ELECTRONICS SECTOR SKILLS COUNCIL OF INDIA

REQUEST FOR PROPOSAL
FOR
APPOINTMENT OF ARCHITECT for DESIGN ENGINEERING SERVICES
OF
COMMON UTILITY CENTER OF ESSCI, at ELCINA EMC, BHIWADI, RAJASTHAN

01st June 2022
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1 INTRODUCTION

I. **ELECTRONICS SECTOR SKILLS COUNCIL OF INDIA** (hereinafter referred to as ‘**ESSCI or Client’**) is setting up a Greenfield Common Utility Center (**CUC**), in ELCINA EMC at Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan.

II. ESSCI is a non-profit Organization, registered under the Indian Companies Act, 1956. The Council has been promoted by six Associations i.e., CEAMA, ELCINA, IESA (formerly ISA), IPCA, MAIT and ELCOMA, with financial support from National Skill Development Corporation (NSDC). Its focus is on establishing an effective and efficient ecosystem for developing and imparting of outcome-oriented skills for the Electronics Systems, Design and Manufacturing Industry (**ESDM**).

III. In the proposed **CUC**, ESSCI plans to set up basic design and testing facilities along with **Capacity Building Facilities** for Upcoming **ESDM** Segments like Drones, Semi-conductors, AI, IOT, 5G etc.

IV. The **CUC** is spread in a total area of 4,200 sq. mtr and the land is under possession of ESSCI.

V. ESSCI now plans to start Implementation of the **CUC** including Detailed Design Engineering, followed with civil construction and necessary **Plant & Machinery** for the project, to make the **CUC** functional.

VI. A tentative budget of Rs 6.00 Crores has been earmarked for the civil construction activities in the **CUC**, which is likely to get revised during Project Implementation phase.

VII. In order to streamline all the project activities and implement the **CUC** in the best spirit, ESSCI has appointed “Edgerise Global Private Limited” (hereinafter referred to as ‘**ERG or PMC’**) as the **Project Management Consultants** for this project.

VIII. Through this **Request for Proposal (RFP)**, ESSCI looks forward to appoint an **agency/company/firm** (hereinafter called as ‘**Architect’**) for undertaking **Detailed Design Engineering Services** for the project.

IX. The broad scope of work considered in this Project is for **Detailed Design Engineering Services** which is elaborated in Chapter 5 of this RFP.
2 DEFINITIONS AND INTERPRETATION

I. Definitions

“Affected Party” shall have the meaning ascribed to it in this RFP.

“Confidential Information” shall have the meaning ascribed to it in this RFP.

“Construction Site” means Plot nos. D2 & D3, ELCINA Electronics Manufacturing Cluster, SPL-1, Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan – 301019

“Architect” means the agency/company/firm selected, engaged and appointed by ESSCI for undertaking the Project work of this RFP.

“Dispute” shall have the meaning ascribed to it in this RFP.

“Force Majeure Event” shall have the meaning ascribed to it in this RFP.

“PMC” means Project Management Consultant of ESSCI.

“Project” shall mean preparation of Detailed Architectural Design & BOQs of facilities planned by ESSCI for its Common Utility Center at Plot nos. D2 & D3, ELCINA Electronics Manufacturing Cluster, SPL-1, Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan – 301019

“Services” shall mean all of the services outlined in this RFP.

II. Interpretations

In this RFP, unless the context otherwise requires:

any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;

any reference to the singular shall include the plural and vice versa;

the headings are inserted for ease of reference only and shall not affect the interpretation of this RFP;

where any party comprises two or more persons, any obligations of that party in, under or arising from this RFP, is undertaken by or binding upon such two or more persons jointly and severally;

references to any party to this RFP includes its successors-in-business and assignees;

any references to this RFP or any other document shall be construed as references to this RFP or that other document as amended, varied, novated, supplemented or replaced from time to time.
3 Critical Information and Important Dates

I. ESSCI invites bidders to submit the technical and financial offer to participate as Architect in accordance with the conditions and manner prescribed in this RFP document.

II. Bidder agencies are advised to study this RFP document carefully before submitting their proposals. Submission of a proposal in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications.

III. Important dates and information

<table>
<thead>
<tr>
<th>S. No</th>
<th>Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RFP release date</td>
<td>1st June 2022</td>
</tr>
<tr>
<td>2</td>
<td>Last date (deadline) for submission of bids – both hard copy and soft copy</td>
<td>3rd June 2022 before 6.00 PM (Soft Copy);</td>
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<tr>
<td></td>
<td></td>
<td>6th June 2022 (Hard Copy)</td>
</tr>
<tr>
<td>3</td>
<td>Finalisation of Successful Bidder</td>
<td>8th June 2022</td>
</tr>
<tr>
<td>4</td>
<td>Bid validity period</td>
<td>30 Days</td>
</tr>
<tr>
<td>5</td>
<td>Contact person for queries</td>
<td>Mr. Devraj Singh</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• E - <a href="mailto:devraj@essc-india.org">devraj@essc-india.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• M- +91-9560857975</td>
</tr>
<tr>
<td>6</td>
<td>Addressee and address at which proposal in response to RFP notice is to be</td>
<td>Mr. Devraj Singh</td>
</tr>
<tr>
<td></td>
<td>submitted (both, Soft Copy on the given emails and Hard Copy on the given</td>
<td></td>
</tr>
<tr>
<td></td>
<td>address)</td>
<td>Email: <a href="mailto:devraj@essc-india.org">devraj@essc-india.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ESSCI, 155, 2nd Floor, ESC House,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Okhla Industrial Area, Phase 3,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>New Delhi – 110020</td>
</tr>
</tbody>
</table>

4 Letter of Invitation

Date: 01/06/2022
RFP No.: ESSCI/RFP/2022-23/01
I. The Chief Operating Officer, Electronics Sector Skills Council of India (hereinafter referred to as the “ESSCI”) invites proposals from eligible bidders/agency/company/firm (the “Architect”) for undertaking the services as detailed in the above sections of this RFP (the “Services”). The Bidder needs to submit the proposals; the selected Bidder shall be responsible to undertake the preparation of Architectural Designs and BOQs for the proposed Common Utility Center at ELCINA EMC in Bhiwadi in the state of Rajasthan as per the terms and conditions set out in the RFP Document.

II. Bidder will be selected on Quality and Cost Based Selection (QCBS) system basis and procedures described in this RFP.

III. Proposals must be submitted on or before the time and date specified in the Bidding Schedule, with Technical Bid to be submitted in soft copy format by email (pdf) and in hard copy format (in a sealed envelope) and Financial Bid to be submitted ONLY in hard copy format (in a sealed envelope, separate to that of Technical Bid), by In-person/ Post/ Speed Post/ Courier Services only. ESSCI shall not be responsible for any delay in submission of proposal.

IV. Evaluation of Proposals – The evaluation of Proposals would be carried out in three stages:
   • Stage 1: Evaluation of Technical Proposal
   • Stage 2: Evaluation of Financial Proposal
   • Stage 3: Evaluation based on QCBS System

V. The Technical Proposal should comprise of all the documents/ proofs of works accomplished as specified in the RFP. The Financial Proposal should be submitted as specified and, in the format, mentioned in Chapter 12 of this RFP. In case the details furnished by the Bidder as per RFP are incomplete/ inadequate, the proposal shall be summarily rejected.

VI. Upon selection of the successful Bidder, ESSCI will promptly notify the other Agencies that their Proposals have been unsuccessful.

VII. The Bidder should satisfy all the terms and conditions laid down here under in relation to this RFP. All conditional bids/ proposals will be rejected.

VIII. Notwithstanding all or any of the conditions mentioned, ESSCI has the right to reject any bid without assigning any reason whatsoever.
## 5 Scope of Work

The ‘Architect’ would carry our detailed engineering services of the ‘Project’ and will advise ESSCI/PMC to anchor the project on a sound footing, and to this effect, provide the following services -

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Item</th>
<th>Scope of work</th>
</tr>
</thead>
<tbody>
<tr>
<td>b.</td>
<td>Structure Design</td>
<td>Detailed Structure design calculations / drawings based on relevant IS Codes / NBC norms / standards incorporating Earthquake Resistant Structure norms.</td>
</tr>
<tr>
<td>c.</td>
<td>Plumbing &amp; Fire Fighting Design</td>
<td>Complete Sanitary, plumbing, drainage, water supply Firefighting design as per NBC norms including the sizing of equipment, discharge calculations as per design basis, detailed layout and specifications.</td>
</tr>
<tr>
<td>d.</td>
<td>Electrical Services</td>
<td>Complete Electrical, electronic &amp; communication systems design including the sizing of equipment, load calculations as per design basis, detailed circuiting and specifications.</td>
</tr>
<tr>
<td>e.</td>
<td>HVAC System design</td>
<td>Heating, ventilation and air conditioning design (HVAC) and other mechanical systems including the sizing of equipment, load calculations as per design basis and specifications.</td>
</tr>
<tr>
<td>f.</td>
<td>Interior Design</td>
<td>Interior Design drawings as required shall be provided for the fixed Interior.</td>
</tr>
<tr>
<td>g.</td>
<td>Material Specification &amp; cost estimate &amp; BOQ</td>
<td>Detailed material specification for all materials in the project based on the detailed design and engineering drawings. Detailed Bill of Quantity with estimates for various works is included.</td>
</tr>
<tr>
<td>h.</td>
<td>Engineering Document for Tender</td>
<td>Preparation of engineering documents for tendering process for appointment of contractors including drawings &amp; BOQ specifications.</td>
</tr>
<tr>
<td>i.</td>
<td>Working drawings during construction</td>
<td>Prepare detailed working drawings for all design and engineering items for execution of works at site. Incorporating any changes and issuing revised drawings for site works. Approve samples of various elements and components. Check and approve shop drawings submitted by the contractor/ vendors.</td>
</tr>
<tr>
<td>j.</td>
<td>Periodic Site Visit during construction</td>
<td>Senior Architect / Engineers shall visit the site monthly to review the works and clarify / guide the client / contractors.</td>
</tr>
<tr>
<td>k.</td>
<td>Statutory Approvals</td>
<td>Any statutory approval related to work undertaken as above would be covered in this Scope and statutory fees to be billed as per actuals.</td>
</tr>
</tbody>
</table>
6 ELIGIBILITY CRITERIA FOR BIDDERS

I. National/international well-known companies/ legal entities registered under the Societies Act / Corporate Act / Limited Liability Partnership Firm/ Partnership Firm/ Proprietor Firm, having at least three years of work experience in the native/global design architectural services with a valid Tax number, Shop and Establishment certificate, certificate of registration/ incorporation etc.

II. Bidder should have proven and demonstrated experience, expertise and resources in providing Architectural Design services in these areas for well-known organizations in the private and/or public sector.

III. Bidder should have designed at least 3 Architectural Designs and the Civil BOQs in the last 3 years

IV. Bidder should have a strong understanding of the industrial building bye-laws, fire and electricity requirements, environmental policies, amendments and procedures, along with the priorities of Rajasthan State Industrial Development & Investment Corporation Limited (RIICO) & Central Govt. norms.

V. Bidder should not be currently blacklisted from any of the public/ private companies. (Declaration is required from the bidder on his letter head.)

All requested and relevant documents, as mentioned in this Eligibility Criteria section, need to be enclosed in the Bid.
7 **TECHNICAL EVALUATION CRITERIA**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description</th>
<th>Criteria for point allotment</th>
<th>Max. Marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>At least three years of experience in Architectural Design</td>
<td>Relevant supporting documents to be submitted.</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>Projects completed and under implementation in India in the past 3 years (name, area in sq.m. of building, quality standard).</td>
<td>5 marks per project, maximum to 40 marks</td>
<td>40</td>
</tr>
<tr>
<td>3</td>
<td>Work Done in the State of Rajasthan</td>
<td>5 marks per project, maximum to 10 marks</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Work Done within ELCINA EMC at Bhiwadi</td>
<td>At least one project undertaken</td>
<td>05</td>
</tr>
<tr>
<td>5</td>
<td>Project Approach &amp; Methodology with reference to the Scope of Work. The assigned work should be based on latest technological innovations and standards.</td>
<td>Evaluation will be based on the quality of submissions and understanding of assignment</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>The number of professionals working in India with professional titles on the company roster, their relevant education background, etc.</td>
<td>The evaluation committee will conduct a comparative evaluation</td>
<td>10</td>
</tr>
<tr>
<td>7</td>
<td>Accreditation for green buildings</td>
<td>Relevant certificate to be submitted</td>
<td>05</td>
</tr>
<tr>
<td># TOTAL</td>
<td></td>
<td></td>
<td>100</td>
</tr>
</tbody>
</table>

*Note: Minimum Qualifying Marks under Technical Evaluation Criteria is 60 (Table above).*

*The Bidder must submit all relevant supporting documents for the points mentioned in above table of Technical Evaluation Criteria.*
8 Selection Criteria

I. The Bidder must score a minimum of 60 marks out of the total 100 marks in the technical evaluation to be considered for further evaluations.

II. Selection of the Consultant shall be based on a Quality & Cost Based Selection (QCBS) system—50:50 [Technical marks (T): Financial marks (F)] and procedures as described in this RFP.

III. In final Evaluation, the weightage of the Technical Bid would be 50%. The weightage of the Financial Bid would be 50%. The Financial Marks would be determined by the formula:

\[
\text{Financial Marks (F) = 50} \times \left( \frac{\text{Financial Quote given by the Lowest bidder}}{\text{Financial Quote Given by the Bidder}} \right)
\]

IV. The Bids would be finally evaluated on Total marks determined by following formula:

\[
\text{Total Marks (M) = (0.5x T) + F}
\]

Where, T = Technical marks (out of 100) awarded to the bidder, F = Financial Marks

V. The Bidder obtaining highest Total Marks (M) would be selected.

VI. The decision of the Evaluation Committee in this regard will be final.
9 Delivery Timelines

The Bidder would carry out the Architectural Design and BOQs and drawings in accordance with the following delivery timelines –

- The timelines for “Preparation of engineering documents for tendering process for appointment of contractors including drawings & BOQ specifications” would be of 7 days starting from the day of confirmation of award of work on email.
- Any time beyond the above specified will attract a penalty of 0.1% of total fee for delay per day to a maximum up to 5%. Any further delay may not be accepted and may lead to termination of contract.
10 PAYMENT TERMS AND CONDITIONS

I. The selected Architect shall be required to mobilize adequate manpower for completing the work of the CUC, as mentioned in this RFP, and submit an activity plan along with the information on timeframe to ESSCI/ PMC immediately after its engagement.

II. The fee release structure shall be as follows:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Stage</th>
<th>Amount</th>
<th>Deliverables</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Advance</td>
<td>10% of fee</td>
<td>Appointment of architect.</td>
</tr>
<tr>
<td>2</td>
<td>Final layout</td>
<td>10% of fee</td>
<td>Submission of Conceptual design layout drawings &amp; then final layout.</td>
</tr>
<tr>
<td>3</td>
<td>Tender related documents</td>
<td>15% of fee</td>
<td>On submission of BOQ and tender drawings for tender documents of civil contractor.</td>
</tr>
<tr>
<td>4</td>
<td>Drawings for start of site work</td>
<td>15% of fee</td>
<td>Release of structure &amp; architecture drawings for the start of site work.</td>
</tr>
<tr>
<td>5</td>
<td>During Site works</td>
<td>40% of fee</td>
<td>During execution of project in 4 instalments of 10% each, on 20% completion, 40% completion, 60% completion, 80% completion.</td>
</tr>
<tr>
<td>6</td>
<td>Completion</td>
<td>10% of fee</td>
<td>On virtual completion of project before project handover.</td>
</tr>
</tbody>
</table>

III. Expenses during study/work towards transportation, study material, hand-holding, lodging/boarding, remuneration for staff, medical expenses, insurance etc. will be borne by the Agency/Architect. ESSCI will not reimburse any expense incurred in connection with above items.

IV. GST & other taxes viz. TDS, TCS wherever required and due on the charges for the services being provided by the Architect, would be paid by ESSCI in addition to other payments mentioned in section-II of this chapter as above.
11 GENERAL TERMS AND CONDITIONS

I. OBLIGATION & RIGHTS

The Architect’s Obligations

i) During its performance of obligations under this Contract, Architect shall work earnestly and diligently to undertaken activities assigned for the Project. Architect shall provide the services in a diligent manner and in compliance with all the applicable laws in this regard.

ii) Architect shall timely complete the works within the scope of work set forth in this RFP, and during performance of their obligations, Architect shall regularly report to PMC on their progress of Project work during contracted period.

iii) During contract period or after termination of contract, no disclosure of confidential information related to or in connection with the works of this Project and the Contract is allowed without prior consent of the party concerned.

iv) During its period of responsibility, the Architect shall perform its obligations under the Contract, and compensate ESSCI for any economic loss suffered by ESSCI due to the Architect’s negligence.

v) Architect shall submit to PMC various documents together with CD ROM or other electronic media of such documents at the same time.

ESSCI & PMC Obligations

i) PMC shall provide the information related to project specific management work to the Consultant for free within agreed time.

ii) PMC and ESSCI shall reply in writing to the matters submitted and requested in writing by the Architect for response within agreed time in Special Contract Conditions. In the case the Architect calls Third Party for providing related information, ESSCI shall be liable to communicate the same to Third Party and forward such information to the Architect.

iii) PMC is the authorized representative agency of ESSCI who is competent for project management work and to act as its liaison for contacting with the Architect.

iv) ESSCI shall timely notify the Architect it has chosen for construction contracting about management power granted by it to the PMC, as well as division of functions and management authorities of the PMC’s key personnel, and specify the same in detail in
the contract it signed with Third Party.

**Architect’s Rights**

Within the range of contract, ESSCI will grant following power to the Architect, it is acceptable to confirm by email:

1. During its management works, Architect may submit written report to PMC if Architect is uncertain about the information provided by PMC.
2. During its management works, Architect has the right to ask Third Party with prior consent of PMC to check or inquire the matters related to management works.
3. During its management works, Architect has the right to make site investigation of the site.
4. Architect has the right to make suggestions on the form and content of construction contract.

**ESSCI’s & PMC’s Rights**

ESSCI and PMC have following rights:

1. ESSCI & PMC have the right to inquire Architect about its work progress and related content.
2. ESSCI & PMC have the right to expound its opinion and suggestion on specific problems.
3. When Architect deems that Architect’s management staffs for this Project failed to perform under contract, or lack of professional skills and incompetent to perform their duties, or they colluded with Third Party and led to ESSCI suffering economic loss, ESSCI has the right to request the Architect to replace such management staffs, or terminate this Contract and claim against Architect for corresponding liability for damage.
4. PMC has the right to ask Architect to submit weekly work report as well as various epical reports within the scope of its management works.

**Architect’s Responsibilities**

i) Architect’s period of responsibility is valid till completion of construction works of CUC. If contracted date is overdue as a result of postponement or delay of progress to which Architect is not accountable, both Parties shall agree validity of the contract in question under this Contract.

ii) During its period of responsibility, Architect shall perform its obligations set forth in the
Contract, and compensate ESSCI for economic loss suffered by ESSCI, provided that aggregate amount of such compensation shall not exceed total amount of total fees (Except tax).

iii) In the case Architect fails to check or respond to the problem raised by PMC/ESSCI or Third Party on a timely basis, and which resulted in failure of whole or partial performance of this Contract, Architect shall be liable to ESSCI for all the losses/damages suffered by ESSCI in this regard.

iv) In the case Architect makes groundless claim against ESSCI for compensation, Architect shall compensate ESSCI for any and all out-of-pocket expenses by ESSCI as a result of such claim for compensation or other demand.

v) In case of failure of whole or partial performance of this Contract for commissioned management as a result of force majeure, neither party is liable; provide however, Architect is liable to compensate ESSCI for related matters from breach of Clause iv.

**ESSCI’s Responsibilities**

i) ESSCI shall perform its obligations under the contract, bear the responsibility for breach of contract, and compensate Architect for any loss to which ESSCI is accountable.

ii) In the case ESSCI makes groundless claim against Architect for compensation, ESSCI shall compensate Architect for any and all out-of-pocket expenses by Architect as a result of such claim for compensation or other demand.

II. **PAYMENTS TO THE ARCHITECT**

- ESSCI reserves the right to withhold payment of the relevant invoice which is due to the Architect arising under this RFP in the event that the Architect fails to comply with any of its material obligations as specified herein which affects the services covered under this RFP.

- If required by the applicable law, ESSCI is entitled to make a deduction or withholding on any payment under this RFP. Upon the Architect’s request, ESSCI shall furnish appropriate documentation to the Architect for the purpose of claiming tax credits in this regard.

- ESSCI is entitled to review and evaluate the weekly report in consideration of any and all efforts of the Architect made under this RFP including, but not limited to, efficiency, following up of management process, deliverables, schedules, milestones and capability of personnel (“Weekly Review”). ESSCI is entitled to modify or adjust the weekly report based on a mutual agreement with the Architect during the process of the above weekly Review, and send a notice to the Architect along with the adjusted weekly report.
mentioning the invoice and/or the amount ESSCI should pay.

- ESSCI will not be obligated to pay any charges that are not explicitly stated and enumerated in this RFP.

**GST Compliances:**

- GST shall include the Central Goods and Services Tax (‘CGST’), the State Goods and Services Tax (‘SGST’) and/or the Integrated Goods and Services Tax (‘IGST’) as may be applicable.

- Architect shall be responsible to raise a proper tax invoice which is in compliance from GST perspective. Vendor shall raise an invoice on ESSCI only on the address and other details communicated by ESSCI.

- In due compliance of its obligations, Architect shall remit the GST so charged (if any) from ESSCI, subject to a valid invoice / debit note, to the appropriate government authority and file GST returns as prescribed, within the statutory timeline, mentioning all appropriate and relevant information on the GSTN platform.

- In case of any non-compliance in this regard, Architect shall be liable for all the expenses/claims/losses to ESSCI including but not limited to the Interest/penalty charged by the authorities and shall indemnify ESSCI in this regard.

- In case of advance payment made by ESSCI, as evidence of receipt of such payment, Architect shall issue a receipt voucher or any other relevant document mentioning all the particulars as prescribed under GST.

**TDS compliance:**

- In the event that any payment to be made in respect of any invoice is subject by law to any withholding tax, ESSCI shall make payment to Architect of the amount owing, less a deduction for such withholding tax and shall account to the relevant tax authority for the withholding tax. ESSCI shall timely provide to Architect evidence from the relevant tax authority of the proof of payment of the said withholding tax as per provisions of law applicable from time to time.

- Architect alone shall be responsible and liable for payment of salaries/wages, emoluments and other amounts including benefits, bonus, retrenchment compensation, provident fund, ESI, gratuity and any other payments and dues of its Personnel/employees as per statutory provisions.

**III. INFORMATION, DOCUMENTS AND CONFIDENTIALITY**

**INFORMATION AND DOCUMENTS**

- The Architect must submit the Team Structure and work ramp-up plan for the Project along with all relevant documents during the Bid submission.

- Each & every work methodology needs to be provided by Architect and further approval
of PMC & ESSCI needs to be taken at least one week before starting of corresponding work.

CONFIDENTIALITY & INTELLECTUAL PROPERTY

• The Architect shall ensure that it and all of its personnel, subcontractors, representatives and agents shall not, without having first obtained on each occasion the express prior written approval of ESSCI:

  ▪ Issue, disseminate, publish, cause to publish or divulge to any third party, alone or in conjunction with any other person, any Confidential Information (as defined below) including article, press release, drawing, photograph, illustration or any other publicity relating to the Agreement or the Project generally, or use such information for any purpose other than the performance of the Services, and shall not disclose any such Confidential Information to any third party except as may be required by any applicable law or by order of a court of competent jurisdiction, or a regulatory or governmental body having jurisdiction over the Parties, provided that the Architect shall give prompt notice to ESSCI of any such order so as to give adequate opportunity to object to such order.

And

  ▪ Take, or permit to be taken, any photograph of the Project, the Construction Site or any part thereof, other than photographs required by the Architect for record purposes.

For the context of this Article, “Confidential Information” shall mean any information not generally known to the public including, but not limited to, the generality of all proprietary information, technical data, trade secrets, know-how, research, product development and marketing plans, supplier and customer lists, implementation strategies, developments, inventions, discoveries, concepts, methods or processes, whether or not patented or patentable, technology, copyrights, designs, plans, drawings, inventory and financial data and information including, but not limited to, process for acquiring approvals, whether or not marked as “Confidential” (and such other information normally understood to be confidential or otherwise designated as such in writing by either Party) that the other Party is obligated to keep confidential. “Confidential Information” shall also mean any other document or information of ESSCI or of any supplier or customer of or with whom ESSCI has an agreement concerning the confidentiality of information, whether or not such document or information is contained in or hereafter placed in either Party’s database.

• The Architect shall not cause or permit any activity which may damage or endanger any of the intellectual property rights of ESSCI or assist or allow others to do so.

• The Architect shall not, in any manner, use any of the trademarks or service marks of ESSCI in any of its publications, brochures or in any other manner without the prior written consent of ESSCI.
IV. INDEMNITY AND LIMITATION OF LIABILITY

- The Architect agrees to indemnify and hold harmless ESSCI from and against any and all liabilities, losses, damages, costs and expenses (including, but not limited to, attorneys’ fees) arising out of or associated with the Services provided under the Agreement. The Architect shall also be liable for the liabilities arising from or relating to the Agreement and for damages, without any limitation, arising from (a) wilful misconduct; or (b) indemnification against third party claims for infringement; or (c) breach of confidentiality obligations; or (d) personal injury or death resulting from negligence.

- In addition to the generality of the foregoing, in case the Architect commits any breach of the terms and conditions hereof, then, without prejudice to ESSCI’s other remedies provided herein or at law or equity, including termination of the Agreement forthwith without assigning any reason and getting the Services by or through any other agency, the Architect shall: (a) promptly investigate the underlying causes of the failure to meet the service level and other agreed requirements and prepare and deliver to ESSCI a report on the causes; and (b) take whatever action is reasonably necessary to minimize the impact of the failure and to correct the causes of the failure, and advise ESSCI of the status of remedial actions.

- Should the Architect fail to meet or be delayed in meeting any of its responsibilities set forth in the Agreement, the Architect shall reimburse and keep ESSCI reimbursed in respect of all reasonable direct and evidenced additional costs and expenses incurred as a result of such failure or delay. Such additional cost shall be paid by the Architect within one (1) month upon receiving a written notification from ESSCI.

- Save as otherwise provided in the Agreement, neither PMC nor ESSCI or any of its officers, employees, directors, representatives or affiliates shall be liable to the Architect for any indirect, incidental, punitive, exemplary or consequential losses/damage including, but not limited to, loss of anticipated business or profit, loss of revenue, loss of business opportunity, or any other indirect financial or economic loss even if foreseeable and resulting from the negligence of any party involved in construction of the Project.

- Notwithstanding anything to the contrary contained in the Agreement, the aggregate liability of ESSCI in respect of any claims raised by the Architect for liabilities arising under this Contract shall not exceed any undisputed amount which has been become due but not paid to the Architect.

V. FORCE MAJEURE

- Any of the following events which prevent a party (“Affected Party”) from performing any of its obligations for a continuous period of not less than seven (7) days from the date of its occurrence shall mean and be considered as events that are beyond the control and/or prediction of the Affected Party (“Force Majeure Event”):
  
i. Natural calamities, earthquake, flood, thunderstorm and fire;
 ii. War, war-like situation, terrorist activities, embargo and commotion;
iii. Action of a government department including, but not limited to (a) acts of expropriation, (b) compulsory acquisition or takeover by any government department of the Construction Site or any part thereof, (c) lockdown under disaster management act, (d) stop of construction activities due to pollution surge.

- Neither Party shall be liable for the non-performance or delay in performance of its obligation or costs or penalties or termination for default if, and to the extent that, the delay in performance or other failure to perform its obligations under the Agreement is the result of an event of any Force Majeure Event, provided that a written notice is given by the Affected Party to the other Party promptly. However, the Affected Party shall take all necessary measures to mitigate the loss and damages of the other Party.

- If the Force Majeure Event subsists for over one hundred and twenty (120) days from the date of occurrence of such event, a discussion shall be held between the Parties to discuss and assess suitable alternatives for the implementation of the Agreement. If the Force Majeure Event subsists for more than one hundred and eighty (180) days from the date of occurrence of the event and/or the Parties cannot reach an agreement to an alternative necessary for the implementation of this Agreement, either Party hereto shall have the right to terminate the Agreement by serving the other Party with a written notice to such effect.

VI. GOVERNING LAW
This Agreement shall be governed by and construed in accordance with the laws and regulations of India.

VII. LANGUAGES USED IN THE PROJECT
All reports, documents and other communications pertaining to this Agreement shall be in the English language.

VIII. ASSIGNMENT OF THE AGREEMENT
ESSCI shall have the right to assign the benefits of the Agreement to any of its associate companies. The Architect shall not have the right to assign this Agreement or make any arrangement for the vicarious performance of its obligations and responsibilities without the prior written consent of ESSCI, nor to transfer or sub-contract to any third parties the works and benefits to this Agreement or any part thereof.

IX. TERMINATION OF AGREEMENT
- This Agreement may be terminated under either of the following circumstances and in the following manner:
  ▪ In the event that the Architect commits any material breach of the terms and conditions hereof, ESSCI may, without prejudice to ESSCI’s other remedies provided under law or equity, terminate the Agreement by giving at least seven (7) days’ prior written notice of its intention to terminate the Agreement to the Architect. Such notice shall specify the breach or default complained of, and if the Architect fails to remedy such breach or default within the notice period of seven (7) days, then the Agreement shall terminate at the end of the said seven
(7) days period.

**OR**

- ESSCI may terminate the Agreement, in whole or in part, at any time for its convenience by thirty (30) days’ notice in writing to the Architect.

- Upon termination as mentioned in this RFP, the Architect shall be paid for the Services satisfactorily performed before and up to the date of termination, including any reimbursable expenses then due and payable by ESSCI. Upon the receipt of such payment, the Architect shall have no claims against ESSCI under the Agreement.

- In the event of the appointment of the Architect being terminated for whatever reasons, and upon the settlement of all outstanding fees and reimbursable expenses due and payable to the Architect at that time in accordance with the Agreement, the Architect shall hand over all documents and intellectual properties developed for this Project to ESSCI, who shall have the right to use such documents for the completion of the Project or otherwise.

**X. NOTICES**

All notices or communications in connection with the Agreement shall be given in writing and may be served by hand delivery, or by courier, or by email to the following address:

*If to ESSCI*

Address: 155, 2nd Floor, ESC House, Okhla Industrial Area, Phase 3, New Delhi
Email: devraj@essc-india.org

or to such other address or email address as the Party has communicated by notice to the other Party in the above manner.

Any notice, approval, consent or other formal communication shall be deemed to have been given or made:

a. if hand delivered, at the time of delivery; or
b. if sent by courier, on the working day after the date of dispatch; or

c. if by email, when it is sent to the correct email address.

**XI. ARBITRATION**

All claims, disputes, differences and other matters in question between the Parties hereto arising out of interpretation or effect of any Article or Articles relating to the Agreement, or as to the performance or non-performance or breach of the terms in connection with any rights or duties or obligations of any Party hereunder, or as to any other dispute touching the contents of the Agreement or these presents, whether contractual or tortious (each a “Dispute”), shall be promptly and in good faith be negotiated by the Parties with a view to its amicable resolution and settlement. If the Dispute is not resolved within seven (07) days from when the negotiation between the Parties first starts, the Dispute shall be resolved through the process of Arbitration. The Arbitration shall be conduct as per Indian Arbitration and Conciliation Act, 1996 or its latest enactment. Both ESSCI and Architect shall choose their nominee Arbitrators. These Arbitrators shall then together and mutually appoint their
The decision shall be binding on both ESSCI and Architect. All the proceedings shall be conducted at New Delhi. The language of arbitration shall be in English. The cost of arbitration shall be borne by the parties equally.

The Parties agree to continue to perform all their obligations under the Agreement whilst pending the finalizations of the arbitration or by the court of competent jurisdiction, save and except the obligations under dispute that are referred to arbitration or the court.

XII. COMPLIANCE WITH LAWS

In carrying out its responsibilities under the Agreement, the Architect shall comply with all applicable laws of India and the states, municipalities and other localities (including all applicable labour and employment laws) in which it operates. The Architect further agrees that it will not pay, offer or promise to pay, or authorize the payment, directly or indirectly, of any monies or anything of value to any person, employee or government official for the purpose of inducing or rewarding any favourable action.

XIII. NO COMMISSION

The Architect undertakes not to receive any commission or other benefit or advantage from any others in respect of the Services to be provided by it hereunder and shall act at all times in the best interest of Client.

Without prejudice to the generality of the foregoing, the Architect shall not receive any fee or charges from any land owner, contractor, builder/developer or any other agency, due to, or in connection with the subject matter of the Agreement. In the event that the Architect is in breach of this section or if ESSCI comes to reliably know that the Architect has engaged in corrupt, fraudulent, collusive or coercive practices in dealing with any party in relation to performing the Services as set out in the Agreement, then ESSCI may, after giving seven (7) days’ notice to the Architect, terminate the Agreement and may debar the Architect and/or its directors and shareholders from carrying on any ongoing or future business with ESSCI, either directly or indirectly, in addition to the rights available to ESSCI under law to take any appropriate legal action.

The Architect also agrees to fully indemnify ESSCI if ESSCI suffers any loss due to any such corrupt, fraudulent, collusive or coercive practices of the Architect.

Additionally, the entire charges payable to the Architect shall be forfeited and shall be retained by ESSCI and any payments already made shall be returned to ESSCI by the Architect.

Further, in case of the termination as aforesaid, ESSCI shall be entitled to get the remaining Services completed by another Architect or agency and the Architect shall be liable to reimburse the additional service fee, related costs and expenses incurred by ESSCI for getting the remaining Services completed. Such additional service fee, related costs and expenses shall be paid by the Architect on demand within one month (1) upon receiving a written notification from ESSCI.

The Architect shall not, during the term of the Agreement, deal with or seek to transfer in favour of any prospective third party, any property/properties that are identified and under negotiation in terms of the Agreement.

XIV. INDEPENDENT STATUS
The Architect is not authorized to contract, directly or indirectly, on behalf of ESSCI, or to make any commitment which would be binding on Architect. The Architect shall not make any statements, representations or warranties about ESSCI, save to the extent expressly authorized in advance by ESSCI. The Architect shall conduct its activities and Services in a manner which will not adversely affect ESSCI’s interests or reputation in any manner. The Architect will, for all purposes, be deemed to be an independent Architect, contracting with ESSCI on a “principal to principal” basis. No employment is created by virtue of this Agreement between ESSCI and the Architect or any of its employees, agents or representatives, and nothing in the Agreement is intended to or will result in either Party becoming or being treated as a representative, agent or partner of the other. Accordingly, no employee of the Architect shall claim employment with ESSCI in any manner whatsoever.

XV. WAIVER

No delay or failure by either Party in exercising any of its rights, or the acquiescence or knowledge thereto shall operate as a release or waiver of its rights, except in the specific instance for which it is expressly given.

XVI. SEVERABILITY

If any provision of the Agreement is declared or held by any judicial or other competent authority to be void or otherwise unenforceable, the remaining provisions shall remain in full force and effect. The invalid provision shall be severed from the Agreement without affecting the remaining provisions and the validity of the Agreement. The Parties shall attempt to find a new provision to replace the invalid or unenforceable part to the extent it is possible. The new provision shall be as close to the Parties’ original intentions as possible.

XVII. AMENDMENTS, ALTERATIONS AND VARIATIONS

No alteration of or amendment to the provisions of the Agreement shall be valid unless made in writing and signed by both the Architect and ESSCI.

XVIII. ANNEXURES AND PRECEDENCE

All annexures attached to the Agreement form an integral part hereof. In the event of an inconsistency between the Agreement and the terms of an Annexure, the inconsistency shall be resolved by giving precedence to the terms of the Agreement.

Annexure 1: CODE OF INTEGRITY
Annexure 2: NON-DISCLOSURE UNDERTAKING

XIX. ENTIRE AGREEMENT

The Agreement embodies the entire, sole and exclusive agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes and cancels all prior discussions, negotiations, agreements and understandings between the Parties, whether written or oral, as to such subject matter.
12 FINANCIAL PROPOSAL SUBMISSION FORM

FINANCIAL PROPOSAL

(Location, Date)

From: (Name of Bidder)  
To: (Name & Address of ESSCI)

Sir/Madam

Subject: Selection of Architect for Design Engineering Services of Common Utility Center of ESSCI at ELCINA EMC, Bhiwadi, Rajasthan – FINANCIAL PROPOSAL.

We, the undersigned, offer to provide the Design Engineering services for the above in accordance with your Request for Proposal dated [Date], and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal, inclusive of all taxes, is for the amount Rs. ___________________________ (both in words & numbers).

Our financial proposal shall be binding upon us subject to the modifications resulting from contract negotiations, up to expiration of the validity period of the Proposal, i.e., [Date].

Yours Faithfully,

Authorized Signature:
Name and Title of Signatory:
Name of the Bidder:
Address:
CODE OF INTEGRITY

I, ______________, S/o ______________, (Designation) of ___(Name of Agency)__________, a private limited/ limited company/ partnership firm/ proprietorship having its registered office at ______________ – Pin __________, India (“Architect”) do hereby solemnly affirm and declare that ___(Name of Agency)__________, its directors, employees, agents, workers shall be bound by the Code of Integrity as under:

1. General Principles

1.1 Strictly abide by applicable laws and regulations, rules, and policies on fair trading, integrity and self-discipline, and anti-corruption, uphold the principles of integrity and good faith, adhere to recognized business ethics and professional ethics, and never engage in and resist dishonest behaviors.

1.2 Proactively establish and improve the internal integrity policy and regulations, set up a disciplinary inspection or integrity supervision department and allocate a reporting phone number and contact person to conduct integrity inspection and handle violations of laws and discipline.

1.3 Educate all staff members on integrity, and enhance their awareness and self-discipline, to create a culture of honesty and integrity in the company.

2. Architect’s commitments

2.1 Architect and its staff members shall not provide any direct or indirect bribes in any form to the staff members of ESSCI’s or its affiliates (hereinafter collectively referred to as "ESSCI’s staff members"), including but not limited to:

1) Offering cash, cash equivalents, or valuables to ESSCI's staff in any form.
2) Paying the bills or reimburse expenses that should be borne by the staff of ESSCI.
3) Without the prior written consent of ESSCI, organizing or inviting ESSCI's staff to participate in the following activities, including but not limited to travel, expensive entertainment, and meetings held at scenic spots for the purpose of tourism, unless the relevant expenses are borne by ESSCI.
4) Allowing relatives or other stakeholders referred by ESSCI's staff members to engage in businesses related to the cooperation agreements signed between the Parties (hereinafter referred to as the "Contract")
5) Other behaviors or activities that could be reasonably inferred as bribery, including prohibited activities that are explicitly stipulated as bribery by relevant laws and regulations
   i. Architect shall not establish any entity with ESSCI’s staff or their immediate relatives or allow ESSCI’s staff or their immediate relatives to participate or invest in entity of Architect.
ii. Before and during the development of business, Architect shall on its own initiative, report and truthfully disclose to ESSCI the following circumstances when Architect knows or should know such circumstances:

6) ESSCI's former staff members become direct investors or shareholders of Architect within five years after their resignation.

7) ESSCI's former staff members take management positions (including manager, deputy manager, financial officer, cooperative project leader, secretary of the board of directors of a listed company, director, or other positions as stipulated in articles of association) at Architect within five years after their resignation.

8) ESSCI's staff or their spouses or immediate relatives carry out economic cooperation and exchanges with Architect.

ESSCI has the right, at its sole discretion, to decide whether to (or continue) the cooperation based on the abovementioned information disclosed by Architect.

i. Architect and its staff members shall refuse any requests from ESSCI's staff members for the content specified in the “Architect’s Obligations” section of the RFP and shall be obliged to report such requests to ESSCI. If Architect or its staff members fail to refuse and report such bribe requests from ESSCI's staff members and, instead, grant such bribe requests, such bribe requests shall be deemed as bribery by Architect and ESSCI shall bear all corresponding liabilities.

ii. Architect warrants that it shall not, for the benefit of itself or others or for other purposes, induce or instigate ESSCI's staff members to act in violation of provisions hereof, duties, or professional ethics, including but not limited to bribing other relevant parties through ESSCI's staff members and inducing ESSCI's staff members to participate in bribery.

iii. If Architect is allowed to subcontract any work in accordance with relevant agreements, Architect shall supervise subcontractors and undertake that the subcontractors comply with the Agreement. If a breach of the Agreement by a subcontractor causes losses to ESSCI, Architect shall be jointly and severally liable.

3. Reporting Channels and Rewards

3.1 ESSCI’s reporting channels

3.1.1 Architect shall actively support ESSCI’s integrity culture building. If Architect or its staff find that ESSCI’s staff have conducted actions considered as bribery or other dishonest behaviors as specified herein, Architect shall immediately report to ESSCI via the following channels.

1) Email: devraj@essc-india.org
2) Address: 155, 2nd Floor, ESC House Okhla Industrial Area, Phase-III, New Delhi 110020
   Recipient: Vice President

3.2 Once the information provided by the whistleblower is verified by ESSCI, ESSCI has the right to reward the whistleblower as appropriate according to its relevant system.
3.3 ESSCI shall give priority to continuing cooperation with Architect under the same conditions if Architect’s report is verified to be true and if Architect has strictly abided by the Code of Integrity.

3.4 ESSCI shall keep the identities of all reporters strictly confidential and protect them against any attacks or retaliation.
ANNEXURE – 2

NON-DISCLOSURE UNDERTAKING

I, __________________, S/o __________________, (Designation) of ____ (Name of Agency) ____________, a private limited/ limited company having its registered office at ____________ – Pin ________, India ("Architect") do hereby solemnly affirm and declare that ____ (Name of Agency) ____________, its directors, employees, agents, workers shall be bound by the Non-Disclosure Undertaking as under:

1. Purpose

The Parties are executing or wish to discuss and explore a business cooperation relating to Architect’s services for ESSCI Project at Plot nos. D2 & D3, ELCINA Electronics Manufacturing Cluster, SPL-1, Salarpur Industrial Area (Bhiwadi), District Alwar, Rajasthan – 301019 (“Purpose”) and in connection with the Purpose, ESSCI and Architect has disclosed, and may further disclose certain information.

2. Confidential Information

2.1 Definition

“Confidential Information” shall mean any information disclosed by either Party and/or its Affiliates to the other Party and/or its Affiliates, (i) in discussions relating to that information, regardless whether those discussions occur prior to, concurrent with, or following disclosure of the information, or (ii) in writings, electronic, magnetic or other tangible forms, provided that such information is marked with the name, sign, trade mark, or trade name of the ESSCI or is otherwise clearly and conspicuously marked as proprietary or confidential, or (iii) orally or in other intangible form, provided that such oral information is designated as proprietary or confidential at the time of disclosure, and (iv) any information, regardless of the means of disclosure, that by its nature is the type of information normally considered proprietary or confidential. Confidential Information includes, but is not limited to, any information on sales data, marketing, distribution, business plans and other commercial terms and conditions, technical, financial, managerial, legal (including but not limited to information relating to licensing, litigation, mediation, or arbitration), personnel and labour, business or the company’s development strategy of information or data, as well as any Party’s technology, engineering design, circuit design, manufacturing methods, formulation, process procedures, technical specifications, computer programs, software, databases, source code, physical coding, design, ideas, drawings, samples, models, photos, prices, contracts, application to government departments, content development, programming, specifications, manuals, business plans, diagrams, flow charts, customer lists and related information, marketing plans, cargo channels, financial and tax reports, any similar information and the existence of the Agreement, its terms, the fact that the Parties are discussing the Purpose, and oral and written communications between the Parties regarding the Purpose, all of which shall be deemed Confidential Information.

2.2 Exceptions

The Confidential Information shall not include any information that: (i) was already known at the time of its disclosure hereunder, or becomes thereafter publicly known otherwise than through wrongful act or omission by the Architect; (ii) was rightfully known by or in the lawful possession of the Architect prior to or at the time of disclosure; (iii) is rightfully obtained at any time by the
Architect from a third party without restrictions in respect of disclosure or use; (iv) is independently developed by the Architect without any use of Confidential Information from ESSCI as proven by the written records of the Architect.

2.3 Compelled Disclosure

Notwithstanding anything contained herein to the contrary, if the Architect is required by any government or judicial order, to disclose any of the Confidential Information, the Architect must immediately notify ESSCI in writing of the requirement. The Architect must: (i) to the extent practicable, where the ESSCI Disclosing Party requests, assist and permit ESSCI to oppose or restrict disclosure; and (ii) in any event to the extent practicable, where disclosure is required by government or judicial order, make disclosure on terms which will preserve the strictest confidentiality of the Confidential Information.

3. Confidentiality Obligations

3.1 The Architect agrees that it shall use the Confidential Information only for the Purpose defined herein.

3.2 The Architect may disclose the Confidential Information to its employees or respective Affiliates to the extent strictly necessary for the Purpose defined herein. In such an event, an employee or the respective Affiliates of the Architect may only use the Confidential Information to the same extent the Architect is permitted to do so under the Agreement, and the Architect hereby warrants and undertakes to ensure that such employee and the Affiliates shall be bound by written obligations of confidentiality no less stringent than the provisions in the Agreement. The Architect shall be fully liable to ESSCI for any action or inaction on the part of any such employee or Affiliate that receives Confidential Information pursuant to the provisions of this Clause. For the avoidance of doubt, the Architect shall not disclose the Confidential Information to any other third Parties without the ESSCI’s prior written permission. For the purpose of this Agreement, an “Affiliate” of a Party means a company or other legal entity that controls, is controlled by, or is under common control with such Party, but any such company or other legal entity shall be deemed to be an Affiliate only as long as such control exists. For the purposes of this definition, “control” shall mean direct or indirect ownership of more than fifty percent (50%) of the voting power, capital, or other securities of the controlled or commonly controlled entity.

3.3 The Architect agrees to exercise at least the same degree of care as it uses with regard to its own Confidential Information in protecting the ESSCI’s Confidential Information, but in no event less than a reasonable degree of care.

3.4 The Architect undertakes to notify ESSCI immediately upon becoming aware of any breach of this Agreement by the Architect or by anybody to whom the Architect has disclosed the Confidential Information and to give all necessary assistance in connection with any steps which the ESSCI may wish to take to prevent or stop such breach or threatened breach.

3.5 The Architect shall not reverse engineer or disassemble the Confidential Information, and shall not seek any intellectual property by using the Confidential Information.

4. No License

Nothing contained in this Undertaking shall be construed as granting or conferring upon the Architect or its Affiliates, whether expressly or impliedly, any right by license or otherwise under any proprietary or statutory right of the other Party or its Affiliates existing prior to, or coming into existence after, the Effective Date of this Undertaking.

5. No Obligation
Disclosure or receipt of Confidential Information herein shall not constitute or imply any promise to create an agency, joint venture, partnership, or any other formal business relationship between the Parties, to purchase or provide any goods or services, or to enter into any other business arrangement.

6. No Warranty

All Confidential Information is provided “AS IS” and without any warranty, expressed or implied, or otherwise, as to the accuracy, completeness, or fitness for special purpose.

7. Return

All documents and other tangible objects containing or representing Confidential Information that have been disclosed by ESSCI to Architect, and all copies or extracts thereof or notes derived therefrom that are in the knowledge of Architect, shall be and remain the property of ESSCI and shall be promptly returned to ESSCI or destroyed (with proof of such destruction), each upon (i) ESSCI’s written request, or (ii) expiration or termination of the Service Agreement. In spite of the return or destruction of Confidential Information, the Architect and its employees are subject to the restriction of this undertaking until the termination of the Architect’s confidentiality obligations as agreed upon in the Service Agreement.

8. Miscellaneous

8.1 No delay or failure by either Party to exercise any of its powers, rights, or remedies under this Undertaking shall operate as a waiver of any of them, nor shall any single or partial exercise of any such powers, rights, or remedies preclude any other. Any waiver by ESSCI of any provisions of this Undertaking shall not be construed as a waiver of any other provision of this Undertaking, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstances, whether past, present, or future. Furthermore, the remedies provided for in the Service Agreement and Undertaking are cumulative and not exclusive of any provided by law.

8.2 No provision of this undertaking may be amended or otherwise modified except by a writing signed by ESSCI.