

SCHEDULE-2
(See Clause 2.1.3)

Primary Engineering Consultant Contract
for
development of BSL-4 Greenfield Bio Containment Research Laboratory
with ABSL facility meeting all national and international statutory and
regulatory standards/guidelines of Gujarat Biotechnology Research Centre
(GBRC) at Gandhinagar

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Draft

PEC Contract

For providing Primary Engineering Consultancy services for development of BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility meeting all national and international statutory and regulatory standards/guidelines of Gujarat Biotechnology Research Centre (GBRC) at Gandhinagar

This Primary Engineering Consultancy Contract (hereinafter referred to as “**PEC Contract**”) is made and entered into at [●] on this the [●] day of [month], [year] by and between:

Department of Science & Technology, Government of Gujarat represented by its independent body [**Gujarat Biotechnology Research Centre ●**] and having its principal offices at [**MS Building, 6th Floor, GH Road, Sector - 11, Gandhinagar, Gujarat 382011●**] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the First Part;

AND

[●], a [●] incorporated under the provisions of the [●] and having its registered office at [●], (hereinafter referred to as the “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

(The Authority and the Consultant shall individually be referred to as ‘**Party**’ and collectively as ‘**Parties**’).

WHEREAS

- A. The Authority is a department functioning under the aegis of the Government of Gujarat (“**GOG**”) and is responsible to undertake biotechnology research in the State priority areas.
- B. The Authority has been entrusted with the role to develop the **Biosafety Level 4 (BSL-4) and Animal Biosafety level 4 (ABSL-4) facility, Biosafety level 3 (BSL-3) and Animal Biosafety level 3 (ABSL-3) facility and Biosafety level 2 (BSL-2)** (“**BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility**”) laboratory meeting all national and international statutory and regulatory standards/guidelines of Gujarat Biotechnology Research Centre (GBRC) at Gandhinagar (“**Site**”) (hereinafter referred to as the “**Project**”), with an aim to house Multistorey Building to undertake biotechnology research. The focus is not only to undertake conduct cutting-edge research in the frontier areas of biotechnology but also leading to product, prototype & process development with application in healthcare, agriculture, environment, marine etc. It shall also act as a state-of-art shared laboratory facility by extending its infrastructure to other research organization, Institutions, Industries and students for their research purposes.

- C. The development of the Project is envisaged either in the land near Animal Vaccine Institute, Gandhinagar, spread over an area of 14 acres (“**Site**”).
- D. The Authority had invited proposals vide Request for Proposal Document bearing No. [●] dated [●] (the “**RFP**”) for appointment of a Primary Engineering Consultant Agency (PEC) for providing Services in connection with the Project;
- E. After evaluation of the Bid(s) received, the Authority had accepted the bid of the Consultant and issued a letter of acceptance No. [●] dated [●] (hereinafter called the “**LOA**”) to the Consultant requiring, inter alia, the execution of this PEC Contract;
- F. The PEC has agreed to undertake and perform its obligations with respect to the Project, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this PEC Contract, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 GENERAL

1.1 Definitions and Interpretation

- 1.1.1 The words and expressions beginning with capital letters and defined in this PEC Contract shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:
 - (a) “**Affected Party**” shall have the meaning set forth in Clause 2.7.1.
 - (b) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
 - (c) “**Site**” shall have the meaning set forth in Recital B;
 - (d) “**Authority**” shall mean the Department of Science & Technology, Government of Gujarat represented by its independent body Gujarat Biotechnology Research Centre;
 - (e) “**Award**” shall have the meaning set forth in Clause 10.4.3;
 - (f) “**BSC**” mean Biosafety Consultant
 - (g) “**BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility**” means the Biosafety Level 4 (BSL-4) and Animal Biosafety level 4 (ABSL-4) facility, Biosafety level 3 (BSL-3) and Animal Biosafety level 3 (ABSL-3) facility and Biosafety level 2 (BSL-2)
 - (h) “**Change of Scope**” shall have the meaning set forth in Clause 9A.1;
 - (i) “**Change of Scope Notice**” shall have the meaning set forth in Clause 9A.2;
 - (j) “**Change of Scope Order**” shall have the meaning set forth in Clause 9A.2;

- (k) **“Confidential Information”** shall have the meaning set forth in Clause 3.3;
- (l) **“Conflict of Interest”** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (m) **“CMA”** means Construction and Maintenance Agency
- (n) **“Consultancy Documents”** shall have the meaning set forth in Clause 3.9.1;
- (o) **“Construction and Maintenance Agency”** or **“CMA”** shall mean the agency appointed by the Authority for Design, Construction and Maintenance of the **BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility**
- (p) ***“Construction/ Implementation Phase” shall mean a period of 24 months from the date of appointment of CMA***
- (q) **“Contract Fee”** shall have the meaning set forth in Clause 6.1.2;
- (r) **“Cure Period”** means the period specified in this PEC Contract for curing any breach or default of any provision of this PEC Contract by the Party responsible for such breach or default.
- (s) **“Design Phase”** shall mean a period of 6 months from the Effective Date
- (t) **“Dispute”** shall have the meaning set forth in Clause 10.2.1;
- (u) **“PEC Contract”** means this contract, together with all the annexes;
- (v) **“Due Date”** shall have the meaning set forth in Clause 6.3 (b);
- (w) **“Effective Date”** means the date on which this PEC Contract comes into force and effect pursuant to execution of the PEC Contract;
- (x) **“Expatriate Personnel”** means such persons who at the time of being so hired had their domicile outside India;
- (y) **“Estimated Project Cost”** shall mean an amount equivalent to INR 225 Crore at an estimated CAPEX of INR 150 crores with a provision of OPEX for a period of minimum 5 years
- (z) **“Force Majeure”** or **“Force Majeure Event”** shall have the meaning set forth in Clause 2.7.1;
- (aa) **“GOG”** means the Government of Gujarat;
- (bb) **“INR, Re. or Rs.”** means Indian Rupees;
- (cc) **“Inspection Report”** shall have the meaning set forth in Clause 9.2;
- (dd) **“LOA”** shall have the meaning set forth in Recital E;

- (ee) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (ff) “**GBRC**” means Gujarat Biotechnology Research Centre (GBRC)
- (gg) “**Party**” means the Authority or the Consultant, as the case may be, and **Parties** means both of them;
- (hh) “**Payment Schedule**” shall mean the schedule of timeline and payments set forth in Annex 4 of this PEC Contract;
- (ii) “**PEC**” means Primary Engineering Consultant
- (jj) “**Performance Security**” shall have the meaning set forth in Clause 7.1;
- (kk) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (ll) “**Prohibited Practices**” shall have the meaning set forth in Clause 3.2.5;
- (mm) “**Project**” shall have the meaning set forth in Recital B;
- (nn) “**Resident Personnel**” means such persons who at the time of being so hired had their domicile inside India;
- (oo) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (pp) “**Services**” means the work to be performed by the Consultant pursuant to this PEC Contract, as described in the Terms of Reference hereto;
- (qq) “**Site**” shall have the meaning set forth in Recital C;
- (rr) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7;
- (ss) “**Term**” shall have the meaning set forth in Clause 2.1;
- (tt) “**TOR**” shall mean the terms of reference set forth in Annex I of this PEC Contract;

- (uu) **“Third Party”** means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

- 1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this PEC Contract and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) PEC Contract;
- (b) Annexes of PEC Contract;
- (c) RFP; and
- (d) LOA.

- 1.1.3 Subject to Clause 1.1.2, in case of ambiguities or discrepancies within this PEC Contract, the following shall apply:

- (a) between two or more Clauses of this PEC Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this PEC Contract and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any value written in numerals and that in words, the latter shall prevail

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this PEC Contract, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the PEC Contract, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the PEC Contract; and
- (b) the Authority shall make payments to the Consultant in accordance with the provisions of the PEC Contract.

1.4 Governing law and jurisdiction

This PEC Contract shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Gandhinagar shall have exclusive jurisdiction over matters arising out of or relating to this PEC Contract.

1.5 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this PEC Contract shall be in writing and in English language.

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this PEC Contract are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this PEC Contract.

1.7 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this PEC Contract shall be in writing and shall:

- (a) in the case of the Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city as the Authority's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the

case of e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards the Authority under this PEC Contract, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorised Representatives

1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this PEC Contract by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

1.10.2 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

.....

.....

Tel:

Mobile:

Email:

1.10.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

.....

.....

Tel:

Mobile:

Email:

1.11 Taxes and duties

Unless otherwise specified in the PEC Contract, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the

Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

1.12 Interpretation

1.12.1 In this PEC Contract, unless the context otherwise requires:

- (d) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (e) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (f) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (g) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Ahmedabad, Gujarat are generally open for business;
- (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this PEC Contract is not a business day, then the period shall run until the end of the next business day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh” means a hundred thousand (1,00,000) and “crore” means ten million (10,000,000);

- (o) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (q) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this PEC Contract from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (s) the Schedules and Recitals to this PEC Contract form an integral part of this PEC Contract and will be in full force and effect as though they were expressly set out in the body of this PEC Contract;
- (t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this PEC Contract shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this PEC Contract, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this PEC Contract or of the Schedule in which such reference appears; and
- (u) the damages payable by either Party to the other of them, as set forth in this PEC Contract, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

1.13 Rule of Construction

The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

Any word or expression used in this PEC Contract shall, unless otherwise defined or construed in this PEC Contract, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.14 Assignment

This PEC Contract shall not be assigned by the Consultant to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason. The Consultant shall not create nor permit to subsist any encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this PEC Contract to which the Consultant is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

Notwithstanding anything to the contrary contained in this PEC Contract, the Authority may, after giving 60 (sixty) days' notice to the Consultant, assign any of its rights and benefits and/or obligations under this PEC Contract; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this PEC Contract.

1.15 [Joint and Several Liability]¹

If the Consultant is in the nature of a Consortium for implementing the Project: (a) these persons shall, without prejudice to the provisions of this PEC Contract, be deemed to be jointly and severally liable to the Authority for the performance of the PEC Contract; and (b) the Consultant shall ensure that no change in the composition of the Consortium is effected without the prior consent of the Authority.

Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Consultant. The Consultant shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this PEC Contract and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member.

2 COMMENCEMENT, COMPLETION AND TERMINATION OF PEC CONTRACT

2.1 Effectiveness of PEC Contract

The Term of the PEC Contract shall commence from the Effective Date and end on the expiry of the period set out in Clause 2.2 (b) (unless the PEC Contract is terminated earlier by issuance of a Termination Notice by any Party) ("**Term**")

¹ This clause shall be omitted if the Consultant is not in the nature of a Consortium.

2.2 Commencement of Services

The Consultant shall commence the Services from the Effective Date, unless otherwise agreed by the Parties.

Subject to and in accordance with the provisions of this PEC Contract, the Consultant shall provide the Services set out in Annex 1 during the undermentioned periods:

- (a) For Services set out under Annex 1 i.e. during the Design Consultancy Phase: A period of 6 months, commencing from the Effective Date;

Sl No	Deliverable (In consultation with Authority and other stakeholders)	Duration
1	Draft master plan and other relevant site investigation studies and initiation of documentation towards statutory clearance	T+2 months
2	Drawings, specifications and all other relevant document as per scope of work towards preparation of tender document for the appointment of CMA	T+4 months
3	Coordination and inputs towards bid process management for appointment of CMA	T+6 months

T= Effective date of commencement of design consultancy service.

CMA= Construction and Maintenance Agency

- (b) For Services set out under Annex 1 i.e. during the Implementation Phase: A period of 24 months or 90 days post validation and certification of the BSL-4 facility, whichever is later, commencing from the date of appointment of Construction and Maintenance Agency by the Authority for construction, operation and maintenance of the Project.

2.3 Termination of PEC Contract for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 2 (two) weeks' notice to the Consultant, declare this PEC Contract to be null and void, and in the event of such a declaration, the Bid Security or the performance security, as the case may be, of the Consultant shall stand forfeited.

2.4 Expiry of PEC Contract

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this PEC Contract shall, unless extended by the Parties by mutual consent, expire either upon (i) completion of the Project; or (ii) 90 days post opening of the BSL-4 facility, whichever is later.

2.5 Entire PEC Contract

- 2.5.1 This PEC Contract and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this PEC Contract are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this PEC Contract.
- 2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this PEC Contract, the provisions of RFP shall apply.

2.6 Modification of PEC Contract

Modification of the terms and conditions of this PEC Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this PEC Contract, “**Force Majeure**” or “**Force Majeure Event**” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances (“**Affected Party**”), and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockdowns on account of pandemic, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this PEC Contract, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Clause 2.7 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this PEC Contract;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this PEC Contract.

For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required in this Clause 2.7.2, and such other information as the other Party may reasonably request the Affected Party to provide.

2.7.3 No breach of PEC Contract

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this PEC Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this PEC Contract. Further, when the Affected Party is able to resume performance of its obligations under this PEC Contract, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

2.7.4 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

2.7.5 Extension of time

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

2.7.6 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for Additional Costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.7 Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.7.8 Effect of Force Majeure on PEC Contract

At any time after the commencement of the Term, if any Force Majeure Event occurs whereupon the Consultant is unable to provide the Services during the period for which Force Majeure exists, no payments shall be made by the Authority to the Consultant and appropriate deductions shall be made by the Authority at the time of settling the amounts due towards the Contract Fee. However, the Consultant shall not be liable to pay any damages to the Authority in case it is unable to provide the Services on account of any Force Majeure Event.

2.7.9 Allocation of Costs

Upon occurrence of any Force Majeure Event during the Term, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

Save and except as expressly provided in this Clause 2.7, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

2.7.10 Termination Payment for Force Majeure Event

If Termination is on account of any of the Force Majeure Events, the Authority shall return the Performance Security to the Consultant. The Consultant shall take appropriate insurance cover for hedging risks associated with the events of Force Majeure.

2.7.11 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

2.8 Suspension of PEC Contract

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this PEC Contract or shall fail to perform any of its obligations under this PEC Contract, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of PEC Contract

2.9.1 By the Authority

The Authority may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this PEC Contract if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 10 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this PEC Contract.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this PEC Contract if:

- (a) the Authority fails to pay any money due to the Consultant pursuant to this PEC Contract and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this PEC Contract and has not remedied the same within 45 (forty five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this PEC Contract pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this PEC Contract pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this PEC Contract; and (iv) any right or remedy which a Party may have under this PEC Contract or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this PEC Contract by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this PEC Contract pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the Consultant:

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination.

In case the PEC Contract is terminated by the Authority as per Clause 2.9.1, the Authority shall be entitled to forfeit the Performance Security furnished by the Consultant.

In case the PEC Contract is terminated by the Consultant as per Clause 2.9.2, the Authority shall be obligated to return the Performance Security furnished by the Consultant.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 10 hereof, and this PEC Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3 OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this PEC Contract or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.1.2 Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this PEC Contract. The Consultant shall provide and submit all the deliverables/documents/surveys/submissions specified in Annex 4 with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the PEC Contract.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this PEC Contract and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this PEC Contract, any business or professional activities which would conflict with the activities assigned to them under this PEC Contract;
- (b) after the termination of this PEC Contract, such other activities as may be specified in the PEC Contract; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this PEC Contract or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this PEC Contract or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this PEC Contract, the Authority shall be entitled to terminate this PEC Contract forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this PEC Contract. In such an event, the Authority shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, *inter alia*, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this PEC Contract, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this PEC Contract, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the PEC Contract before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the PEC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PEC Contract, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this PEC Contract;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this PEC Contract disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this PEC Contract ("**Confidential Information**"), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this PEC Contract shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:
 - (i) for any indirect or consequential loss or damage; and
 - (ii) for any direct loss or damage that exceeds (a) the Contract Fee set forth in Clause 6.1.2 of this PEC Contract, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Contract Fee.

3.5 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this PEC Contract, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the PEC Contract and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this PEC Contract.
- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this PEC Contract, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this PEC Contract and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.
- 3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:
- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of Rs. 1 (one) crore;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Contract Fee.

3.6 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this PEC Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all

relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and

- (b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this PEC Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

3.7 Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this PEC Contract; or
- (c) any other action that is specified in this PEC Contract.

3.8 Reporting obligations

The Consultant shall submit to the Authority the reports and documents specified in the PEC Contract, in the form, in the numbers and within the time periods set forth therein.

3.9 Documents prepared by the Consultant to be property of the Authority

- 3.9.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.9.2 The Consultant shall, not later than termination or expiration of this PEC Contract, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this PEC Contract without the prior written approval of the Authority.
- 3.9.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries

(collectively referred to as 'Claims') which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10 Equipment and materials furnished by the Authority

Equipment and materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this PEC Contract, the Consultant shall furnish forthwith to the Authority, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by the Authority in writing, insure them in an amount equal to their full replacement value.

3.11 Providing access to Project and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project, the Site and to all Personnel during office hours. The Authority's official, who has been authorised by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

The Consultant shall at its own cost arrange for office space and accommodation for its personnel at Project Site. The Authority shall provide office space for its personnel to be deployed as per project requirement at its office in Gandhinagar only.

The Consultant shall at its own cost arrange for visits to project site and meetings at Delhi and/or Gandhinagar and/or Ahmedabad. No travel expense or out of pocket expense shall be paid by the Authority.

3.12 Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4 CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 Deployment of Personnel

- 4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Key Personnel are described in Annex-2 of this PEC Contract.

4.3 Approval of Personnel

- 4.3.1 The PEC shall provide the list of their Key Personnel as per Annex-2 of the PEC Contract prior to or at the time of execution of the Contract. No other Key Personnel shall be engaged without prior approval of the Authority.
- 4.3.2 If the Consultant hereafter proposes to engage any person as Key Personnel, it shall submit to the Authority its proposal along with a CV of such person. The Authority may approve or reject such proposal within 15 (fifteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4 Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the PEC Contract. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the PEC Contract, and the Consultant's remuneration shall be deemed to cover these items. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Team Leader

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel.

5 OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

Unless otherwise specified in the PEC Contract, the Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (c) issue to officials, agents and representatives of the GOG all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to land and property

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the Site of the Project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services.

5.3 Change in Applicable Law

If, after the date of this PEC Contract, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Contract Fee specified in Clause 6.1.2, then adjustments shall be made to the aforesaid Contract Fee after mutual discussion by and between the Parties.

5.4 Payment

In consideration of the Services performed by the Consultant under this PEC Contract, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this PEC Contract.

6 PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Contract Fee

- 6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-3 of the PEC Contract.
- 6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this PEC Contract shall not exceed the contract fee specified herein (the “**Contract Fee**”) The Parties agree that the Contract Fee (FEE-A+FEE-B) is INR (INR) and shall be payable subject to and in accordance with terms hereof.
- 6.1.3 The overall payment milestones and schedule of payment of the Contract Fee is set forth in Annex 4 and shall be read together with terms herein.

The Contract Fee shall be exclusive of applicable GST, which shall be paid extra by the Authority as per the PEC Contract.

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:

- (a) The Consultant shall be paid for its services as per the Payment and Time Schedule at Annex-4 of this PEC Contract, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 45 (forty five) days after the receipt by the Authority of invoices with necessary particulars (the “**Due Date**”).
- (c) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this PEC Contract shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof.
- (d) All payments under this PEC Contract shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.
- (e) The Consultant hereby acknowledges and agrees that it is not entitled to any revision of the Contract Fee or other relief from the Authority except in accordance with the express provisions of this PEC Contract.

7 LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1 The Consultant shall, for the performance of its obligations hereunder during the Term, provide to the Authority on or prior to the Effective Date, an irrevocable and unconditional guarantee from a scheduled commercial bank for a sum equivalent to Rs (Rupees only) (**5% of the Contract Fee**) in the form set forth in **Annex 5** (the “**Performance Security**”). Until such time the Performance Security is provided by the Consultant pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Consultant.
- 7.1.2 The Performance Security shall be released within 90 days post expiry of the Term.
- 7.1.3 Upon occurrence of a default by the Consultant during the Term, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to

encash and appropriate the relevant amounts from the Performance Security as damages for such default. Upon such encashment and appropriation from the Performance Security, the Consultant shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, within the time so granted, failing which the Authority shall be entitled to terminate this PEC Contract in accordance with Clause 2.9.2. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Consultant shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the default, and in the event of the Consultant not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as damages, and to terminate this PEC Contract in accordance with Clause 2.9.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports/deliverables submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 10% (ten per cent) of the Contract Fee.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, including the preparation and submission of relevant reports/studies/surveys/deliverables as per the specified timelines in Annex 4, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Contract Fee per day, subject to a maximum of 10% (ten per cent) of the Contract Fee will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant or attributable to Force Majeure, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this PEC Contract or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8 FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this PEC Contract and to adopt all reasonable measures to ensure the realisation of the objectives of this PEC Contract.

8.2 Operation of the PEC Contract

The Parties recognise that it is impractical in this PEC Contract to provide for every contingency which may arise during the life of the PEC Contract, and the Parties hereby agree that it is their intention that this PEC Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this PEC Contract either Party believes that this PEC Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 10 hereof.

9 MONITORING OF SERVICES

9.1 Monthly Status Reports

During the Term, the Consultant shall, no later than 7 (seven) days after the close of every month, furnish to the Authority a report stating in reasonable detail the progress made with respect to Services and possible delays (if any), including its compliance with the obligations with the PEC Contract and shall promptly give such other relevant information as may be required by the Authority.

9.2 Inspection of Services

The Authority shall during the Term of this PEC Contract have a right to make periodic inspections with respect to the Services provided by the Consultant and provide feedback. The Authority shall be entitled to make a report of such inspection (the "**Inspection Report**") stating in reasonable detail any deficiency, if any, with respect to the Services and send a copy thereof to the Consultant within 7 (seven) days of such inspection.

9.3 Remedial Measures

The Consultant shall remove the deficiency, if any, set forth in the Inspection Report and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the Inspection Report.

In the event that remedial measures are not completed by the Consultant in conformity with the provisions of this PEC Contract, the Authority shall be entitled to recover Damages from the Consultant at the rate of 0.2% of the Contract Fee per day shall be levied up to an upper limit of 10% of the Contract Fee. If the deficiency is not remedied till that point, the Authority may terminate this PEC Contract.

9A CHANGE OF SCOPE

9A.1 Change of Scope

The Authority may, notwithstanding anything to the contrary contained in this PEC Contract, require the provision of additional services which are not included in the TOR of this PEC Contract (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Clause 9A.

Any additional services which are provided under and in accordance with this Clause 9A shall form part of the Project and the provisions of this PEC Contract shall apply *mutatis mutandis* to such works or services.

9A.2 Procedure for Change of Scope

In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Consultant a notice specifying in reasonable detail the services contemplated thereunder (the “**Change of Scope Notice**”) and the resultant impact (increase or decrease) on the Contract Fee payable to the Consultant under this PEC Contract.

Upon receipt of a Change of Scope Notice, the Consultant shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the completion schedule; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any,
- (c) Effort estimation for change in scope supported with necessary rate analysis.

Upon receipt of information set forth in Clause 11.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Consultant and the Parties shall, with assistance, thereupon of the Authority, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Consultant to proceed with the performance there.

10 SETTLEMENT OF DISPUTES

10.1 Amicable settlement

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

10.2 Dispute resolution

- 10.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this PEC Contract (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”)

shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 10.3.

- 10.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this PEC Contract promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

10.3 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Consultant for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.4.

10.4 Arbitration

- 10.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 10.3, shall be finally decided by reference to arbitration in accordance with Clause 10.4. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The venue of such arbitration shall be Gandhinagar, and the language of arbitration proceedings shall be English.
- 10.4.2 There shall be an arbitral tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected in accordance with the Arbitration Act.
- 10.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 10 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 10.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 10.4.5 This PEC Contract and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this PEC Contract to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
Authority

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.

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Annex-1: Terms of Reference

(Refer Clause 3.1.2)

GENERAL SCOPE OF WORK

Government of Gujarat (GoG) through Department of Science & Technology represented by its independent body Gujarat Biotechnology Research Centre (also referred to as “Authority”) has decided to develop Biosafety Level 4 (BSL-4) and Animal Biosafety level 4 (ABSL-4) facility, Biosafety level 3 (BSL-3) and Animal Biosafety level 3 (ABSL-3) facility and Biosafety level 2 (BSL-2) (also referred to as **“BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility”**) meeting all national and international statutory and regulatory standards/guidelines of Gujarat Biotechnology Research Centre (GBRC) (hereinafter referred to as “Project”) at Gandhinagar.

Authority intends to appoint a “Primary Engineering Consultant” for (i) providing necessary technical inputs towards preparation of Detailed Project Report and conceptual design documents for further appointment of Construction and Maintenance Agency; (ii) scrutinizing, vetting and providing recommendation for approval of the detailed design and engineering documents and specifications for all the components of the BSL-4 Facility, which shall be prepared and submitted by the Construction and Maintenance Agency; (iii) providing technical inputs and technical parameters to the “Construction and Maintenance Agency” to be appointed by the Authority for construction (including interiors, furniture (if any) and specialised lab components) and for operation and maintenance of the BSL-4 Facility.

The Primary Engineering Consultant shall assist the Authority to approve all technical details, drawings and proposals prepared and submitted by CMA based on the Planning and General Layout documents. This would involve different phases and components.

Phases in Engineering:

- i. Design Memorandum and Design Basis Report.
- ii. Geotechnical studies and other site investigations
- iii. Basic design engineering
- iv. Conceptual drawings, broad engineering drawings and broad technical specifications
Good for Construction (GFC) / Working drawings for each component

The PEC shall undertake the above listed, multi-disciplinary activities in a systematic and concurrent manner by involvement of multi-disciplinary engineers, subject matter experts/specialists, and support staff for vetting the detailed design, drawings and specifications in an effective and timely manner leading to timely procurement and execution of construction activities by the Construction and Maintenance Agency. During the course of execution certain changes based on site conditions may be inevitable and hence periodic intervention by PEC for timely review and resolution of the changes and finalisation of the proposal towards further execution is also envisaged.

Brief description of Scope of Works

A. Design Phase

1. PEC shall develop conceptual drawings, broad engineering drawings and broad technical specifications towards tender for selection of Construction and Maintenance Agency. PEC shall provide broad engineering drawings and specifications for various components of the Project including but not limited to Overall Site Master Plan (including but not limited to diagnostic laboratory ,security gate, utility building, administrative building, employee amenities block, warehouse, parking spaces/shed), Civil (Architectural, structural, water supply, sanitary, drainage etc. for building and infrastructure), Electrical, HVAC, Utility, BMS system, fire alarm system, security system, piping and others. Process Engineering for equipment & related activities, flow diagrams, P&I diagrams for off-sites & utilities, towards tender for selection of Construction and Maintenance Agency.
2. PEC shall perform soil investigation, topographical survey and Vertical, Electrical and Sounding survey and submit its report to Authority.
3. PEC shall develop detail/tender drawings of Laboratory Layout (Room sizing & Location), Equipment Layout, Personal flow/movement, Material flow/movement+ Decontamination, Sample flow/movement (approval and rejection), Room Sizing and Location, Master Plan, Area Classification, AHU Zoning, Pressure Zoning, and Shower Cycles
4. PEC shall provide all necessary inputs towards finalisation of process flow and relevant parameters; finalisation of equipment list, capacity and utilities including their design; achieving common understanding of material and personnel flow; common understanding of containment philosophy & effluent management; finalization of layouts and master plan; finalization of equipment, finalisation of Authority Requirement Specifications (URS) & selection of vendors for equipment (except laboratory equipment which are to be procured by Authority).
5. PEC shall provide inputs towards value engineering including but not limited to Integration of different modules/blocks; Integration of master utilities; Optimizing utilities; Risk Analysis; Time & cost optimization; Energy efficiency & conservation; Incorporation of Green building Concepts in designs (wherever possible within the given cost parameters); Freezing of equipment requirements, their sizing and balancing in close cooperation with the supplier, etc.
6. PEC shall prepare a detailed list of design & drawings that shall be prepared and submitted by CMA during each phase of work. In this regard, PEC shall prepare a month wise document submittal and approval schedule for timely submission by CMA for approval.
7. PEC shall prepare and provide inputs for finalization of the Memorandum for Planning and Design including Design Basis Reports for the project.

8. Conditional vetting of design, drawings and other relevant drawings for the Project is not allowed under any circumstance.
9. The terms and process for review of drawings and documents shall be effective till all the designs and drawings are fully approved by PEC and Authority in a systematic and timely manner.
10. PEC shall develop detail tender drawing, technical specifications and P&ID for the components of the (BSL-4) facility including but not limited to HVAC system (classification, pressure gradients, air flow schemes , HVAC zoning, Air Handling Systems, Exhaust systems, Ducting and Insulation (GI), Ducting and Insulation (SS), Dampers (Low Leakage), VAVs, Airtight and Gas Tight Dampers, Grills and Swirl Diffusers, HEPA Modules (hooded), Return Air Modules, Supply HEPA Housings (BIBO), Exhaust HEPA Housings (Containment) (BIBO), Scanning system for HEPA housings, Heat Recovery Unit); Mist system for firefighting inside the lab; Penetration equipment; Airtight/Gastight Doors and Windows; Formalin Hydrogen peroxide airlocks, dunk tanks etc; LV System (BMS System, Access Control, Door interlocking, Fire Alarm System etc); External Fire Hydrant system; Breathing systems; Radioactive deactivation system; Clean Utilities (Water Generation+ Distribution system, Chilled Water Generation+ Distribution System, Hot Water Generation+ Distribution System for HVAC system, Hot Water Generation+ Distribution System for Water Showers ,Chemical Storage + Distribution System for Chemical Showers/Caustic Digester, Black Steam Generation+ Distribution, Pure steam Generation+ Distribution, ,Compressed Air Generation+ Distribution, HSD Storage & Distribution, Gases Storage & Distribution.
11. PEC shall develop technical specifications and P&ID for the components of the (BSL-4) facility including but not limited Black Utilities; Electricals- HT / LT systems; DG sets, UPS system; Light fixtures; Cable and wires; Distribution boards + sockets; Conduits+Cabletrays+Trunking; Process and Barrier Equipment (Pass Boxes, Biosafety Cabinet, LAFU, Fume hoods, Autoclaves, Glassware washing, IVC/Isolator Animal cages / holding system, Animal Disposal system Incinerator, Rendering system, Caustic digester etc.); Decontamination systems (Autoclaves, Fumigation/Decontamination Pass boxes and Airlocks, Dunk Tank, UV Pass Boxes) , Chemical and Heat based primary ETP systems, secondary ETP and STP, Penetration Systems (entry for cables, wires, Pipes, Ducts etc.); Walk-in Cold rooms and Deep freezers; PPE (Positive Pressure suits), Garments etc.; Laboratory Benching and SS Furniture (Lockers, Crossover benches, Stools, Bins etc), PPE Garments/Caps/Gloves etc., Filter Cleaning Station any other responsibility as assigned by the Authority.
12. PEC shall develop detail/tender drawings and technical specifications of modular partition such as wall and ceiling partition, doors and vision panels, Coving, Cut-outs.
13. PEC shall support in preparation of conceptual drawings and other related items.

14. PEC should obtain concepts for biocontainment and clean room and prepare basic engineering drawings in compliance with above concepts.
15. PEC shall maintain copies of all statutory approvals and to be issued as and when required to CMA and other stakeholders.
16. PEC shall be responsible for liaising and obtaining all statutory clearance including but not limited to environmental clearance, consent to establish, approval for construction etc . Fee towards statutory approval shall be reimbursed/ made directly by Authority based on relevant documentary proof submitted by PEC.
17. Preparation of list of consumables, frequency of change and preventive maintenance change and recertification schedules of utility equipment as part of CMA tender.
18. PEC shall prepare and submit detailed maintenance manpower requirements including nature of personnel, numbers, qualification and experience requirement and roles and responsibility for the manpower deployed by CMA during maintenance period.

B. Implementation Phase

1. Under the CMA Contract, the responsibility of planning, detail design, construction, supply, erection, commissioning, operation and maintenance work rests with the CMA. As per the agreed schedule of the CMA Contract, the CMA shall submit the plans, designs, drawings, estimates, etc. and PEC shall check all plans, detailed designs, estimates submitted by the CMA. PEC shall critically check all the design, drawings, proposal and any relevant documents submitted by the CMA in accordance with the terms and conditions of the RFP for appointment of CMA and report about its conformance with the same. In case there are any deviations from the said criteria, the same shall be highlighted and CMA shall be directed to revise the relevant design/drawing document.
2. PEC shall actively monitor, review, scrutinize and approve design and construction drawings submitted by the CMA. PEC shall perform proof checking and vetting of structural drawings prepared by CMA and issuing the same to CMA for developing shop/ execution drawings. (The requirements of structure are not to be diluted on following this system considering the critical nature of BSL-4 facility). PEC shall review shop drawings submitted by CMA and provide recommendations for execution.
3. PEC shall review execution of works at site in compliance with the technical requirements of the CMA Contract and the approved Planning & Design Memorandum
4. PEC shall review and approve the As-built drawings submitted by the CMA and provide resolution towards any issue regarding the design during the execution phase.
5. PEC shall co-ordinate with the other stakeholders, Consultants, CMA and Authority towards design and execution of the Project. The scope of services shall cover periodical visits to site/office and attendance of meetings with other Consultants to

Authority, visits to project sites for discussions, providing technical clarifications, detailing, review/approval of input/drawings provided by other Consultants and the CMA Contractor, providing resolution for engineering related bottleneck for execution of works at site.

6. Review and approve documentation prepared for the regulatory inspections and providing support for clearance.
7. PEC shall be responsible of document control, issuance and archival of all the relevant drawings and document.
8. PEC shall maintain copies of all statutory approvals and to be issued as and when required to CMA and other stakeholders.
9. PEC shall be responsible for facilitating rectification, modification and substitution wherever required and prepare impact assessment document and suggest risk mitigation plan. The document will be submitted for final approval to the authority. The document should be archived for future reference.
10. It shall be obligation of PEC to obtain third party certification on quality check of construction, mechanical, electrical and utilities and submit it to Authority.
11. PEC will be responsible for periodic safety monitoring, review and implement corrective action if required.
12. PEC will be responsible for documentation to comply with cGMP and cGLP guidelines-
 - a. Site Master File
 - b. Authority requirement specification
 - c. Design qualification (DQ) document to be obtain from supplier and to get it approved by Authority.
 - d. Installation qualification (IQ) document to be obtain from supplier and to get it approved by Authority.
 - e. Operation qualification (OQ) document to be obtain from supplier and to get it approved by Authority.
 - f. Preparation of performance qualification (PQ) after performing performance check of facility, utility and process equipment
 - g. Quality manual
 - h. Submission of dossier and obtaining regulatory clearance as per cGMP and cGLP regulations.
13. PEC shall be responsible for liaisoning and obtaining all statutory clearance including but not limited to environmental clearance, consent to establish, approval for construction, consent to operate NOCs (Electrical safety, Pollution safety, Fire safety).
14. Conducting FAT and SAT of equipment/facility as and when requested.
15. Revision of list of consumables, frequency of change and preventive maintenance change and recertification schedules of utility equipment.
16. Support in Preparation of process flow documents / SOPs to meet standards.
17. PEC shall evolve and submit detailed maintenance manpower requirements including nature of personnel, numbers, qualification and experience requirement and roles and responsibility for the manpower deployed by CMA during maintenance period.

Project Deliverables

1. The PEC within 15 days of award of work submit Inception report indicating the methodology of providing the Primary Engineering Consultancy services; submittal plans of vetted designs and drawings; responsibility matrix for vetting and approval of documents; details of the consultants and experts for performing the services. The Inception Report is to be presented for approval of Authority within a period of one month.
2. The PEC shall ensure furnishing to the Authority, three sets of all draft and three sets of all final design reports including specification along with make, drawing, schedules, etc to be prepared by the PEC.
3. PEC shall ensure submission of editable (CAD etc) and PDF digital soft copies of reports and drawings in appropriate format to Authority for data storage and archiving.
4. Monthly Progress Report in four (4) sets shall be furnished.
5. Project Completion report in four (4) sets shall be furnished.
6. One set of all the documents/drawings shall be submitted in the form of soft Copies (in CD) also along with the hard copies.
7. Any other documents not specified but required for the completion of the scope of the work/services shall be submitted in required number as directed by Authority.

Procedure for Design & Drawing vetting and approval – Time Schedule

The Planning, Design and Drawings will be prepared by CMA after performing detailed survey and investigation of the project site. The Design Memorandum and the Design Basis Report shall be examined and vetted by PEC for further approval by Authority

PEC shall proof check Work Plan and detailed Engineering drawings and documents submitted by the CMA for approval. The PEC is required to submit the Inception Report for the services indicating the methodology and time plan for providing the services for different components of the design and drawings of the project. The Inception Report of the PEC will be approved by the Authority which shall be followed for performance of the contract.

On receipt of the Design Reports, drawings of any scheme as a whole or part thereof shall be examined by the PEC expeditiously and observations (if any) shall be furnished within 7 (seven) days depending on the type of the document.

The CMA shall revert with compliance on the observations within 7 (seven) days from the date of such observation issued by PEC.

On receipt of the compliance, the PEC shall vet the document within 3 days of receipt and submit for approval by the Authority. Regarding adequacy of compliance by the CMA, the decision of Authority will be final and binding and PEC shall act as directed by the Authority.

Annex-2: Deployment of Personnel

(Refer Clause 4.2)

The Consultant shall have the following Key Personnel as part of their team for purpose of this Project. Consultant to deploy one (1) personnel at the office of Authority for the entire duration of the Contract (“Term”). Further, deployment of personnel at the site for the entire duration of the Contract (“Term”) would be as per Terms of Reference in Annex-1.

The Consultant’s team of Key Personnel shall constitute the following experts:

S. No.	Key Personnel	Qualification & Experience	Deployment	
			Design Consultancy Phase	Construction Phase
1.	Team Leader	<ul style="list-style-type: none"> Post-Graduate in Mechanical Engineering with at least 10 years of overall experience providing design/engineering consultancy services for HVAC and other Mechanical systems for at least one number of BSL 3 facility. With experience in design/engineering of at least 2 numbers of BSL 3 facility 	<ul style="list-style-type: none"> Once a week or as and when required Shall be available for meetings as and when required by Authority 	<ul style="list-style-type: none"> Periodic visits to site, once in two month. Shall be available for meetings as and when required by Authority
2.	Structural Engineer	<ul style="list-style-type: none"> Post-Graduate in Structural Engineering with at least 10 years of overall experience providing structural design/engineering consultancy services for building construction projects With experience in design/engineering of at least 1 numbers of BSL 3 facility 	<ul style="list-style-type: none"> Once a week or as and when required Shall be available for meetings as and when required by Authority 	<ul style="list-style-type: none"> Periodic visits to site, once in a month and as and when required Shall be available for meetings as and when required by Authority

3.	Electronics & Instrumentation Engineer	<ul style="list-style-type: none"> Graduate in Electronics & Instrumentation Engineering with at least 8 years of experience in design/engineering of electronics & instrumentation systems With experience in design/engineering of electronics and instrumentation systems and automation such as BMS for at least 1 numbers of BSL 3 facility 	<ul style="list-style-type: none"> Shall be available for meetings as and when required by Authority 	<ul style="list-style-type: none"> Periodic visits to site, once in a month and as and when required Shall be available for meetings as and when required by Authority
4.	Electrical Engineer	<ul style="list-style-type: none"> Graduate in Electrical Engineering with at least 8 years of experience in design/engineering of HV and LV electrical systems for building construction projects 	<ul style="list-style-type: none"> Shall be available for meetings as and when required by Authority 	<ul style="list-style-type: none"> Periodic visits to site, once in a month and as and when required Shall be available for meetings as and when required by Authority
5.	Project Coordinator	<ul style="list-style-type: none"> Graduate with at least 3 years of experience in project planning and management of construction projects for building construction projects 	<ul style="list-style-type: none"> To be deployed at the office of Authority at Gandhinagar throughout the Term of the PEC Contract Responsible for maintaining all statutory and relevant document , 	To be deployed at the office of Authority at Gandhinagar and periodic visit at site throughout the Term of the PEC Contract

			issuance and archival	
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The PEC, in addition to the above Key Personnel, would be required to provide additional subject matter expert/support staff as per requirement for satisfactorily performing the scope of works assigned to the PEC.

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Annex-3: Cost of Services⁺

A	Fee for the Design Phase Consultancy Services in accordance with TOR under Annex 1 in Volume II (Fee-A)	INR
B	Fee for the Implementation Phase Consultancy Services in accordance with TOR under Annex 1 in Volume II (Fee-B)	INR
A+B	Total Contract Fee (Fee-A+Fee-B)	INR

+The Contract Fee shall be exclusive of applicable GST, which shall be paid extra by the Authority as per the PEC Contract. The Contract Fee shall be payable as per terms of Annex 4 read together with Clause 6 of this PEC Contract.

Annex-4: Payment and Time Schedule

Time schedule for important deliverables of the Project and the payment schedule linked to the specified deliverables is given below:

A. Design Phase

Milestone No.	Description of Milestones – Progress in Performing the Activities in Terms of Reference	Completion Timeline from Effective Date, (on or before)	Payment as % Fee for the Design Phase Consultancy Services quoted for the Fee-A
BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility meeting all national and international statutory and regulatory standards/guidelines of Gujarat Biotechnology Research Centre (GBRC) at Gandhinagar			
1.	Preparation and approval of Design Memorandum comprising the principles and Basis of planning, functional requirements of the project.	Mutually decided by GBRC and agencies	15%
2.	Submission and approval of technical documents including project reports, basic engineering drawings, technical specifications for tender towards appointment of CMA	Mutually decided by GBRC and agencies	60%
3.	Upon successful onboarding of CMA	Mutually decided by GBRC and agencies	25%

B. Implementation Phase

Miles tone No.	Description of Milestones – Progress in Performing the Activities in Terms of Reference	Completion Timeline from Effective Date, (on or before)	Payment as % Fee for the Implementati on Phase Consultancy Services quoted for the Fee-B
BSL-4 Greenfield Bio Containment Research Laboratory with ABSL facility meeting all national and international statutory and regulatory standards/guidelines of Gujarat Biotechnology Research Centre (GBRC) at Gandhinagar			
1.	Vetting of the Detailed Design drawings and specifications of each component of the Project	Mutually decided by GBRC and agencies	50%
2.	Upon commissioning of the project and successful certification a competent third-party agency/authorised regulatory body	Mutually decided by GBRC and agencies	40%
3.	Final acceptance payment – 90 days after commissioning of the Project	Mutually decided by GBRC and agencies	10%

The Particulars of Break Up of Payment is generally indicative and not limited for the Vetting works to be performed. The PEC shall have to perform all the vetting works of Planning and Design Reports and Drawings as per the requirements of the Project for successful commissioning. All such items not mentioned are to be suitably included in the respective particulars of Break Up and no additional payment shall be made.

The percentage of payment indicated in each item of work (in A2, B1 & B2) shall be paid on pro rata basis. PEC shall submit a master list of documents towards the milestones (A2, B1 & B2) and pro rata base for payment shall be mutually agreed between Authority and PEC which shall form the base for payment.

Annex-5: Bank Guarantee for Performance Security

(Refer Clause 7.1.2)

To

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.....
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1. In consideration of acting on behalf of the (hereinafter referred as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, having its office at (hereinafter referred as the “**PEC**” or “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s PEC Contract no. dated valued at Rs. (Rupees), (hereinafter referred to as the “**PEC Contract**”) the assignment for consultancy services in respect of the Project, and the PEC having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the Authority for performance of the said Agreement.
2. We, (hereinafter referred to as the “**Bank**”) at the request of the PEC do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said PEC of any of the terms or conditions contained in the said PEC Contract.
3. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said PEC of any of the terms or conditions contained in the said PEC Contract or by reason of the PEC’s failure to perform the said PEC Contract. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).
4. We, (indicate the name of the Bank) do hereby undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

5. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required for the performance of the said PEC Contract and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said PEC Contract have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said PEC Contract have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.
6. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said PEC Contract or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said PEC Contract and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.
7. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant.
8. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.
9. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. crore (Rupees crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with Paragraph 2 hereof, on or before [..... (indicate the date falling 365 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, theday of, 20.....

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch

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