



बामर लॉरी एण्ड कं. लिमिटेड  
**Balmer Lawrie & Co. Ltd.**

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NOTICE INVITING TENDER FOR SELECTION / HIRING OF MANAGEMENT CONSULTANT  
TO DEFINE ON-PREMISE OR CLOUD SOLUTION FOR SAP APPLICATION AS FUTURE STRATEGY

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**TENDER NO** : BL/IT/HO/CONSLT/PT/202122/0003  
**TENDER PUBLICATION DATE** : 30/04/2021  
**PRE-BID MEETING DATE** : 18/05/2021  
**TENDER DUE DATE** : 25/05/2021  
**TENDER HOSTING WEB SITE** : <https://balmerlawrie.eproc.in>  
www.balmerlawrie.com

**TENDER IN-CHARGE** : Pradeep Thekutte, thekutte.p@balmerlawrie.com  
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**Disclaimer**

*The information contained in the Tender document or information provided subsequently to applicants, whether verbally or form by or on behalf of Balmer Lawrie & Co. Ltd. is provided to applicants on terms and conditions set out in this Tender document and all other terms and conditions subject to which such information is provided*

## **GLOSSARY**

The following table gives the Terminologies used and the reference to/ definition of these terminologies.

BL	Balmer Lawrie & Co. Ltd
DC	Data Centre
EMD	Earnest Money Deposit
EOI	Expression of Interest
IFB	Invitation for Bid
INR	Indian National Rupees
IPR	Intellectual Property Right
LD	Liquidated Damages
MC	Management Consultant
MEITY	Ministry of Electronics and Information Technology, Government of India
MPLS	Multiprotocol Label Switching
MSME	Micro, Small & Medium Enterprise
NSIC	National Small Industries Corporation
PBG	Performance Bank Guarantee
RFP	Request for Proposal
SOW	Scope of Work
VPN	Virtual Private Network

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## SECTION-1 : INVITATION FOR BIDS

### 1.1 Tender Schedule

<b>Tender No. &amp; Date</b>	BL/IT/HO/CONSLT/PT/202122/0003 dated 30/04/2021
<b>Job</b>	Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP application as future strategy
<b>Cost of Tender Document</b>	Nil (Free Download from the tender site)
<b>Tender Publication Date</b>	<b>30/04/2021</b>
<b>Last date and Time for receiving Pre-Bid Queries</b>	<b>17/05/2021 at 12:00 hrs. IST</b>
<b>Pre-Bid meeting date, time and venue</b>	<b>18/05/2021 at 11:00 hrs. IST</b> Venue : Balmer Lawrie & Co. Ltd, 21, N.S. Road, Kolkata 700 001.
<b>Tender Submission Date</b>	<b>25/05/2021 at 16:00 hrs. IST</b>
<b>Place of Submission of Bid</b>	<b>Techno-commercial –To be submitted online as well as hard copy</b>  Mr. Pradeep Thekutte, AVP(IT Infrastructure) Balmer Lawrie & Co. Ltd, 21, N.S. Road, Kolkata 700 001. Tel : (033) 22225204, Fax : (033) 22225253 Email : thekutte.p@balmerlawrie.com
<b>Technical Query</b>	Interested bidders can send emails to thekutte.p@balmerlawrie.com for any technical query
<b>Bid Security/ Earnest Money Deposit</b>	₹ 50,000/- (Indian Rupees Fifty Thousand only). – This will not attract any interest.  Registered micro and small enterprises shall be exempted from furnishing EMD, subject to their submission of their registration details. EMD should be submitted online only. Please refer to Clause No. 1.1.6 in SECTION-1 of this document for more details.
<b>Validity of Bid</b>	90 days from the bid submission date

#### 1.1.1 Invitation

Balmer Lawrie & Co. Ltd (BL) invites sealed bids from eligible bidders for “Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP Application as future strategy”.

You are requested to submit your offer in a Two-part bid for the subject as per the Technical specifications / Functional requirements, Scope of Work and Terms & Conditions as mentioned in this Tender document.

#### 1.1.2 Downloading of bidding document

The bidder can download the bidding documents from website at <https://balmerlawrie.eproc.in>.

### 1.1.3 Tender Document

The tender document consists of:-

#### SECTIONS:

**Section 1 : INVITATION FOR BIDS**

**Section 2 : INSTRUCTIONS TO BIDDERS**

**Section 3 : MANDATORY QUALIFYING CRITERIA**

**Section 4 : BUSINESS REQUIREMENT**

**Section 5 : COMMERCIAL TERMS & CONDITIONS**

#### ANNEXURES:

**Annexure-1 : Format for Letter of Authorization for attending pre-bid meeting**

**Annexure-2 : Pre-bid Queries Format**

**Annexure-3 : Bid Form – Techno Commercial bid submission letter**

**Annexure-4 : Bid compliance statement**

**Annexure-5 : Mandatory Qualifying Criteria / Eligibility Criteria**

**Annexure-6 : No Blacklist declaration**

**Annexure-7 : Statement of No Deviation**

**Annexure-8 : Price Bid Format**

**Annexure-9 : Mutual Non-Disclosure Agreement**

**Annexure-10: Consulting Service Agreement**

**Annexure-11: Pre-Contract Draft Integrity Pact**

**Annexure-12: Online EMD**

**Annexure-13: Performance Bank Guarantee**

**Annexure-14: Bank Transfer / RTGS details**

**Annexure-15: Bid submission checklist**

### 1.1.4 No deviation Bid

It shall be the responsibility of the persons submitting the bid to ensure that the bid has been submitted in the specified format and as per the terms and conditions of the tender documents and no change should be made therein. In the event of any doubt regarding the terms and conditions / formats, the person concerned may seek clarifications from the authorized officer of BL. In case any tampering / unauthorized alteration is noticed in the bid submitted from the bidding document available on the BL Website, the said bid shall be summarily rejected, and the company shall have no liability whatsoever in the matter. However, deviations, if any, proposed by the bidder may be separately indicated for acceptance in a deviation note or otherwise as proposed by BL.

### 1.1.5 Bid Submission

Bidders are required to submit their bids in two parts:

- i. Techno-Commercial Bid
- ii. Price Bid

**Techno-Commercial Bid:** This should contain all the required documents such as but not limited to the management consultancy proposal along with relevant technical literature and data sheets, compliance to technical specifications, unpriced commercial bid and acceptance to all commercial terms and conditions etc. For a complete list of documents to be submitted under Techno-Commercial Bid, please refer to Annexure-15 as well as clause 2.2.7 under SECTION 2-INSTRUCTION to BIDDERS.

**Price Bids:** This should contain Prices and Taxes against all the line items in Price Bid Format specified in Annexure-8.

### **1.1.6 Earnest Money Deposit (EMD)**

**EMD of ₹ 50,000/- (Rupees Fifty Thousand only) is to be paid online** as per Annexure-12 in this tender document. Cheque or any other form of payment is not acceptable towards EMD. EMD will be refunded online to unsuccessful bidders after finalization of tender. EMD will carry no interest. Linking with earlier transactions/adjustments with pending bills or any other amount payable by the Company is not allowed.

- I. Any bid not accompanied with the prescribed bid security/EMD, shall be rejected by BL as non-responsive.
- II. The bid security/EMD of the successful bidder will be returned/ refunded when the Bidder has signed the Contract Agreement / Purchase Order and fulfilled all the contractual obligations with respect to the scope of this tender and has also furnished the required Performance Bank Guarantee (PBG).
- III. Please note, EMD will be exempted for vendors, who furnish a valid National Small Industries Corporation (NSIC) & Micro, Small & Medium Enterprises (MSME) registration certificate covering goods /services that are proposed to be procured. Following exemptions till such time it is valid/in force as per the latest notification/circular issued by Govt. of India, may be considered while tendering in respect of vendors coming under the definition of “Micro, Small & Medium Enterprises” industries.
- IV. EMD is liable to forfeiture if:
  - a) In the event of withdrawal of offers during validity period of the offer except that the bidder may withdraw its bid after submission provided that written notice of the withdrawal is received by BL prior to the deadline prescribed for bid submission.
  - b) Fails to sign / Non acceptance of Contract / Purchase Order within the stipulated time.
  - c) Any unilateral revision made by the bidder during the validity period of offer.
  - d) Non execution of the documents after acceptance of the contract due to any dispute with the bidder or any reason whatsoever.
  - e) Non submission of PBG (if applicable).

BL does not take any responsibility for any delay in submission or non-submission of online bid/EMD due to connectivity problems or non-availability of website. No claims on this account shall be entertained.

### **1.1.7 Rejection of Incomplete Tender**

Incomplete tender shall be liable for rejection without seeking further clarification. BL also reserves the right to reject any or all tenders without assigning any reasons whatsoever.



## SECTION-2 : INSTRUCTION TO BIDDERS

2.1	General Definitions
2.2	General conditions of the Tender and Instructions to Bidders for E-Tendering

### 2.1 General Definitions

2.1.1 The following terms shall have the meaning hereby assigned to them except where the context requires otherwise:-

- i. Balmer Lawrie & Co. Ltd shall mean a Company registered under Indian Companies Act 1956, with its Registered Office at 21, N.S Road, Kolkata 700001 and its Authorized Officers or its Engineer or other Employees authorized to deal with this contract.
- ii. "SITE" shall mean the place or places, including Project site where the system will be delivered and installed
- iii. "CONTRACTOR" shall mean the individual, or firms who enters into this Contract with Balmer Lawrie and shall include their executors, administrators, successors and assigns.
- iv. "TENDER SPECIFICATIONS" shall mean the Scope of Work, Special Instructions / Conditions, Technical specifications/requirement, etc., pertaining to the work and any other relevant reference in the Tender Document for which the Bidder are required to submit their offer.
- v. "APPROVED" "DIRECTED" or "INSTRUCTED" shall mean approved, directed or instructed by Balmer Lawrie.
- vi. "SINGULAR AND PLURAL" etc. words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting masculine gender shall be taken to include the feminine gender and words imparting persons shall include any Company or Association or Body or Individuals, whether incorporated or not.
- vii. "CONTRACT" or "CONTRACT DOCUMENT" shall mean and include the agreement, the work order, the accepted General Terms and Conditions of Contract, Special Conditions of Contract, Instructions to Bidder, etc.
- viii. Any conditions or terms stipulated by the bidder in the tender documents or subsequent letters shall not form part of the Contract unless specifically accepted in writing by Balmer Lawrie and incorporated in the Agreement.
- ix. "VALIDITY OF THE CONTRACT" The contract will remain valid till all the activities specified therein are completed in all respects to the satisfaction of Balmer Lawrie.
- x. "COMPLETION OF THE CONTRACT" The contract will be treated as complete on full and final settlement of all Bills / invoices raised under the contract with no claim on either side.

2.1.2 The above mentioned general conditions shall be read in conjunction with the other conditions of contract, special conditions of contract, Technical Specifications etc. shall be considered as an extension and not in limitation of the obligations of the Contractor. In case of discrepancy, if any, between these conditions the precedence shall be as stated elsewhere in the special conditions of contract.

2.1.3. Complaints, notices, communications and references shall be deemed to have been duly given to the Contractor, if delivered to the Contractor at his declared address or to his authorized agent /representative.

## **2.2 General Conditions of the Tender and Instructions to Bidders for E-Tendering**

### **2.2.1 Ethical Bidding**

Bidders are expected to observe the highest standard of ethics during the procurement and execution of this Contract. In pursuit of this policy, BL will reject a proposal for award if it determines that the Bidder being considered for award has engaged in corrupt or fraudulent practices in competing for the Contract.

For the purposes of this provision, the terms set forth below are defined as follows:

- “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action in the procurement process or in Contract execution;
- “fraudulent practice” means a misrepresentation of facts to influence the procurement process;
- “collusive practice” means designs to establish bid prices at artificial, non- competitive levels to deprive BL of the benefits of competition.

### **2.2.2 Cost of Bidding**

There will be no cost of the Tender Document.

### **2.2.3 Expenses**

All expenses in preparation and submission of bids and visits to the office or any place in connection with the preparation of Bid shall be borne by Bidder. BL in no case shall be responsible or liable for these costs regardless of the outcome of the Bidding process

### **2.2.4 Discrepancy in Tender Document**

Should there be any discrepancy, inconsistency, error or omission in the Tender Documents, the Tenderer shall bring it to the notice of the BL officer for necessary clarification / action. In the event such matters are referred to later, the decision of the BL officer directing the way the work is to be carried out shall be final & conclusive and the tenderer shall carry out work in accordance with this decision.

If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.

### **2.2.5 Amendment of bidding documents**

BL may at its sole discretion amend the bidding documents at any time prior to the deadline for submission of bids. However, in case of such amendment, the Bid submission date may be extended at the discretion of BL. Any amendments / corrigendum, as and when required, will be uploaded only on the website of the company <http://www.balmerlawrie.com>, <https://balmerlawrie.eproc.in> and related Govt. of India websites, where the tender is floated. Interested vendors should regularly visit these websites for any updates. BL is not liable in case the bidder(s) fail to make note of such amendments.

### **2.2.6 Clarification of bidding documents / Pre-bid meeting**

A pre-bid meeting shall be organized on the date and time as mentioned in the **Invitation For Bids (IFB)** section to provide clarifications sought by the prospective bidders. Subsequently the Tender may undergo some modifications after the pre-bid meeting. The corrigendum for such modification would be placed at the e-procurement website <https://balmerlawrie.eproc.in> including any key date change, if any, shall be issued and uploaded only in the e-procurement site for all bidders to view.

Bidders are requested to send in clarifications pertaining to the bidding documents by notifying BL in writing before last date and time of pre-bid queries date. BL will endeavor to provide timely response to all queries. However, BL makes no representation of warranty as to the completeness or accuracy of any response made in good faith, nor does BL undertake to answer all the queries that have been posted by the prospective bidders. Queries received late may or may not be addressed during the pre-bid meeting. Responses to relevant queries will be updated in <https://balmerlawrie.eproc.in>. No bidders shall be intimated individually about the response of BL. It is advisable for bidders to attend the pre-bid meeting. The list of queries should be sent in one communication only and should be in the format as mentioned in Annexure-2 (Pre-bid queries format). On the date of pre-bid, at most 2 representatives of each bidder would be allowed entry (such representatives shall bring their business cards).

All the bidder should mention in writing to BL the names of the representatives attending the pre-bid query as mentioned in Annexure-1 (Letter of authorization for attending pre-bid meeting). This authorization letter should be mailed in advance to indicate the intention of attending the pre-bid meeting as well as should be hand carried during pre-bid meeting. Please note, without prior written information no bidder will be allowed to join Pre-bid meeting.

BL may at its sole discretion amend the Bidding Documents at any time prior to the deadline for submission of bids. However, in case of such amendment, the Bid submission date may be extended at the discretion of BL. Amendments made prior to submission of bid will be provided in the form of Addenda to the Bidding Documents and will issued and uploaded in the web-site only.

To provide prospective bidders reasonable time for taking the corrigendum into account, BL may, at its discretion, extend the last date for the receipt of Proposals.

#### **2.2.7 Documents accompanying the Technical bids**

The technical bid should contain the following but not limited to:

- i. Power of attorney in original or duly notarized.
- ii. Bid Form – Techno Commercial Bid submission letter (Annexure-3)
- iii. Bid Compliance statement (Annexure-4).
- iv. Response and proof pertaining to all Mandatory Qualifying Criteria as mentioned in Annexure-5.
- v. BL's RFP duly stamped & signed by the authorized signatory in token of acceptance of all terms & conditions as mentioned in this document.
- vi. No Blacklist Declaration as per Annexure-6.
- vii. Statement of No Deviation as mentioned in Annexure-7.
- viii. All Forms and Annexures attached, duly filled, signed and stamped.
- ix. Un-priced copy of the price schedule clearly marking "XXX" wherever price is quoted mentioning applicable taxes and duties with declaration on it that "The Price bid is as per the format requested & prices submitted are in the units specified in the tender without any conditions attached" under the signature of the authorized signatories.
- x. Complete documentation (Solution deployment along with relevant technical literature and data sheets pertaining to scope of work as mentioned in Business Requirement section).
- xi. Product brochures and cross reference document pertaining to technical specification (as relevant).

Bidders are expected to submit all necessary documents in support of fulfillment of eligibility criteria. However, in case any further document is found necessary for proper assessment, the bidder may be asked to furnish the same at the sole discretion of BL.

### 2.2.8 Submission

The Bidder shall seal the Techno-commercial bid. The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall contain:

- be addressed to BL at the address given in the “IFB” and
- bear the Invitation for Bids title and number, and the statement “DO NOT OPEN BEFORE-----(date) and ----- (time) i.e. the date and time of bid opening mentioned in the “IFB”.
- The envelopes shall indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared “not fit to be opened.”

If the outer envelope is not sealed and marked as mentioned above, BL will assume no responsibility for the bid’s misplacement or premature opening.

### 2.2.9 Directions for online bid submission

Directions for submitting online offers, electronically, against e-procurement tenders directly through internet. Bidders are advised to log on to the website (<https://balmerlawrie.eproc.in>) and arrange to register themselves at the earliest.

- **Registration with e-Procurement platform:**

For registration and online bid submission bidders may contact the following personnel (HELPDESK of M/s C1 India Pvt. Ltd.) or they can register themselves online at <https://balmerlawrie.eproc.in>.

Name	E-mail	Phone Numbers	Availability (10:00 – 18:30 hrs)
Tirtha Das (Kolkata)	tirtha.das@c1india.com	9163254290	Mon-Fri
Ch Mani Shankar(Chennai)	Chikkavarapu.manishankar@c1india.com	8939284159	Mon-Sat
HelpDesk Support (Kolkata)		8017272644	Sat

Escalation Level	Name	E-mail	Phone number
Level 1	Tuhin Ghosh	tuhin.ghosh@c1india.com	8981165071
Level 2	Sandeep Bhandari	sandeep.bhandari@c1india.com	9560637779

- **Certificate authentication:**

The bidder shall authenticate the bid with his Digital Certificate for submitting the bid electronically on e-Procurement platform and the bids not authenticated by digital certificate of the bidder will not be accepted on the e-Procurement platform. All the bidders who do not have Digital Certificates need to obtain Digital Certificate.

The system time (IST) that will be displayed on e-tender web page shall be the time considered for determining the expiry of due date and time of the tender and no other time shall be taken into cognizance.

Bidders are advised in their own interest to ensure that their bids are submitted in e-tender system well before the closing date and time of bid. If the tenderer intends to change/revise the bid already entered, he may do so any number of times till the due date and time of submission deadline. However, no bid can be modified after the deadline for submission of bids.

**2.2.10 Disclaimer for e-procurement:**

Neither the Company (Balmer Lawrie & Co. Ltd.) nor the service provider (C1 India Pvt. Ltd.) is responsible for any failure of submission of bids due to failure of internet or other connectivity problems or reasons thereof.

**2.2.11 Extension of bid submission**

Bids/ Offers shall not be permitted in e-procurement system after the due date/ time of tender. Hence, no bid can be submitted after the due date and time of submission has elapsed. BL may however, at its discretion, extend this deadline for submission of bids in which case all rights and obligations of BL and Bidders will thereafter be subject to the deadline as extended. Information on deadlines would be uploaded in the website.

**2.2.12 No Deviation**

Please note that this is a no deviation and no assumption bid. Bidders should abide by all the terms and technical requirement mentioned in this Tender or further corrigendum as and when issued.

**2.2.13 Disclaimer for connectivity and availability of website**

No responsibility will be taken by BL and/or the e-tender service provider for any delay due to connectivity and availability of website. They shall not have any liability to bidders for any interruption or delay in access to the site irrespective of the cause. It is advisable that bidders who are not well conversant with e-tendering procedures, start filling up the tenders much before the due date /time so that there is enough time available with him/her to acquaint with all the steps and seek help if they so require. Even for those who are conversant with this type of e-tendering, it is suggested to complete all the activities ahead of time. It should be noted that the individual bid becomes viewable only after the opening of the bid on/after the due date and time. Please be reassured that your bid will be viewable only to you and nobody else till the due date/ time of the tender opening. The non-availability of viewing before due date and time is true for e-tendering service provider as well as BL officials.

**2.2.14 Disclaimer for bidding process**

BL and/or the e-tender service provider shall not be responsible for any direct or indirect loss or damages and or consequential damages, arising out of the bidding process including but not limited to systems problems, inability to use the system, loss of electronic information etc.

**2.2.15 Submission of Hard copies**

**Under no circumstances the Price Bid should be submitted in physical form.** Part I however, should be submitted in hard copy / digital form. Part I should also be submitted in the e-procurement site only.

**2.2.16 Deactivation of Bidders**

The bidders found defaulting in submission of hard copies or EMD and other documents to the Tender Inviting Authority on or before the time stipulated in the tender will not be permitted to participate further in the tender.

### 2.2.17 Tender Document

Bidder is requested to download the tender document and read all the terms and conditions mentioned in the tender document and seek clarification, if in doubt, from the Tender Inviting Authority.

**The bidder has to keep track of any changes by viewing the Addendum / Corrigenda issued by the Tender Inviting Authority on time-to-time basis in the e-Procurement platform. Interested parties have to keep referring to the website for further information. The Company calling for tenders shall not be responsible for any claims/problems arising out of this.**

BL shall not take any responsibility for any delay or non-receipt of documents. If any of the documents furnished by the Bidder is found to be false/fabricated/bogus then the bidder is liable for black listing, forfeiture of the EMD, cancellation of work and criminal prosecution.

### 2.2.18 Bid Submission Acknowledgement

The user should complete all the processes and steps required for bid submission. The successful bid submission can be ascertained once acknowledgement is given by the system through bid submission number after completing all the processes and steps. C1 India is not responsible for incomplete bid submission by users. Users may also note that the incomplete bids will not be saved by the system and are not available for the Tender Inviting Authority for processing. Before scanning for uploading, the bidders shall sign on all the statements, documents, certificates uploaded by him, owning responsibility for their correctness / authenticity.

- i. Such uploaded documents pertaining to Technical Bid need to be attached to the tender while submitting the bids online.
- ii. The bidders should furnish hard copies of all the uploaded documents, **excepting the Price Bid.**

Neither the Company (Balmer Lawrie & Co. Ltd.) nor the E-procurement service provider (M/s C1 India) is responsible for any failure or non-submission of bids due to failure of internet or other connectivity problems or reasons thereof.

Successful bidder shall be responsible for completion of the contract in all respects. Balmer Lawrie reserves the right to accept or reject any tender or part of tender or to reject all tenders without assigning any reason thereof.

This is merely a Request for Quotation (RFQ) and carries no commitment / obligation to award the contract. RFQ does not obligate BL to pay any costs incurred by respondents in the preparation and submission of the proposal. Furthermore, the RFQ does not obligate BL to accept or contract for any expressed or implied services. Queries/Clarifications should be addressed by email to [thekutte.p@balmerlawrie.com](mailto:thekutte.p@balmerlawrie.com)

### 2.2.19 Preliminary examination of bids

- i. BL will examine the bids to determine whether they are complete, whether the documents have been properly signed and whether the bids are generally in order. Any bids found to be nonresponsive for any reason or not meeting the criteria specified in the Bidding Documents will be rejected by BL and shall not be included for further consideration. BL will also carry out a preliminary examination of any alternative bids submitted by Bidders.
- ii. Prior to the detailed evaluation, BL will determine whether each bid is complete, and is responsive to the Bidding Documents. For the purposes of this determination, a responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents.

### **2.2.20 No transfer of bid document**

Transfer of bids submitted by one Bidder to another Bidder is not permissible.

### **2.2.21 Right to terminate the process**

BL may terminate the RFP process at any time and without assigning any reason. BL makes no commitments, express or implied, that this process will result in a business transaction with anyone.

### **2.2.22 Important Notes to Bidders**

- i. It is the Bidder's responsibility to carefully review the Tender document and understand the scope of work while quoting for the bid. Any hardware, software required for executing the project & not listed in this RFP, will be on bidder's account and bidder must consider all such costs while submitting the bid.
- ii. Jobs awarded under this contract/Purchase Order cannot be sub-contracted without the consent of BL
- iii. Consortium/ Joint-Venture/ Sub-contracting with any organization shall not be permitted for this engagement of Management Consultant for the project. However, to bridge the gap in expertise, the Consultant may hire respective domain expert manpower/ resources part time /full time /contractual from any sources at their end.
- iv. Bidder must ensure that all the Mandatory Qualification and Techno-Commercial documents as mentioned in clause 2.2.7 are submitted along with the Price Bid failing which the Bid is liable to be rejected.

### **2.2.23 Fraud and Corrupt Practices**

- I. The Applicants/Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, BL shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, BL shall, without prejudice to its any other rights or remedies, forfeit and appropriate the EMD or PBG, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to BL for, inter alia, time, cost and effort of BL, in regard to the RFP, including consideration and evaluation of such Applicant's Proposal.
- II. Without prejudice to the rights of BL under clause above and the rights and remedies which BL may have under the LOI or the Agreement, if an Applicant or Consultant, as the case may be, is found by BL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOI or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by BL during a period of three years from the date such Applicant or Consultant, as the case may be, is found by BL to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

- III. For the purposes of this Section, 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 action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the BL who is or has been associated in any manner, directly or indirectly with the Selection Process or has dealt with matters concerning the Agreement or arising there from, 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 BL, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the Award or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the BL in relation to any matter concerning the Project;
  - b) “fraudulent practice” means a misrepresentation or omission 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 persons or property to influence any person’s participation or action in the Selection Process;
  - d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by BL 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.

#### 2.2.24 Conflict of Interest

- I. The Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the “**Conflict of Interest**”). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the EMD of the Bidder shall be forfeited and appropriated, if available, as mutually agreed genuine pre-estimated compensation and damages payable to BL for, *inter alia*, the time, cost and effort of BL including consideration of such bidder’s Proposal, without prejudice to any other right or remedy that may be available to BL hereunder or otherwise. Further, in case the conflict of interest is noticed after award of contract in such case the PBG shall be forfeited without prejudice to any other right or remedy that may be available to BL hereunder or otherwise.
- II. The BL requires that the Consultant provides professional, objective, and impartial advice at all time and hold BL’s interest paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Management Consultant shall not accept or engage in any assignment that would conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of BL.



- III. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
  - a) the Bidder, or Associates (or any constituent thereof) and any other Bidder, or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
  - b) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Proposal of either or each of the other Bidder; or
  - c) there is a conflict among this and other consulting assignments of the Bidder (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Management Consultant will depend on the circumstances of each case. While providing consultancy services to BL for this assignment, Management Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
  - d) A firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project;
  
- IV. A Bidder eventually appointed to provide Consultancy for this Project shall be disqualified from subsequently providing goods or services related to the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 12 months from the completion of this assignment; provided further that this restriction shall not apply to consultancy services performed for BL in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for BL where the conflict of interest situation does not arise.

In the event that Management Consultant, its Associates or affiliates are auditors or financial advisers to any of the Bidders (for System Integration or any other activity) for the Project, they shall make a disclosure to BL as soon as any potential conflict comes to their notice but in no case later than thirty(30) days from the receipt of such proposals and any breach of this obligation of disclosure shall be construed as Conflict of Interest. BL shall, upon being notified by the Consultant under this Clause, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding forty five (45) days

#### **2.2.25 Risk Purchase**

BL reserves to itself the following in respect of this Contract without entitling the Management Consultant for any compensation.

- i. If at any time during the tenure of the contract, the Management Consultant fails to render all or any of the services required under the scope of work of the contract satisfactorily in the opinion of BL, whose decision shall be final and binding on the consultant, BL reserves the right to get the work done by other parties at the cost and risk of the contractor.
- ii. Any recovery of the cost incurred / Liquidated Damages (LD) shall be effected from the amount payable to Management Consultant and Performance Bank Guarantee wherever applicable.

#### **2.2.26 Observance of Local Laws:**

- i. The Management Consultant shall comply with all applicable Laws, Statutory Rules, and Regulations etc.
- ii. The Management Consultant shall pay all taxes, fees, license charges, deposits, duties, tolls, royalty, commissions or other charges that may be leviable on account of any of the operations connected with the execution of this contract.
- iii. The Management Consultant shall be responsible for the proper behavior and observance of all regulations by the staff employed.

#### **2.2.27 Force Majeure**

The following shall amount to force majeure conditions: -

- i. Act of terrorism;
- ii. Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power.
- iii. Ionizing radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- iv. Epidemics, earthquakes, flood, fire, hurricanes, typhoons or other physical natural disaster, but excluding weather conditions regardless of severity; and
- v. Freight embargoes, strikes at national or state-wide level or industrial disputes at a national or state-wide level in any country where Works are performed, and which affect an essential portion of the Works but excluding any industrial disputes which is specific to the performance of the Works or the Contract.
- vi. For the avoidance of doubt, inclement weather, third party breach, delay in supply of materials (other than due to a nationwide transporters' strike) or commercial hardship shall not constitute a Force Majeure event.
- vii. Other similar causes / events over which the Contractor has no control.

##### **Notification of Force Majeure**

Contractor shall notify within ten (10) days of becoming aware of or the date it ought to have become aware of the occurrence of an event of Force Majeure giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing the affected Party or delaying the affected Party in performing its obligations under the Contract.

##### **Right of either party to terminate**

If an event of Force Majeure occurs and its effects continues for a period of one hundred eight (180) days or more in a continuous period of three hundred sixty five (365) days after notice has been given under this clause, either party may terminate the Contract by issuing a written notice of thirty(30) days to the other party.

##### **Payment in case of termination due to Force Majeure**

The Contract Price attributable to the Works performed as at the commencement of the relevant event of Force Majeure.

The Contractor has no entitlement and Owner has no liability for:

- i. Any costs, losses, expenses, damages or the payment of any part of the Contract Price during an event of Force Majeure; and
- ii. Any delay costs in any way incurred by the Contractor due to an event of Force Majeure. Time extension for such cases will be worked out appropriately.

If the Contractor suffers delay in the execution of the contract, due to delays caused by force majeure conditions, as defined above, the agreed time of completion of the work

covered by this contract may be extended by a reasonable period of time provided notice of the happening of any such cause / event is given by the contractor to BL within 14 days from the date of occurrence thereof.

The Contractor by the reason of such events shall neither be entitled to terminate this contract nor shall have any claim for damages against BL in respect of such non-performance or delay in performance and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of contractor as to whether the deliveries have been so resumed or not shall be final and conclusive.

Force Majeure conditions will apply on both sides.

#### **2.2.28 Prevention of Corruption / Penalty for use of Undue influence**

- I. Canvassing in any form or any attempt to influence directly or indirectly any official of BL will lead to rejection of the bid.
- II. The Seller undertakes that he has not given, offered or promised to give directly, or indirectly, any gift, consideration, reward, commission, fee, brokerage or inducement to any person to the Buyer or otherwise in procuring the contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present contract or any other contract with the government of India of showing or forbearing to show favor or disfavor to any person in relation to the present contract or any other contract with the government of India. Any bridge of the foreside undertaking by the Seller or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offer by the Seller or anyone employed by him or acting on his behalf, as defined in chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Sellers and recover from the Seller the amount of any other loss arising of such cancellation. A decision of the Buyer or his nominee to the effect that breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe, inducement or any attempt at any such act on behalf of the Seller towards any officer / employee of the Buyer or to any other person in a position to influence any officer / employee of the Buyer for showing any favor in relation to this or any other contract, shall render the Seller to such liability / penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund the amounts paid by the Buyer.

#### **2.2.29 Access to books of accounts**

In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract, the Seller, on a specific request of the buyer, shall provide necessary information / inspection of the relevant financial documents/information.

#### **2.2.30 Arbitration**

- i. If any time, any questions, disputes or differences what so ever arising out of or in any way concerning the contract between BL and the Contractor, the same shall be referred to a sole arbitrator or nominee appointed by Chairman & Managing Director (C&MD) in writing. The arbitration shall be conducted in line with the provisions in Indian ARBITRATION AND CONCILIATION ACT, 1996 (As amended in 2015). The award of the arbitrator shall be final and binding on both the parties. The fees of the arbitrator, if any, shall be paid equally by both the parties.

- ii. The contract shall continue to be operated during the arbitration proceedings unless otherwise directed in writing by BL or unless the matter is such that the contract cannot be operated till the decision of the arbitration is received.
- iii. The place of Arbitration will be Kolkata, West Bengal, India.

**2.2.31 Laws Governing the Contract:**

The contract shall be governed by the Indian Laws for the time being in force and only courts in Kolkata, West Bengal, India shall have jurisdiction over this contract.

**2.2.32 Indemnity**

The Contractor shall indemnify and keep indemnified BL of all losses, claims etc. arising out of any of his acts or out of the acts of his agents or associates or servants during the currency of the contract.

**2.2.33 Foreclosure**

If at any time after acceptance of the tender, BL shall decide to abandon or reduce the scope of the work for any reason whatsoever and hence not require the whole or any part of the work to be carried out, the Project-in-charge shall give notice in writing to that effect to the contractor and the contractor shall act accordingly in the matter. The contractor shall have no claim to any payment or compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he did not derive in consequence of the foreclosure of the whole or part of the works.

The contractor shall be paid at contract rates the full amount for work that is completed at the site as certified by the internal review committee of BL.

**2.2.34 Disclosure**

The Bidder must declare whether the proprietors/ partners of the firm/ Directors of the limited company has any relation with any director of BL including its subsidiaries and Joint Ventures and if so, the details or the relation thereof must be disclosed in the bid response.

**2.2.35 Compliance with IT ACT 2000**

The bidder should strictly comply with different provisions of the Information Technology Act, 2000.

### SECTION-3 : MANDATORY QUALIFYING CRITERIA

Parameter	Mandatory Qualification Criteria	Documentary Evidence
Language	Language of bid shall be in English language. In case any document is submitted by bidder in other than English language, authenticated English translation of the same shall be submitted along with the bid. (e.g. citations, etc.).	N/A
Legal Entity	The bidder should be registered company under Companies Act, 1956/2013/2020 or as amended or a Partnership firm registered under LLP Act, 2008 and should be operating for last three (3) years.	<ul style="list-style-type: none"> <li>• Copy of the Certificate of incorporation issued by Registrar of Companies/ Partnership Deed/ Trade License and full address of the registered office.</li> <li>• PAN Card.</li> <li>• GSTIN no. along with copy of ARN certificate</li> </ul>
Net worth	The bidder should have a positive Net worth during each of the last three (3) Financial Years (excluding current Financial Year) as per the last published Balance sheets.	<ul style="list-style-type: none"> <li>• Extracts from the audited Balance Sheets and Profit &amp; Loss for last three (3) Financial years (excluding current Financial Years) or Certification from the Statutory Auditors</li> </ul>
Technical Capability	The Bidder should have experience of consulting / implementation for at least one (1) project on migration of SAP applications from On-premise to Cloud.	<ul style="list-style-type: none"> <li>• Completion certification from the client <b>OR</b> Work Order + Self Certification of completion (Certified by Statutory Auditor) <b>OR</b> Work Order + Phase wise certification from client</li> </ul>
Technical Capability	The Bidder should have consulted / implemented at least one (1) project involving procurement of Servers for SAP project (ECC or S/4 HANA) either on-premise or cloud implementation.	<ul style="list-style-type: none"> <li>• Completion certification from the client <b>OR</b> Work Order + Self Certification of completion (Certified by Statutory Auditor) <b>OR</b> Work Order + Phase wise certification from client</li> </ul>

Power of Attorney	Power of Attorney in favour of Authorised Signatory signing the bid and Board Resolution in favour of person granting the Power of Attorney (on Non Judicial stamp paper of INR 100/- or such equivalent amount and document duly notarised). All pages of the bid document and relevant documents should be duly signed by the authorised signatory failing which the bid will stand rejected.	<ul style="list-style-type: none"> <li>• Power of Attorney to show authorization of the person.</li> </ul>
Blacklisting	The bidder must not have been black listed by any Central / State Government organization / Public Sector Undertaking as on bid submission date.	<ul style="list-style-type: none"> <li>• A Self certified letter (Annexure-6) by the authorized signatory of the bidder clearly stating that the bidder has not been blacklisted must be submitted on original letter head of the bidder with signature and stamp.</li> </ul>

## SECTION-4 : BUSINESS REQUIREMENT

<b>4.1</b>	Project Introduction
<b>4.2</b>	Current Infrastructure/Landscape
<b>4.3</b>	Requirement Synopsis
<b>4.4</b>	Functional Requirements/Features
<b>4.5</b>	Scope of Work
<b>4.6</b>	Software and Tools
<b>4.7</b>	Commissioning certificate

### 4.1 Project Introduction

Balmer Lawrie & Co. Ltd (BL), a Govt. of India Enterprise under the Ministry of Petroleum & Natural Gas is a professionally managed multi-location company with business spanning both in manufacturing and service sectors. Please visit [www.balmerlawrie.com](http://www.balmerlawrie.com) for details of various businesses and locations of the company. The organization is steadily growing and relies heavily on the IT Infrastructure to enable the growth and operational efficiencies.

Technological advancement has brought in paradigm shift in the way the business is being conducted. This transformation in business practice demanded consistently maintaining high quality of IT services to consumers. With this growth in demand and dependency on technology, where more and more services are delivered electronically, the amount of business-critical information stored electronically continue to grow exponentially. BL has been successfully responding to the demands of an everchanging environment, leveraging every change as an opportunity to innovate and emerge a leader in industry.

### 4.2 Current Infrastructure/Landscape

BL operations and user base are spread across 30 locations with Corporate Office at Kolkata having around 180 users; factory locations have around 100 users while small branch locations have 10 users each. The application infrastructure of BL is centralized with the Primary Data Centre at HO, Kolkata, which hosts SAP ERP and various Business-related applications some of which are web based, MS Exchange Server and legacy applications. Users across 30 locations of BL access the primary Data Centre through MPLS VPN network or through Internet. BL has also hosted some of its business applications with third party Cloud Service Provider (MEITY empaneled).

The Server and Storage infrastructure of BL is a heterogenous mix of 120+ Servers (around 55 physical Servers) which comprises of

Sr. No	Application	Server Infra	Storage Infra	Database	OS	Backup Solution
<b>Primary Data Centre, Kolkata</b>						
1	SAP	IBM Power Server	IBM V7000	DB2	AIX	EMC Data Domain DD2500
2	Business Applications	Wintel based	EMC 5200	MySQL / MS SQL	Windows / Linux Server	Enterprise Backup software : Commvault
3	MS Exchange	Wintel based	IBM DS-3500	MS SQL	Windows Server	

### 4.3 Requirement Synopsis

The IT infrastructure in Balmer Lawrie Data Centre has been driven by the needs of individual business applications implemented over a period of more than 10 years. The hardware and platforms i.e. Servers, Storage, Network Equipment, Connectivity Bandwidth, relevant to the business applications were procured and implemented based on the recommendations of the

respective consultants/service providers for the SBUs. Hence the implemented infrastructure was provisioned in silos or grown organically on specific business requirements. In cases, the actual business requirements have exceeded the envisaged infrastructure wherein scaling-up up of hardware resources is no longer possible with some of hardware nearing End of Service Life (EOSL). Optimizing infrastructure as per the current and future business needs is critical for the organization to sustain business growth.

BL had implemented business critical SAP applications (current version - ECC 6 EHP7) on IBM Power7 Servers (current version - AIX 7.1 and database DB2 10.5) during the year 2013. The Non-SAP business applications are built on Wintel based platform and the underlying operating systems are Windows / Linux. These applications are web based and integrates with external agencies like Customs, GST websites, GeM etc. Some of these Non-SAP business applications are hosted in third party Data Centre.

The IBM Power7 Servers which are hosting SAP applications, have reached End of Support Life (EOSL). Currently, these servers are supported “on best effort basis” leading to great risk for business since spare parts are no longer manufactured by IBM. There is also increased maintenance cost due to unsupported hardware which also limits the future scalability of the hardware. Hence there is urgent need for hardware refresh.

In addition to the above, BL intends to migrate to S/4 HANA in the coming years hence SAP HANA certified appliances (Server and Storage) must be considered during hardware refresh.

It may be noted that at present S/4 HANA is only supported on x86 based architecture (available across cloud service providers) and RISC based architecture of IBM Power Server with Linux / Windows as operating system

To fulfill the hardware refresh requirement and S/4 HANA migration, BL team carried out a study on various technology solutions to migrate all business applications (including SAP) to an appropriate platform be it existing Data Centre or Cloud.

The options have been studied considering the strategy that BL would continue with SAP ECC and would migrate to SAP S/4 HANA only after stabilization of SAP ECC and Non-SAP applications.

Following are some of the options explored:

1. Procure latest IBM Power Server and Storage (S/4 HANA Certified) which can be commissioned in the existing Data Centre of BL.
2. Procure x86 based Servers and Storage (S/4 HANA Certified) which can be commissioned in the existing Data Centre of BL
3. Procure IBM Power Server or x86 Servers and Storage (HANA Compliant) and co-locate them in CSP (MEITY approved).
4. Migrate SAP application (ECC) to cloud Services of various MEITY approved CSP's.

During its study, BL found availability of variety of technological solutions with varying complexities. BL team felt that there is a need to take assistance of subject matter expert who understands the Data Centre as well as cloud solutions and have experience in migration services as well as procurement of Servers and cloud services.

Through this tender BL team would like to select a techno-commercial consultant who would evaluate all possible options including but not limited to the above and suggest an appropriate option considering the following:

1. Solution should be commercially economical



2. Meets the future roadmap of BL.
3. Easy to Implement and faster delivery of the project.
4. Comply with statutory requirements as published from time to time.

#### 4.4 Scope of Work

**The detailed scope of work for Management consultant is shown below.** This is with reference to the set of functions to be taken up in the project which would cover the following phases subject to exclusions as mentioned subsequently:

- i. AS-IS Process: Frame up the AS-IS process by analyzing the existing business demands, assessing all existing infrastructure platform and applications implemented, interconnection between application communications gateways and equipment and impact of solutioning on licensing cost.
- ii. Document all existing setup which should include but not limited to Hardware capacity requirement, performance, network connectivity and bandwidth.
- iii. In-Scope and Out-of-scope list: Develop in-scope / out-of-scope list of migration by understanding the existing business demands and infrastructure and carry out assessment on cloud readiness of all business applications.
- iv. Scale-up estimates: Evaluate business growth scenarios with the view to suggest proper infrastructure scalability option considering year-on-year growth across business verticals.
- v. **Redesign and right-size** all existing applications requirement with the view to migrate to cloud.
- vi. Identify all target options available to BL.
- vii. Evaluate all option both technically and commercially
- viii. Suggest a feasible option to BL for implementation.
- ix. The scope includes planning for Disaster Recovery also.
- x. Presentation to the BL Management on feasible option for implementation.

#### 4.4 Software and Tools

Not Applicable

#### 4.5 Commissioning Certificate

Not Applicable

## 4.6 Techno-Commercial Evaluation

Techno-commercial bid will be accepted only if they are in the prescribed format in e-tender, with complete information and compliance to technical and commercial conditions laid therein.

### 4.6.1 Techno-Commercial Bid Documents

As specified in Point 2.2.7 in SECTION-2 of this document.

### 4.6.2 Techno-Commercial Evaluation Criteria

- I. Evaluation of commercial bid shall be carried out in three stage process as under:
  - Pre-qualification (Mandatory Qualification Criteria) / Eligibility evaluation.
  - Compliance to minimum technical specification as mentioned in Annexure-8
  - Technical evaluation.
  - Commercial bids evaluation.
- II. BL reserves the right to accept or reject any First (Original) or Updated bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or any obligation to inform the affected Bidder of the grounds for such action.
  - Price bids will be opened after evaluation for those bids which fulfil the Mandatory Qualification Criteria and comply with minimum technical specification as specified in Annexure-8.
  - The bid evaluation committee shall prepare a comparative statement in tabular form in accordance with rules along with its report on evaluation of financial Bids and determine the best offer as laid down in the Commercial evaluation for acceptance to the procuring entity.

### 4.6.3 Technical Evaluation

BL shall form an evaluation committee who shall score the bids as per the guidance below. The total technical evaluation would comprise of 100 marks with the following breakup:

- i. Bidder's Experience **(60 marks)**
  - ii. Approach and Technical solution presentation **(40 marks)**
- Any deviation from the Technical Specification should be clearly brought out. BL Technical Evaluation Committee may at its discretion accept, seek further clarification or reject any such deviation.

### Technical Score Evaluation Methodology

S.N	Criteria	Requirements	Max Marks	Supporting Documents
<p>Each Requirement will have a technical Score. The maximum sum of all the technical scores is equal to 100. Solution must score minimum 70 marks to be technical qualified and to be considered for commercial evaluation. The score achieved by a solution will be called <b>Technical Score (TS)</b></p>				
<b>A</b>	<b>Company Profile</b>		<b>10</b>	
1	Full-time professional staff engaged in consulting services	<ul style="list-style-type: none"> <li>• &gt;=5 Consulting staff: 10 marks</li> <li>• &lt;=4 Consulting staff: 5 marks</li> </ul>	10	A self-certification from authorized signatory indicating name, consulting experience with resume
<b>B</b>	<b>Relevant Past Experience</b>		<b>50</b>	
2.	Experience in implementation / consulting engagement on migration of SAP application from on-premise to Cloud. Projects to be demonstrated in maximum of 5 engagements that have either been completed or are ongoing project(s) where a similar deliverable or milestone has been successfully achieved.	<ul style="list-style-type: none"> <li>• &gt;=5 Projects: 30 marks</li> <li>• = 4 Projects : 20 marks</li> <li>• =3 Projects : 10 marks</li> <li>• =2 Projects : 5 Marks</li> </ul>	30	Completion Certificates from the client; OR Work Order + Certification of Phase Completion (for ongoing projects) from the client.
3	Experience in implementation / consulting engagement in procurement of Server and Storage hardware for SAP application project (S/4 HANA) either on-premise or cloud implementation where a project milestone has been successfully achieved.	<ul style="list-style-type: none"> <li>• &gt;= 3 Projects : 20 marks</li> <li>• = 2 Projects : 10 marks</li> </ul>	20	Completion Certificates from the client; OR Work Order + Certification of Phase Completion

C	Approach & Methodology		40	
4.	Approach and Methodology to perform the work in this assignment.	1) Understanding of the objectives of the Assignment: The extent to which the consultant’s approach and work plan respond to the objectives indicated in the RFP <b>: Max Marks 10</b> 2) Completeness and responsiveness: The extent to which the proposal responds exhaustively to all the requirements of all the Scope of Work <b>: Max Marks 10</b> 3) Demonstration of understanding of the requirements - Learnings - Challenges likely to be encountered - Mitigation proposed - Client references <b>: Max Marks 10</b> 4) Project work break down structure - Overall timelines - Resource assignments (relevance to the task assigned) - Dependencies <b>: Max Marks 10</b>	40	A note and presentation at BL (Marks are to be assigned based on the presentation given to the evaluation committee.)
Total			100	

#### 4.6.4 Commercial Evaluation

Price bids would be opened after technical evaluation. From the eligible bids, based on the Technical evaluation the commercials would be scaled up as per the following:

**Commercial Score = (100\*L1)/Bidder’s Price**

- Considering the technical influence and value impact of the above services proposed to be procured, relative weightage (**Technical: Commercial**) for quality and cost shall be assigned as **70:30**
- The contract/PO shall be awarded to the vendor with the highest combined score calculated using the following formula:

$$\text{Combined Score} = (\text{Technical Score assigned to the bidder} * 70\%) + (\text{Commercial Score assigned to the bidder} * 30\%)$$

The commercial scores are calculated through a normalization process where the lowest bidder is given a score of 100 and scores of all other bidders are normalized.

If there is a tie on the Combined Score then Bidder with higher technical score would be considered.

Example:

Price quoted by Bidder A = 90, Bidder B = 95, Bidder C = 100 hence normalized score of Bidder A (lowest) is taken as 100

Bidder A: Technical Score=75, Price=90, Commercial Score= $100 \times 90 / 90 = 100$

Combined Score=  $(75 \times 0.7) + (100 \times 0.3) = (52.5 + 30) = 82.5 = 83$  (rounded)

Bidder B: Technical Score=70, Price=95, Commercial Score= $100 \times 90 / 95 = 95$  (approx)

Combined Score=  $(70 \times 0.7) + (95 \times 0.3) = (49 + 28.5) = 77.5 = 78$  (rounded)

**Bidder C: Technical Score=85, Price=100, Commercial Score= $100 \times 90 / 100 = 90$**

**Combined Score=  $(85 \times 0.7) + (90 \times 0.3) = (59.5 + 27) = 86.5 = 87$  (rounded)**

## **4.7 Appointment of Consultant**

### **4.7.1 Award Criteria**

BL will award the Contract to the successful bidder whose proposal has been determined to be substantially responsive and has been determined as the most responsive bids as per the process outlined above.

### **4.7.2 Right to Accept Any Proposal and To Reject Any or All Proposal(s)**

BL reserves the right to accept or reject any proposal, and to annul the tendering process / Public procurement process and reject all proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for BL action.

### **4.7.3 Notification of Award**

Prior to the expiration of the validity period, BL will notify the successful bidder in writing or by fax or email, that its proposal has been accepted. In case the tendering process / public procurement process has not been completed within the stipulated period, BL, may request the bidders to extend the validity period of the bid.

The notification of award will constitute the formation of the contract. Upon the successful bidder's furnishing of Performance Bank Guarantee, BL will notify each unsuccessful bidder and return their EMD.

### **4.7.4 Performance Guarantee**

The BL will require the selected bidder to provide a Performance Bank Guarantee, within 30 days from the Notification of award, for a value equivalent to 10% of the total cost of contract at the time of award. The Performance Guarantee shall be kept valid till completion of the project and Warranty period. The Performance Guarantee shall contain a claim period of three months beyond the last date of validity. The selected bidder shall be responsible for extending the validity date and claim period of the Performance Guarantee as and when it is due on account of non-completion of the project and Warranty period. In case the selected bidder fails to submit performance guarantee within the time stipulated, the BL at its discretion may cancel the order placed on the selected bidder without giving any notice.

BL shall invoke the performance guarantee in case the selected Management Consultant fails to discharge their contractual obligations during the period or BL incurs any loss due to Consultant's negligence in carrying out the project implementation as per the agreed terms & conditions.

**4.7.5 Signing of Contract**

Post submission of Performance Guarantee by the successful bidder, BL shall enter into a contract, incorporating all clauses, pre-bid clarifications and the proposal of the bidder between BL and the successful bidder. Template for the proposed agreement/ contract is provided at Annexure-10

**4.7.6 Signing Of The Integrity Pact**

Signing of Integrity Pact is mandatory for every bidder participating in this tender and the contractor who is awarded the work. The Pact signed on each page by the person authorized by bidder to sign the bid for submission or the person authorized to sign the contract on behalf of successful bidder shall be submitted by the bidder. Template for the proposed Integrity Pact is provided at Annexure-11.

**4.7.7 Failure to Agree with the Terms and Conditions of the RFP**

Failure of the successful bidder to agree with the Proposed Contract terms and Terms & Conditions of the RFP shall constitute sufficient grounds for the annulment of the award, in which event BL may award the contract to the next best value bidder or call for new proposals from the interested bidders. In such a case, the BL shall invoke the PBG of the most responsive bidder.

## SECTION-5 : COMMERCIAL TERMS & CONDITIONS

5.1	Pricing Type
5.2	Delivery Schedule
5.3	Terms of Payment
5.4	Performance Bank Guarantee
5.5	Maintenance Timelines (SLA)
5.6	Termination
5.7	Exit Management
5.8	Other Contractual Stipulations
5.9	Limitation of Liability

### 5.1 Pricing Type

- i. The quoted rates shall be valid for acceptance for the period of 90 days from the date of opening of commercial bid.
- ii. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and shall not be subject to variation on any account, including exchange rate fluctuations. However, variation in the rates for statutory levies / taxes / duties during the tenure of the contract for supplies within delivery schedule will be allowed only on the submission of documentary evidence from Govt. / Statutory Authorities and its acceptance by BL.
- iii. A Bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected.
- iv. The price quoted in the Price Bid should cover charges for all Products and Services asked in this tender. No other payment shall be made over and above quoted rates.
- v. All prices quoted should be in INR.

### 5.2 Delivery Schedule and Timelines

- i. The delivery schedule is elaborated in the table below. All schedules will be calculated from the zero date i.e. Date of issue of Purchase order. **The project needs to be completed within a period of 2 months (calendar days).**
- ii. The bidder is expected to adhere to these timelines stipulated below. Non-compliance to these timelines by the Bidder would lead to Liquidated Damages as stated in the RFP.

Phase	Milestone	Timelines (Calendar days)	
Initiation	Date of award of contract	T0	
Phase 1	AS-IS Process Mapping and Gap Assessment	T0 + 10 days	T1
Phase 2	Technical and commercial evaluation of all target options available to BL	T1 + 20 days	T2
Phase 3	Enlist most feasible solution available to BL for implementation with timelines	T2 + 20 days	T3
Phase 4	Strategy document delivery, presentation of solution to BL Management and completion of all milestones	T3 + 10 days	T4

#### NOTE:

- i. BL at its discretion, shall have the right to alter the project schedule based on the implementation plan. This will be communicated formally to the Bidder during the implementation, if a need arises.
- ii. The Bidder is required to provide a detailed strategy to BL; the activities

mentioned above are indicative but the timelines for delivery should be maintained.

### 5.3 Payment Schedule

The Payment Schedule linked to the Scope of work defined for the project is as below:

S. No.	Phase	Billable amount (as % of Contract Value)
1	Completion of Phase 1	10%
2	Completion of Phase 2	20%
3	Completion of Phase 3	40%
4	Completion of Phase 4	30%

### 5.4 Terms of Payment

- i. No advance payment shall be made in any case.
- ii. All payments will be made to the Bidder in Indian Rupees only.
- iii. The Bidder recognizes that all payments to the Bidder under this RFP and subsequent agreement are linked to and dependent on successful achievement and acceptance of deliverables / activities set out in the project plan and therefore any delay in achievement of such deliverables / activities shall automatically result in delay of such corresponding payment.
- iv. Any objection / dispute to the amounts invoiced in the bill shall be raised by BL within reasonable time from the date of receipt of the invoice.
- v. All out of pocket expenses, travelling, boarding and lodging expenses for the entire term of this RFP and subsequent agreement is included in the amounts and the Bidder shall not be entitled to charge any additional costs on account of any items or services or by way of any out of pocket expenses, including travel, boarding and lodging etc.
- vi. The company also reserves the right to prescribe additional documents for release of payments and the bidder shall comply with the same.
- vii. The bidder shall cover the entire scope of services mentioned and deliver all the 'deliverables' as mentioned under the scope of work.

Payments shall be made promptly by BL, but in no case later than sixty (60) days after submission of an invoice along with the stipulated acceptance/delivery certificate signed by competent authority/Project Coordinator/Authorized Representative, unless there is a clarification that is sought by BL within this time.

Payment will be done by EFT mechanism only

### 5.5 Liquidated Damages

- I. If the Management Consultant fails to complete/achieve corresponding module or deliverable as provided in the RFP before the scheduled date or the extended date for various activities given in the RFP or if Consultant repudiates the Contract before completion of the Project then BL, at its discretion, may without prejudice to any other right or remedy available to BL under the Contract can recover from the Management Consultant a Liquidated damages @ 2% (two %) of the contract price for every week of delay or for part of a week thereof, subject to the maximum value of not more 10% (Ten %) of contract price in the form of Liquidated Damages and no further proof regarding loss would be required.



- II. BL may without prejudice to its right to affect recovery by any other method, deduct the amount of damages from any money belonging to the Consultant in its hands or which may become due to the Consultant. Any such recovery of damages shall not in any way relieve the Consultant from any of its obligations to complete the works or from any other obligations and liabilities under the Contract.

## **5.6 Support to be provided by BL**

BL will provide the following support, post the award of the contract to the successful bidder:

1. Provide understanding of AS-IS processes.
2. Provide the information on current IT infrastructure already available.
3. The aspirations / expectation of the system which is planned to be procured.
4. Any technical infrastructure related support.

**Annexure-1 : Format for Letter of Authorization for attending pre-bid meeting**  
(To be submitted in the Bidder's letter head)

Ref. No : \_\_\_\_\_

To

Pradeep Thekutte  
AVP(IT Infrastructure)  
Balmer Lawrie & Co Ltd  
21, N.S. Road, Kolkata 700001

Sub : Letter of Authorisation to attend Pre-Bid meeting for Tender No: BL/IT/PT/HO/CONSLT/PT/202122/0003

The following persons are hereby authorized to attend the pre-bid meeting to be held on \_\_\_\_\_ (date) in respect of the tender for "Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP application as future strategy" on behalf of M/s. \_\_\_\_\_ (Name of the Bidder) in the order of preference given below:

Order of Preference

Name Designation

Specimen Signature

- 1.
- 2.

(Authorized Signatory of the Bidder)

Date:

(Company Seal)

1. Maximum of two persons can be authorized for attending the pre-bid meeting.
2. Permission for entry to the hall where pre-bid meeting is held may be refused in case authorization as prescribed above is not submitted.

## Annexure-2 : Pre-bid Queries Format

**Name of the bidder : (Bidder name)**

Tender Ref No: BL/IT/PT/HO/CONSLT/PT/202122/0003

Tender Date : 30/04/2021

Query No	Page No	Clause No	Existing Tender Clause	Modification / Suggestion Requested	Reason for request

Note: The pre-bid queries may be communicated before last date and time as mentioned in the pre-bid queries date only through e-mail to email id: [thekutte.p@balmerlawrie.com](mailto:thekutte.p@balmerlawrie.com). Responses of queries may be addressed in the pre-bid meeting and uploaded in <https://balmerlawrie.eproc.in> website. No queries will be accepted on telephone or through any means other than e-mail. The queries need to be sent in .xls / .xlsx format with above fields only.

### **Annexure-3 : Bid Form- Techno Commercial Bid submission Letter**

Bidder's Ref. No. -----

Date:

Pradeep Thekutte  
AVP(IT Infrastructure)  
Balmer Lawrie & Co Ltd  
21, N.S. Road, Kolkata 700001

Ref.: Your Tender no.: BL/IT/PT/HO/CONSLT/PT/202122/0003

Dear Sir,

Having examined the bid documents, including Addenda, if any, the receipt of which is hereby acknowledged, we, the undersigned, offer the above-named Facilities in full conformity with the said bidding documents for the sum as mentioned in Price Bid or such other sums as may be determined in accordance with the terms and conditions of the Contract.

We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice.

We undertake, if our bid is accepted, to commence execution of work and to achieve completion within the respective timelines stated in the bid documents / quoted by us in our bid.

If our bid is accepted, we undertake to provide Performance Bank Guarantee(s) in the form, amount, and within the time specified in the bid documents.

We agree to abide by this bid, which consists of this letter and Attachments hereto, for a period of 90 (Ninety) days from the date fixed for submission of bids as stipulated in the bidding documents, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period unless otherwise extended mutually.

We note that a formal Contract/ Purchase Order would be prepared and executed between the Company and the successful bidder.

We understand that you are not bound to accept the lowest or any bid you may receive and in-turn we will not have any rights to raise any claim, whatsoever it may be, due to or arising out of rejection of our bids.

\_\_\_\_\_ [signature with office seal]

In the capacity of \_\_\_\_\_ [Designation]

Duly authorized to sign this bid for and on behalf of \_\_\_\_\_ [Name of the bidder]

**Annexure-4 : Bid compliance statement**

(Please submit the following undertaking on your company's Letter head)

Title: Tender for Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP application as future strategy

TENDER ENQUIRY NO. : BL/IT/PT/HO/CONSLT/PT/202122/0003 Dated: 30/04/2021

We hereby confirm that our Bid complies with the total techno-commercial requirements/ terms and conditions of the bidding document and subsequent addendum/corrigendum (if any) without any deviation/ exception/ comments/ assumptions.

We also confirm that we have quoted for all items of schedule of rates and prices have been filled without any condition and deviation.

We further confirm that terms and conditions, if any, mentioned in our bid (Un-priced as well as Schedule of Rates) shall not be recognized and shall be treated as null and void.

SIGNATURE OF BIDDER :

(With name of authorized signatory & designation)

NAME OF BIDDER :

COMPANY SEAL

## Annexure-5 : Mandatory Qualifying Criteria / Eligibility Criteria

Reference no.: BL/IT/PT/HO/CONSLT/PT/202122/0003 dated **30/04/2021**

Sl. No.	Details	Remarks (Yes/No)
1	Name & Address of the Bidder	
2	Type of organization & year of incorporation / Registration. (attach certificate of registration / incorporation)	
3	PAN No. (Attach copy)	
4	GST Number (attach certificate)	
5	Correspondence address at with contact person/s name/s, telephone number, mobile number etc.	
6	Name and designation of the person authorized to sign the Bid / proposal and all other documents incidental to the RFP	
7	Contact person/s name/s, telephone number, mobile number etc. and escalation matrix for the purpose of this RFP	

### TURNOVER & NETWORTH

Financial Year	Turnover (crores)	Net Profit (crores)
2017-2018		
2018-2019		
2019-2020		

Parameter	Mandatory Qualification Criteria	Documentary Evidence
Language	Language of bid shall be in English language. In case any document is submitted by bidder in other than English language, authenticated English translation of the same shall be submitted along with the bid. (e.g. citations, etc.).	N/A
Legal Entity	The bidder should be registered company under Companies Act, 1956/2013/2020 or as amended or a Partnership firm registered under LLP Act, 2008 and should be operating for last three (3) years.	<ul style="list-style-type: none"> <li>• Copy of the Certificate of Incorporation issued by Registrar of Companies/ Partnership Deed/ Trade License and full address of the registered office.</li> <li>• PAN Card.</li> <li>• GSTIN no. along with copy of ARN certificate</li> </ul>
Net worth	The bidder should have a positive Net worth during each of the last three (3) Financial Years (excluding current Financial Year) as per the last published Balance sheets.	<ul style="list-style-type: none"> <li>• Extracts from the audited Balance Sheets and Profit &amp; Loss for last three (3) Financial years (excluding current Financial Years) or Certification from the Statutory Auditors</li> </ul>

Technical Capability	The Bidder should have experience of consulting / implementation for at least one (1) project on migration of SAP applications from On-premise to Cloud.	<ul style="list-style-type: none"> <li>• Completion certification from the client <b>OR</b> Work Order + Self Certification of completion (Certified by Statutory Auditor) <b>OR</b> Work Order + Phase wise certification from client</li> </ul>
Technical Capability	The Bidder should have consulted / implemented at least one (1) project involving procurement of Servers for SAP project (ECC or S/4 HANA) either on-premise or cloud implementation.	<ul style="list-style-type: none"> <li>• Completion certification from the client <b>OR</b> Work Order + Self Certification of completion (Certified by Statutory Auditor) <b>OR</b> Work Order + Phase wise certification from client</li> </ul>
Blacklisting	The bidder must not have been black listed by any Central / State Government organization / Public Sector Undertaking as on bid submission date.	<ul style="list-style-type: none"> <li>• A Self certified letter (Annexure-6) by the authorized signatory of the bidder clearly stating that the bidder has not been blacklisted must be submitted on original letter head of the bidder with signature and stamp.</li> </ul>

**Annexure-6 : No Blacklist Declaration**

(To be submitted in the Bidder's letterhead)

Ref. No: BL/IT/PT/HO/CONSLT/PT/202122/0003

To

**Pradeep Thekutte**

**AVP(IT Infrastructure)**

**Balmer Lawrie & Co Ltd**

**21, N.S. Road, Kolkata 700001.**

Sub: No Blacklisting Self-Declaration for Tender Ref. No: BL/IT/PT/HO/CONSLT/PT/202122/0003 for  
"Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP  
application as future strategy"

Dear Sir/Madam,

We do hereby declare and affirm that we have not been blacklisted/debarred by any Government Departments, Agencies or Public Sector Undertakings in India as on the date of submission.

(Authorized Signatory of Bidder)

Date: (Company Seal)



**Annexure-7 : Statement of No Deviations**

(To be submitted in the Bidder's letterhead)

Ref. No: BL/IT/PT/HO/CONSLT/PT/202122/0003

To

Pradeep Thekutte  
AVP(IT Infrastructure)  
Balmer Lawrie & Co Ltd  
21, N.S. Road, Kolkata 700001.

Dear Sir,

There are no deviations (nil deviations) from the terms and conditions of the tender. All the terms and conditions of the tender are acceptable to us.

Yours faithfully,

(Authorized Signatory of Bidder)

Date: (Company Seal)

**Annexure-8 : Price bid format**

Ref: BL/IT/PT/HO/CONSLT/PT/202122/0003

Dated : 30/04/2021

Price bid is to be submitted for “Selection / Hiring of Management Consultant to define on-premise or cloud solution for SAP application as future strategy”.

Given below is the price bid summary table. The bidder should quote for the following (**only in Price Bid Section of e-Procurement site**)

For each item, the bidder should include the following details. This form shall be available in the e-procurement site for each item of the price bid.

**Price Bid for Solution:**

<b>Phase</b>	<b>Milestone</b>	<b>Price</b>
Phase 1	AS-IS Process Mapping and Gap Assessment	Lumpsum
Phase 2	Technical and commercial evaluation of all target options available to BL	Lumpsum
Phase 3	Enlist most feasible solution available to BL for implementation with timelines	Lumpsum
Phase 4	Strategy document delivery, presentation to BL management and completion of all milestones	Lumpsum

## Annexure-9 : Mutual Non-Disclosure Agreement

*(To be executed on Non – judicial stamp paper of INR 100/-or such equivalent amount and document duly attested by notary public)*

### **(To be submitted prior to signing the main agreement)**

This Mutual Non-Disclosure Agreement (“Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2021

#### **BETWEEN**

**BL**, having its office at \_\_\_\_\_ (hereinafter referred to as ‘**BL**’) which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors, permitted assigns of the **ONE PART**;

#### **AND**

\_\_\_\_\_, a company incorporated and registered under the provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as ‘**Management Consultant**’) which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors, permitted assigns and affiliates of the **OTHER PART**.

The ‘**BL**’ and the ‘**Management Consultant**’ are hereinafter collectively referred to as ‘**Parties**’ & individually as ‘**Party**’.

#### **WHEREAS:**

BL and Management Consultant are in the process of consultations and discussions pertaining to Comprehensive Contract of providing Management Consultancy Services for defining on-premise or cloud solution for SAP application project of BL by Management Consultant.

It is anticipated that during the process described above, and during the performance of the definite services contract, if any, executed between the parties it may be necessary for the parties to exchange certain confidential and proprietary information in written, oral and/or physical/sample form (hereinafter collectively referred to as “**Confidential Information**”).

BL and Management Consultant are executing this Agreement to specify the terms and conditions in respect of the use of the Confidential Information disclosed by the Parties to each other in their negotiations with each other to establish a business relationship.

#### **ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:**

- 1. Confidential Information:** Confidential Information shall mean any information disclosed by ONE PARTY (hereinafter “The Disclosing Party”) to the OTHER PARTY (hereinafter “The Receiving Party”), either directly or indirectly, in writing, by inspection of tangible objects (including, without limitation, documents, prototypes, samples, media, documentation, discs and code). Confidential Information shall include, without limitation, any materials, trade secrets, know-how, formulae, processes, algorithms, ideas strategies, inventions, data, network configurations, system architecture, designs, flow charts, drawings, proprietary information, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and /or future business and operations of the Management Consultant and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Receiving Party based on information disclosed by the Disclosing Party. Confidential Information

may also include information disclosed to the Receiving Party by third parties on behalf of the Disclosing Party. In order to treat any information as Confidential Information, the Disclosing Party, when sharing of such information in paper or electronic form, shall clearly mark such information as confidential. When Confidential Information is shared orally, it shall be reduced in writing (in paper or electronic form) within one week of sharing of information, and shall be clearly marked as confidential. Unless any information shared by Disclosing Party is marked as confidential in the said manner, it shall not be treated as Confidential Information for the purpose of this Agreement.

2. Upon receiving the Confidential Information, the Receiving Party shall keep in confidence and shall not disclose to any person or entity:
  - a. Any of the Confidential Information disclosed by the Disclosing Party;
  - b. the discussions that are taking place between the parties concerning the Management Consultancy for defining on-premise or cloud solution for SAP application project of BL nor the status, terms, conditions or other facts concerning such discussions;
  - c. The identities of any of the parties by name or by any identifiable description in connection with the parties' participation in the Contract.

Except as otherwise provided by the terms and conditions of this Agreement, the Receiving Party shall exercise the same degree of care to guard against disclosure or use of such information, as Receiving Party employs with respect to its own Confidential Information, but in any event, not less than reasonable care. The Receiving Party shall make the Confidential Information disclosed by the Disclosing Party available only to those of its employees, officers, directors, agents, advisors or any persons employed by the Receiving Party and/or involved in the project having a "need to know" in order to carry out the purposes of this Agreement ("Authorised Person(s)").

Further, the Receiving Party shall not make any other use of the Confidential Information for its own benefit or that of any third party except for the purposes of this project nor make unnecessary copies of the same without the prior written approval of the Disclosing Party.

3. The Receiving Party shall not be liable for the disclosure or use of Confidential Information if the same:
  - a. Is in or enters the public domain, other than by breach of this Agreement; or
  - b. Is known to the Receiving Party on a non-confidential basis prior to disclosure pursuant to this Agreement; or
  - c. Is or has been lawfully disclosed to the Receiving Party by a third party without an obligation of confidentiality; or
  - d. Is required to be disclosed pursuant to any applicable laws, rules or regulations or direction of statutory or regulatory authority or order of a relevant court of law provided that the Receiving Party will provide the Disclosing Party with prompt written notice of such request (the "**Disclosing Notice**") containing (i) details of the person requiring such disclosure, (ii) the contents/nature of information required to be disclosed, and (iii) the cause and time period within which the disclosure is required to be made.
4. Each party shall ensure that each of its Authorised Person(s) to whom Confidential Information is disclosed strictly comply with the terms of this Agreement as if he was a party thereto, and shall take all steps available to it to enforce such obligations of confidentiality.

5. All written Confidential Information or any part thereof (including without limitation, information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials as are in possession, power or control of the Receiving Party shall be returned to the Disclosing Party or destroyed by the Receiving Party, when requested by the Disclosing Party except that the Receiving Party may retain one copy of such Information as may be required to be retained by law and regulations applicable to the Receiving Party. In the event of the destruction of the Confidential Information, the Receiving Party shall certify in writing to the Disclosing Party, within thirty (30) days, that such destruction has been accomplished. The Receiving Party shall make no further use of nor retain such Confidential Information in any form whatsoever.
6. Without prejudice to the generality of other clauses in this agreement, Parties unconditionally and irrevocably undertake not to:
  - a. Attempt to solicit or entice away from the other Party or any of its Associates and ensure that none of its Associates or Authorised Person(s) shall solicit or entice away from the other Party or any of its Associates, any director, officer, agent or employee(s) presently in the employment of the other Party or any of its Associates (whether or not such person knows of any of the Confidential Information) without the other Party's prior written consent.
  - b. In connection with its appraisal of the Confidential Information as provided herein or otherwise, make contact, directly or indirectly, whether by itself or through its Associates and/or Associated Person (s), with any customer, supplier, or with any other person connected with the other Party or any of its Associates without the other Party's prior written consent.
7. The rights, powers and remedies provided in this Agreement is cumulative and do not exclude the rights or remedies provided at law and in equity independently of this Agreement.
8. The Parties agree and acknowledge that money damages are not a sufficient remedy for any breach of this Agreement by the breaching Party and that the non – breaching Party shall be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach thereof, in addition to any other remedies available at law or in equity.
9. This Agreement shall be effective from the date hereof and shall be valid for a period of ( to be mutually decided by the parties). During the term of this Agreement, either party shall be entitled to terminate this Agreement upon giving the other party\_\_( ) day's prior written notice. The obligation to maintain the confidentiality of the Confidential Information provided hereof and the undertakings and obligations in this Agreement shall survive for\_\_years from the expiry or termination of this Agreement.
10. The Disclosing Party does not warrant that the Confidential Information it is disclosing hereunder will meet the requirements of the Receiving Party or that such Confidential Information, when combined with other information or when used in a particular manner by the Receiving Party, will be sufficient or suitable for the Receiving Party's purposes. The Disclosing Party neither assumes any responsibility or liability nor makes any representation or warranty whatsoever under this Agreement for any consequences of the use of the Confidential Information by the Receiving Party or its Authorised Person(s) or for its accuracy, completeness or sufficiency thereof. Accordingly, the Disclosing Party shall not have any liability or responsibility whatsoever for any errors or omissions in or any decision made by the Receiving Party in reliance on the

Confidential Information. This Agreement shall create no obligation whatsoever on the Disclosing Party to disclose any particular kind or quantity of information to the Receiving Party.

11. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or agreement that the Receiving Party will not develop for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

Either Party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know how or techniques contained therein.

Neither Party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.

Notwithstanding what is contained herein, the Receiving Party shall not reverse – engineer, decompile, or disassemble any Confidential Information declared in computer readable or electronic form.

12. This Agreement is not intended to constitute, create, give effect to, or otherwise recognise a joint venture, partnership or formal business entity of any kind. Any exchange of Confidential Information under this Agreement shall not be deemed as constituting any offer, acceptance, or promise of any further contract or amendment to any contract which may exist between the Parties. Each party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither shall have any authority to bind the other.
13. Nothing contained in this Agreement shall be deemed to grant, whether directly or by implication, any right, (whether by license or otherwise), under any patent(s), patent applications, copyrights or other intellectual property rights with respect to any Confidential Information, except the limited right to use and review the Confidential Information as necessary to explore and carry out the proposed purpose between the Parties. It is however agreed and understood between the Parties that the Receiving Party shall not be liable for any claim or liabilities whatsoever if any made by a third Party claiming or alleging breach of any intellectual property rights by the Receiving Party in connection with the use of Confidential Information by the Receiving Party under this Agreement.
14. This Agreement contains the entire understanding between the parties with respect to the safeguarding of the said Confidential Information and supersedes all prior communications and understandings with respect thereto. No waiver, alteration, modification, or amendment shall be binding or effective for any purpose whatsoever unless and until reduced to writing and executed by authorized representatives of all the parties.
15. This Agreement shall be governed and construed in all respects in accordance with the laws of

the Republic of India.

- 16.** This Agreement may be amended or modified only with the mutual written consent of the Parties.
- 17.** Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable by either party save and except prior written permission of the other party.
- 18.** If any dispute, difference, claim or question arises between the parties hereto in any matter touching these presents or any claim or thing herein contained or as to any matter or in any way connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party thereof in connection with these presents, the parties hereto shall endeavor their best to settle the said disputes or differences amicably between themselves by negotiations at the highest levels of management of both parties, failing which the dispute shall be referred to the sole arbitrator to be appointed mutually by the parties. The Arbitration and Conciliation Act, 1996 and any statutory modification or re- enactment thereof, shall apply to these arbitration proceedings. Arbitration proceedings shall be held at Kolkata and the language of the arbitration proceeding and that of all documents and communications between the parties shall be English. The decision of the arbitrator shall be final and binding upon both the parties. All arbitral awards shall be in writing and shall state the reasons therefore. The expenses of the arbitration as determined by the arbitrator shall be shared equally by the parties.
- 19.** Subject to the arbitration clause herein contained, all disputes between the parties pertaining to this agreement shall be subject to the jurisdiction of the competent Courts at Kolkata only.
- 20.** If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall be in full force and effect.
- 21.** No breach of any provision of this Agreement can be waived unless done so in writing, executed by the waiving party. The waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any provision of this Agreement.
- 22.** In the event of a change in law or regulations which affect any of the parties' obligations under this Agreement, the parties will co-operate in good faith to agree any necessary amendment(s) or variation(s) in the Agreement.
- 23.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent by personal delivery, electronic mail, facsimile transmission or registered or certified mail (return receipt requested) postage prepaid to the relevant Party addressed as herein below or as may from time to time be notified in writing by such Party to the other no less than 15 days' in advance. The notices and communications sent in such manner shall, unless the contrary is proven, be deemed to have been duly received on the date of personal delivery, one business days following delivery upon confirmation of transmission by the sender's electronic mail device or seven business days following mailing by registered or certified mail (return receipt requested postage prepaid).

For Balmer Lawrie & Co. Ltd	For _____ (Management Consultant)
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IN WITNESS WHEREOF THE PARTIES AFORESAID HAVE SIGNED THIS AGREEMENT ON THE DATE AFOREMENTIONED IN THE PRESENCE OF THE UNDERNAMED WITNESSES.

For and on behalf of Balmer Lawrie

For and on behalf of the Management Consultant

By: \_\_\_\_\_

By : \_\_\_\_\_

Designation : \_\_\_\_\_

Designation: \_\_\_\_\_



## **Annexure-10 : Consulting Service Agreement**

**THIS Consulting Service Agreement (“Agreement” or “Contract”)** is made on this the <\*\*\*> day of<\*\*\*> 20... at <\*\*\*>, India.

### **BETWEEN**

Balmer Lawrie & Co. Ltd, 21, Netaji Subhash Road, Kolkata 700 001 represented by .....  
{hereinafter called as the "BL", which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or nominees or assignees or legal representative) being the PARTY of the FIRST PART;

### **AND**

<\*\*\*>, a Company incorporated under the Companies Act, 1956, having its registered office at <\*\*\*> (hereinafter referred to as Management Consultant which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

Each of the parties mentioned above, are collectively referred to as the ‘Parties’ and individually as a ‘Party’.

### **WHEREAS:**

1. BL being desirous to implement the project for selection of Management Consultant to define on-premise or cloud solution for SAP application as future strategy (hereinafter referred to as ‘Future strategy of SAP application’) called for Unconditional tender vide RFP No. \_\_\_\_\_ dated \_\_\_\_\_ for engaging the Management Consultant.
2. The Management Consultant has gone through RFP documents and has satisfied itself by careful examination before submitting its Unconditional tender as to the nature and magnitude of the work, and has obtained complete information as to the matters and things referred to or implied in the RFP documents or having any connection therewith, and has considered the nature and extent of all the probable and possible situations, delays, hindrances or interferences to or with the execution and providing of the Management Consultancy Services under the contract, and has examined and considered all other matters, conditions and things and probable and possible contingencies, and generally all matters incidental thereto and ancillary thereof affecting the execution and providing of the consultancy work and which might have influenced it in making its Unconditional tender and has offered to provide Management consultancy services.
3. The Management Consultant has represented to BL that it possesses and has the required professional skills, personnel and technical resources to deliver the Services related to comprehensive contract of management consultancy for defining on-premise or cloud solution for SAP application project.

### **AND WHEREAS:**

4. BL accepted the Unconditional tender of the Management Consultant for providing Management Consultancy service in respect of defining on-premise or cloud solution for SAP

application project and conveyed its acceptance vide letter no: \_\_\_\_\_ dated \_\_\_\_\_ upon the terms and subject to the conditions as set out hereunder.

**NOW THEREFORE**, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

## **1. Definitions and Interpretation**

### **1.1. Definitions**

In this Contract, except where the contrary intention is expressed, the following definitions are used:

<b>Agreed Terms</b>	Clauses 1 to 34 of the Agreement which set out terms and conditions agreed by the parties.
<b>Auxiliary Material</b>	Any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date.
<b>Business Day</b>	For receiving a notice under clause 33, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and for all other purposes, any day that is not a Saturday or Sunday or a national public holiday throughout India promulgated in the official gazette. BL shall provide list of its scheduled holidays.
<b>Business Hours.</b>	From 10.00 am to 6.00 pm on a Business Day at the place where the Services are to be provided or any other time as may be specified in the contract.
<b>Confidential Information</b>	Information that is by its nature confidential; and is Designated by a party as confidential in Non-Disclosure Agreement (Draft annexed as Annexure-9).
<b>Contract</b>	This agreement between Balmer Lawrie and the Management Consultant, as amended from time to time and includes its Annexures, schedules, any attachments, RFP and BID response of the Management Consultant.
<b>Contract Material</b>	Any Material created by the Management Consultant on or following the Commencement date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required.
<b>Contract Period</b>	Initial Contract Period plus any extension in accordance with the provisions of RFP.
<b>Companies Act</b>	The Companies Act 1956

<b>BL Material</b>	Any Auxiliary Material provided to the Management Consultant by BL.
<b>Data</b>	All data and information relating to BL, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of BL.
<b>Deliverable</b>	Any Contract Material or other item to be provided by the Management Consultant under this Contract and provided as Deliverable in RFP
<b>Documentation</b>	Documentation to be provided by the Management Consultant under Clause 8.
<b>Harmful Code</b>	Any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
<b>Initial Contract Period</b>	The time period for which this Contract is intended to continue, as specified in the RFP.
<b>Intellectual Property Rights (IPR)</b>	<p>a) In relation to this contract of Consultancy, all intellectual property rights, including but not limited to, the following rights:  Patents, copyright, trade marks (including goodwill in those marks) and domain names;  Any application or right to apply for registration of any of the rights referred to above in paragraph a); and all rights of a similar nature to any of the rights in paragraph (a)</p> <p>b) Which may subsist in India or elsewhere, whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	Any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in India, whether made by Central Government or the State or Union Territory.
<b>Losses</b>	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether

incurred by or awarded against a party).

<b>Material</b>	Any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of IPR.
<b>Material Adverse Effect</b>	"Material Adverse Effect" means material adverse effect on Management Consultant to perform/discharge any of its duties / obligations under and in accordance with the provisions of this Contract and/or (b) the legal validity, binding nature or enforceability of this Contract.
<b>Material Breach</b>	"Material Breach" means breach that has an effect on (a) Management Consultant to perform/discharge any of its duties/obligations under and in accordance with the provisions of the Agreement; and/or (b) the legal validity, binding nature or enforceability of the Agreement.
<b>Modules</b>	The task and any fixed date to be met by the Management Consultant in performing any of its obligations under this Contract, as specified in scope of work in RFP.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act.
<b>Notice</b>	A notice, demand, consent, approval or communication issued under this Contract.
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Management Consultant.
<b>Project Directors</b>	Project Directors appointed by each Party are authorized personnel who provide the interface between the executive management of the respective Parties.
<b>Schedules</b>	The schedules to this Contract.
<b>Service Charges</b>	The charges payable to the Management Consultant as per RFP services for which the consultancy service is to be provided by the Management Consultant and as specified in the scope of

work and includes the supply of the deliverables.

<b>Specified Personnel</b>	The Management Consultant's Personnel specified in contract details meeting the qualifications and experience criteria specified in the RFP.
<b>Scope of Work</b>	The details of the Services to be performed under this Contract and as set out in RFP.
<b>Third Party Material</b>	Auxiliary Material in which a third party holds IPR.
<b>Warranted Materials</b>	The Auxiliary Material provided by the Management and includes the Deliverables and Contract Material.

## 1.2. Interpretation

In this Contract, except where the contrary intention is expressed:

- a) In this document the word "agreement" and "Contract" have the same meaning and have been used interchangeably.
- b) the singular includes the plural and vice versa, and a gender includes other genders;
- c) another grammatical form of a defined word or expression has a corresponding meaning;
- d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
- e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- f) a reference to rupee or Indian rupees to the Indian currency;
- g) a reference to time is to the time in the place where the obligation is to be performed;
- h) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- j) if the Management Consultant is a trustee, Management Consultant enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Contract;
- k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- l) a word or expression defined in the Companies Act has the meaning given to it in the Companies Act;
- m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- n) any agreement, representation, warranty or indemnity by two or more parties (including

- where two or more persons are included in the same defined term) binds them jointly and severally;
- o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
  - p) a rule of construction does not apply to the disadvantage of a party because the party was Responsible for the preparation of this Contract or any part of it;
  - q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
  - r) Headings are for ease of reference only and do not affect interpretation.

### **1.3. Completion of Schedules**

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

## **2. Priority of Contract documents**

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- a) Agreed Terms in Contract;
- b) Annexures to Contract;
- c) Schedules of Contract;
- d) any attachments to the Schedules; and
- e) Documents incorporated by reference in this Contract.
- f) RFP document and its corrigendum.
- g) Proposal submitted by the bidder in response to bid.
- h) Letter of award of contract.

## **3. Duration of Contract**

### **3.1. Initial Contract Period**

This Contract begins on the Commencement Date and continues for the duration of the Period specified in RFP, unless terminated in accordance with Clause 27 or 29.

### **3.2. Option to extend Contract Period**

- a) The Initial Contract Period may be extended by the BL for further period(s), on the terms and conditions mutually agreed, by giving 30 days written notice to the Management Consultant.
- b) Any extension exercised in accordance with this clause takes effect from the end of the current Contract Period.

#### **4. General obligations of the parties**

The Management Consultant shall at all time:

- a) Act reasonably in performing their obligations under this Contract & RFP;
- b) Diligently perform their obligations under this Contract & RFP; and
- c) Work together in a collaborative manner.

#### **5. Provision of Services**

##### **5.1. Service obligations**

The Management Consultant must supply the Services:

- a) with due skill and care and to the best of the Management Consultant's knowledge and experience;
- b) in accordance with the Performance Criteria;
- c) in accordance with relevant Indian industry standards, good industry practices and guidelines or where none apply, relevant international industry standards, best practice and guidelines as specified in RFP.
- d) using the Specified Personnel as specified in RFP and in accordance with all applicable Laws;
- e) in accordance with directions as specified in RFP and reasonable in relation to the Services given by BL from time to time so as to meet the Modules and other project plan requirements, and where no Modules or project plan requirements are specified, promptly and without delay; and otherwise in accordance with the provisions of this Contract & RFP.

##### **5.2. Warranties**

The Management Consultant represents and warrants that:

- a) it has the right to enter into this Contract;
- b) it has all rights, title, licenses, interests and property necessary to lawfully perform the Services;
- c) The Management Consultant and its Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- d) the Services will be complete, accurate and free from material faults; and
- e) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the BL's systems or any Deliverables any Harmful Code.
- f) The RFP along with this contract constitutes the legal, valid and binding obligation of the Management Consultant, enforceable against it in accordance with the terms hereof.
- g) There are no actions, suits or proceedings pending or to its best knowledge threatened against or affecting it, before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Contract.
- h) Management Consultant warrants that it possesses and will maintain through the end of the term sufficient financial standing and capacity to comply with the Agreement. If Management Consultant encounters adverse changes to its financial condition that affect Service delivery, then it needs to notify BL immediately.
- i) The execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, Contract, agreement, arrangement, understanding, decree or order to which it is a Party or by which it or any of its properties or assets is bound or affected.
- j) It has no knowledge of any violation or default with respect to any order, writ, injunction or

decree of any court or any legally binding order of any Government authority which may result in any material adverse effect on its ability to perform its obligations under this Contract and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Contract.

- k) No representation or warranty by the Management Consultant contained herein or in any other document furnished by it to BL including the Proposal or to any government authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

## **6. Bank Guarantees**

### **6.1. Performance Bank Guarantee (PBG).**

Management Consultant to provide bank guarantee for the Contract as a whole, valued at 10% (Ten %) of the total value of the Contract, valid for 90 days beyond the Operative Period of Contract. In case the contract is extended and if the amount of the contract for the extended period is more than the earlier contract value, then Management Consultant shall provide an additional PBG of value amounting to the extent of 10% of the difference of the value of the extended contract value and that of the initial contract value. Both the PBGs have to be valid for 90 days beyond the extended period. The PBG shall be issued by a scheduled/ nationalized bank only. **This PBG is to be submitted by the successful bidder before signing this contract.** Management Consultant shall maintain the Bank Guarantee valid throughout the contract period. The draft format in which the PBG is to be submitted by successful bidder is annexed as **Annexure-I3**.

### **6.2. Invoking Performance Guarantee**

Notwithstanding what has been stated elsewhere in this Contract and the Schedules attached herein and in RFP, in the event Management Consultant is unable to meet the obligations as per the provisions of the contract, BL will, inter alia, have the option to invoke the Performance Bank Guarantee. Such right of the BL shall be without prejudice to any other rights or remedies available under law or contract.

## **7. Access to BL's premises**

The BL will cooperate with the Management Consultant by providing access to its premises and facilities as reasonably necessary to enable Management Consultant to provide the Services.

### **7.1. Conduct at BL's premises**

Management Consultant must, if using or accessing BL's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of Management Consultant or as might reasonably be inferred from the circumstances.

## **8. Documentation**

### **8.1. Provision of Documentation**

Management Consultant shall provide BL the Documentation specified in the RFP in the format and at the times specified therein.



## **8.2. Documentation requirements**

The Documentation must at the time of delivery:

- i. be current and accurate;
- ii. adequately explain key terms and symbols; and

## **9. Varying the Services**

### **9.1. Variations proposed by BL**

If BL wants to vary the Services:

9.1.1. BL will request Management Consultant in writing setting out the proposed variations;

9.1.2. within 14 days after receiving BL's request or within another period agreed by the parties, Management Consultant must respond in writing to BL specifying what impact those variations will have on: the Service Charges; the Services or Deliverables, including any particular Deliverable; Management Consultant's ability to perform its obligations under this Contract including its ability to complete the modules specified in the RFP.

9.1.3. Within 14 days after receiving Management Consultant's response, or within another period extended period as decided by BL, it will give Management Consultant a written notice accepting or rejecting the response.

### **9.2. Variations proposed by Management Consultant**

If Management Consultant wants to vary the Services:

9.2.1. Management Consultant must request BL in writing setting out the proposed variations and specifying what impact those variations will have on: the Service Charges; the Services or Deliverables, including any particular Deliverable; Management Consultant's ability to perform its obligations under this Contract (including its ability to meet Modules); and this Contract; and

9.2.2. Within 14 days after receiving the request or within another period agreed by the parties, BL will give Management Consultant a written notice accepting or rejecting Management Consultant's request.

### **9.3. Changes to Service Charges**

Changes to Service Charges associated with a variation in the Services must:

9.3.1. not exceed any reasonable additional cost; and

9.3.2. take fully into account any reduction in cost.

### **9.4. Effective date of variation**

Any variation in the Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

## **10. Co-operation with Personnel and contractors**

Management Consultant must in the performance of the Services under the Contract:

- a) fully co-operate with BL's Personnel, stakeholders and other Agency's/ contractors; and
- b) use its best efforts to coordinate its activities so as to support and facilitate, in BL's best interests, the timely and efficient completion of all work and other activities to be performed for BL by any person.

## **11. Monitoring progress**

### **11.1. Progress meetings**

The parties will meet at the times set out in the RFP (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. Management Consultant must ensure that Management Consultant representative and BL will ensure the BL representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

### **11.2. Reporting**

Management Consultant must provide BL with reports in accordance with the RFP.

## **12. Performance assessment**

### **12.1. Assessment of Services**

Each element of the Services is subject to assessment by BL.

### **12.2. Notice of non-compliant Services**

- a) If BL considers that all or part of the Services does not meet the Performance Criteria, BL will notify Management Consultant within 30 Business Days of assessing the Services.
- b) BL will include reasons for the non-compliance.

### **12.3. Rectification of non-compliant Services**

If BL notifies Management Consultant that all or part of the Services do not meet the requirement of RFP, Management Consultant must:

- a) take all necessary steps to ensure that the Services are promptly corrected;
- b) give notice to BL when the Services have been corrected; and
- c) Allow BL to repeat the assessment of all or part of the Services, within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

### **12.4. Right to terminate**

If any parts of the Services do not meet the requirement of RFP on two or more occasions, BL may (in addition to its other remedies) terminate the Contract immediately under clause 29, by giving Management Consultant written notice.

### **13. Personnel**

#### **13.1. Use of Specified Personnel**

Management Consultant must provide the Services or any part of the Services to which their particular experience relates, with the active involvement of, and using the skill of the Specified Personnel having adequate qualifications and experience as specified in RFP and must ensure that each of the Specified Personnel is aware of and complies with Management Consultant's Obligations in providing the Services as specified in the RFP.

#### **13.2. Notification of Non Availability of specified personnel to BL and timely replacement.**

It is the responsibility of Management Consultant to notify BL regarding non-availability of adequately qualified personnel either on account of death, illness, resignation, and termination or due to any other reason whatsoever and immediately provide the suitable replacement having adequate qualification & experience as specified in RFP. If at any time during the contract period it is observed that the personnel employed by the Management Consultant do not meet the criteria specified in RFP, the same will be considered an "Event of Default" on the part of the Management Consultant.

### **14. Ownership of Material & Intellectual Property Rights (IPR)**

Any studies, reports or other material, graphic, software or otherwise including the Intellectual Property, (trademarks, patents, copyrights, trade secrets, operating practices/ procedures or other IPR brought/ creating for the Project / Services/ Contract Material under this contract and also for related solutions, (whether licensed for a fee or no charge) and any derivatives of the foregoing, the ownership of all of above shall remain vested in BL. In addition to foregoing any document prepared or asset created by Management Consultant for BL under the Contract shall belong to and remain the property of BL.

#### **14.1. Infringement of IPR**

- a) Management Consultant confirms that there shall be no infringement of any intellectual property rights as per the applicable laws of relevant jurisdictions, having requisite competence, in respect of the Services/Project Assets/ Contract Material (including Auxiliary/Third Party Material) or any part thereof, created/ supplied under this Contract. The Management Consultant shall indemnify BL against all cost/claims/legal claims/liabilities arising from third party claim at any time on account of the infringement or unauthorized use of intellectual property rights of any such parties, whether such claims arise in respect of creation/production or use of such material/services rendered under this contract. Without prejudice to the aforesaid indemnity, the Management Consultant shall be responsible for the completion of the development and uninterrupted use of such Services/ Project Asset or any part thereof by BL and persons authorized by BL, irrespective of the fact of claims of infringement of any or all the rights mentioned above. Further, Management Consultant is also responsible to bring this any such infringement done by any SI, immediately to the notice of BL.
- b) If, as a result of such claim, BL is injuncted / restrained from using such Services/ Contract material/ Project Asset or any part thereof or in is likely to be injuncted , Management Consultant, at its expense, shall (i) modify such Services/ Contract material/ Project Asset (provided its functionality is not impaired or varies from the

specifications provided in RFP) so that it is no longer infringing and obtains a certificate to the said effect from the party claiming infringement, (ii) replace such Services/ Contract material/ Project Asset with a functionally equivalent of the same, or (iii) obtain the right for BL to continue using such Services/ Contract material/ Project Asset.

## **15. Moral Rights**

### **15.1. Obtaining consents**

To the extent permitted by applicable Laws and for the benefit of BL, Management Consultant must give genuine consent in writing, in a form acceptable to BL that it would use its best endeavors to ensure that Management Consultant in the production or creation of the Contract Material and rendering services as per RFP & Contract documents, would use the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

### **15.2. Specified Acts**

In this clause, Specified Acts relevant herein means:

- a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material which may be covered under the ambit of purview of Copyright Act, 1957;
- b) materially altering the Contract Material and dealing in any way with the altered Contract Material;
- c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- d) Adding any additional content or information to the Contract Material.

## **16. Payment**

### **16.1. Obligation to pay charges**

Subject to this clause and the Services meeting the Performance requirements as per RFP, BL will pay to Management Consultant the Service Charges as set out in Payment Schedule of RFP.

### **16.2. Management Consultant to provide invoice**

Management Consultant must provide a correctly rendered invoice to BL for the Service Charges in accordance with the requirements specified in the RFP.

### **16.3. Due date for payment**

BL will make payment of a correctly rendered invoice as per the payment schedule provided in the RFP.

### **16.4. Incorrect invoices, under/over payment**

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from Management Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by BL to Management Consultant under this Contract.

### **16.5. Expenses**

Unless specified otherwise in the RFP, Management Consultant must not charge the BL for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges etc.) in addition to the Service Charges. BL is under no obligation to pay any amount in excess of the Service Charges.

## **17. Taxes**

- 17.1.** BL or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to Management Consultant wherever applicable. Management Consultant shall pay for all other taxes in connection with this Agreement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, goods and services, consumption and other similar taxes or duties.
- 17.2.** BL or its nominated agencies shall provide Management Consultant with the original tax receipt of any withholding taxes paid by BL or its nominated agencies on payments under this Agreement. Management Consultant agrees to reimburse and hold BL or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among BL or its nominated agencies, Management Consultant and third party contractors in related of the services provided under this contract.
- 17.3.** If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by BL for providing the services i.e. GST or any such other applicable tax from time to time, which increase or decreases the cost incurred by Management Consultant in performing the Services, then the remuneration and reimbursable expense otherwise payable by BL under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the contract price specified in the Contract. However, in case of any new or fresh tax or levy imposed after submission of the proposal Management Consultant shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- 17.4.** The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

## **18. Indemnity**

- 18.1** That Management Consultant shall indemnify and keep BL indemnified against all actions, suits and proceedings and all and any costs, charges, expenses or any loss or damage incurred, suffered, caused to/sustained by BL by reason of any default or breach or violation or lapse or negligence or non- observance or non-performance or any non-payment or for any violations of copyright / other intellectual property rights etc. by / on behalf of Management Consultant.
- 18.2** In addition to above Management Consultant shall, at its own expense, defend, indemnify, and hold BL harmless for damages, liabilities, claims, losses, costs, demands, suits, actions, and reasonable expenses (including but not limited to reasonable attorneys' fees and settlement costs) (collectively, "Damages") arising out of or related to any third party suits or claims brought against BL (i) arising out of or related to

Management Consultant's violation of any applicable laws, gross negligence, or willful misconduct, or (ii) arising out of or related to any physical damage to property, or personal injury or death, caused by Management Consultant or any of its Affiliates, participants, officers, directors, and employees.

## **19. Liability**

The liability of Management Consultant (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages & also any consequential, incidental, indirect, special or punitive damage, loss or expenses. However, the direct damages shall in no event in the aggregate exceed the fees and expenses provided in RFP for respective module or received by Management Consultant under this contract. The liability cap in respect of direct damages given under this Clause shall not be applicable to the indemnification obligations set out in Clause 18.

## **20. Insurance**

**20.1** Management Consultant shall, at its own cost, arrange, secure and maintain insurance with reputed Insurance companies to the satisfaction of BL to protect the interest of BL against all risks as detailed herein. The responsibility to maintain adequate insurance coverage during the period of Contract shall be that of Management Consultant alone. Management Consultant's failure in this regard shall not relieve it of any of its responsibilities and obligations under the Contract and there shall be no liability of BL under such circumstances. The risks that are to be covered under the insurance shall include , the loss or damage in handling, storage, transit, theft, pilferage, riot, civil commotion, weather conditions, accidents of all kinds, fire, marine, war risk etc.

### **20.2 Workman Compensation and BL's Liability Insurance:**

Insurance shall be effected for all Management Consultant's employees engaged (whether directly or indirectly) in the performance of this Contract and there is no liability of BL in respect of Management Consultant's employees.

### **20.3 Accident or Injury to Workman:**

BL shall not be liable for or in respect of any damages or compensation payable in respect of or in consequence of any accident or injury to any workman or other person in the Employment of Management Consultant and Management Consultant shall indemnify and keep indemnified BL against all such damages and compensation and against all claims, demands, proceeding, costs, charges and expenses, whatsoever in respect or in relation thereto.

### **20.4 Comprehensive General Liability Insurance:**

a) This insurance shall protect Management Consultant against all claims arising from injuries, disabilities, disease or death of member of public or damage to property of others due to any act or omission on the part of Management Consultant, its agents, employees and representatives, while engaged in and while performance of this Contract.

- b) Management Consultant shall have suitable Group Personal Accident Insurance Cover for taking care of injury, damage or any other risks in respect of its Employees who are not covered under Employees State Insurance Act. The policy shall cover third party liability which shall cover the loss of human life / disablement (partial/full) of persons not belonging to Management Consultant. The value of third party liability for compensation for loss of human life or partial/full disablement shall be of required statutory value.
- c) Management Consultant shall also arrange suitable insurance to cover damage, loss, accidents, risks etc., in respect of all its assets brought by it at site to execute the work related to this Contract.
- d) Any such insurance requirements as are hereby established as the minimum policies and coverage which Management Consultant must secure and keep in force must be complied with.

## **21. Confidentiality and privacy**

### **21.1 Confidential Information**

As defined in the Draft Mutual Non-Disclosure Agreement annexed as Annexure-9 to this draft agreement.

### **21.2 Confidential Information not to be disclosed**

- a) The parties must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### **21.3 Non-Disclosure Agreement**

Both the parties are to enter in to a Non-Disclosure Agreement and the draft Mutual Non-Disclosure Agreement is annexed as **Annexure-9** to this agreement. The execution of Non-Disclosure Agreement is pre-requisite for signing the Contract.

### **21.4 Exceptions to obligations**

The obligations on the parties under this clause will not be taken to have been breached to the extent that Confidential Information:

- a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
- c) is disclosed by BL;
- d) is disclosed by BL, in response to a request by a Parliament/Assembly or a Committee of the Parliament/Assembly;
- e) is shared by BL within BL's organization, or with another Agency, where this serves the country's legitimate interests;

- f) is authorized or required by law, including under this Contract, under a license or otherwise, to be disclosed; or
- g) is in the public domain otherwise than due to a breach of this clause 20.

### **21.5 Obligations on disclosure**

Where a party discloses Confidential Information to another person:

- a) pursuant to clauses i, ii or v, the disclosing party must: notify the receiving person that the information is Confidential Information; and not provide the information unless the receiving person agrees to keep the information confidential; or
- b) Pursuant to clauses iii and iv, the disclosing party must notify the receiving party that the information is Confidential information.

### **21.6 Additional confidential information**

- a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

## **22 Protection of personal information**

### **22.1 Application of the clause**

This clause applies only where the Management Consultant deals with personal information when, and for the purpose of, providing Services under this Contract.

### **22.2 Obligations**

Management Consultant acknowledges that it will use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract.

## **23 Conflict of interest**

Management Consultant to declare that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract and also under the provisions of Clause of Conflict of Interest provided in RFP.



## **24 Security**

### **24.1 Compliance with BL requirements**

Management Consultant must ensure that its representative and Personnel comply with:

- a) All relevant security and other requirements specified in BL's Information Security Policy, if the same has been made aware by BL;
- b) any additional security requirements specified in EOI/RFP/Contract ; and
- c) any other security procedures or requirements notified, in writing, by BL to Management Consultant. Management Consultant must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

### **24.2 Security clearance**

BL may, from time to time, notify Management Consultant of the level of security or access clearance applicable to Management Consultant's subcontractors or Personnel, and the date from which, or the period during which, that clearance will be effective and Management Consultant must comply with and ensure its representatives and Personnel act in accordance with that notice.

### **24.3 Removal of BL Data**

Management Consultant must not, and must ensure that its representatives and Personnel do not:

Remove BL Data or allow BL Data to be removed from BL's premises; or take BL Data or allow BL Data to be taken outside of India, without BL's prior written consent.

## **25 Books and records**

### **25.1 Management Consultant to keep books and records**

Management Consultant must:

- a) keep and require its personnel/representatives to keep adequate books and records, in accordance with Indian Accounting Standards, in sufficient detail to enable the amounts payable by BL under this Contract to be determined;  
and
- b) retain and require its subcontractors to retain books and records as mandated by law and the same would be made available to BL and will terminate upon expiry / termination of this Agreement.

### **25.2 Costs**

Management Consultant must bear its own costs of complying with this clause.

## **26 Audit and access**

### **26.1 Right to conduct audits**

BL or a representative may conduct audits relevant to the performance of the Management Consultant's obligations under this Contract. Audits may be conducted of:

- a) Management Consultant's operational practices and procedures as they relate to this Contract, including security procedures;
- b) the accuracy of Management Consultant's invoices and reports in relation to the provision of the Services under this Contract;
- c) Management Consultant's compliance with its confidentiality, privacy and security obligations under this Contract;
- d) material (including books and records) in the possession of Management Consultant relevant to the Services or Contract; and
- e) any other matters determined by BL to be relevant to the Services or Contract.

### **26.2 Access by BL**

- a) BL may access the premises of Management Consultant to the extent relevant to the performance of this Contract; require the provision by Management Consultant, its employees, agents, of records and information in a data format and storage medium accessible by BL by use of BL's existing computer hardware and software; inspect and copy documentation, books and records, however stored, in the custody or under the control of Management Consultant, its employees, agents or and require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to BL, and any inquiry conducted by Parliament or any Parliamentary committee.
- b) Management Consultant must provide access to its computer hardware and software to the extent necessary for BL to exercise its rights under this clause, and provide BL with any reasonable assistance requested by BL to use that hardware and software provided that any proprietary information including confidential information like profit margins, overheads and other such confidential information about its employees, organization would not be made available.

### **26.3 Conduct of audit and access**

BL will use reasonable endeavors to ensure that:

- a) audits are performed pursuant to clause 26; and
- b) the exercise of the general rights granted by clause 26 by BL, do not unreasonably delay or disrupt in any material respect Management Consultant's performance of its obligations under the Contract.

## **26.4 Costs**

- a) Except as set out in sub clause ii below, each party must bear its own costs of any reviews and/or audits.
- b) If Management Consultant is able to substantiate that it has incurred direct expenses in BL's exercise of the rights granted under RFP & Contract document which, having regard to the value of this Contract, are substantial, BL and Management Consultant will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

## **26.5 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Management Consultant's responsibility to perform its obligations in accordance with the Contract.

## **26.6 No restriction**

Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Comptroller and Auditor-General of India or a delegate. The rights of BL under this Contract are in addition to any other power, right or entitlement of the Comptroller and Auditor- General of India or a delegate.

## **26.7 Survival**

This clause 26 survives for the Contract Period or till the termination or expiry of this Contract.

## **27 Force Majeure**

### **27.1 Definition**

- (a) For the purposes of this Agreement, "Force Majeure" 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, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, 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 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 Agreement, 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.

## **27.2 No breach of Agreement**

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 Agreement 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 Agreement.

## **27.3 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) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 07 (Seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (d) Not later than 30 (thirty) days after Management 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.

## **27.4 Extension of time.**

Any period within which Management Consultant shall, pursuant to this Agreement, complete any action or task, may be extended for a period equal to the time during which Management Consultant was unable to perform such action as a result of Force Majeure. The decision of BL as regards the existence of Force Majeure condition and resultantly extension of time, shall be final.

## **27.5 Termination due to Force Majeure.**

If the force majeure conditions exist beyond a period of 30 days, BL reserves the right to terminate the contract forthwith.

# **28 Dispute Resolution**

## **28.1 Notification**

A party claiming a Dispute has arisen must give the other parties the Dispute notice setting out details of the Dispute.

## **28.2 Parties to resolve Dispute**

During the 30 days after a notice is given under clause 28.1 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred for the arbitration by a panel of three arbitrators. Each party to appoint one arbitrator and so appointed arbitrators shall appoint third arbitrator as presiding officer. The presiding officer so appointed should be from IT background having minimum 20 years' experience in handling similar projects as envisaged under this contract. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto. All arbitral awards shall be in writing and shall state the reasons thereof. The seat of Arbitration shall be at Kolkata.

## **28.3 Confidentiality under this process**

Any information or documents disclosed by a party under this clause:

- a) Must be kept confidential; and
- b) May only be used to attempt to resolve the Dispute.

## **28.4 Cost of the process**

Each party to a Dispute must pay its own costs of complying with this clause. The parties to the Dispute must equally pay the costs of the arbitrators.

## **28.5 Termination of Resolution process**

A party to a Dispute may terminate the dispute resolution process by giving notice to the other party after it has complied with the process and serve the notice of termination of the dispute resolution process.

## **28.6 Breach of this clause**

If a party to a Dispute breaches this clause, the other party does not have to comply with those clauses in relation to the Dispute.

## **29 Termination of Contract.**

### **29.1 Termination for convenience**

- a) BL may, at any time, by a prior written notice of 60 days, terminate this Contract, including for a machinery of government change without assigning any reasons.
- b) On receipt of a notice of termination, Management Consultant must stop work as specified in the notice; take all available steps to minimize loss resulting from that termination and to protect BL Material and Contract Material; and continue work on any part of the Services not affected by the notice.

- c) If this Contract is terminated under this clause, BL is liable only for payments for Services rendered before the effective date of termination; and reasonable costs incurred by Management Consultant and directly attributable to the termination. The payment Schedule provided shall be referred for the same.
- d) If the scope of the Services is reduced, BL's liability to pay the Service Charges or to provide BL Material abates in accordance with the reduction in the Services.
- e) BL is not liable to pay compensation under clause iii in an amount which would, in addition to any amounts paid or due, or becoming due, to Management Consultant under this Contract, exceed the total Service Charges payable under this Contract.
- f) Management Consultant is not entitled to compensation for loss of prospective profits.

## **29.2 Termination by BL for default of Management Consultant**

- a) Without limiting any other rights or remedies BL may have against Management Consultant arising out of or in connection with this Contract, BL may terminate this Contract effective immediately by giving written notice to Management Consultant if Management Consultant breaches a material provision of this Contract where that breach is not capable of remedy; Management Consultant breaches any provision of this Contract and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or an event specified in this clause happens to Management Consultant.
- b) Without limitation, for the purposes of this clause , each of the following constitutes a breach of a material provision:
  - breach of warranties;
  - failure to comply with clause 13 (Personnel);
  - failure to comply with clause 14 (Intellectual Property Rights);
  - failure to comply with clause 20 (Insurance);
  - failure to comply with clause 21 (Confidentiality and privacy);
  - failure to comply with clause 22 (Protection of personal information); or
  - Failure to notify BL of a conflict of interest under clause 23 (Conflict of interest).
- c) BL can also terminate the contract in the “Events of Default” and occurrence of such default is solely attributable to Management Consultant and also which could not be cured by Management Consultant during the Consultation Notice period given for remedy/ cure of default( as provided in para & 29.6 below).“Management Consultant’s events of default” means any of the following events unless such an event has occurred as a consequence of a Force Majeure Event:
  - i. Management Consultant’s failure to perform or discharge or delay in performing or discharging any of its obligations in accordance with the provisions of RFP and also Management Consultant’s failure of complete any of the modules within the specified time period as provided in RFP.

- ii. The activities/work at any Project Site is abandoned by Management Consultant without informing BL for more than 7 {Seven} Days during the Project.
- iii. A delay of more than Thirty {30} days (after mutually agreed extended time if any) from any module date in achieving any of the performance obligations set forth for the relevant modules.
- iv. Change in the structure of the project team, the "Key Personnel" by Management Consultant without written consent of BL for the changes, except for death, resignation and disability.
- v. Inability to staff the Project with competent team, within 30 days from the award of contract and in case any of the team members leave the Project either due to voluntary severance or disciplinary actions against them.
- vi. Any representation made or warranties given by Management Consultant under this Contract are found to be false or misleading.
- vii. If Management Consultant, has given false information in qualifying for the Project or getting selected or any information provided by Management Consultant during the procurement process is found to be false.
- viii. Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Management Consultant by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- ix. The Performance Bank Guarantee and any other securities required to be maintained under this Contract is not maintained in terms of the provisions hereof.
- x. Management Consultant abandons or expresses its intention to revoke/terminate this Contract without being entitled to do so as is expressly provided in the Contract.
- xi. Change in constitution/organization of Management Consultant which violates the short listing criteria used in pre-qualification process.
- xii. Amalgamation of Management Consultant with any other company or reconstruction or transfer of the whole or part of the Project or the revenue earning parts of the Project [other than transfer of assets in the ordinary course of business] in contravention with the provisions of this contract.
- xiii. Management Consultant engages or knowingly allows any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Contract and/or by law or which constitutes a breach of the Contract or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Contract.

- xiv. Management Consultant suffers a change of control. For the purpose of this provision the change of control of Management Consultant would happen if:
  - a) the promoter group of Management Consultant ceases to control the board of directors of Management Consultant :or
  - b) Any reduction in the cumulative shareholding of the promoter group of Management Consultant falls below 26% of the total paid up equity share capital of Management Consultant.

### **29.3 Parties Rights in the Event of Default.**

- a) Upon the occurrence of Management Consultant's Event of Default, BL shall without prejudice to any other rights and remedies available to it under this Contract, be entitled to terminate this Contract.
- b) Upon the occurrence of BL Event of Default, Management Consultant shall without prejudice to any other rights and remedies available to it under this Contract, be entitled to terminate this Contract.
- c) **Consultation Notice.** The non-defaulting Party shall issue to the defaulting Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("Consultation Notice").

### **29.4 Remedial Process.**

Following the issue of Consultation Notice by the non-defaulting Party, within a period not exceeding 30{Thirty} Days or such extended period as the Parties may agree in writing ("Remedial Period") the Parties shall, in consultation, endeavor to arrive at an agreement as to the manner of rectifying or remedy the underline event of default.

### **29.5 Obligations during Remedial Period.**

Except expressly provided otherwise in the Contract, during the Remedial Period, the Parties shall continue to perform their respective obligations under this Contract which can be performed, failing which the Party in default shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### **29.6 Revocation of Consultation Notice.**

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and parties agree upon any of the measures set out in this Article, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

### **29.7 Termination due to Events of Default.**

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived then the Party which has issued the Consultation Notice shall have



the right to terminate this Contract, in such event, inter alia, the provisions related to termination of contract provided under this contract shall be expressly made applicable in terms of levy of penalty and liquidated damages and encashment of performance security etc. shall be expressly applied.

### **29.8 Remedies Cumulative.**

The exercise of right by either Party to terminate this Contract, as provided herein, shall not preclude such Party from availing any other rights or remedies that may be available to it under law or Contract. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

## **30 Termination Process and Consequences of Termination.**

### **30.1 Termination due to Force Majeure Event or Event of Default.**

- i. The Party entitled to terminate this Contract either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing to the other Party. The Termination Notice shall be of not more than 30 (thirty) days, ("Termination Period") and at the expiry of the Termination Period, this Contract shall stand terminated without any further notice.

### **30.2 Material Breach.**

- i. In the event that BL believes that Management Consultant is in Material Breach of its obligations under this Agreement, BL may terminate this Agreement upon giving a one month's prior written notice to Management Consultant. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
  - a) If Management Consultant is not able to complete any of the module in RFP which translates into Material Breach, then BL will serve a Thirty (30) days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, BL will have the option to terminate this Agreement and invoke the Bank Guarantee.
- ii. Where a change of control of Management Consultant has occurred whereby Management Consultant has merged, amalgamated or been taken over, due to which the majority shareholding of Management Consultant has been transferred to another entity, BL shall by a one month written notice, terminate this Agreement and such notice shall become effective at the end of the notice period.
- iii. In the event that Management Consultant undergoes such a change of control, BL may, as an alternative to termination, require a full Performance Guarantee for the obligations of Management Consultant by a guarantor acceptable to BL or its nominated agencies. If such a guarantee is not furnished within seven (7) days of BL's demand, BL may exercise its right to terminate this Agreement forthwith.

- iv. If the value of the Damages is more than 10 % (to be calculated as provided in para 30.5 below) of corresponding module or deliverable as provided in the RFP, it shall constitute material breach.

### 30.3 Obligations during Termination Period.

- i. During Termination Period, Management Consultant shall, subject to where applicable to the provisions of this Article, continue to perform its obligations under this Contract including and not limited to co-operation and co-ordination with BL as per the provisions of the contract, failing which Management Consultant shall compensate BL for any loss or damage occasioned or suffered on account of the underlying failure/breach. Even on termination of this Agreement, Management Consultant will be responsible for the continuity of the services to the Stakeholders during the Transition Period.
- ii. During termination, Management Consultant will hand over all data in formats requested by BL, and all the databases to BL and other assets exclusively purchased for BL and /or created during the term of this Agreement. All the ownership rights etc on the application, infrastructure, and all the assets will always remain vested with BL.
- iii. **BL Supplied Equipment and facilities:** Management Consultant shall handover the peaceful possession of all the equipment and facilities supplied by BL including and not limited to BL Supplied Equipment and to the Project Sites, pursuant to the Project. BL shall be entitled to claim the damages in case of damage to any of the above mentioned equipment, facilities and sites etc by Management Consultant.

### 30.4 Effects of termination

- i. In the event that BL terminates this Agreement pursuant to failure on the part of Management Consultant to comply with the conditions as contained in this contract and depending on the event of default, Performance Guarantee furnished by Management Consultant shall be invoked.
- ii. Upon termination of this Agreement, the Parties will comply with the Exit Management as provided in this contract.
- iii. On termination, Management Consultant will hand over all data in formats requested by BL, and all the databases to BL and other assets exclusively purchased for BL and /or created during the term of this Agreement. All the ownership rights etc. on the application, infrastructure, and all the assets will always remain vested with BL.
- iv. In the event that BL terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment and the applicable provisions related to penalty, liquidated damages etc provided in the contract.
- v. On termination of this Contract, Management Consultant must:
  - a) Stop work on the Services;
  - b) Deal with BL Material as reasonably directed by BL; and
  - c) Return all BL's Confidential Information to BL.

### **30.5 Liquidated Damages (L.D.)**

- i. If Management Consultant fails to complete/achieve corresponding module or deliverable as provided in the RFP before the scheduled date or the extended date for various activities given in the RFP or if Management Consultant repudiates the Contract before completion of the Project then BL, at its discretion, may without prejudice to any other right or remedy available to BL under the Contract can recover from Management Consultant Liquidated damages @ 2% (two %) of the contract price for every week of delay or for part of a week thereof, subject to the maximum value of not more 10% (Ten %) of the contract price in the form of Liquidated Damages and no further proof regarding loss would be required.
- ii. BL may without prejudice to its right to affect recovery by any other method, deduct the amount of damages from any money belonging to Management Consultant in its hands or which may become due to Management Consultant. Any such recovery of damages shall not in any way relieve Management Consultant from any of its obligations to complete the works or from any other obligations and liabilities under the Contract.

### **30.6 Termination of this Agreement due to bankruptcy of Management Consultant**

Without prejudice to any other rights and remedies available to BL, BL may serve written notice on Management Consultant at any time to terminate this Agreement with immediate effect in the event that Management Consultant reporting an apprehension of bankruptcy.

### **30.7 Survival**

The following clauses survive the termination and expiry of this Contract:

- a) Clause 14 (Intellectual Property Right);
- b) Clause 18 (Indemnity);
- c) Clause 20 (Insurance);
- d) Clause 21 (Confidentiality and privacy);
- e) Clause 22 (Protection of personal information);
- f) Clause 24 (Security);
- g) Clause 26 (Audit and access);
- h) Clause 28 ( Dispute Resolution)
- i) Clause 32 (Exit Management).

### **30.8 Termination does not affect accrued rights**

Termination of this Contract does not affect any accrued rights or remedies of a party.

## **31 Risk.**

Until transfer in accordance with the Contract, during the Project, the Project Assets shall remain at the sole risk of Management Consultant.

## **32 Exit Management**

### **32.1 Purpose**

- i. This Clause sets out the provisions, which shall apply prior to the expiry of the Agreement or termination of the Contract is initiated, or when BL intends to facilitate an understanding of Management Consultant's work, operations and the systems for BL or any nominee/s of BL and during the Management Consultancy for this project of BL.
- ii. It sets out the provisions which shall ensure that BL shall be able to offer the services to its stake holders without any interruptions on expiry or termination of the contract.
- iii. Continuity and performance of the Services at all times including the duration of the contract and post expiry of the contract is a critical requirement of BL. It is the prime responsibility of Management Consultant to ensure continuity of service at all times of the contract including exit management period and in no way any facility/service shall be affected/degraded. Further, Management Consultant is also responsible for all activities required to train and transfer the knowledge to the Replacement Consulting Agency to ensure similar continuity and performance of the services post expiry of the contract. Management Consultant shall be required to carry out a gap analysis of the facilities and arrangements made by Management Consultant and specifically inform BL.
- iv. It sets out the mechanisms for Exit Management Services, Management Consultant is to provide on termination or prior to expiration of the Agreement to allow the orderly and efficient transition of the Services to BL or its nominee.
- v. It sets out the mechanisms for managing the Knowledge Enablement Services Management Consultant has to provide to allow BL to create an understanding of various aspects related to Scope of Work defined in the RFP for itself or its nominees or any designated agencies.

### **32.2 Initiation.**

- I. In case of successful completion of contract the provisions for Exit Management Services are invoked at least six months prior to the expiry of the Contract and in case of premature termination of the contract, on the day of notice of termination, till the time exit management services are executed to the satisfaction of BL.
- II. BL has the right to alter in consultation with Management Consultant, the timelines mentioned here based on the circumstances prevailing at the time of availing the Exit Management Services.
- III. In case Management Consultant desires to close or shut down its business then in that case, Management Consultant shall inform BL at least six (6) months before closing its business. Failure on the part of Management Consultant in informing BL about its intention to close its business shall make BL entitled to claim compensation and invoke the Performance Bank Guarantee.
- IV. In case of expiry of the Contract or part of this project work, the provisions of this Clause shall come into effect six months prior to the contract for the particular service is coming to an end or six months prior to the expiry of the contract.

- V. However, if BL in the intervening period invokes the provisions of the Contract and extends the term of the Contract for the particular service, the provisions of the schedule will not come into effect at that time but at the expiry of such extended period, provisions of this Schedule of Exit Management of the Contract shall apply. Both the Parties of this contract shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Plan which Management Consultant is required to submit within three months from the date of award of contract and agreed to by BL. Such exit management plan will become part of the contract and accordingly shall be binding on both the parties.

### **33 Notices and other communications**

#### **i. Service of notices**

- a) A Notice must be:
- b) in writing, in English and signed by a person duly authorized by the sender; and
- c) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in Contract Details, as varied by any Notice given by the recipient to the sender.

#### **ii. Effective on receipt**

A Notice given in accordance with this clause takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- i. if hand delivered, on delivery;
- ii. if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside India);
- iii. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 6.00 pm on a Business Day, the Notice is taken to be received at 10.00 am on the next Business Day.

### **34 Miscellaneous**

#### **i. Varying the Contract**

This Contract may be varied only in writing signed by each party.

#### **ii. Fairness and Good Faith**

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

**iii. Undertaking that the Company/Firm/Entity has neither been debarred nor being blacklisted.**

Management Consultant must submit duly signed undertaking that it has neither been blacklisted nor has been debarred by any Central/State Govt Agency/PSU from participating in such tendering process. The format of undertaking is annexed as **Annexure-6. Submission of this undertaking is a pre-requisite of signing this Agreement.**

**iv. Approvals and consents**

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

**v. Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

**vi. Costs.**

Each party must pay its own costs of negotiating, preparing and executing this Contract.

**vii. Counterparts**

This Contract may be executed in counterparts. All executed counterparts constitute one document.

**viii.No merger**

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

**ix. Entire agreement**

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**x. Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

**xi. Severability**

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

## **xii. Waiver**

Waiver of any provision of or right under this Contract:

- i. must be in writing signed by the party entitled to the benefit of that provision or right; and
- ii. is effective only to the extent set out in any written waiver.

## **xiii. Relationship**

- i. The parties must not represent themselves, and must ensure that their officers, employees, and agents do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- ii. This Contract does not create a relationship of employment, agency or partnership between the parties.

## **xiv. Announcements**

- i. Management Consultant must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain BL's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- ii. If Management Consultant is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract Management Consultant must, to the extent practicable, first consult with and take into account the reasonable requirements of BL.
- iii. Where reasonably practicable, BL will, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to Management Consultant of the general nature of the announcement. For the avoidance of doubt, BL does not require the consent of Management Consultant to the making of the announcement.

## **xv. Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules.

Subject to the provisions related to Arbitration contained herein above (in this contract), all disputes between the parties pertaining to this Contract shall be subject to the jurisdiction of the Competent Courts at Kolkata only.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITEN.**

**SIGNED, SEALED AND DELIVERED  
For and on behalf of Management  
Consultant by**

**SIGNED, SEALED AND DELIVERED  
For and on behalf of Balmer Lawrie by**

(Signature)  
(Name)  
(Designation)  
(Address)  
(Phone/Fax No.)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Phone/Fax No.)

In the presence of

In the presence of

Witness 1 .....

Witness 1 .....

Witness 2 .....

Witness 2 .....



## **Annexure-11 : Pre-Contract Draft Integrity Pact**

### **General**

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of 2021, between, on one hand through Shri ....., *Designation of the officer*, Balmer Lawrie & Co, Ltd, 21, N.S. Road, Kolkata 700 001 (hereinafter called the "BL", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s ..... represented by Shri....., Designation (hereinafter called the "BIDDER/MANAGEMENT CONSULTANT" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS BL proposes to "**Engagement of Management Consultant to define on-premise or cloud solution for SAP application as future strategy**" and the BIDDER/MANAGEMENT CONSULTANT is willing to offer/has offered and

WHEREAS the BIDDER/MANAGEMENT CONSULTANT is a Company registered under Companies Act, 1956/2013 or a partnership firm registered under LLP Act, 2008 Registered with the Service Tax Authorities, constituted in accordance with the relevant law in the matter and BL is a PSU under Ministry of Petroleum and Natural Gas (MOPNG).

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling BL to obtain the desired said work define at **Annex** at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDER/MANAGEMENT CONSULTANT to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and BL will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

### **1. Commitments of BL**

- 1.1 BL undertakes that no official of BL, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER/MANAGEMENT CONSULTANT, either for themselves or for

any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

- 1.2 BL will, during the pre-contract stage, treat all BIDDER/MANAGEMENT CONSULTANT alike, and will provide to all BIDDER/MANAGEMENT CONSULTANT the same information and will not provide any such information to any particular BIDDER/MANAGEMENT CONSULTANT which could afford an advantage to that particular BIDDER/MANAGEMENT CONSULTANT in comparison to other BIDDER/MANAGEMENT CONSULTANTS.
  - 1.3 All the officials of BL will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case of any such preceding misconduct on the part of such official(s) is reported by the BIDDER/MANAGEMENT CONSULTANT to the BL with full and verifiable facts and the same is *prima facie* found to be correct by BL, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by BL and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by BL the proceedings under the contract would not be stalled.

### **3. Commitments of BIDDER/MANAGEMENT CONSULTANT**

The BIDDER/MANAGEMENT CONSULTANT commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

- 3.1 The BIDDER/MANAGEMENT CONSULTANT will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of BL, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
- 3.2 The BIDDER/MANAGEMENT CONSULTANT further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of BL or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.

- 3.3 BIDDER/MANAGEMENT CONSULTANTS shall disclose the name of Consortium/Joint-Venture/ Sub-contracting and representatives and Indian BIDDER/MANAGEMENT CONSULTANTS shall disclose their foreign principals or associates.
- 3.4 BIDDER/MANAGEMENT CONSULTANTS shall disclose the payments to be made by them to Consortium/Joint-Venture/ Sub-contracting or any other intermediary, in connection with this bid/contract.
- 3.5 The BIDDER/MANAGEMENT CONSULTANT further confirms and declares to BL that the BIDDER/MANAGEMENT CONSULTANT is the original not Consortium/Joint-Venture/ Sub-contracting for engagement of Management Consultant for the project. However, in order to bridge the competency gap, Management Consultant may hire respective domain expert's manpower/ resources from any sources at their end.
- 3.6 The BIDDER/MANAGEMENT CONSULTANT, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of BL or their family members, Consortium/Joint-Venture/ Sub-contracting or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The BIDDER/MANAGEMENT CONSULTANT will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The BIDDER/MANAGEMENT CONSULTANT will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The BIDDER/MANAGEMENT CONSULTANT shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by BL as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER/MANAGEMENT CONSULTANT also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The BIDDER/MANAGEMENT CONSULTANT commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The BIDDER/MANAGEMENT CONSULTANT shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

3.12 If the BIDDER/MANAGEMENT CONSULTANT or an employee of the BIDDER/MANAGEMENT CONSULTANT or any person acting on behalf of the BIDDER/MANAGEMENT CONSULTANT, either directly or indirectly, is a relative of any of the officers of BL, or alternatively, if any relative of an officer of BL has financial interest/stake in the BIDDER/MANAGEMENT CONSULTANT's firm, the same shall be disclosed by the BIDDER/MANAGEMENT CONSULTANT at the time of filling the tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

3.13 The BIDDER/MANAGEMENT CONSULTANT shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of BL.

#### **4. Previous Transgression**

4.1 The BIDDER/MANAGEMENT CONSULTANT declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER/MANAGEMENT CONSULTANT's exclusion from the tender process.

4.2 If the BIDDER/MANAGEMENT CONSULTANT agrees that if it makes incorrect statement on this subject, BIDDER/MANAGEMENT CONSULTANT can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **5. Earnest Money/Security Deposit**

5.1. While submitting commercial bid, the BIDDER/MANAGEMENT CONSULTANT shall deposit an amount\_\_\_\_\_(to be specified in RFP) as Earnest Money/Security Deposit, with BL through any of the following instruments:-

(i) Bank Draft or a Pay Order in favour of\_\_\_\_\_.

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to BL on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by BL shall be treated as conclusive proof of payment.

(iii) Any other mode or through any other instrument (to be specified in the RFP).

5.2. The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the

BIDDER/MANAGEMENT CONSULTANT and BL, including warranty period, whichever is later.

- 5.3 In the case of successful BIDDER/MANAGEMENT CONSULTANT a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by BL to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- 5.4 No interest shall be payable by BL to the BIDDER/MANAGEMENT CONSULTANT on Earnest Money/Security Deposit for the period of its currency.

## **6. Sanctions for Violation**

- 6.1 Any breach of the aforesaid provisions by the BIDDER/MANAGEMENT CONSULTANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/MANAGEMENT CONSULTANT) shall entitle BL to take all or any one of the following actions, wherever required:-
- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the BIDDER/MANAGEMENT CONSULTANT. However, the proceedings with the other BIDDER/MANAGEMENT CONSULTANT(s) would continue.
  - (ii) The Earnest Money Deposit (in pre-contract stage) and /or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by BL and BL shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER/MANAGEMENT CONSULTANT.
  - (iv) To recover all sums already paid by BL, and in case of an Indian BIDDER/MANAGEMENT CONSULTANT with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER/MANAGEMENT CONSULTANT from a country. If any outstanding payment is due to the BIDDER/MANAGEMENT CONSULTANT from BL in connection with any other contract, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
  - (v) To encash the advance bank guarantee and performance bank guarantee, if furnished by the BIDDER/MANAGEMENT CONSULTANT, in order to recover the payments, already made by BL, along with interest.

- (vi) To cancel all or any other Contracts with the BIDDER/MANAGEMENT CONSULTANT. The BIDDER/MANAGEMENT CONSULTANT shall be liable to pay compensation for any loss or damage to BL resulting from such cancellation/rescission and BL shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER/MANAGEMENT CONSULTANT.
  - (vii) To debar the BIDDER/MANAGEMENT CONSULTANT from participating in any bidding process of the Government of India for a minimum period of five years, which may be further extended at the discretion of BL.
  - (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by BL with the BIDDER/MANAGEMENT CONSULTANT, the same shall not be opened.
  - (x) Forfeiture of Performance Bank Guarantee in case of a decision by BL to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- 6.2 BL will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (x) of this Pact also on the Commission by the BIDDER/MANAGEMENT CONSULTANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/MANAGEMENT CONSULTANT), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of BL to the effect that a breach of the provisions of this Pact has been committed by the BIDDER/MANAGEMENT CONSULTANT shall be final and conclusive on the BIDDER/MANAGEMENT CONSULTANT, however, the BIDDER/MANAGEMENT CONSULTANT can approach the Independent Monitor(s) appointed for the purposes of this Pact.

## **7. Fall Clause**

- 7.1 The BIDDER/MANAGEMENT CONSULTANT undertakes that it has not supplied/is not supplying the similar services or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that the similar services/systems or sub-system was supplied by the BIDDER/MANAGEMENT CONSULTANT to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER/MANAGEMENT CONSULTANT to BL, if the contract has already been concluded.

## **8. Independent Monitors**

- 8.1 BL has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact, in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this pact.
- 8.3 The Monitors shall not be subject to the instructions by the representatives of the parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of the meetings.
- 8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by BL.
- 8.6 The BIDDER/MANAGEMENT CONSULTANT(s) accepts that the Monitor has the right to access without restriction to all Project documentation of BL including that provided by the BIDDER/MANAGEMENT CONSULTANT. The BIDDER/MANAGEMENT CONSULTANT will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/MANAGEMENT CONSULTANT/Subcontractor(s) with confidentiality.
- 8.7 BL will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 8.8 The Monitor will submit a written report to the designated Authority of BL/Secretary in the Department/ within 8 to 10 weeks from the date of reference or intimation to him by BL/BIDDER/MANAGEMENT CONSULTANT and, should the occasion arise, submit proposals for correcting problematic situations.

## **9. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, BL or its agencies shall be entitled to examine the Books of Accounts of the BIDDER/MANAGEMENT CONSULTANT and the BIDDER/MANAGEMENT CONSULTANT shall

provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

**10. Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of BL.

**11. Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**12. Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both BL and the BIDDER/MANAGEMENT CONSULTANT, including Exit management and Transition period, whichever is later. In case BIDDER/MANAGEMENT CONSULTANT is unsuccessful, this Integrity Pact shall expire after six months from the date of signing the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

**13.** The Parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_.

BIDDER/MANAGEMENT CONSULTANT

BALMER LAWRIE

Name of the Officer Designation

Name of the Officer with Designation

\_\_\_\_\_

\_\_\_\_\_

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_



## **Annexure-12 : Online EMD**

### **Terms and Conditions for making Online-Payments towards Earnest Money Deposit (EMD)**

The Terms and Conditions contained herein shall apply to any person (“User”) using the services of **Balmer Lawrie & Co. Ltd**, hereinafter referred to as “Merchant”, for making Tender fee and Earnest Money Deposit (EMD) payments through an online Payment Gateway Service (“Service”) offered by ICICI Bank Ltd. in association with E Tendering Service provider and Payment Gateway Service provider through Balmer Lawrie e-procurement website i.e. <https://balmerlawrie.eproc.in> (“Website”). Each User is therefore deemed to have read and accepted these Terms and Conditions.

#### **A. Privacy Policy**

The Merchant respects and protects the privacy of the individuals that access the information and use the services provided through them. Individually identifiable information about the User is not willfully disclosed to any third party without first receiving the User's permission, as covered in this Privacy Policy.

This Privacy Policy describes Merchant’s treatment of personally identifiable information that Merchant collects when the User is on the Merchant’s website. The Merchant does not collect any unique information about the User (such as User's name, email address, age, gender etc.) except when you specifically and knowingly provide such information on the Website. Like any business interested in offering the highest quality of service to clients, Merchant may, from time to time, send email to the User and other communication to tell the User about the various services, features, functionality and content offered by Merchant's website or seek voluntary information from the User.

Please be aware, however, that Merchant will release specific personal information about the User if required to do so in the following circumstances:

- a) in order to comply with any valid legal process such as a search warrant, statute, or court order, or available at time of opening the tender
- b) if any of User’s actions on our website violate the Terms of Service or any of our guidelines for specific services, or
- c) to protect or defend Merchant’s legal rights or property, the Merchant’s site, or the Users of the site or
- d) to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the security, integrity of Merchant’s website/offerings.

#### **B. General Terms and Conditions For E-Payment**

1. Once a User has accepted these Terms and Conditions, he/ she may register on Merchant’s website and avail the Services.
2. Merchant's rights, obligations, undertakings shall be subject to the laws in force in India, as well as any directives/ procedures of Government of India, and nothing contained in these Terms and Conditions shall be in derogation of Merchant's right to comply with any law enforcement agencies request or requirements relating to any User’s use of the website or information provided to or gathered by Merchant with respect to such use. Each User accepts and agrees that the provision of details of his/ her use of the Website to regulators or police or to any other third party in order to resolve disputes or complaints which relate to the Website shall be at the absolute discretion of Merchant.
3. If any part of these Terms and Conditions are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth herein, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms and Conditions shall continue in effect.

4. These Terms and Conditions constitute the entire agreement between the User and Merchant. These Terms and Conditions supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the User and Merchant. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
5. The entries in the books of Merchant and/or the Payment Gateway Service Providers kept in the ordinary course of business of Merchant and/or the Payment Gateway Service Providers with regard to transactions covered under these Terms and Conditions and matters therein appearing shall be binding on the User and shall be conclusive proof of the genuineness and accuracy of the transaction.
6. **Refund For Charge Back Transaction:** In the event there is any claim for/ of charge back by the User for any reason whatsoever, such User shall immediately approach Merchant with his/ her claim details and claim refund from Merchant alone. Such refund (if any) shall be effected only by Merchant via payment gateway or by means of a demand draft or such other means as Merchant deems appropriate. No claims for refund/ charge back shall be made by any User to the Payment Gateway Service Provider(s) and in the event such claim is made it shall not be entertained.
7. In these Terms and Conditions, the term “**Charge Back**” shall mean, approved and settled credit card or net banking purchase transaction(s) which are at any time refused, debited or charged back to merchant account (and shall also include similar debits to Payment Gateway Service Provider's accounts, if any) by the acquiring bank or credit card company for any reason whatsoever, together with the bank fees, penalties and other charges incidental thereto.
8. Refund for fraudulent/duplicate transaction(s): The User shall directly contact Merchant for any fraudulent transaction(s) on account of misuse of Card/ Bank details by a fraudulent individual/party and such issues shall be suitably addressed by Merchant alone in line with their policies and rules.
9. Server Slow Down/Session Timeout: In case the Website or Payment Gateway Service Provider’s webpage, that is linked to the Website, is experiencing any server related issues like ‘slow down’ or ‘failure’ or ‘session timeout’, the User shall, before initiating the second payment, check whether his/her Bank Account has been debited or not and accordingly resort to one of the following options:
  - i. In case the Bank Account appears to be debited, ensure that he/ she does not make the payment twice and immediately thereafter contact Merchant via e-mail or any other mode of contact as provided by Merchant to confirm payment.
  - ii. In case the Bank Account is not debited, the User may initiate a fresh transaction to make payment.

However, the User agrees that under no circumstances the Payment Gateway Service Provider shall be held responsible for such fraudulent/duplicate transactions and hence no claims should be raised to Payment Gateway Service Provider. No communication received by the Payment Gateway Service Provider(s) in this regard shall be entertained by the Payment Gateway Service Provider.

### **C. Limitation of Liability**

1. Merchant has made this Service available to the User as a matter of convenience. Merchant expressly disclaims any claim or liability arising out of the provision of this Service. The User agrees

and acknowledges that he/ she shall be solely responsible for his/ her conduct and that Merchant reserves the right to terminate the rights to use of the Service immediately without giving any prior notice thereof.

2. Merchant and/or the Payment Gateway Service Providers shall not be liable for any inaccuracy, error or delay in, or omission of (a) any data, information or message, or (b) the transmission or delivery of any such data, information or message; or (c) any loss or damage arising from or occasioned by any such inaccuracy, error, delay or omission, non-performance or interruption in any such data, information or message. Under no circumstances shall the Merchant and/or the Payment Gateway Service Providers, its employees, directors, and its third party agents involved in processing, delivering or managing the Services, be liable for any direct, indirect, incidental, special or consequential damages, or any damages whatsoever, including punitive or exemplary arising out of or in any way connected with the provision of or any inadequacy or deficiency in the provision of the Services or resulting from unauthorized access or alteration of transmissions of data or arising from suspension or termination of the Services.
3. The Merchant and the Payment Gateway Service Provider(s) assume no liability whatsoever for any monetary or other damage suffered by the User on account of:
  - (i) the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Payment Gateway or Services in connection thereto; and/ or
  - (ii) any interruption or errors in the operation of the Payment Gateway.
4. The User shall indemnify and hold harmless the Payment Gateway Service Provider(s) and Merchant and their respective officers, directors, agents, and employees, from any claim or demand, or actions arising out of or in connection with the utilization of the Services.

The User agrees that Merchant or any of its employees will not be held liable by the User for any loss or damages arising from your use of, or reliance upon the information contained on the Website, or any failure to comply with these Terms and Conditions where such failure is due to circumstance beyond Merchant's reasonable control.

**D. Miscellaneous Conditions:**

1. Any waiver of any rights available to Merchant under these Terms and Conditions shall not mean that those rights are automatically waived.
2. The User agrees, understands and confirms that his/ her personal data including without limitation details relating to debit card/ credit card transmitted over the Internet may be susceptible to misuse, hacking, theft and/ or fraud and that Merchant or the Payment Gateway Service Provider(s) have no control over such matters.
3. Although all reasonable care has been taken towards guarding against unauthorized use of any information transmitted by the User, Merchant does not represent or guarantee that the use of the Services provided by/ through it will not result in theft and/or unauthorized use of data over the Internet.
4. The Merchant, the Payment Gateway Service Provider(s) and its affiliates and associates shall not be liable, at any time, for any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line failure, theft or destruction or unauthorized access to, alteration of, or use of information contained on the Website.
5. The User may be required to create his/ her own User ID and Password in order to register and/ or use the Services provided by Merchant on the Website. By accepting these Terms and

Conditions the User agrees that his/ her User ID and Password are very important pieces of information and it shall be the User's own responsibility to keep them secure and confidential. In furtherance hereof, the User agrees to;

- i. Choose a new password, whenever required for security reasons.
- ii. Keep his/ her User ID & Password strictly confidential.
- iii. Be responsible for any transactions made by User under such User ID and Password.

The User is hereby informed that Merchant will never ask the User for the User's password in an unsolicited phone call or in an unsolicited email. The User is hereby required to sign out of his/ her Merchant account on the Website and close the web browser window when the transaction(s) have been completed. This is to ensure that others cannot access the User's personal information and correspondence when the User happens to share a computer with someone else or is using a computer in a public place like a library or Internet café.

#### **E. Debit/Credit Card, Bank Account Details**

1. The User agrees that the debit/credit card details provided by him/ her for use of the aforesaid Service(s) must be correct and accurate and that the User shall not use a debit/ credit card, that is not lawfully owned by him/ her or the use of which is not authorized by the lawful owner thereof. The User further agrees and undertakes to provide correct and valid debit/credit card details.
2. The User may make his/ her payment(Tender Fee/Earnest Money deposit) to Merchant by using a debit/credit card or through online banking account. The User warrants, agrees and confirms that when he/ she initiates a payment transaction and/or issues an online payment instruction and provides his/ her card / bank details:
  - i. The User is fully and lawfully entitled to use such credit / debit card, bank account for such transactions;
  - ii. The User is responsible to ensure that the card/ bank account details provided by him/ her are accurate;
  - iii. The User is authorizing debit of the nominated card/ bank account for the payment of Tender Fee and Earnest Money Deposit
  - iv. The User is responsible to ensure sufficient credit is available on the nominated card/ bank account at the time of making the payment to permit the payment of the dues payable or the bill(s) selected by the User inclusive of the applicable Fee.

#### **F. Personal Information**

1. The User agrees that, to the extent required or permitted by law, Merchant and/ or the Payment Gateway Service Provider(s) may also collect, use and disclose personal information in connection with security related or law enforcement investigations or in the course of cooperating with authorities or complying with legal requirements.
2. The User agrees that any communication sent by the User vide e-mail, shall imply release of information therein/ therewith to Merchant. The User agrees to be contacted via e-mail on such mails initiated by him/ her.
3. In addition to the information already in the possession of Merchant and/ or the Payment Gateway Service Provider(s), Merchant may have collected similar information from the User in the past. By entering the Website the User consents to the terms of Merchant's information privacy policy and to our continued use of previously collected information. By submitting the User's personal information to us, the User will be treated as having given his/her permission

for the processing of the User's personal data as set out herein.

4. The User acknowledges and agrees that his/ her information will be managed in accordance with the laws for the time in force.

#### **G. Payment Gateway Disclaimer**

The Service is provided in order to facilitate payment of Tender Fees/Earnest Money Deposit online. The Merchant or the Payment Gateway Service Provider(s) do not make any representation of any kind, express or implied, as to the operation of the Payment Gateway other than what is specified in the Website for this purpose. By accepting/ agreeing to these Terms and Conditions, the User expressly agrees that his/ her use of the aforesaid online payment service is entirely at own risk and responsibility of the User.

#### **H. General Terms and Conditions -**

1. It is advised that all bidders make payment via RTGS/NEFT/Debit Card /Credit Card at least one day in advance to the last day. In the event of bidder making payment on the last day and same is not available for bidder for validation on account of any reason whatsoever, Balmer Lawrie & Co. Ltd., its banker or e-Procurement service provider or payment gateway service provider would not be held responsible in any manner. In such cases bidder may not be able to submit the tender.
2. It is the bidder's responsibility to ensure that RTGS/NEFT RTGS/NEFT/Debit Card /Credit Card payments are made to the exact details as mentioned in the challan. In the event of any discrepancy, payment would not be considered and would not be available for validation of EMD payment.
3. Bidder is required to generate challan for every tender since details in the challan are unique to the tender and bidder combination. Bidder is not supposed to use challan generated in one tender for payment against another tender.
4. Under no circumstance, including whether the bidder has made duplicate/incorrect payments or correct payments not validated by the bidder for which tender validity has expired, Balmer Lawrie & Co. Ltd. or its Banker or its service providers are under no obligation to disclose the details of payment made by any bidder.
5. If you attempt to add beneficiary through internet banking then add the beneficiary account number printed in challan only. Please note that every challan have different beneficiary account number and hence do not attempt to use the same beneficiary account number for multiple cases.
6. No part payment should be made using account of same bank or other bank. Kindly ensure that full amount should be paid in one transaction. If multiple payments are made from one bank or multiple banks, then case will be disapproved and amount will be auto refunded.

**Annexure-13 : Performance Bank Guarantee**

*(To be executed on Non-Judicial Stamp Paper of appropriate value)*

..... *(Name of the Bank)*

Address .....

Guarantee No. ....

A/c Messrs ..... *(Name of Contractor)*

Date of Expiry .....

Limit to liability (*amount in INR*) .....

Contract No. ....

For ..... *(Name of Facilities)*

**Subject: Performance Bank Guarantee.**

Date ..... 201.

**To**

.....  
.....  
.....

**[Name and Address of Employer]**

Dear Sir,

We refer to the Contract Agreement (hereinafter called the "Contract") Reference No. .... Dated ..... between you and M/s. (*Name of the Contractor*) (hereinafter called the "Contractor"). Whereas the Contractor has undertaken to produce a Bank guarantee under the Contract including any amendment thereto, to secure its obligations to you for the performance of the Contract including the guarantees and warranty of the Facilities & the equipment supplied.

1. We ..... (*Name of the Bank*) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the contractor and without protest and demur an amount not exceeding ..... (*amount in INR*). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding .....

2. Notwithstanding anything to the contrary we agree that your decision as to whether the Contractor has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) / Contractor(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.
4. This guarantee shall come into force from the date of issue of this guarantee and shall remain revocably valid and in force initially up to \_\_\_\_\_ and the same shall be extended further until the expiry of the Defect Liability Period of the said Contract.
5. This guarantee shall not in any way be affected by you taking any securities from the Contractor or by the winding up, dissolution, insolvency or death as the case may be of the Contractor. We shall not be entitled to proceed against the assets of the Contractor at your site
6. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Contractor, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
7. This guarantee is in addition to any other guarantee or guarantees given to you by us.
8. This guarantee shall not be discharged by any change in the constitution of the Contractor or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
9. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum ..... (**amount in INR**) and shall expire on ..... unless a claim or demand is made on us in writing within three months of the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
10. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Yours faithfully

Dated ..... day of ..... 201\_

For .....

**(Name of the Bank with office seal )**

**Annexure-14 : Bank Transfer / RTGS Details**

01	Name & Address of the Bidder	
	<b>Details of Bank Account:</b>	
02	NAME & ADDRESS OF THE BANK	
03	NAME OF THE BRANCH	
04	BRANCH CODE	
05	MICR CODE	
06	ACCOUNTNUMBER	
07	TYPE OF ACCOUNT	CURRENTA/C / OD / CASHCREDIT
08	BENEFICIERY'SNAME	
09	IFSC CODE OF THE BRANCH	
10	EMAIL ID	
11	TELEPHONE/MOBILE NO.	



**Annexure-15 : Bid Submission Check List - for Bidders**

S#	Document	Attached (Yes/No)	Page#
1.	Covering Letter		
2.	Power of attorney in original or duly notarized.		
3	Bid Form – Techno Commercial Bid submission letter (Annexure-3)		
4	Bid Compliance statement (Annexure-4)		
5.	Response and proof pertaining to all Mandatory Qualifying Criteria as mentioned in Annexure 5.		
6.	BL's RFP duly stamped & signed by the authorized signatory in token of acceptance of all terms & conditions as mentioned in this document.		
7.	No Blacklist Declaration as per Annexure-6		
8.	Statement of No Deviations as per Annexure-7		
10.	Un-priced copy of the price schedule clearly marking "XXX" wherever price is quoted mentioning applicable taxes and duties with declaration on it that "The Price bid is as per the format requested & prices submitted are in the units specified in the tender without any conditions attached" under the signature of the authorized signatories.		
11.	Complete documentation (Solution Deployment along with relevant technical literature and data sheets pertaining to scope of work as mentioned in Business Requirement section).		
12.	Product brochures and cross reference document pertaining to technical specification (as relevant).		