

(TO be given on Rs.100 stamp paper)

CONSORTIUM AGREEMENT

This Consortium Agreement ("Agreement") is executed on this ___ day of _____, 2020 by and between

_____, ("Lead Member"), a Company incorporated under the laws of _____ having its Registered Office at _____ (hereinafter called the "Lead Member", which expression shall include its successors, executors and permitted assigns) of the First Part;

and

_____, a Company incorporated under the laws of _____ having its Registered Office at _____ (hereinafter called the "Consortium Partner", which expression shall include its successors, executors and permitted assigns) of the Second Part.

(Each Member individually shall be referred to as the 'Member' or "Party" and both the Members shall be collectively referred to as the "Members" or "Parties" in this Agreement).

WHEREAS, TERI has issued Tender No TERI/MAT/2019-20/002 (hereinafter 'The Tender') for the 'Design, Supply, Testing, and Installation & Commissioning along-with Comprehensive Annual Maintenance Contract (CAMC) for 5 years of Battery Energy Storage Systems (BESS) on Turnkey Basis under UI-ASSIST initiative with BRPL in NCT of Delhi' and invited bids for this purpose.

AND WHEREAS, the Tender stipulates that the Lead Member may enter into a Consortium Agreement

with another Company / Corporate entity to fulfill the Technical Eligibility Criteria stipulated in Tender

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the Members in this Consortium agreement do hereby mutually agree as follows:

1. We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that _____ shall act as the Lead Member for the Consortium.
2. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective obligations. Each Member further undertakes to be individually liable for the performance of its part of the obligations envisaged in this Agreement.
3. Subject to the terms of this Agreement, the Consortium Partner shall be responsible for providing technical knowledge required for the Tender to the Lead Member. Furthermore, Lead member and Consortium Partner shall enter into a separate definitive agreement (hereinafter referred to as "**Definitive Agreement**") with each other defining respective rights, duties, obligations, liabilities, etc. of both the parties for the performance of the obligations as per the Tender.
4. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Delhi alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
5. It is hereby further agreed that in case of being shortlisted, the Members do hereby agree that they shall abide by the terms & conditions of the Tender.
6. It is further expressly agreed that this Agreement shall be irrevocable and shall form an integral part of the bid submitted to TERI and shall remain in full force and effect until the date of occurrence of any of the following events or conditions. whichever shall first occur: -
 - a) Termination of the Tender;
 - b) Rejection of Bid submitted by the Parties in consortium with each other;
 - c) Contract/Bid is awarded to a third party;
 - d) The Lead Member decides not to submit the Bid.

6.1 Consequences of Termination/ expiry

- (a) Each Party shall handover all information, documents, materials, Confidential Information of the other Party as may be provided by such other

Party in accordance with the terms of this Consortium Agreement within 15 (fifteen) days of termination of this Consortium Agreement.

- (b) The Consortium Partner shall maintain all data, all necessary and required records, registers and accounts in respect of the services provided and shall furnish the same to Lead Partner on request.
7. In case the Consortium is declared as successful bidder and Contract is awarded to the Consortium, then Lead Member and Consortium Partner shall enter into Definitive Agreement defining respective rights, duties, obligations, liabilities etc. of both the parties for the performance of the obligations as per Tender. Further, the Consortium Members shall continue to be members of the Consortium and continue to fulfill their respective obligations/scope of work under this Consortium Agreement post award of the Bid/Contract, for the duration specified in the Tender.
 8. It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under this agreement without the explicit permission of TERI.
 9. Each Party to this Consortium Agreement shall bear its respective costs, expenses and liabilities as a result of its obligations and efforts under this Agreement. Neither Party shall have any right to any reimbursement, payment or compensation of any kind from each other during the period prior to the award of the contract by TERI or, any other contract executed in consequence of this Consortium Agreement. However, it is clarified that this clause shall not apply over the Definitive Agreement entered into between both the parties as per this agreement.
 10. This Agreement:
 - a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
 - b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof: and
 - c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of TERI.
 11. If at any time any dispute, differences or question arises between the Parties concerning the meaning, construction, interpretation, effect and scope of this Consortium Agreement regarding the respective rights and liabilities of the Parties under this Consortium Agreement, then such disputes, differences or question shall be amicably resolved through mutual discussions and negotiations ; if the Parties fail to resolve such dispute within 30 days of

commencement of amicable settlement process such dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended from time to time). The Arbitration procedure shall be conducted in English language at New Delhi. The arbitration award passed by the sole arbitrator (mutually appointed by the parties) shall be final and binding on the Parties.

12 Legal Relationship

12.1 Relationship between the Parties is on principal to principal basis. This Consortium Agreement does not in any respect make Consortium Partner an agent or a partner of the Lead Member nor does it establish any joint venture between the Parties or authorize the Consortium Partner to transact any business in the name of the Lead Member or to incur any obligation or liability for or on behalf of the Lead Member except as otherwise specifically set forth herein or as may be agreed upon specifically in writing.

12.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other Party.

13. Indemnity

Each Party (the Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the Indemnified Party") from any and all direct costs, losses, liabilities or expenses (including reasonable attorneys' fees) incurred by the Indemnified Party to the extent arising from the breach by the Indemnifying Party of any of its obligations under this Consortium Agreement.

Each Party acknowledges that monetary damages would not be a sufficient remedy for any breach of this Consortium Agreement by such Party and that the other Party would suffer irreparable harm as a result of any such breach. Accordingly, each Party will be entitled to equitable remedies, including but not limited to injunctive relief and specific performance for any breach or threatened breach of this Consortium Agreement by the other Party, in addition to any other rights or remedies available to such Party.

14. Limitation of Liability

No Party shall be liable towards the other Party for consequential, indirect, incidental, or special (including multiple or punitive) damages of any kind, including, but not limited to, lost orders, sales or profits.

15. Assignment

Neither party shall have the right to assign or otherwise transfer, in whole or in part, any of its rights or obligations under this Consortium Agreement without obtaining prior written consent from the other party.

16. Severable Terms

The provisions of this Consortium Agreement are severable. If any provision is determined by a court of competent jurisdiction to be invalid, void or unenforceable under the existing law, that provision shall be modified to the extent necessary to make it enforceable. The remaining provisions of this Consortium Agreement or validity of this Consortium Agreement shall not be affected or impaired thereby.

17. Waiver and Amendment

No provision of this Consortium Agreement shall be modified or waived, except by a writing signed by an authorized person from each party in presence of two witnesses . Any failure or delay in asserting any provision or breach does not waive that or any other provision or breach. A waiver does not act as a waiver of any provision or breach on any other occasion.

18. Entire Agreement

This Consortium Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all other oral or written representations, arrangements and understanding.

19. Counterparts

This Agreement shall be executed in two counterparts that together shall constitute one and the same instrument. Each Party shall retain one counterpart.

IN WITNESS WHEREOF, the Members have, through their authorized representatives, executed these present on the Day, Month and Year first mentioned above.

For ____

Witnesses:

1.

2.

For ____

1.

2.