue in relation to such discrepancies in the Invoices within thirty (30) days of issue of the Discrepant Amount Notice by the Employer in relation to such Discrepant Amount, such dispute shall be resolved in accordance with the provisions of Clause 36.

7. **Taxes**

- 7.1 Except GST, all applicable Taxes shall be solely payable by the Consultant, unless otherwise specified in the Service Order. The Employer shall pay the applicable GST to the Consultant at actuals, as per the rates specified in the Price Schedule. The Consultant shall deposit the applicable GST with the relevant government authority and file returns and such other analogous statutory filings with respect to GST, in accordance with the manner and timelines stipulated under Applicable Laws. The Consultant shall, within three (3) days from such deposit and/or filings (as the case may be), submit to the Employer all relevant documentation evidencing such compliance and deposit of GST. If the Consultant fails to comply with its obligations under this Clause 7, the Employer shall be entitled to: (i) withhold payments due to the Consultant under the SO Documents; and/or (ii) invoke the Bank Guarantee(s) (as applicable) provided by the Consultant in accordance with Clause 9, to the extent of the amount of GST that has not been deposited by the Consultant with the government authorities, along with any interest, fine and/or penalty, as may be levied under Applicable Laws. In the event the Consultant is in breach of its obligations under

this Clause 7.1, the Employer shall also be entitled to blacklist the Consultant and thereby restrict the Consultant from participating in future projects of the Employer.

- 7.2 The Consultant shall, in respect of the deposit of Taxes (as may be applicable), comply with all Applicable Laws and shall ensure that all requirements, as stipulated under Applicable Laws in relation to the deposit of Taxes, are complied with. The Consultant shall ensure timely deposit of all Taxes, including applicable fees, assessments and other analogous charges, as may be required in connection therewith with the government authorities. The Consultant shall be solely liable for any consequences arising out of non-compliance with such Applicable Laws and any expenses suffered by the Employer on account of such non-compliance by the Consultant shall be to the Consultant's account.
- 7.3 The Consultant hereby agrees and acknowledges that in case any tax benefits/rebates, duty drawbacks, GST refunds or such other applicable tax concessions and/or exemptions are available with respect to the Services, the Consultant shall avail of such concessions and/or exemptions or benefits and pass on such exemptions or benefits to the Employer or shall assist the Employer in availing such exemptions or benefits. In order to enable the Employer to satisfy its obligations under this Clause 7.1, the Consultant shall duly execute all such further instruments and documents and do or procure to be done all such acts or things, as may be required to ensure that the terms of the SO Documents are complied with.
- 7.4 If there is a delay in Completion and a statutory increase occurs in the applicable GST or implication of any new Taxes during the period of such delay, for reasons not attributable to the Employer, then the same shall be to the account of the Consultant.

8. Bank Guarantees

- 8.1 The Consultant shall provide the Employer with the Bank Guarantees as shall be stipulated in the Service Order, issued by an Acceptable Bank, at the times and in the amount, manner and form as more particularly specified in the Service Order. The Consultant shall also procure a confirmation from the bank issuing such Bank Guarantees of the valid issue of such guarantees and provide such confirmation to the Employer, within ten (10) days of the submission of such Bank Guarantees to the Employer. The Consultant shall ensure that the Bank Guarantees that are submitted by the Consultant and the rights and interests therein are assignable by the Employer in favour of its lenders or security trustees. In the event that the bank issuing such Bank Guarantees no longer meets the requirement of an Acceptable Bank at any time during the subsistence of such bank guarantee, the Consultant shall replace such bank guarantee with another bank guarantee from an Acceptable Bank within fifteen (15) days of the Employer's demand.
- 8.2 The Employer shall have an unqualified option under the Bank Guarantees to invoke such guarantee(s) and claim the amounts thereunder in the event of the Consultant's failure to honour its obligations, responsibilities or commitments under the SO Documents for which such relevant security has been provided and/or in respect of any amounts due from the Consultant to the Employer.
- 8.3 In the event the Employer draws on the Contract Performance Bank Guarantee, in part or in full, the Consultant shall immediately restore the value of such bank guarantee to such value which existed prior to drawal of such bank guarantee. If the Consultant fails to restore such bank guarantee, the Consultant shall not be entitled for any further payments under the SO Documents.
- 8.4 In the event that:
 - (a) the Completion of the Services is delayed beyond the Completion Schedule on account of which the advance amount remains unadjusted, the validity of the Advance Payment Bank Guarantee shall be extended till the revised Completion Schedule or until recovery or refund of the full amount of the advance payment; and
 - (b) the Completion of the Services has been delayed beyond the Completion Schedule, thirty (30) days prior to the scheduled expiry of the Contract Performance Bank Guarantee, the validity of the Contract Performance Bank Guarantee shall be extended till the revised Completion Schedule.
- 8.5 The Parties agree that all costs relating to the Bank Guarantees provided by the Consultant in accordance with the terms of this Clause, including in respect of the opening, renewal, maintenance and invocation of such Bank Guarantees (as applicable), shall be borne by the Consultant.

9. Term of the Service Order and Completion Schedule

- 9.1 The SO Documents shall be in full force and effect from the Effective Date and shall continue to be in subsistence until all obligations under the SO Documents have been fulfilled by the Parties, unless otherwise terminated in accordance with the provisions of the SO Documents ("**Term**").
- 9.2 The Completion Schedule shall be as specified in the Service Order. The Completion Schedule shall be deemed to be of essence with respect to the SO Documents and any extension of time in this respect shall also be considered to be of essence of the SO Documents. If the Consultant fails to Complete the Services or any part thereof, including failure to achieve any Milestone within the specified Completion Schedule, the Employer shall be entitled, at its option, to:
- (a) recover Delay Liquidated Damages from the Consultant; and/or
 - (b) terminate the SO Documents or part thereof and engage a third party to complete the Services, at the risk and cost of the Consultant.
- 9.3 Any cost or expense resulting from any such delay in achievement of any Milestone and/or Completion of the entire Scope of Work, shall be solely to the Consultant's account. The adjustments with respect to the amount recoverable, if any, in terms of Clause 9.2 above, shall be made from the Bank Guarantee(s) provided by the Consultant in terms of Clause 8, as may be available, or in any other manner as may be deemed appropriate by the Employer.

10. Variation

- 10.1 Subject to Clauses 10.4 and 10.5, the Employer shall have the right to propose, and subsequently require the Consultant to make, any change, modification, addition or deletion to, in or from the Scope of Work ("**Change**"). The Consultant may, during the performance of the Services, propose to the Employer any Change that the Consultant considers necessary or desirable to improve the quality, efficiency or safety of the Services. The Employer may at its discretion approve or reject any Change proposed by the Consultant.
- 10.2 Notwithstanding Clause 10.1, any necessary change made due to any default of the Consultant in the performance of its obligations under the SO Documents, shall not be deemed as a Change and shall not result in any adjustment of the SO Price or the Completion Schedule.
- 10.3 If the Employer proposes a Change or acknowledges the Consultant's proposal for a Change in accordance with Clause 10.1, it shall send to the Consultant a request to that effect, requiring the Consultant to prepare and furnish to the Employer as soon as practicable a proposal detailing the proposed Change ("**Change Proposal**"), which shall include, *inter alia*, brief description of the Change, estimated impact on the Completion Schedule, SO Price, Scope of Work or any other provisions of the SO Documents.
- 10.4 Upon receipt of the Change Proposal, the Employer and the Consultant shall mutually agree upon all matters therein contained. Within fifteen (15) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Consultant with a written change order, incorporating the proposed Change. If the Employer is unable to reach a decision within fifteen (15) days or decides not to proceed with the Change for any reason, it shall notify the Consultant accordingly.
- 10.5 If the Employer and the Consultant cannot reach agreement on the price for the Change, an equitable adjustment to the Completion Schedule, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Consultant to proceed with the Change by issue of an order signed by the Employer ("**Interim Change Order**").
- 10.6 Upon receipt of an Interim Change Order, the Consultant shall immediately proceed with effecting the Changes covered by such order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal. If the Parties cannot reach an agreement within sixty (60) days from the date of issue of the Interim Change Order, then the matter may be referred for dispute resolution, in accordance with Clause 36.
- 10.7 Notwithstanding anything contained in this Clause, the Employer shall have the right to amend the Scope of Work and the revised SO Price shall be mutually agreed between the Parties. The Employer shall have the right to get any part of the Services to be performed by other consultants, advisors, contractors or

service providers, which may be appointed from time to time by the Employer and thereby removing such Services from the Scope of Work.

11. Location for performing Services and Site Access

Depending upon the nature of the Services and the requirements of the Employer, the Consultant shall be required to perform the Services from its own premises or at the Site or any other location as may be specified in the Service Order. In the event the Consultant is required to perform any part of the Services at the Site, the Employer shall provide the Consultant, on a non-exclusive basis, with the non-exclusive right to use of, enter upon, access and work upon such portions of the Site, as may be specified in the Service Order.

12. Facilities

12.1 Unless otherwise specified in the Service Order, the Employer shall provide to the Consultant, reasonable office space at the Employer's office situated at the Site, free of cost, for the Consultant's personnel in case the Consultant is required to perform any part of the Services at the Site. All support services required by the personnel for working out of the Site, including technical and information technology related requirements such as laptops, computers or telephones, shall be arranged by the Consultant and the Employer shall not be responsible for provision of such support services.

12.2 The Employer may also provide boarding, lodging and travel facilities to the Consultant's personnel, in accordance with the Service Order and the Employer's policy on the same. In the event the Employer does not provide such facilities to the Consultant, then the Consultant shall be entitled to incur such expenses and claim reimbursement for such expenses in accordance with this Clause 12.2. All such expenses incurred by the Consultant's personnel, for which reimbursement is proposed to be claimed by the Consultant, shall require prior written approval of the Employer. The Consultant shall raise a consolidated invoice, at the time of raising the Final Invoice, for all such reimbursable expenses that the Consultant is entitled to claim, along with documentary evidence supporting such claims. Upon the Consultant raising such invoice in respect of such reimbursable amounts, the Employer shall reimburse the same, at actuals, subject to compliance with the requirements of the Employer's policy in respect of the same and the terms and conditions specified in the Service Order. It may be noted that the Consultant shall not be permitted to claim for reimbursement of any expenses incurred on account of consumption of alcohol or on account of recreational or leisure activities. The Employer shall not be liable to reimburse any other incidental expenses or out of pocket expenses, other than the expenses specified in this Clause 12.2 or as may be provided for in the Service Order.

13. Programme of Performance, Reports and Meetings

13.1 Unless otherwise required by the Employer, the Consultant shall, within fifteen (15) days from the Effective Date, submit to the Employer a detailed programme of performance of the Scope of Work by the Consultant, presenting the sequence in which the Consultant proposes to schedule, program and achieve completion of the Milestones (if any) and all other obligations of the Consultant under the SO Documents. The programme so submitted by the Consultant shall be in accordance with the Completion Schedule and other dates and periods specified in the Service Order. The Consultant shall update and revise the programme as and when appropriate or when required by the Employer and shall submit all such revisions to the Employer.

13.2 The Consultant shall monitor progress of all the activities specified in the programme referred to in this Clause and submit a progress report to the Employer on a periodic basis, as may be required by the Employer's Representative or as may be specified in the Service Order. The Employer and the Consultant shall, within ten (10) days of the Effective Date, mutually agree to the form of the progress report which shall cover, *inter alia*, aspects of progress of work as per the Services, performance issues, key operational hurdles and deliverables addressed during the report period or anticipated to be completed during the succeeding report period. The Consultant shall also furnish to the Employer information or status reports which the Employer may require from time to time. The Consultant shall inform the Employer immediately upon receipt of knowledge of occurrence of any event which may impact or hamper the performance of the Services. The Parties may also arrange for meetings to be held during the performance of the Services on a periodic basis. The Consultant shall make itself and its personnel available to attend such meetings.

14. Parties' Representatives

14.1 Employer's Representative

- (a) The Employer shall have the right to appoint a representative for performing the duties delegated to it by the Employer under the SO Documents, as shall be specified in the Service Order or as may be appointed in the kick-off meeting ("**Employer's Representative**"). The Consultant acknowledges that the Employer has appointed or shall have the right to appoint the Employer's Representative for the purpose of the SO Documents. The Employer's Representative shall represent and act for the Employer at all times during the Term. All notices, instructions, orders, certificates, approvals and all other communications under the SO Documents shall be given by the Employer's Representative, except as herein otherwise provided. Such Employer's Representative shall be authorised to bind the Consultant for all purposes under the SO Documents and notices, approvals and consents given to or received from the Employer's Representative shall have the same effect as if given to or received from the Employer.
- (b) All notices, instructions, information and other communications given by the Consultant to the Employer under the SO Documents shall be given to the Employer's Representative, except stated otherwise.

14.2 Consultant's Representative

- (a) The Consultant shall, for the purpose of the SO Documents, designate a competent and experienced person to serve as the representative for the Consultant, within fifteen (15) days from the Effective Date, for performing the duties delegated to it by the Consultant under the SO Documents, who shall be responsible for the administration, supervision, co-ordination and execution of the Consultant's obligations hereunder ("**Consultant's Representative**"). The Consultant shall ensure that the Consultant's Representative is approved by the Employer in accordance with Clause 15.1(b).
- (b) The Consultant's Representative shall represent and act for the Consultant at all times during the Term and shall give the Employer's Representative all the Consultant's notices, instructions, information and all other communications to be provided under the SO Documents.
- (c) All notices, instructions, information and all other communications given by the Employer or the Employer's Representative to the Consultant under the SO Documents shall be given to the Consultant's Representative.
- (d) The Consultant shall not revoke the appointment of the Consultant's Representative without the Employer's prior written consent. If the Employer consents thereto, the Consultant shall appoint some other person as the Consultant's Representative, pursuant to the procedure set out in Clause 14.2(a).
- (e) The Consultant's Representative may, subject to the approval of the Employer, at any time delegate to any person any of the powers, functions and authorities vested in the Consultant's Representative. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Consultant's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Employer's Representative and approval of the same has been obtained.

15. Personnel

15.1 Key Personnel

- (a) For the purposes of the SO Documents, the Consultant's Representative and any other person liable to perform significant aspects of the Scope of Work shall be considered to be the key personnel of the Consultant ("**Key Personnel**"). Prior to the appointment of any Key Personnel by the Consultant for the purposes of performing the Scope of Work, the Consultant shall obtain prior approval from the Employer on such appointment and the Employer shall have the right to approve or reject such appointment, in accordance with Clause 15.1(b) below. The Consultant may also propose replacement of any Key Personnel from time to time as the Consultant may deem necessary or desirable, subject to the approval procedures laid down in Clause 15.1(b) below.

- (b) The Consultant shall put forth the proposal for the appointment or replacement of any Key Personnel to the Employer, along with a resume detailing out the educational qualifications and experience of the personnel proposed to be appointed as the Key Personnel. In case the Employer requires any supplemental information in respect of such personnel for the purposes of this Clause 15.1, then the Employer shall request for the same to the Consultant and the Consultant shall promptly provide the requested information to the Employer. The Employer shall approve or reject the appointment or replacement of such personnel, within fifteen (15) days of its receipt of the relevant resumes or its receipt of the requested information, in case where supplemental information is requested by the Employer. If the Employer makes no objection to the appointment within fifteen (15) days thereafter, the personnel shall be deemed to have been approved. If the Employer objects to the appointment within fifteen (15) days of receiving the request for approval, then the Consultant shall provide to the Employer, the resumes of one or more alternative persons within fifteen (15) days of the Employer's notice of rejection to the Consultant, and the procedures set forth above shall apply.

15.2 *General*

- (a) The Consultant shall be solely responsible for all personnel engaged for the performance of the Scope of Work, including any Person to whom any part of the Scope of Work has been subcontracted by the Consultant, or any supplier from whom the Consultant purchases any item(s) required for the performance of the Scope of Work, without any recourse to the Employer. The personnel shall possess suitable competence, ability, skill, expertise, training and qualifications as is required for the performance of the Consultant's obligations under the SO Documents. The Parties agree that the Employer shall have no responsibility whatsoever for the Consultant's personnel, vehicles and equipment, which are engaged for the performance of the Scope of Work under the SO Documents.
- (b) The Consultant shall comply with the SO Documents and Applicable Laws, including laws relating to employment, provident fund, health, safety, welfare and immigration. The Consultant shall undertake background verification and screening in respect of all personnel engaged for performance of the Scope of Work, including for any criminal records and shall be responsible for the visas, work permits and other immigration requirements for its personnel.
- (c) The Consultant shall not appoint a foreign personnel or technician without the prior consent of the Employer. The Consultant shall be solely responsible for bringing in any foreign personnel and technicians and ensure compliance of all Applicable Laws with respect to the said foreign personnel or technicians including obtaining work permits, visas, arranging for accommodation, travel, and security clearances from any Government Authority as may be necessary.
- (d) The Consultant shall be further liable and responsible for all payments to its personnel, including salaries, wages, Taxes, medical expenses, allowances and other benefits in accordance with Applicable Laws. The Consultant shall contract for the provision of such social benefits for its employees as may from time to time be required by Applicable Laws in the jurisdictions where its obligations pursuant to the SO Documents are performed. The Consultant shall ensure that all personnel of the Consultant performing the Services are and at all times shall be, in possession of all such documents (including, without limitation, valid visas, work permits and security clearances) as may be required by any Applicable Laws.
- (e) The Consultant shall terminate the employment of any personnel whom the Employer deems unwilling to perform its services in a diligent and timely manner or who has engaged in any misconduct, illegal or immoral activities, and the Consultant shall nominate a suitable replacement who shall be subject to the approval of the Employer or Employer's Representative. The Employer reserves the right to require the Consultant to cause removal or replacement of any personnel acting in a manner which is non-compliant with the SO Documents or prejudicial to the interests of the Employer or health, safety, protection of the project or the environment.

16. **Permits and Licenses**

- 16.1 The Consultant shall obtain and maintain all Applicable Permits for the performance of the Scope of Work, which may be required to be obtained and maintained under Applicable Laws. If requested by the Consultant, the Employer shall provide the Consultant with reasonable assistance in obtaining and

maintaining any Applicable Permits. However, the foregoing shall in no circumstances be construed as relieving the Consultant from its obligation to obtain and maintain Applicable Permits, for which it shall remain primarily and fully responsible, or as imposing any responsibility on the Employer in respect of procurement of Applicable Permits.

- 16.2 The Consultant shall maintain all records and registers as per the provisions of Applicable Laws and shall be solely liable for any consequences arising out of non-compliance with Applicable Laws by itself or by its agents or personnel. Any incidental expenses for complying with Applicable Laws shall be borne by the Consultant. The Consultant shall not be entitled to any adjustment to the Completion Schedule or the SO Price or any other terms of the SO Documents on account of any delay or failure to obtain or maintain any Applicable Permits.

17. Cooperation and Coordination with Employer and Other Contractors

- 17.1 The Consultant recognises and acknowledges that the Other Contractors have been or may be engaged by the Employer to advise the Employer and to perform other work and services at the Site. In the event that the Consultant is required to perform any part of the Services at the Site, the Consultant shall cooperate and coordinate with the Employer, the Other Contractors and their respective personnel, subcontractors, consultants and advisers, and shall provide all information and assistance and undertake all actions as may be required from the Consultant. If required by the Employer, the Consultant shall enter into such arrangements with the Other Contractors, as may be required by the Employer, to coordinate the performance of other work and services at the Site.

- 17.2 The Consultant hereby acknowledges that failure to comply with its obligations under this Clause 17 may result in claims by the Other Contractor(s) against the Employer. The Consultant hereby undertakes to defend, indemnify and hold harmless the Employer in respect of and against any such claim, if the Employer makes a determination, from the information provided to it by the Other Contractor(s), that such claim arose due to reasons attributable to the Consultant and that the amounts claimed by the Other Contractor(s) are payable.

- 17.3 Save as provided in this Clause 17, the Consultant hereby releases and forever discharges the Employer from all actions, suits, claims, demands, costs and other liabilities of any nature which the Consultant now has or at any time may have, or, but for the execution of the SO Documents, might have had against the Employer arising out of or in connection with the performance, or any negligent performance, by any of the Persons referred to in this Clause 17, of any of their individual or collective obligations under any agreement.

18. Insurance

Unless otherwise specified in the Service Order, the Consultant shall, at its own cost, arrange, secure and maintain, all insurance policies required under Applicable Laws in connection with the performance of the Services (except the insurance policy(ies) required to be obtained by the Employer as per the SO Documents), including professional liability and indemnity, workmen's compensation, employees' state insurance, public liability insurance and insurance for all its personnel, equipment, vehicles and other assets engaged in the performance of the Services. The Consultant shall (where required by the Employer) designate the Employer's lenders as the 'loss payees', in all the insurance policies procured by the Consultant under the SO Documents. The Basic Price is inclusive of charges pertaining to such insurance, unless otherwise specified in the Service Order.

19. Review of Services

- 19.1 The Employer, its representatives or any TPIA shall have the right to review the performance of the Services during any stage of the Services and at any and all places where the Services are being performed, in accordance with the review requirements as may be stipulated in the Scope of Work. The procedures for such review shall be as set out in the Scope of Work or in accordance with Codes and Standards and/or Good Industry Practice. The Consultant shall cooperate with the Employer for such reviewing and shall if necessary, obtain the authorisation for the Employer to conduct the same.
- 19.2 The Consultant shall furnish all requisite facilities, assistance, manpower and instruments necessary for the review of the Services by the Employer in accordance with this Clause 19. The right of review by the Employer, its representatives or TPIA provided herein is intended solely for the Employer's benefit. No

exercise of or failure to exercise such right shall relieve the Consultant of any of its obligations hereunder or prejudice any of the Employer's rights under the SO Documents.

20. Acceptance and Rejection

- 20.1 The Consultant shall ensure that all the Services performed shall comply with and meet the requirements stipulated in the Scope of Work. If as a result of any review carried out in accordance with Clause 19, the Employer determines that any part of the Services performed is Defective or otherwise not in accordance with the SO Documents, the Employer shall have the right to:
- (a) reject such Services without any liability whatsoever, in accordance with this Clause 20.1; or
 - (b) engage any third party contractors or service provider(s) for performance of the Services in accordance with Clause 27.
- 20.2 If the Employer rejects such Defective part of the Services performed, it shall notify the Consultant promptly of such rejection. The Consultant shall promptly undertake the necessary remedial work at its own cost and ensure that the rejected Services are re-performed to comply with the SO Documents. After completion of the necessary remedial work, the Employer has the right to subject such re-performed and rectified work to further review by the Employer, its representatives or TPIA. All costs and expenses of such further review shall be to the Consultant's account. The Consultant shall not be entitled to raise any Invoices for any sums payable in respect of the portion of the Services which has been rejected by the Employer in accordance with the provisions of this Clause.

21. Liquidated Damages

- 21.1 If the Consultant fails to complete any Milestone or achieve Completion as per the Completion Schedule, the Employer shall have the right to levy liquidated damages for such delay, in accordance with the terms specified in the SO Documents ("**Delay Liquidated Damages**"). The maximum ceiling for Delay Liquidated Damages shall be as specified in the Service Order.
- 21.2 The Parties agree that the liquidated damages set out in the SO Documents are a genuine pre-estimate of the Losses that shall be suffered by the Employer on account of any delay in completion of the Scope of Work and/or breach of obligations set out under Clause 23 (as may be applicable). The Parties further irrevocably agree that the liquidated damages prescribed herein: (i) shall be payable on demand without requiring any proof of actual Losses caused by the Consultant's breaches; and (ii) have been mutually determined after joint discussions and calculations.
- 21.3 The Parties agree that the GST applicable on liquidated damages payable by the Consultant under this Clause 21 shall be to the Consultant's account. The total amount of liquidated damages payable by the Consultant in terms of the SO Documents shall be grossed up to take into account such liability of GST and the Employer shall be entitled to raise invoice(s) upon the Consultant in respect of the same. The Employer may recover such liquidated damages by: (i) deducting such liquidated damages from any amounts due or which may become due to the Consultant; (ii) directing the Consultant to pay such liquidated damages to the Employer as a debt due and payable; or (iii) claiming such liquidated damages from available Bank Guarantees.
- 21.4 The payment of liquidated damages shall not relieve the Consultant from its obligation to achieve the Milestones (if any) and Completion, nor from any other obligations and liabilities under the SO Documents, and shall not prejudice any other remedy that the Employer may have in relation to the Consultant's non-compliance with the SO Documents. Any correspondence or minutes of meetings and/or acceptance of delayed performance of the Scope of Work shall not be construed as a waiver of liquidated damages payable under the SO Documents.

22. Compliance with Applicable Laws and Site Regulations

The Consultant shall abide by all Applicable Laws relating to the performance of the Scope of Work, including laws pertaining to environment, health and safety. In the event the Consultant is required to perform any part of the Services at the Site, the Consultant shall comply with the specific rules and regulations (including safety regulations), as provided by the Employer and to be observed during performance of the SO Documents at the Site. Such rules and regulations shall include rules in respect of security, safety of the people at the Site, gate control, sanitation, medical care and fire prevention. The Consultant shall also strictly comply with standard safety norms, rules and regulations prevalent in the

industry and 'code of conduct' published on the Employer's website while performing its obligations under the SO Documents. The Consultant shall be liable for any damage or injury to persons or property of the Employer or third parties caused as a result of acts or omissions of the Consultant in the course of performing Services under the SO Documents.

23. Compliance with Environmental, Social and Governance Requirements

- 23.1 The Consultant shall, as a part of performing its obligations under the SO Documents, ensure responsible business management pertaining to environmental, social and governance ("ESG") related matters. In this regard, the Consultant shall: (i) comply with policies, codes and guidelines, as may be notified by the Employer to the Consultant, pertaining to such ESG requirements and as may be required in terms of Applicable Laws; (ii) employ management systems for ESG risks and opportunities, and commit to continuous improvements thereof; (iii) ensure fair terms and conditions of employment for its subcontractors, employees and personnel; (iv) take all necessary care of the personnel engaged in the performance of the Services and undertake activities for their skill enhancement and welfare; (v) assess and mitigate the health, safety and environmental risks which may arise due to the performance of the Scope of Work; and (vi) focus on corporate responsibility and long term sustainability.
- 23.2 Further, the Consultant shall, as part of its corporate responsibility, undertake to focus on: (i) the promotion of diversity, prosperity and sustainable development; (ii) enhancement of skills, empowerment of women, protection of human rights and development of local community; (iii) reduction of pollution, preservation of biodiversity and water resources, conservation of natural resources and energy and supporting efforts to combat climate change; (iv) creation and implementation of sustainable water use strategies; (v) avoiding the usage of plastic (including any single use plastic items or non-biodegradable materials) and innovating new products to reduce carbon footprint; and (vi) establishing strong risk management and corporate governance mechanisms and build healthy stakeholder relationships.

24. Title

Except as otherwise provided herein, title and proprietary interest in the Services (or any part thereof) and any other items created pursuant to performance of the Services, including any reports or any other form of deliverable, shall become and remain the property of the Employer.

25. Deficiency in Services

- 25.1 The Consultant shall be liable and keep the Employer indemnified for any discrepancies, error or omissions in the Services performed by it, whether or not the same has been approved by the Employer. The Consultant also warrants that any reports or deliverables produced or created during the course of performing the Services (or any part thereof) shall be free from any Defects. If: (i) errors, omissions, ambiguities, inadequacies are found in such Services; (ii) there is any fault, imperfection, shortcoming or inadequacy in the quality, nature and performance or any other deficiency whatsoever in the performance of Services by the Consultant; and/or (ii) any Defects are found in such reports or deliverables, the Consultant shall, at its cost and expense and in consultation and agreement with the Employer regarding appropriate remedying of such Defects, promptly replace or otherwise make good such Defects within such time period as may be notified by the Employer. For the avoidance of the doubt, it is clarified that the determination of a Defect shall be at the sole discretion of the Employer and the decision of the Employer in this regard should be final and binding on the Consultant. The Employer's acceptance of the Services and any reports or deliverables created pursuant thereto, shall in no way relieve the Consultant of its obligations under this Clause 25.
- 25.2 If the Consultant fails to promptly commence remediation of such Defect(s), the Employer may, following notice to the Consultant, proceed to remedy the Defect(s), and any costs incurred by the Employer in connection therewith shall be: (i) reimbursed by the Consultant; (ii) deducted by the Employer from any amounts due to the Consultant; or (iii) claimed by the Employer under the applicable Bank Guarantee(s).

26. Representations and Warranties

- 26.1 The Consultant hereby represents and warrants to the Employer that:
- (a) it is duly organized, validly existing, and in good standing under the laws of the country or state in which it is organized or incorporated;

- (b) it is duly qualified to do business in all jurisdictions and owns or possesses all Applicable Permits that are necessary to operate its business as is currently being conducted and perform its obligations under the SO Documents and that the copies of such Applicable Permits have been delivered to the Employer;
- (c) it has full corporate power and authority to execute, deliver and perform its obligations under the SO Documents, and that the execution, delivery and performance of the SO Documents by the Consultant have been duly authorised by all necessary corporate action on part of the Consultant;
- (d) the execution, delivery and performance of the SO Documents by the Consultant and the consummation of the transactions contemplated thereby do not and shall not contravene the certificate of incorporation or by-laws of the Consultant and do not and shall not conflict with or result in: (i) a breach of or default under any indenture, agreement, judgment, decree, order or ruling of any court, Government Authority to which the Consultant is a party or by which any of its assets are bound that would have a material adverse effect on the Consultant's ability to perform its obligations under the SO Documents; or (ii) a breach of any Applicable Laws;
- (e) the SO Documents constitute legal, valid and binding obligations of the Consultant, which are enforceable against it in accordance with the terms of the SO Documents;
- (f) the Scope of Work shall be performed with professionalism, promptness, diligence and due care, in a skilled and workmanlike and timely manner, in accordance with Good Industry Practice and the terms of the SO Documents;
- (g) there are no legal, arbitration or any other proceedings by or before any Government Authority, now pending or threatened against it or its Affiliate which, if adversely determined, could be expected to have adverse effects on the financial condition, options, prospects or business of the Consultant or the Consultant's ability to perform its obligations under the SO Documents;
- (h) it has the requisite expertise, skill, knowledge, experience, manpower and adequate infrastructure (with capacity and ability to augment all of these as may be necessary) to successfully perform the Scope of Work in accordance with the terms of the SO Documents;
- (i) it has examined all aspects of the SO Documents (including other terms and conditions of the SO Documents) and the Scope of Work and has satisfied itself fully as to the sufficiency of consideration for performance and completion of all of its obligations under the SO Documents;
- (j) it has the financial standing and capacity to undertake the performance of the Services and remedy any Defects therein in accordance with the SO Documents;
- (k) the Services shall be free of Defects and deficiencies;
- (l) it is fully aware of and shall comply with all Applicable Laws during the performance of the Scope of Work;
- (m) the Services performed hereunder shall be executed in a timely manner with due care and diligence and shall be fit for the purposes and uses intended and capable of operation in the manner contemplated hereby and in accordance with the SO Documents;
- (n) any work product that may be created pursuant to the performance of the Services shall be free and clear of any and all claims and encumbrances;
- (o) in entering into the SO Documents, it is acting in its own capacity and not in the capacity as trustee of any trust or as agent on behalf of any entity;
- (p) neither the Consultant nor any of its Affiliates, and to the best of its knowledge, none of its or its Affiliates' employees, officers, directors, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for: (i) any government official, employee, representative or agent; (ii) any employee, officer, director, representative or agent of the Employer or its Affiliates; or (iii) any other Person with respect to the negotiation, execution or performance of the SO Documents; and
- (q) no representation or warranty made by it, as contained herein or in any other document furnished by it to the Employer or to any Government Authority in relation to Applicable Permits or the SO

Documents, contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading.

26.2 The Employer represents and warrants to the Consultant that:

- (a) it is a corporation duly organized, validly existing, and in good standing under the laws of India;
- (b) it has full corporate power and authority to execute, deliver and to perform its obligations under the SO Documents, and that the execution, delivery and performance of the SO Documents by the Employer have been duly authorized by all necessary corporate action on the part of the Employer; and
- (c) the execution, delivery and performance of the SO Documents by it and the consummation of the transactions contemplated thereby do not and shall not: (i) contravene the Employer's certificate of incorporation, its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the Employer is a party that would materially and adversely affect the Employer's ability to perform its obligations under the SO Documents; or (iii) breach any Applicable Laws, judgment, decree, order or ruling of any court, government authority or regulatory body to which the Employer is a party or by which any of its assets are bound.

27. Consultant's Liability for Failure to Perform

In the event that the Consultant is in breach of its obligations under the SO Documents, which results in delay in achievement of any Milestone or Completion within the Completion Schedule or hindrance in performance of the Scope of Work, the Employer shall, without prejudice to any of its other rights under Applicable Laws or the SO Documents, be entitled to complete the Services by itself or appoint another contractor to perform or complete the Services, and the Consultant shall, in addition to the payment of liquidated damages, be liable to reimburse to the Employer any additional costs, including any overheads, incurred for the engagement of such third party contractor.

28. Intellectual Property Rights

28.1 Consultant's IP

All Intellectual Property Rights created or developed by or on behalf of the Consultant:

- (a) prior to the Effective Date;
- (b) other than in connection with the SO Documents; and
- (c) which the Consultant makes available, contributes, brings to or uses in connection with the SO Documents,

collectively, the "**Consultant IP**", are and shall remain the property of the Consultant.

28.2 Employer's IP

All Intellectual Property Rights created or developed by or on behalf of the Employer and which the Employer makes available, contributes, brings to or uses in connection with the SO Documents (including all Intellectual Property Rights in the Scope of Work) (the "**Employer IP**") are, and shall remain, the property of the Employer.

28.3 Licenses

- (a) The Consultant hereby grants to the Employer and its Affiliates a non-exclusive, assignable, irrevocable, royalty-free, perpetual, worldwide license (including the right to sub-license) to use, copy, sub-license and exercise all rights in the Consultant IP for any purpose in connection with the use, reproduction, operation, repair, maintenance or otherwise in respect of the Services, the Scope of Work or the SO Documents.
- (b) The Employer hereby grants to the Consultant a non-exclusive, non-transferable, revocable, royalty-free license for the Term to use the Employer IP for the sole purpose of performing and completing its obligations under and in accordance with the SO Documents.

- (c) The Consultant shall, at the expense of the Employer, execute all documents and do all other things in order to enable the Employer, its Affiliates or its nominee to exercise its rights in relation to the Intellectual Property Rights being granted to the Employer in accordance with this Clause.
- (d) In the event the use of any Consultant IP in the Services, any part thereof, any process or component forming part of or contained in any of the Services or in the reasonable contemplation of the Parties, is held to constitute an infringement of any third party's rights and its use is enjoined pursuant to any suit or proceeding, the Consultant shall promptly, at its own risk, cost and expense either:
 - (i) procure for the Employer the right to continue using such process or component; or
 - (ii) replace such process or component with a non-infringing process or apparatus of equal utility and efficiency to the satisfaction of the Employer; or
 - (iii) modify such process or component in a way satisfactory to the Employer, so that it becomes non-infringing.
- (e) In the event the Consultant becomes aware of any suspected, threatened or actual infringement of any of the Employer's IP or any Intellectual Property Rights of a third party due to incorporation of the Employer's IP in the Scope of Work, the Consultant shall notify the Employer and shall:
 - (i) provide all assistance requested by the Employer in relation to such claim; and
 - (ii) use its best endeavours to render the infringing material non-infringing in a manner acceptable to the Employer.

28.4 *Representations and Warranties*

The Consultant represents and warrants to the Employer that:

- (a) it is the registered owner of or holds a valid license to all Intellectual Property Rights required in the performance of the Services and shall grant valid license in all such Intellectual Property Rights to the Employer without the Employer incurring any liability or obligation;
- (b) it shall not infringe any Intellectual Property Rights, moral rights or any other rights of any person in the performance of the Scope of Work;
- (c) the Services, the Consultant IP and the use of them by the Employer or its Affiliates, shall not infringe the Intellectual Property Rights, moral rights or any other analogous rights of any Person;
- (d) it has not granted and shall not grant any right, title or interest in the Scope of Work or the Intellectual Property Rights in the Scope of Work to any third party; and
- (e) there are no current or threatened claims or suits against the Consultant or any of its Affiliates in connection with infringement of any Intellectual Property Rights that would materially adversely affect the Consultant's ability to perform its obligation under the SO Documents.

28.5 *Reproduction and Return of Documentation*

- (a) Documentation owned or created by the Employer relating to the Scope of Work may only be used, copied, performed or reproduced by the Consultant for the purposes of performing the Scope of Work, unless the Consultant has obtained the prior written approval of the Employer.
- (b) The Employer shall have the unlimited right to translate, abridge and/or make as many copies of the Consultant IP as are necessary for the Employer's purpose in relation to the Scope of Work and the Services.

29. **Indemnity**

29.1 The Consultant shall defend, indemnify and hold the Employer harmless from and against any and all Losses arising directly or indirectly from or incurred by reason of:

- (a) the acts or omissions of the Consultant, its Affiliates, or any of their respective personnel during the performance of the Consultant's obligations under the SO Documents, including any such Losses arising from injury to or death of any person or damage to or Loss of property of the

Employer;

- (b) any failure of the Consultant, its Affiliates, or their respective personnel to: (i) pay any Taxes relating to income or any other Taxes required to be paid by such Person; (ii) make any payments in respect of Taxes which are to be paid by such Person in connection with the performance of its obligations relating to the SO Documents; or (iii) comply with its obligations under Clauses 7.1;
- (c) any infringement or alleged infringement of Intellectual Property Rights, which the Consultant is not licensed to use as a part of the Consultant IP or any claims, suits or proceedings by a third party alleging that a proprietary right or copyright has been infringed by any use, copying, reproduction or distribution by the Employer;
- (d) any breach of the SO Documents resulting from the acts or omissions of the Consultant, its Affiliates or any of their respective personnel during the performance of the Consultant's obligations under the SO Documents;
- (e) non-compliance with Applicable Laws by the Consultant, its Affiliates or their respective personnel; and
- (f) any breach of representations or warranties given by the Consultant, its Affiliates or their respective personnel under or in relation to the SO Documents.

29.2 The obligation to indemnify stipulated in this Clause is a continuing, separate and independent obligation of the Consultant and shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied towards reduction of the claims made against the Employer.

29.3 *Defense of Claims*

- (a) The Consultant shall, at its own expense, defend any suit or proceeding based on any claim asserted against the Employer and indemnified under this Clause 29 or any other provision of the SO Documents.
- (b) The Employer shall give the Consultant such assistance as the Consultant may reasonably require in the defence of such suit and shall have the right to be represented therein by counsel of its own choosing at its own expense.
- (c) If the Consultant fails to defend diligently any such suit or proceeding, the Employer may settle the claim, without the consent of the Consultant and without relieving the Consultant of its obligation to indemnify the Employer.

30. **Limitation of Liability**

30.1 The aggregate liability of either Party, arising out of or in connection with the Scope of Work or the SO Documents, shall not exceed one hundred percent (100%) of the SO Price, provided that no such limit shall apply in respect of the Consultant's liability for:

- (a) Losses resulting from any fraud, wilful misconduct or illegal or unlawful acts or omissions of the Consultant;
- (b) liquidated damages payable by the Consultant under the SO Documents;
- (c) any amount which is recovered or recoverable under a policy of insurance effected under the SO Documents or which would have been recoverable had the Consultant effected insurance in accordance with the terms of the SO Documents;
- (d) costs and expenses incurred with respect to rectification of any Defect;
- (e) any claim pursuant to Clause 17; and
- (f) any Losses and claims pursuant to the breach of the Consultant's indemnity obligations under the SO Documents.

30.2 Neither Party shall be liable to the other Party for any loss of use, loss of production or loss of profits or any other indirect or consequential damage, whether foreseeable or not, that may be suffered by the other Party.

31. Change in Law

31.1 The Consultant shall, on or following the occurrence of a Change in Law, give notice of such Change in Law to the Employer in accordance with the provisions of this Clause as soon as may be reasonably practicable. The notice served pursuant to this Clause shall provide, *inter alia*, details of the Change in Law and the effect thereof on the SO Documents. If the Employer accepts the Change in Law proposed by the Consultant, the SO Price shall be correspondingly increased or decreased, and/or the Completion Schedule shall be adjusted to the extent that the Consultant has been affected in the performance of any of its obligations under the SO Documents.

31.2 If due to such Change in Law, the Consultant is entitled for any additional amounts, the same shall be paid to the Consultant only against a claim supported by documentary evidence, to the satisfaction of the Employer. If due to such Change in Law, the Employer is entitled to recover any amount, the same shall be recovered from the Consultant as a debt due and payable by the Consultant to the Employer.

32. Force Majeure

32.1 "**Force Majeure**" shall mean any event or circumstance or combination of events or circumstances in India which: (i) is beyond the reasonable control of the affected Party; (ii) the affected Party could not reasonably have anticipated or provided for before entering into the SO Documents; (iii) could not have been prevented by Good Industry Practice; (iv) is not suffered by a sub-contractor; (v) is unavoidable notwithstanding the reasonable care of the Party affected; and (vi) has not resulted from the negligence of the affected Party or the failure of such Party to perform its obligations under the SO Documents and which, or any consequences of which, has a direct, material and adverse effect upon the performance by the affected Party of its relevant obligations under the SO Documents and shall be restricted to the following events:

- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, sabotage, terrorism and civil war; or
- (b) earthquake, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or nuclear or other natural disaster, epidemic, pandemic, lock downs imposed by government authorities; or
- (c) ionising radiation or contamination or radio activity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, other hazardous properties of any explosive assembly or nuclear component.

32.2 Notwithstanding the foregoing, an event of Force Majeure shall not include:

- (a) any condition specific to the site where the Services are to be performed or event arising therefrom;
- (b) the occurrence of any manpower, material or equipment shortage;
- (c) inability to procure funding by the Consultant;
- (d) any increase in cost, prices, rates, wages, commissions, fees, duties or other levies;
- (e) any hindrance created by any third party in respect of any access right or right of use in respect of the site where the Services are to be performed;
- (f) inability of a Party to pay any amounts due pursuant to the SO Documents;
- (g) conditions caused by the negligence or wrongful acts of the affected Party;
- (h) a breach of any provision of the SO Documents or any default or failure by a third party in any agreement entered into by the affected Party with such third party;
- (i) any delay, default or failure (direct or indirect) in obtaining materials, equipment or performing services by any sub-contractor, any personnel or agents thereof, performing the Scope of Work or any part thereof; or
- (j) disruption of access to the site where the Services are to be performed, due to road conditions.

32.3 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the SO Documents by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof immediately following the date of commencement of any

event of Force Majeure and in any event within seven (7) days of the occurrence of such event. Such notice shall be a pre-condition to an affected Party claiming relief for an event of Force Majeure and, if such notice has not been provided, the affected Party shall be precluded from claiming any Loss pursuant to an event of Force Majeure.

- 32.4 The Party giving such notice shall be excused from the performance of its obligations under the SO Documents for so long as the relevant event of Force Majeure continues, and to the extent that such Party's performance is prevented, hindered or delayed. The Completion Schedule shall be extended for the time period during which such event of Force Majeure exists and, in such case, both Parties shall mutually discuss and arrive at the further course of action for the performance of their respective obligations. The Party invoking such event of Force Majeure as a cause for such delay shall promptly submit to the other Party proof of the nature of such delay and its effect upon the time for performance of its obligations.
- 32.5 Delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not constitute a default or breach of the SO Documents or give rise to any claim for damages or additional cost or expense. However, the affected Party shall mitigate the effect thereof upon its performance of the SO Documents and to fulfil its obligations under the SO Documents, including recourse to alternate acceptable sources of the Services and other resources, but without prejudice to either Party's right to terminate the SO Documents under Clause 34.
- 32.6 If the performance of the SO Documents is substantially prevented, hindered or delayed for either a period of more than one hundred and twenty (120) consecutive days or an aggregate period of more than fifty percent (50%) of the total Completion Schedule, on account of one or more events of Force Majeure during the currency of the SO Documents, the Parties shall attempt to develop a mutually satisfactory solution, failing which the Employer may terminate the SO Documents by giving a notice to the Consultant. In the event of termination pursuant to this Clause, the rights and obligations of the Employer and the Consultant shall be as set out in Clause 34.2.

33. Suspension

- 33.1 The Employer may, by issuing a notice to the Consultant, order the Consultant to suspend performance of any or all of its obligations under the SO Documents. Such notice shall specify the obligation of which performance is to be suspended, the date of suspension and the reasons thereof. The Consultant shall forthwith:
- (a) suspend performance of such obligation (except those obligations necessary for the care or preservation of the work done pursuant to the Services already performed), until ordered in writing to resume such performance by the Employer;
 - (b) place no further subcontracts or orders for goods, supplies, services, work or facilities in respect of the Scope of Work, except to the extent expressly requested by the Employer; and
 - (c) unless otherwise directed by the Employer, use all endeavours to suspend on the most favourable terms available to the Consultant all orders, contracts, subcontracts and agreements to the extent affected by such suspension and otherwise minimise any additional costs associated with such suspension.
- 33.2 The Employer shall issue orders for suspension or reinstatement of the SO Documents to the Consultant in writing, as may be required. In the event of any suspension, the Completion Schedule shall be extended suitably by the Employer, which in any case shall not be more than for a period equal to the duration of suspension.
- 33.3 During a suspension, the Consultant shall not be entitled to payment of the SO Price which would have otherwise been ordinarily payable during the relevant period of such suspension, except for such part of the Scope of Work which has been completed prior to the date of suspension specified in the notice of suspension. Upon resumption by the Consultant of all activities affected by a suspension, the Employer shall resume payments of the SO Price with the payment dates adjusted to reflect the period during which scheduled payments were not made.
- 33.4 The Employer shall reimburse the Consultant any necessary, reasonable, proper, verified and demonstrable costs incurred as a direct result of such suspension of the Scope of Work, provided such

costs are substantiated to the Employer's satisfaction. The Employer shall not be responsible for any costs and liabilities, if suspension or delay is due to default by the Consultant.

34. Termination

34.1 Termination for the Consultant's Default

- (a) The Employer may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents forthwith and with no compensation, by giving a notice of termination, if the Consultant:
 - (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Consultant is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Consultant takes or suffers any other analogous action in consequence of debt;
 - (ii) assigns or transfers the SO Documents or any right or interest therein, except as provided under the SO Documents;
 - (iii) in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in execution of the SO Documents; or
 - (iv) delays performance of any obligation under the SO Documents, resulting in the maximum ceiling of the liquidated damages as stipulated in the SO Documents being reached.
- (b) The Employer may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents by giving the Consultant a termination notice of fifteen (15) days, with no compensation to the Consultant, if the Consultant:
 - (i) abandons or repudiates the SO Documents;
 - (ii) fails to commence work on the Scope of Work promptly or has suspended the progress of performance of its obligations under the SO Documents for more than thirty (30) days after receiving a written instruction from the Employer to proceed;
 - (iii) fails to execute the SO Documents in accordance with the terms and conditions therein, or neglects to carry out its obligations under the SO Documents; or
 - (iv) refuses or is unable to provide sufficient materials, services or manpower to execute and complete the performance of the Services in a manner specified in the programme furnished under Clause 13 at such rates of progress that give assurance to the Employer that the Consultant can complete the Services in accordance with the Milestones or the Completion Schedule,

and the Consultant fails to remedy, or to take steps to remedy, such default within fourteen (14) days of its receipt of a notice from the Employer requiring the Consultant to cure such default.

- (c) Upon receipt of the notice of termination under Clause 34.1(a) or Clause 34.1(b), as the case may be, the Consultant shall, either immediately or upon such date as is specified in the notice of termination:
 - (i) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Services already executed;
 - (ii) terminate all sub-contracts, except those to be assigned to the Employer;
 - (iii) to the extent legally possible, assign to the Employer all rights, titles and benefits of the Consultant to the Services as on the date of termination and, as may be required by the Employer, in any sub-contracts concluded by the Consultant for the purposes of performing the Scope of Work;
 - (iv) deliver to the Employer all the documents and deliverables prepared in connection with the Scope of Work by the Consultant, as on the date of termination;
 - (v) if applicable, co-operate with the Employer and take all necessary measures to achieve a smooth transition for the Site, the facilities being managed in the course of performing

Services or any part thereof, from the Consultant to the Employer and comply with certain divestment and handover requirements, including:

- a. handover the Site and the facilities to the Employer's personnel or such other persons as the Employer may direct;
 - b. delivering and transferring relevant records, reports, logs, manuals, documents containing Intellectual Property Rights, applicable permits and other licences pertaining to the Site or such facilities;
 - c. providing comprehensive training to the Employer's personnel or such other persons as the Employer may direct for the performance of the Services; and
 - d. survey the Site and the facilities for any damage or deficiencies and make good the same at its own cost and expense.
- (d) Upon such termination in terms of Clause 34.1, the Employer may expel the Consultant and complete the Scope of Work by itself or by employing any third parties in accordance with Clause 27.
- (e) Subject to Clause 34.1(f) below, the Consultant shall be paid the SO Price attributable to the Services (or part thereof) as executed by the Consultant and accepted by the Employer, as on the date of termination. If the Employer instructs the Consultant to provide for safekeeping of the Services, any reasonable costs incurred by the Consultant with respect to protection of the Services shall be paid by the Employer to the Consultant. Any sums due to the Employer from the Consultant and accruing prior to the date of termination shall be deducted from any amounts to be paid to the Consultant under the SO Documents.
- (f) Pursuant to termination of the SO Documents in accordance with Clause 34.1, if the Employer completes the Scope of Work (or any part thereof) under the SO Documents, the cost of completing such Scope of Work by the Employer shall be determined, as under:
- (i) if the sum that the Consultant is to be paid, pursuant to Clause 34.1(e), plus the reasonable costs incurred by the Employer in completing the Services, exceeds the SO Price, the Consultant shall be liable to pay to the Employer such excess amounts incurred by the Employer;
 - (ii) if such excess is greater than the sums due to the Consultant under Clause 34.1(e), the Consultant shall pay the balance to the Employer; and
 - (iii) for termination due to the defaults by the Consultant, the Employer reserves the right to get the balance work done by other agencies at the risk and cost of the Consultant.

34.2 Termination for the Employer's Default

- (a) The Consultant may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents by giving a thirty (30) days' notice to the Employer, if the Employer:
- (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt, and the consequences thereof are not cured within a period of ninety (90) days of commencement of such proceedings or action, or are incapable of being cured; or
 - (ii) has failed to pay the Consultant the amounts specified in any undisputed Invoice as may have been invoiced by the Consultant in accordance with the terms and conditions of the SO Documents and the Employer has failed to remedy such default within one hundred and twenty (120) days after the receipt of the Consultant's notice requiring the Employer to remedy such default,

provided that, in the event the Consultant does not terminate the SO Documents within a period of thirty (30) days after the expiry of the cure period set out in Clause 34.2(a)(ii), the Consultant's

notice of such remedial period shall lapse and the Consultant shall not have the right to terminate the SO Documents without providing a fresh notice to the Employer.

- (b) Upon issuing the notice of termination under Clause 34.2(a), the Consultant shall take all measures as specified in Clause 34.1(c).
- (c) In the event of termination of the SO Documents under Clause 34.2(a), the Employer shall pay to the Consultant all payments specified in Clause 34.3(c).

34.3 *Termination for the Employer's Convenience*

- (a) The Employer may, at any time, terminate the SO Documents for any reason whatsoever, by giving the Consultant a ten (10) days' notice of termination.
- (b) Upon receipt of the notice of termination under Clause 34.3(a), the Consultant shall take all measures as specified in Clause 34.1(c).
- (c) In the event of termination of the SO Documents under Clause 34.3(a), the Employer shall pay to the Consultant, the SO Price, properly attributable to the Services executed by the Consultant and accepted by the Employer, as on the date of termination.

34.4 In this Clause 34, in calculating any amounts due from the Employer to the Consultant, any sum previously paid by the Employer to the Consultant under the SO Documents, including any advance payment paid pursuant to the terms of payment under the SO Documents, shall be taken into account.

35. **Governing Law**

The SO Documents shall be governed by and interpreted in accordance with the laws of the Republic of India. Subject to Clause 36.2, the courts at Ahmedabad, Gujarat, India shall have exclusive jurisdiction on all matters arising out of or relating to the SO Documents.

36. **Settlement of Disputes**

36.1 If any dispute whatsoever arises between the Parties in connection with or arising out of the SO Documents, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination or the execution of the Scope of Work, whether during the progress of the Scope of Work or after Completion of the Services and whether before or after the termination, abandonment or breach of the SO Documents, the Parties shall seek to resolve any such dispute by referring the matter to Employer's Representative. The Employer's Representative shall provide his decisions within thirty (30) days of the referral of such dispute. Either Party, if not in agreement with the Employer's Representative's decision, may proceed to resolve such dispute in accordance with Clause 36.2, within thirty (30) days of such decision.

36.2 *Arbitration*

- (a) If either the Employer or the Consultant is dissatisfied with the Employer's Representative's decision, such dissatisfied Party may give notice to the other Party of its intention to commence arbitration as to the matter in dispute and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute, in respect of which a notice of intention to commence arbitration has been given in accordance with Clause 36.2(a) above, shall be finally settled by arbitration in accordance with Clause 36.2(c) below.
- (c) Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules and regulations made thereunder, as amended from time to time. The venue of arbitration shall be Ahmedabad, Gujarat, India.
- (d) The arbitration proceedings shall be conducted by a sole arbitrator appointed by mutual agreement of the Parties. In the event the Parties are unable to agree on the appointment of a sole arbitrator, each Party shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall appoint the third (3rd) arbitrator as the presiding arbitrator.
- (e) The arbitration shall be conducted in English and any award shall be made in English. The Parties agree that the decision and any award rendered by the arbitrator(s) in connection with a dispute shall be final and binding on the Parties.

- (f) The arbitration expenses shall be borne as provided in the award of arbitration. In the event the award is silent on the same, the arbitration expenses shall be borne by the losing Party.

36.3 Notwithstanding reference of any dispute to the Employer's Representative or to the arbitration herein, the Parties shall continue to perform their respective obligations under the SO Documents, unless otherwise agreed by the Parties in writing. Further, each Party agrees to pay to the other Party, all such undisputed amounts due under the SO Documents, provided that such amounts due are not a subject matter of such dispute.

36.4 Notwithstanding anything to the contrary contained herein but subject to Clause 36.2, the Consultant acknowledges that damages may not be an adequate remedy for a breach of the SO Documents and that the Employer shall have a right to seek injunctive relief or specific performance, as a remedy for any actual or threatened breach. The Consultant agrees to the Employer seeking grant of injunctive relief to restrain any conduct or threatened conduct which is or shall be in breach of the SO Documents or specific performance to compel the Consultant to perform its obligations under the SO Documents, as a remedy for any actual or threatened breach which shall be in addition to any other remedies available to the Employer.

37. Assignment and Subcontracting

37.1 The Employer shall be entitled to assign the whole or any part of the SO Documents or any benefit or interest herein without the Consultant's consent. The Consultant particularly consents to the grant and creation by the Employer of a security interest in and assignment of the SO Documents and any and all of the Employer's rights, titles and interests in and under the SO Documents in favour of any lender, security agent or trustee. In furtherance of and to give effect to such security interest and assignment, the Consultant agrees to enter into such contracts, direct agreements, consents and deliver such legal opinions as are reasonably customary and as may be required by any of the lenders or their representatives.

37.2 The Consultant shall not be entitled to assign or subcontract any part of the SO Documents or any benefit or interest in or under the SO Documents, without the prior written approval of the Employer.

37.3 The Consultant shall be responsible for all acts, omissions and defaults of any personnel performing the Scope of Work, including the personnel of any sub-contractor, as if such acts, omissions and defaults were committed by the Consultant and any assignment or subcontracting shall not relieve the Consultant of any of its responsibilities under the SO Documents or at law.

38. Novation and Step-in Rights

38.1 Notwithstanding anything contained herein, the Parties agree and acknowledge that the Employer's lenders shall be entitled to step into the obligations of the Employer and substitute the Employer under and in accordance with the financing arrangements entered into by the Employer with such lenders, either by itself or through its nominated agencies.

38.2 In order to enable the Employer to satisfy its obligations under this Clause 38.1, the Consultant shall duly execute all such further instruments and documents, and do or procure to be done all such acts or things, as may be required to ensure that the terms of the SO Documents are complied with.

39. Project Funding

39.1 The Consultant acknowledges that the times and method of payment provided for in the SO Documents have been fixed in contemplation that funds for the SO Documents may be made available through funding arrangements made with lenders. The Consultant agrees that, if requested by the Employer, it shall assist the Employer, or parties designated by the Employer, in the preparation of any studies or analyses required to obtain, make effective and maintain the effectiveness of such funding arrangements. The Consultant agrees to supply such documentation and information as the Employer may request to facilitate the applications for and to ensure compliance with any terms or regulations pertaining to such funding arrangements. The Consultant agrees to cooperate with representatives of the Employer, or other parties designated by the Employer, in connection with the obtaining, maintenance, administration and disbursement of funds pursuant to such arrangements.

39.2 The Parties hereby acknowledge that the terms and conditions of the SO Documents may be subject to the approval of the lenders and agree to incorporate such revisions to the SO Documents as may be

required without materially altering the commercial position agreed under the SO Documents. If as a result of a request from the lenders, changes to the SO Documents are required, the Parties shall incorporate such revisions as mandated by the lenders.

40. Confidentiality

- 40.1 All information including, without limitation, oral and written information, disclosed by the Employer, the Employer's Representative (including any experts appointed by the Employer) or Employer's personnel ("**Disclosing Party**") to the Consultant, the Consultant's Representative or any Person acting for and on behalf of the Consultant ("**Receiving Party**") is deemed to be confidential, restricted and proprietary to the Disclosing Party ("**Confidential Information**").
- 40.2 Except as specified in the SO Documents, the Confidential Information supplied is not to be reproduced in any form except as required to accomplish the intent of, and in accordance with the terms and conditions of the SO Documents. The Receiving Party shall provide the same care as it provides to protect its own similar proprietary confidential information to avoid disclosure or unauthorized use of the Confidential Information. All Confidential Information shall be retained by the Receiving Party in a secure place with access limited to only such of the Receiving Party's personnel, employees or agents who strictly need to know such Confidential Information for the purposes of and exclusively for completing the Scope of Work, performance of obligations under the SO Documents and to such third parties as the Disclosing Party has consented to by prior written approval.
- 40.3 Unless otherwise specified in writing, all Confidential Information, including all copies thereof: (a) remains the property of the Disclosing Party; (b) shall be used by the Receiving Party only for the purpose for which it was intended; and (c) shall be returned to the Disclosing Party or destroyed after the Receiving Party's need for it has expired or upon request of the Disclosing Party, and, in any event, upon expiration or termination of the SO Documents. At the request of the Disclosing Party, the Receiving Party shall furnish a certificate certifying that any Confidential Information not returned to Disclosing Party has been destroyed.
- 40.4 The Receiving Party further agrees not to reverse engineer any Confidential Information furnished by the Disclosing Party and shall not, without the prior written consent of the Disclosing Party, disclose to any other Person, the Confidential Information or the fact that the Confidential Information has been disclosed to it under the SO Documents, or any of the terms and conditions, status or other facts with respect thereto. For the purposes hereof, Confidential Information does not include information that:
- (a) is already published or otherwise in public domain before it was communicated to the Receiving Party without any fault or negligence of the Receiving Party;
 - (b) prior to disclosure, was already in the Receiving Party's legitimate possession without having been obtained directly or indirectly from the Disclosing Party;
 - (c) is lawfully obtained from an independent source that had neither direct nor indirect obligation of confidentiality towards the Disclosing Party;
 - (d) is independently developed by the Receiving Party, by itself or through parties who have not had, either directly or indirectly, access to or knowledge of such information; or
 - (e) is obligated to be produced under order of a court of competent jurisdiction or other similar requirement of a Government Authority, provided that the Receiving Party provides the Disclosing Party with prior notice of such order or requirement for disclosure of such information.
- 40.5 The Confidential Information shall not be deemed to be within the categories of exceptions set out in Clause 40.4 above, merely because such Confidential Information is embraced by more general information in the public domain or in the Receiving Party's possession. In addition, no combination of features shall be deemed to be within the categories of exceptions merely because individual features are in the public domain or in the Receiving Party's possession. A combination of features shall only be deemed to be within the foregoing categories if the combination itself and its principles of operation are in the public domain or in the Receiving Party's lawful possession.
- 40.6 Prior to making any disclosure of Confidential Information to any Person, as permitted under the SO Documents, the Receiving Party shall procure that such Persons are: (a) made aware of the terms of the SO Documents; and (b) are either bound by professional responsibility to keep such information

confidential or that such Persons agree in writing to keep such Confidential Information confidential on terms no less onerous than those contained in the SO Documents.

40.7 Any document other than the SO Documents itself that contains Confidential Information, shall remain the Employer's property and all copies thereof shall be returned to the Employer upon completion of the Scope of Work.

41. Media Releases

41.1 The Consultant shall not, except with the prior written consent of the Employer, use in advertising, publicity (including in-house publications and client circulars) or otherwise the name of the Employer or of any officer or employee of the Employer or any trade name, trade mark, trade device, service mark, symbol mark, symbol or any abbreviation, contraction or simulation thereof owned by the Employer, or represent directly or indirectly, that any product or any service provided by the Consultant has been approved or endorsed by the Employer or by any officer or employee of the Employer.

41.2 Subject to mandatory disclosure required under Applicable Laws, any Governmental Authority or the listing rules of any stock exchange, the Consultant shall not issue any information, publication, document or article for publication concerning the Employer, Site, Services, the Employer's business and activities or this SO Documents in any media without prior written approval of the Employer.

41.3 The Consultant shall refer to the Employer, any enquiries received from the media in relation to the Services, Site or Employer's businesses. The Consultant shall assist and provide personnel, if required, to the Employer and the Employer's Representative in any public relations activities relating to the Services or Site.

41.4 The Consultant shall not take any photographs or video recording of any Services or any part of the Site, without the prior written approval of the Employer's representative.

42. Notices

42.1 All notices to be given by one Party to the other Party in connection with or under the SO Documents shall be made in writing in English, and shall be sent, at the addresses set forth in the Service Order or to such other addresses, as notified from time to time by the Parties to each other, by either one or more of the means namely personal delivery, registered post, courier, or electronic mail.

42.2 A notice shall be treated as having been received, if sent by:

- (a) hand, when its delivery is confirmed by a signature on behalf of the recipient;
- (b) courier: (i) two (2) days after deposit with a reputed overnight courier if for inland delivery; and (ii) five (5) days after deposit with a reputed international courier if for overseas delivery;
- (c) registered post then, when the registered post would, in the ordinary course of post, be delivered whether actually delivered or not; and
- (d) email, when the sender receives an automated message confirming delivery (all electronic mail communication shall be followed by hand delivery, posting the courier or registered post in terms of Clauses 42.2(a), 42.2(b) and 42.2(c) hereof), provided always that the onus of proving deposit per Clause 42.2(b) hereof and posting by registered post per Clause 42.2(c) shall be that of the sender.

42.3 Notwithstanding anything contained in the SO Documents, no electronic mail communication shall be accepted as a legal notice or legal claim, unless it is additionally served at the appropriate address by hand, courier or by registered post.

43. Adjustments

43.1 The Consultant agrees that the Employer shall have a right to set-off payments due and payable to the Consultant against payments due and receivable from the Consultant in terms of the SO Documents. If the Employer is unable to adjust or set-off any payments due and receivable from the Consultant, the Employer shall have the right to raise a credit note on the Consultant to claim any reimbursements that may be due from the Consultant.

43.2 It is agreed between the Parties that all payments by the Consultant in respect of any payment obligations of the Consultant in terms of the SO Documents shall be made without any deductions or set-off. If the

Consultant is prevented by Applicable Laws or otherwise from making, or causing to be made, such payments without deduction, the Consultant shall gross-up such payments by such amounts as may be necessary for the Employer to receive the full payments it would be entitled to receive, had such payments been made without such deduction.

44. Anti-Bribery and Anti-Corruption

The Consultant covenants that neither the Consultant nor the Consultant's Representative, any of the Consultant's Affiliates, employees, agents or representatives shall make, offer or agree to give any bribe, commission, gift or inducement to: (i) any government official; (ii) any officer, employee, agent or representative of the Employer or its Affiliates; or (iii) any other Person, in relation to the obtaining or execution of the SO Documents or performance of obligations hereunder. Such an act by the Consultant or the Consultant's Representative, any of the Consultant's Affiliates, employees or representatives shall, in addition to any criminal liability which the Consultant may be subject to under Applicable Laws, provide a right to the Employer to terminate: (i) the SO Documents in accordance with Clause 34.1(a); and/or (ii) any other contract that may have been entered into between the Parties. The Consultant shall also be liable for payment of any Losses suffered by the Employer due to any such termination, which the Employer may, at its option, deduct and/or set off from the amounts otherwise due to the Consultant under the SO Documents or any other contract or recover from the Consultant as a debt due and payable. Any dispute as to the breach by the Consultant of its obligations under this Clause shall be determined by the Employer in such manner and on such evidence or information as available to the Employer, and the Employer's decision in this regard shall be final and conclusive.

45. Amendment

No modification of the terms of the SO Documents shall be effective unless it is in writing, is dated, expressly refers to the SO Documents and is agreed to and signed by duly authorised representatives of the Parties.

46. Constitution

The Consultant shall not alter, modify or change its constitution, without the Employer's prior written approval.

47. Language of Communication

All documents, writing and notices pertaining to and submitted in terms of the SO Documents and provided by one Party to the other shall be in the English language. If any writing or document, including any document issued or certified by any Person, is not in English, then it shall be translated into English and notarised, by the Party in possession of such writing and the English version of such writing shall govern and prevail.

48. Severability

If any provision or condition of the SO Documents is prohibited, rendered invalid or becomes unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the SO Documents. In such event, the Parties shall use all reasonable endeavours to replace the illegal, invalid or unenforceable provisions by a legal, valid and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

49. Independent Contractor

The Parties acknowledge and accept that the Consultant shall act and perform its obligations under the SO Documents as an independent contractor and that the Consultant shall not be regarded as an employee, agent or partner of the Employer. The Consultant shall not have any power or authority to enter into any contract, agreement or arrangement for or on behalf of the Employer.

50. Non-Solicitation

The Consultant shall not, during the Term and for a period of one (1) year thereafter, directly or indirectly offer employment to or employ/hire the employees of the Employer.

51. Conflicts of Interest

The Parties shall exercise reasonable care and diligence to prevent any actions or situations which could result in a conflict with the best interests of the other Party. The Parties shall not offer, give, solicit or accept an advantage or excessive entertainment to or from any of the employees or agents of the other Party and other business associates. Any Party who becomes aware of any violations of this Clause 51 shall immediately notify the other Party in writing.

52. Further Assurance

Each Party shall do, sign, execute, deliver and procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them to carry out and give full effect to the SO Documents and the rights and obligations of the Parties under it.

53. Costs

Each Party shall bear and is responsible for its own costs in connection with the negotiation, preparation and execution of the SO Documents.

54. Waiver

Any waiver of a Party's rights, powers or remedies under the SO Documents shall be in writing, dated and signed by such Party or its authorized representative granting such waiver. A Party granting such waiver shall specify the right and the extent to which it is being waived.

55. Survival

Notwithstanding anything to the contrary in the SO Documents, the termination, cancellation or expiration of the SO Documents for any reason shall not relieve either Party of any obligations or liabilities for Loss or damage to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such termination, cancellation or expiration, as the case may be. The provisions of Clause 17 (*Cooperation and Coordination with Employer and Other Contractors*), Clause 18 (*Insurance*), Clause 21 (*Liquidated Damages*), Clause 25 (*Deficiency in Services*), Clause 26 (*Representations and Warranties*), Clause 28 (*Intellectual Property Rights*), Clause 29 (*Indemnity*), Clause 30 (*Limitation of Liability*), Clause 34 (*Termination*), Clause 35 (*Governing Laws*), Clause 36 (*Settlement of Disputes*), Clause 38 (*Confidentiality*) and Clause 55 (*Survival*) shall survive termination, cancellation or expiration of the SO Documents, in addition to any other provisions that by their content are intended to survive the performance, termination, expiration or cancellation of the SO Documents.

56. Entire Agreement

The SO Documents constitute the entire agreement between the Parties with respect to the Scope of Work set out thereunder and supersedes all prior agreements, understandings, negotiations, letters of intent/award and correspondence, whether oral or written, between the Parties, with respect to the Scope of Work.

REQUEST FOR PROPOSAL DOCUMENT

**FOR
OWNER'S ENGINEER
&
PROJECT MANAGEMENT CONSULTANCY
SERVICES**

**FOR CONSTRUCTION OF
BIO-CNG (CBG) PLANT CAPABLE OF
TREATMENT OF 250 TPD CAPACITY ORGANIC
FRACTION OF SOLID WASTE & OTHER
BIODEGRADABLE WASTE**

April 13, 2024

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1. INTRODUCTION

ADANI TOTAL GAS LTD (herein after called “ATGL”) is engaged in supply of Piped Natural Gas (PNG) to Households, Commercial & Industrial consumers and Compressed Natural Gas (CNG) to automotive sector. ATGL is in the process of expanding its City Gas Distribution network in various Geographical Areas authorized by the PNGRB. ATGL is also setting up Compressed Biogas Plants in various parts of the country.

ADANI TOTALENERGIES BIOMASS LIMITED (herein after called “ATBL”) a wholly owned subsidiary of **ADANI TOTAL GAS LTD** (ATGL) carry on the business of developing, establishing Agro & MSW based Biogas Plants at various locations in India to produce Compressed Biogas (CBG) and other supplemental like CO₂, Organic manure/ Fertilizer in form of solids & liquids

Presently, ATBL is inviting tenders on competitive bidding basis for appointment of Owner’s Engineer & Project Management Consultants (PMC) for complete project management during design, engineering, tendering, construction and setting up of Municipal Solid Waste based Compressed Biogas plant.

2. GENERAL

The Owner’s Engineer (herein after called “OE”) has to support the owner with Basic engineering, tender process, successful design, planning, oversight, execution & implementation of project from inception through commissioning. The OE to be total & single point responsibility, ensure deliverables are in line with owner’s expectation & work with the aim of completing the project on or before the schedule in compliance with the highest standard of Quality & HSE. The OE to provide experienced engineering talent to the owner during engineering and construction of a plant. The OE to simultaneously enhance opportunities, reduce overall risk, and ensure deliverable as per owner’s expectations.

The OE to define the equipment size, technology selection, configuration, scope, interfaces, and schedule for the successful completion of project. The

OE has to be critical link in keeping the work on schedule, budget monitoring & control, tracking progress, and taking note of any emerging trends. When issues arise, the owner's engineer to check original contract documents and review events to avoid unnecessary and unproductive finger-pointing. The OE to prepare technical specifications and assisting in the purchase of owner-furnished equipment and making sure that equipment suppliers are in compliance with all contract requirements. The OE to solicit and evaluate bids, work with the owner's outside counsel to develop contracts. Change management, implementation of earned value, project cost reporting and trending, and overall project controls are other areas in which an OE to provide as a project progresses.

The Project Management Consultants (herein after called "PMC") shall be responsible for the complete Project Management, monitoring, control, execution & completion of the project based on the engineering, planning, milestones & specifications prepared by OE. PMC shall follow all relevant and applicable standards, regulations, codes & policies. PMC to work in close coordination with ATBL appointed OE, EPC and act as a single point responsibility to ensure efficient budget monitoring & control, timely completion of the project. PMC to handle the project by the application of their skills, knowledge, experience and to overcome every possible error in the project. PMC to also includes various types of tools & software for better execution & completion of the project. PMC to make sure that every activity is taking place smoothly at every stage of project for proper execution of work. PMC to provide effective measures to improve the efficiency of the project. With equilibrium & principles of project management. PMC to ensure successful completion of project within time and with minimum number of errors.

The detailed scope of work of the OE & PMC is outlined below, however the list is not exclusive and limited. The OE & PMC shall also be required to do the works not envisaged herein and specifically mentioned below, but otherwise required as a consultant for overall completion of the project, within the quoted price / awarded value of work.

3. SCOPE OF WORK

The scope for OE & PMC Services for setting up of 250 TPD Organic Fraction Municipal Solid Waste & other Bio-degradable based Compressed Biogas plant shall include but not limited to the following:

PART A- SCOPE OF WORK DURING BASIC ENGINEERING & TENDER PROCESS

(Not limited to following & in consultation with ATBL)

1. Pre-FEED (Front End Engineering Design), FEED, DBR, Basic Engineering, validation of site topographical & soil analysis reports, Deputation of expert at ATBL office, plant configuration, technical description of each package, preliminary implementation plan, Milestones of complete project, overall project schedules, organization/ responsibility matrix, etc.
2. Risk assessment of complete project, Comparative analysis/assessment report on various technologies (includes site/facility visit) and their suitability/viability in consideration to all aspects of project for successful completion and operation
3. Prepare detailed project scope definition, early project layout & schedules.
4. Preparation of detailed RFP with reliable technology, construction & equipment specification, make & methodology to float tender for selection of EPC contractor/vendors for different packages
5. Detailed tender specification also to include preparation of qualifying requirements, short listing of bidders, preparation of tender specification containing engineering (details of civil, mechanical, electrical & instrumentation requirements), project description, detailed scope of supply, basic design criteria, process technical requirements, construction design requirements, quality assurance and inspection requirements, safety requirements, plant/package battery limits and interface requirements, guarantee parameters and liquidated damages requirements, tender drawings, bid proposal sheet, exclusions, data sheets, terminal points, deviation schedule, spares and tools

schedules, O&M manual requirement, list of approved vendors, procedure of bid evaluation etc.

6. Prebid meetings, replies to queries received from various prospective bidders, tender revisions
7. Technical Evaluation of bids

Part B- SCOPE OF WORK DURING DETAILED ENGINEERING & EXECUTION

(Not limited to following & in consultation with ATBL)

1. Formal SLA (Service Level Agreement) with owner for required services & expected level of services
2. Prepare the standard DDL (Document & Drawing list) to be acquired from PMC, EPC contractor & be the document controller of total project
3. Prepare & ensure Quality Assurance and Quality Control procedures
4. Review engineering to ensure that the plant is designed and built in accordance with technical specification, applicable codes and standards, prudent utility practices, environmental norms, operational and safety aspects, reliability and ease of maintenance and sound engineering practices.
5. The review engineering also to include review of procurement specifications, major design calculations, detail engineering documents and drawings, quality assurance and quality control program, test certification of critical equipment, performance guarantee procedures, erection, testing and commissioning procedures, O&M manual, training manual, change order etc., conducting project review meetings and reporting project status to the owner
6. Review and approval of Execution plan of PMC/ EPC/ contractors
7. Review and approval of design / drawings / documents/ HAZOP reports /schedules/ submitted by EPC contractors / vendor / sub vendor
8. Review and approval of Mass & Energy balance/ Technical Specification / data sheet / performance curves/ QAP / P&ID / GAD of Materials / Equipment / spares of all plant equipments which are to be supplied by contractor / vendor / sub-vendor

9. Review and approval of different process systems as well as the interfacing system
10. Review and approval of layout drawing based on progress of engineering, finalize coordinates for various buildings/structures, carryout layout control, monitor changes and check interfaces between units & services
11. Review and approval of detailed engineering (Civil, Mechanical, Electrical, Instrumentation & Control) and released documents for balance items & construction drawings
12. Review and approval of development plan for all interface hookup items (Civil, Mechanical, Electrical, Instrumentation & Control)
13. Review and approval of Standard Operating Procedures (SOP) and construction methodologies submitted by contractors before start of execution
14. Review and approval of compliances with requirements (HAZOP, Ex-zone drawings, explosion protection concept, functional descriptions)
15. Review and approval of as built Drawings & Documents
16. Review & approval of EPC contractor's/vendor procedures and related documentation
17. Review & approval of all engineering & other documentation are subjected to minimum of 5 iterations
18. Review and validate the changes in drawings/documents during construction phase
19. Inspection and approval of Materials / Spares supplied by EPC contractor / vendor / sub-vendor
20. Certification of vendor invoices
21. Ensure contractors comply with HSE Policies, Standards, practices laid down by ATBL during the project execution period and submit compliance reports to ATBL on regular basis
22. Represent Owner in EPC contractor/ vendor procurement activities
23. Periodic site visits for overall supervision during stages of construction/ execution/ commissioning/ inspections

24. Ensure vendor and its work force understand and strictly follow the Site Safety Manual, Safety Bulletin, Do's & Don'ts provided by ATBL from time to time before starting any work at site
25. Assist in startup & commissioning of project, prepare operation & maintenance procedures, operational scenario, risk assessment
26. Prepare the procedures & ensure the Owner's Manpower/personnel training for plant operation & maintenance from EPC contractor/vendor/ sub-contractor
27. Various inspection, Performance testing and commissioning support includes preparation/review of testing and commissioning procedures, witness performance testing and commissioning activities, field testing for performance capacity of major equipment and systems and provide technical assistance for performance guarantee testing.

Part C: SCOPE OF WORK OF PROJECT MANAGEMENT CONSULTANTS

1. The PMC will be completely responsible for entire project management, preparing detailed project plans and schedule in line with the overall project schedule provided by OE/ ATBL. PMC to monitor the documentation, quality inspections, project schedule tracking, and billing activities until the project's handover. This will include the preparation and submission of:
 - a. Work Breakdown Structure (WBS) incorporating Basic & Detailed Engineering, Equipment / machine ordering, Delivery, Inspection, Expediting, Field execution including Civil, Mechanical, Electrical works, Testing, Commissioning, Stabilization, Handover, Final documentation, Project close out etc.
 - b. Project detail schedule as per ATBL approved execution plan
 - c. Project Activity list / milestone incorporating start date and end date
 - d. PMC Organogram for deployment
 - e. Project communication / coordination plan
 - f. Inspection schedule
 - g. Submission of daily DPR/ weekly / monthly / quarterly reports as per ATBL instructions (Formats to be verified in consultation with ATBL)

2. The PMC to establish communication procedure in concurrence with ATBL as PMC will be entirely responsible for the entire project management wherein, they will be required to work in close coordination with OE & ATBL project team
3. The PMC shall also provide the Project Monitoring services with scope of work not limited to following-
 - a. Preparation of detailed project schedule using Project Management Software
 - b. Identification of all activities falling on the critical path of the project
 - c. Identification of all activities requiring close co-ordination/synchronization
 - d. Preparation of a look-ahead model/ catch-up plan for the project from time to time
 - e. Generation of all project monitoring reports for the project drawing attention towards critical jobs, activities and functions
 - f. Identification of all activities/steps required for execution of the project within approved cost
 - g. Identification of all activities/steps required for execution of the project within stipulated time
 - h. Highlight pitfalls, if any, caused by the Project Consultant/ any agency hindering efficient execution of the project
 - i. Generation of MIS reports for the project and identify critical path on fortnightly basis
 - j. Providing all inputs/ performing all project monitoring activities as desired by the ATBL Management/Project Group from time to time for timely completion of the project
 - k. In addition to above PMC shall do all activities to do Project Monitoring Services efficiently
 - l. The PMC to attend Monthly project review meeting with ATBL management with monthly report presentation including S curves of the project

- m. The PMC to conduct and attend Fortnightly project review meeting with vendor / contractor Project manager
 - n. The PMC to ensure close surveillance on entire project related activities, monitor project progress and submit periodic reports to ATBL based on ATBL requirements
 - o. The PMC to provide timely inputs in terms of materials and drawings to the vendor for carrying out the construction activities
4. PMC to provide the Construction Supervision throughout the project with scope of work not limited to following
- a. Based on the execution plan, drawings and work order, a detailed construction schedule to be developed with execution vendor/contractor
 - b. To develop detailed quality assurance plan, test plan and inspection plan at various stages
 - c. Supervision and inspection of site activities, establishment of working procedures, QA/QC procedures, documentation and signing of inspection reports, certification of bills / invoices of vendor
 - d. Consultant to provide adequate number of qualified engineering staff to render day-to-day site supervision, quality control and quality control during fabrication, construction and erection activities
 - e. All material & equipment testing, and performance tests shall be fully witnessed and approved by consultant's engineering staff
 - f. To ensure compliance with statutory requirement viz. minimum wages act. Workers' compensation act. PF & ESI acts, safety acts, accident/insurance acts, labor license acts etc.
 - g. To identify the unforeseen problems arising/likely to arise at site and to take appropriate prompt actions
 - h. To carry out stage/final inspection at place of manufacture/fabrication and installation
 - i. To ensure conformity with laid down/latest specifications, quality standards and procedures by ATBL as well as regulating authorities

- j. To carry out welders qualification test, electricians trade test, safety drills visitors identification etc.
 - k. To prepare weekly, fortnightly and monthly progress reports, exception reports, deviation report etc.
 - l. Carry out expediting as required and prepare reports
 - m. To maintain material consumption records, take detailed measurements at site, check RA and final bills of the vendor
 - n. To furnish completion/inspection certificates, organize handing over/taking over of complete works
 - o. Provide necessary assistance during the commissioning as and when required
 - p. To provide technical support/supervision for trouble shooting and post-equipment commissioning works up to performance guarantee period of works/
5. PMC to provide supervision during mechanical installation, completion & commissioning of Plant with scope of work not limited to following
- a. PMC shall supervise and certify the mechanical completion work performed by Vendor. Upon successful completion of mechanical completion work, PMC shall review and recommend Pre-commissioning / stabilization audit / report and its compliance of completing all pending / corrective jobs.
 - b. PMC shall ensure that all necessary personnel from equipment suppliers are called to attend the pre-commissioning activities as provided for in the equipment purchase orders.
 - c. PMC shall prepare for approval by Owner and implement all necessary procedures to ensure safety of personnel working on construction activities at the same time as field inspection, testing and commissioning is in progress.
 - d. PMC shall supervise contractors, work such that phase mechanical completion and commissioning takes place as determined by ATBL business needs.

- e. PMC shall ensure that all defects and deficiencies found during the course of commissioning shall be rectified by the Vendor.
 - f. PMC shall supervise and monitor all commissioning and start-up activities and all performance test runs which will be carried out by the contractors. All performance test results shall be reviewed and certified by PMC.
 - g. PMC shall ensure that all commissioning records and log sheets are properly collated and submitted to ATBL as part of contractors' mechanical completion certificate approval documents and provisional acceptance documents as relevant.
6. PMC is responsible for Inspection & Expediting with scope of work not limited to following
- a. Review & granting approval to all drawings / documents / specifications submitted by vendor before start & during execution within seven working days of the submission of document by vendor. (In consultation with OE & ATBL)
 - b. Preparation of inspection and expediting procedure
 - c. Carryout inspection of all items directly Purchased by ATBL and by EPC contractors / vendors / sub-vendors. Carry out Inspection of bought out items of vendor supply, as specified elsewhere in the tender. All charges for Inspection / expediting are in the scope of the PMC
 - d. Ensure that items procured by vendor are acceptable as per PO specifications and standards
 - e. Witness performance / acceptance tests as applicable
 - f. Prepare periodic inspection and expediting reports
 - g. For critical / major items (like Pumps, Agitators, Purification system, Solid liquid separators / Decanters, Fertilizer plants, Compressor, Cascades, Valves etc.) final inspection & test including hydro tests, FAT etc. shall be witnessed and certified.
 - h. However, for components, non-critical/minor equipment and bulk materials acceptance will be based on review of relevant test

certificates / actual inspection as decided by the inspector in consultation with ATBL

- i. For ATBL, the PMC is wholly and fully responsible for all inspection during Construction & Commissioning of BioGas plant for which the consultant may issue necessary certificates as deemed fit.
 - j. PMC shall certify FAT and SAT of various procurement items besides witnessing the same
 - k. All activities pertaining to Inspection at vendors & contractors works sites shall be the complete responsibility of the PMC. PMC is required to deploy qualified TPIs for inspections and issue final "Inspection Release Note" after inspection. The Inspection and test plans for material and construction site activities shall be developed by the PMC and approved by the Owner.
7. PMC is responsible for Stores / Warehouse and Material Management with scope of work not limited to following

PMC shall be fully responsible for materials management for goods / material purchased from various suppliers either by ATBL or vendor. PMC shall properly monitor goods / ensure quality checks at receipt point/ stage wise inspection/ materials available in stores and report losses / damages / shortages, if any, to the ATBL immediately upon noticing the same.

- a. Review and verify the equipment/materials from suppliers against ATBL approved technical specifications and certify their documents / invoices
- b. Inspect the condition of goods received and issue / approve Goods Receipt Voucher
- c. Maintain a record and submit report periodically, indicating the stock in stores, material in transit, material consumed on site by vendor and balance material to be received as per PO's issued
- d. Prepare reconciliation statements to enable ATBL to review on regular basis
- e. Expediting of materials being supplied by vendors including contractor supplied items

8. PMC is responsible for submission of documents with scope of work not limited to following.

- a. Follow up with vendors / contractors for as-built drawings / documents, PLC program backup in required software and hardcopy format, review/approve the same and forward to ATBL.
- b. All project-related documents for future reference and records will be handed over to ATBL as per standard international practice.

Submission of final documents shall be under the following heads:

- a. As built drawings
- b. Detailed operating manuals (Equipment wise)
- c. Separately highlighting recommendations of the HAZOP Study & Risk Analysis etc.
- d. Problems faced during the project execution and mitigation measures taken and reasons for future.

9. Manpower deployments of PMC

The PMC shall deploy required numbers of manpower (on full time basis), qualified and experienced personnel e.g. Professional engineers, subordinate engineering personnel, construction supervisors, inspections and other specialists of appropriate levels to ensure:

- a. Quality at all stages and aspects as per requirement of codes, standards, specifications and best international practices
- b. Timely & expeditious completion of the project

The PMC shall submit the following for approval of the ATBL after award of the contract:

- a. Organogram at Project site and at Head Office
- b. Resume of all personnel for verification and approval by ATBL
- c. Schedule of preliminary manning schedule
- d. Organisation and reporting structure

The PMC will be required to depute qualified, experienced manpower for the execution of the project. The consultant will ensure that the complete

manpower whose names have been proposed to be deployed for the project execution at the time of submission of the bids are not changed during project execution. In case of change in proposed personnel, the PMC will submit resume of the substitute manpower proposed and take ATBL approval in advance.

4. SCHEDULE OF RATES

Description of Activity	UoM	Qty	Rate
Owner's Engineer services			
Deployment of Process/ Mechanical, Electrical, Architect (Civil & Structural) Experts		3	
Part A – Scope during Basic Engineering & Tender preparation	Lumpsum		
Part B – Scope during Detailed Engineering & Execution	Lumpsum		
Optional offer for Man Day basis for deputation at owner's place / field visit/ inspection	Lumpsum		
Project Management Consultancy services			
Part C- Scope of work of Project Management Consultants			
Deployment of Project Co-Ordinator (Project Planning, Monitoring & Expediting)	Man-Month	1	
Deployment of Project incharge (Overall construction, Execution, Commissioning, QA & QC)	Man-Month	1	
Discipline Manager- Civil, QA & QC	Man-Month	1	
Discipline Manager- Electrical, Instrumentation & PLC	Man-Month	1	
Deployment of EHS Manager	Man-Month	1	

*Deployment of PMC at site applicable as per project timeline referring with type of discipline being executed

*Annexure II- Qualification criteria for manpower deployments attached

5. EVALUATION PROCESS

Applicants will be evaluated based on the technically qualified lowest priced methodology. When using this method, the award of the contract should be made to the service providers whose offer has been evaluated and determined as responsive/ compliant.

Selection criteria will be based on functionality, skills and relevant experience. The selection of the successful service provider will be aimed at maximizing the overall qualities in required areas of competence. Applicants whose proposals are found responsive and who meet the technical eligibility criteria shall qualify for further evaluation process. The total cost indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as annexures.

Financial Proposal* - should be kept as a separate document and should specify a unit rate/ total lump sum amount for the tasks specified in this document. The financial proposal must include a breakdown of this lump sum amount (number of anticipated working days for OE and any other possible costs/ etc.). Please note that the financial proposal is all-inclusive and shall take into account various expenses incurred by the Owner's Engineer & PMC during the contract period.

Technical criteria of Owner's Engineer -

- Must have experience as owner's engineer in MSW based Biogas projects
- Minimum of 05 years' experience in engineering, execution, commissioning & supervisory responsibility within the Biogas, Biomethanation Industry
- Degreed Process/ Mechanical, Civil, and Electrical Engineers with relevant experience of Biogas, Biomethanation projects (Ref Annexure II)
- Must have experience in working with EPC contracts
- Technical Presentation to the committee *for shortlisted applicants

Technical criteria of Project Management Consultant -

- Minimum experience of at least 2 PMC contract of Biogas projects in India during the last 7 financial years inclusive of current financial year (till the date of submission of proposal) (at least one contract in last 3 years)
- Minimum of 05 years' experience in Project management in Biogas/ Waste to Energy/ Hydrocarbon/ Oil & Gas projects
- Degreed Civil, Mechanical and Electrical Engineers with relevant experience in Biogas/ Waste to Energy/ Hydrocarbon/ Oil & Gas projects (Ref Annexure II)
- Must have experience in working with EPC contracts
- Technical Presentation to the committee *for shortlisted applicants

Thank You

SOR OE & PMC

Part I			
Description of Activity	UoM	Qty	Rate
Owner's Engineer services			
Deployment of Process/Mechanical, Electrical Architect (Civil & Structural) Experts			
Part A - Scope during Basic Engineering & Tender preparation	Lumpsum		
Part B - Scope during Detailed Engineering & Execution	Lumpsum		
Optional offer for Man Day basis for deputation at owner's place / field visit/ inspection	Lumpsum		

Part II			
Project Management Consultancy services	UoM	Qty	Rate
Part C- Scope of work of Project Management Consultants			
Deployment of Project Co-Ordinator (Project Planning, Monitoring & Expediting)	Man-Month	1	
Deployment of Project incharge (Overall construction, Execution, Commissioning QA & QC)	Man-Month	1	
Discipline Manager- Civil, QA & QC	Man-Month	1	
Discipline Manager- Electrical Instrumentation & PLC	Man-Month	1	
Deployment of EHS manager	Man-Month	1	

ATBL at its discretion may split Part I & II as a separate order.