



ICM Myanmar Wind Power Project

Magwe, Myanmar

Contract No. PRO-0033-002

Kandok and Zin Taung Wind Farms Feasibility Studies

Contract

Appendices

between

InfraCo Myanmar Wind Power Pte. Ltd.

and

[Consultant Firm Name]

November, 2018

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1. INTRODUCTION

- (a) Infra Capital Myanmar - ReEx (“ICM”) is a company whose mandate is to develop and finance infrastructure projects on behalf of InfraCo Asia Development (“IAD”) in Myanmar. IAD is a commercially managed infrastructure development and investment company headquartered in Singapore but operating in over twelve countries in Asia in order to help stimulate greater private sector investment into infrastructure projects.
- (b) IAD is a company of the Private Infrastructure Development Group (“PIDG”). The Private Infrastructure Development Group, established in 2002, is a coalition of multi-lateral donors mobilizing private sector investment to assist developing countries in providing infrastructure vital to boosting their economic growth and combating poverty. IAD is currently funded by three members of PIDG - Australian Department of Foreign Affairs and Trade (DFAT), the Swiss State Secretariat for Economic Affairs (“SECO”), and the UK Department for International Development (“UK DFID”). The funding for ICM comes from the UK DFID.
- (c) InfraCo Myanmar Wind Power Pte. Ltd., a wholly owned subsidiary of IAD managed by ICM, shall be for the purposes of this contract the Client. (the “**Client**”), whose key objective is to originate, develop and commercialise a portfolio of wind power projects (the “**Project**”) in the Magwe Region of Myanmar (the “**Country**”).

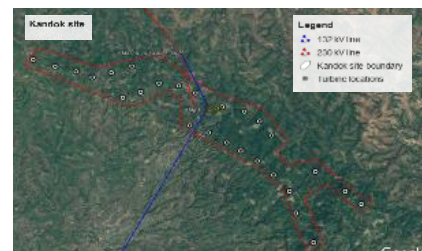
2. THE PROJECT

The Client hereby engages [Consultant Name], (the **Consultant**) to undertake full technological and commercial Feasibility Studies (“**Feasibility Studies**”) for the following two (2) project sites:

- (a) Kandok Wind Farm: Estimated 113 MW installed capacity
 - i) Latitude: 19.762415°, Longitude: 94.741256°
 - ii) Minla township, Magwe region
 - iii) Mann Substation (230 KV)
- (b) Zin Taung Wind Farm: Estimated 49.9 MW installed capacity
 - i) Latitude: 19.454700°, Longitude: 94.596990°
 - ii) Mindon township, Magwe region
 - iii) Mann SS (132 kv)

The main attributes of each of the two (2) wind farm project sites are as follows.

SITE 1	
NAME OF THE PROJECT	Kandok Wind Farm
SCALE OF PROJECT	113 MW (estimated)
SIZE OF THE PROJECT	2,899 Acres (within site boundaries)
TYPE OF INFRASTRUCTURE	Between 27 and 40* wind turbines of up to 113 MW
TRANSMISSION LINE (TL) VOLTAGE LEVEL AND CONNECTION POINT	230 kV double circuit TL (by combining with Zin Taung TL) Mann Substation
DETAILS ON TL ROUTE & DISTANCE:	57.5 km
SITE 2	
NAME OF THE PROJECT	Zin Taung Wind Farm
SCALE OF PROJECT	50 MW (estimated)
SIZE OF THE PROJECT	1,447 Acres
TYPE OF INFRASTRUCTURE	Between 12 and 19 wind turbines of up to 50 MW, and transmission line
TRANSMISSION LINE (TL) VOLTAGE LEVEL AND CONNECTION POINT	132 kV double circuit TL (Firstly to KD site and combined as double circuit transmission line) Mann Substation
DETAILS ON TL ROUTE & DISTANCE:	114.29 km (Zin Taung to Mann Substation)



3. SCOPE OF SERVICES

3.1 General

Pursuant to General Conditions Sub-Clause 3.3 [*Duty of Care and Exercise of Authority*], the Services shall be completed by the Consultant in a manner that will ensure the timely submission of the required deliverables, and shall include the document requirements, tasks and activities as described below.

3.2 Documents

- (a) All documents prepared and/or provided by the Consultant shall be in English.
- (b) All documents shall be submitted in electronic form.
- (c) All documents shall be submitted in the original editable format and in PDF format.

3.3 Project Management

3.3.1 General

- (a) The project management services shall include management, administration and supervision of the Services, including management and supervision of any recommended and approved field investigations and studies undertaken by selected contractors, consultants and/or sub-consultants.
- (b) The project management services shall be undertaken in accordance with an approved Services Management Plan specifically related to the scope of the Services.

3.3.2 Services Management Plan

- (a) The Services Management Plan shall provide all necessary information showing how the Services will be appropriately controlled and managed, including the following:
 - (i) Programme of all key activities.
 - (ii) Organisation chart(s).
 - (iii) Staffing schedule(s).
 - (iv) Budget and cash flow forecast.
 - (v) Deliverables and invoicing schedule
 - (vi) Communications protocols.
 - (vii) Risk register.
 - (viii) Work locations, work allocations and means of coordination and control.
 - (ix) Design management processes and procedures.
 - (x) Document control and management system.
 - (xi) Project meetings.
 - (xii) Project reporting.
 - (xiii) Quality management system.
 - (xiv) Health and safety plan (for any field activities).

3.3.3 Services Programme

- (a) The Consultant(s) shall develop, maintain, and update the programme for the Services.
- (b) The Services programme shall be developed using MS Project software.

3.3.4 Services Risk Register

- (a) The Consultant(s) shall develop, maintain, and update the risk register for the Services.

3.3.5 Meetings

- (a) The Consultant(s) shall participate in meetings in relation to the Services. Such meetings shall include the following:
 - (i) Bi-weekly (once every two weeks) progress meetings.
 - (ii) Any other adhoc and periodic meetings, as may be required from time to time by the Client
- (b) The Consultant(s) shall be responsible for the preparation of agendas and records for all meetings, for review and acceptance by the Client.

3.3.6 Reporting

- (a) The Consultant shall prepare and submit monthly progress reports with respect to the Services, and which shall include the following information:
 - (i) Narrative summary of progress for the respective reporting period, broken down into the key activities, including studies, investigations, designs, specifications, reports, etc.
 - (ii) Actual progress versus scheduled (baseline) progress and any action being taken to mitigate any identified delays.
 - (iii) Issues, problems and concerns, and the actions being taken to mitigate.
 - (iv) Summary of activities and actions to be undertaken in the next reporting period.
 - (v) Risk register, including highlighting of any updates, particularly with respect to any emerging risks.
 - (vi) Quality management, including details of any non-conformances and related corrective actions.
 - (vii) Outline of any scope of work change proposals (variations) and the current status of any such proposals.
 - (viii) Summary of any health or safety issues.
 - (ix) Summary of any social or environmental issues.
 - (x) Summary of any issues or concerns for which information or action is needed from the Client.

3.4 Feasibility Studies

3.4.1 Review of Client Documentation

- (a) Review of all Client provided reference data, identification of any shortcomings in the available data, documentation and related studies, and identification of any other known reference data and/or documents that may be applicable to the Project.
- (b) Identification of possible improvement options for the arrangement of each wind farm site, features and implementation strategies to provide appropriately optimised, simple, cost-effective and reliable power generation facilities, with minimised development costs that are consistent with the relative scale of each wind farm.

3.4.2 Determination of Wind Turbine Selection and Configuration

- (a) The Feasibility Studies shall be conducted on 4 to 5 wind turbine models, for which it is expected that the turbine type/model, configuration, layout and CAPEX/OPEX cost will be procured from potential tier 1 wind turbine suppliers¹.
- (b) As there is no relevant wind turbine regulation in Myanmar, the Consultant shall reference and prescribe international standards for micro-siting considerations.

¹ The list of prequalified wind turbine suppliers shall be agreed upon by the Client and Consultant

- (c) Important planning considerations required by these wind turbine suppliers, shall be provided by the Consultant, with consent from the Client.
- (d) The Consultant may propose site visits or any other technical studies considered necessary to validate specific assumptions required in the techno-commercial feasibility analysis pursuant to Sub-section 3.4.3 (*Techno-Commercial Feasibility Analysis*), if not made available through the Client documentation provided or by the wind turbine suppliers.

3.4.3 Techno-Commercial Feasibility Analysis

After the completion of the tasks described in Sub-sections 3.4.1 and 3.4.2, the Consultant shall conduct and provide the Client with Feasibility Studies reports for each of the two (2) project sites. Each of the two (2) Feasibility Studies shall include the following sections:

- (a) **Executive Summary**
- (b) **Introduction and Project Overview:** including the site coordinates, boundaries, size, terrain, project classification and capacity of the plant;
- (c) **Wind Climate Assessment:** Including metrological mast campaign details, wind data quality assessment, measured data analysis and profile, long term wind data extrapolation and modelling, vertical extrapolations.
- (d) **Site Assessment Result:** Arising from the wind climate assessment and wind turbine selection and configuration, the Consultant shall calculate for average wind speed, air density, turbulence intensity and extreme winds, at the relevant hub heights.
- (e) **Annual Energy Production (“AEP”):** The long term MCP calculations would then be used to generate AEPs and capacity factors for each turbine model and suggest a reasonable level of expected losses between the gross and net AEP amounts. This section shall also estimate the uncertainty at P50, P75 and P90 levels for 1 year, 10 year and 25-year AEPs.
- (f) **Land Requirements:** The Consultant shall review and advise on the land requirements of the Project, as would be informed through a review of information from the Client’s ongoing land ownership surveys in collaboration with relevant governmental authorities (estimated completion early December 2018). The main purpose of this activity is to determine accurate and current information on land classifications, land ownership and land-use information within the site boundary at the project site. Additionally, a land acquisition plan will be developed and would likely be completed in tandem with the Draft Feasibility Studies Report. Therefore, the Consultant should provision sufficient effort to reviewing these updates, the results of which shall be included and integrated in the Final Feasibility Studies Report.
- (g) **Transportation and Logistical Assessment:** The Consultant shall review the full transportation plans developed for the site to verify the feasibility of the proposed transportation routes, considerations, schedules and cost for transporting components to the site.
- (h) **Construction Solution and Considerations:** The Consultant shall review and advise on the main materials and methods to be used (as may be provided by the wind turbine suppliers in accordance with the activities described in Sub-section 3.4.2, in the transportation plan(s), and other relevant information as may be provided by the Client), and provide necessary updates and expert observations to the construction method and/or estimated costs for the different civil works components.
- (i) **Review Environmental and Social compliance Studies.** The Client is undertaking a Ministry of Natural Resources and Environmental Conservation (“MONREC”), Myanmar complaint IEE/EIA and IFC/ADB compliant ESIA on each of the sites. Relevant documents (i.e. completed scoping reports and final drafts of the IEE/EIA reports) will be provided to the Consultant for review. The Consultant shall identify any additional potential risks and suggest mitigation plans to address potential environmental and social impacts which could occur during construction and operation stages, not

already addressed in the documents provided by the Client. Note: The final drafts of the IFC compliant ESIA reports are due to be completed in tandem with the Draft Feasibility Studies Report. Therefore, the Consultant should provision sufficient effort to reviewing these updates, the results of which shall be included and integrated in the Final Feasibility Studies Report.

- (j) **Grid Interconnection and Impact:** The Consultant shall consider the completed “Grid Interconnection and Impact Analysis” in making its recommendations in relation to the grid interconnection and impact of the Project. That said, A further grid interconnection and impact study and an ongoing transmission and distribution study are being undertaken by the Client at the moment and would likely be completed in tandem with the Draft Feasibility Studies Report (See Timeline in Appendix 3). Therefore, the Consultant should provision sufficient effort to reviewing these updates, the results of which shall be included and integrated in the Final Feasibility Studies Report.
- (k) **Commercial Feasibility Study:** The Consultant shall compute the Levelised Cost of Electricity (“LCOE”) given reasonable CAPEX and OPEX assumptions provided by the different wind turbine suppliers in accordance with the activities described in Sub-section 3.4.2. In addition, Project break-even analyses and Investment Rate of Return (“PIRR”) sensitivity analyses shall be conducted using i) a band of possible Tariff rates, ii) possible wind resource uncertainty levels (P50,P90), iii) expected CAPEX and OPEX deviations and, iv) any other key assumptions that may be significant in considering the Project’s commercial viability. Other factors that may affect commercial viability shall be discussed in this section.
- (l) **Key Project Development Risks and Recommendations:** The Consultant shall prepare a project development risk register with recommended mitigation measures, the intent of which shall be to provide reasonable recommendations on the development of the project up to COD, and during operations.

4. DELIVERABLES

The Services shall include provision by the Consultant of the following Deliverables:

Deliverables			
Ref.	Description	Soft Copies	Printed Copies
1.	Submission of Project Inception Documents: <ul style="list-style-type: none"> • Services Management Plan; • Services Programme; and • Services Risk Register. 	Yes	N/A
2.	Meeting records	Yes	N/A
3.	Progress reports	Yes	N/A
4.	Draft Feasibility Studies Reports	Yes	N/A
5.	Final Feasibility Studies Reports	Yes	N/A

Appendix 2 Price and Payment

1. CONTRACT PRICE

(a) The total Contract Price for the Normal Services shall be as follows:

Amount in Figures:

- Currency other than USD ???
- United States Dollars USD

Amount in Words:

- Currency other than USD ???
- United States Dollars USD

(b) The breakdown of the Contract Price for the Normal Services is as follows:

Contract Price Breakdown – Normal Services			
Ref.	Description	Non-USD Portion (???)	US Dollar Portion (USD)
1.	Project Management		
2.	Review of Client Documentation		
3.	Determination of Wind Turbine Selection and Configuration		
4.	Techno-Commercial Feasibility Analysis		
5.	Feasibility Report		
6.			
7.			
8.			
9.			
10.			
	Total Contract Price – Normal Services		

Any approved Additional Services and Exceptional Services shall be added to the scope of the Services through a Variation Order pursuant to General Conditions Sub-Clause 4.3 [Variations].

2. ADDITIONAL SERVICES – DAILY RATES FOR REMUNERATION FOR ADDITIONAL SERVICES

2.1 Daily Rates for Remuneration for Additional Services

The daily rates for approved Additional Services undertaken by the Consultant’s personnel with respect to approved Additional Services through a Variation instructed pursuant to General Conditions Sub-Clause 4.3 [Variations] shall be as shown in the following table.

Daily Fee Rates for Remuneration for Additional Services				
Ref.	Name	Position on Team	Daily Fee Rate	
			Non-USD	USD
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

2.2 Rates for Additional Facilities and Equipment with respect to Additional Services

The rates for approved additional facilities and/or equipment utilized by the Consultant with respect to approved Additional Services through a Variation instructed pursuant to General Conditions Sub-Clause 4.3 [Variations] shall be as shown in the following table.

Rates for Additional Facilities and Equipment with respect to Additional Services					
Ref.	Description	Unit	Qty	Rate	
				Non-USD	USD
1.					
2.					
3.					
4.					
5.					
6.					

3. THIRD PARTY CHARGES ON THE CONSULTANT

Pursuant to General Conditions Sub-Clause 5.5 [*Third Party Charges on the Consultant*], all third party charges on the Consultant shall be the responsibility of the Consultant.

4. PAYMENT

4.1 Payment Schedule for the Services

The payment schedule for the Services, the prices for which are detailed above in Clause 1 [*Contract Price*], shall be as follows:

Payment Schedule					
Ref.	Milestone	%	Criteria	Amount	
				Non-USD Portion (???)	US Dollar Portion (USD)
1.	Contract Award and Notice to Proceed	10%	Client provides Consultant with Notice to Proceed		
2.	Project Inception Documents: <ul style="list-style-type: none"> • Services Management Plan; • Services Programme; and • Services Risk Register. 	20%	Client acceptance of: <ul style="list-style-type: none"> • Services Management Plan; • Services Programme; and • Services Risk Register. 		
3.	Draft Feasibility Studies Reports	40%	Client acceptance of Draft Feasibility Studies Reports		
4.	Final Feasibility Studies Reports	30%	Client acceptance of Final Feasibility Studies Reports		
			Totals		

4.2 Consultant's Bank Accounts for Payments

The Consultant's bank accounts for receipt of payments from the Client are as follows:

	Payments in Non-USD Currency	USD Payments
Account Name	:	
Account Number	:	
BIC (Swift) Code	:	
Bank Name	:	
Bank Address	:	

Appendix 3 Time Schedule for the Services

- (a) The Time for Completion for the Services shall be [Insert no. of days and/or start and end date of Services].
- (b) The time schedule for the Services and key milestones for related deliverables shall be as follows:

Time Schedule for the Services			
Ref.	Activity/Deliverable	Due Date (dd-mmm-yy)	Duration (days)
1.	Proposal submission	26 Nov 2018	
2.	Services contract award	3 Dec 2018	
3.	Kick off meeting for the Services and Client provision of inputs to Consultant (as shown in Appendix 4)	4 Dec 2018	
4.	Submission of Project Inception Documents: <ul style="list-style-type: none"> • Services Management Plan; • Services Programme; and • Services Risk Register. 	10 Dec 2018	
5.	Approval of Services Programme	12 Dec 2018	
6.	Draft Feasibility Studies Reports	21 Jan 2018	
7.	Client to complete review of Draft Feasibility Studies Reports and provision of (i) land acquisition plan, (ii) additional grid interconnection and impact study, and (iii) IFC compliant ESIA studies.	28 Jan 2018	
8.	Final Feasibility Studies Reports	11 Feb 2019	
9.	Services completion	11 Feb 2019	

Appendix 4 Personnel, Equipment, Facilities and Services of Others Provided by the Client

The Client's inputs and support for the Services will be limited to the following:

- (a) Provision of relevant reference documents relating to studies, investigations and concept designs undertaken to date with respect to the Project and/or the Services in relation to each of the two sites, including:
 - (i) Digital maps (elevation/contour, indicative site boundaries and preliminary layout, constraints);
 - (ii) Mesoscale wind data (including Vortex and AWS Truepower);
 - (iii) Preliminary wind assessment report;
 - (iv) Meteorological measurement data;
 - (v) Meteorological mast ("met mast") inspection report for each met mast;
 - (vi) Geotechnical analysis at met mast location
 - (vii) Complete transportation studies and plan for the site;
 - (viii) Technical and commercial responses to Client requests for information (RFI) from selected wind turbine suppliers ("WTS") and prospective EPC contractors;
 - (ix) Initial feasibility studies (based on 6 months of data);
 - (x) Land ownership surveys and land asset inventory for the site;
 - (xi) Transmission line route studies for the site;
 - (xii) Grid interconnection and impact analysis;
 - (xiii) MONREC compliant IEE/EIA scoping reports and final draft reports;
 - (xiv) Land acquisition study and plan (by 28 Jan 2018);
 - (xv) Additional grid interconnection and impact analysis (and T&D study) (by 28 Jan 2018);
 - (xvi) IFC/ADB compliant ESIA study drafts (by 28 Jan 2018).
- (b) Administrative support and assistance for facilitation of the Consultant's visits to and activities at the Project sites if necessary.

Appendix 5 Standards of Conduct, Anti-bribery and Fraud

1. REQUIRED STANDARDS OF CONDUCT

- (a) The Consultant acknowledges that it has read and understood:
- (i) the InfraCo Asia (“**InfraCo**”) code of conduct (as displayed within www.infracoasia.com) (as may be amended from time to time) (the “**InfraCo Code**”); and
 - (ii) the codes and policies of the PIDG (as displayed within www.pidg.org) (as may be amended from time to time),
- and in connection with the Contract, its performance and conduct of the Services, any Exceptional Services, the Project and any other business transactions or dealings involving InfraCo and its affiliates, agrees to comply with the principles, standards of behaviour and ethics contained in the InfraCo Code and the codes and policies of the PIDG.
- (b) The Consultant acknowledges and agrees that it shall procure on behalf of itself and its personnel, sub-consultants and sub-contractors that its conduct of the Contract, and all of the Consultant’s undertakings, transactions and dealings in connection with the Services, any Exceptional Services, the Project or with InfraCo under this Contract shall at a minimum be compliant with and undertaken in accordance with the following:
- (i) the InfraCo Code and with the codes, policies and procedures of InfraCo;
 - (ii) the codes and policies of the PIDG;
 - (iii) the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability 2012 (including the related IFC Environmental, Health and Safety (EHS) General Guidelines and any other relevant IFC sector-specific guidelines) and any such updates to the same by IFC (together known as the “IFC Performance Standards”);
 - (iv) all Applicable Laws; and
 - (v) best practice with regard to planning, design, engineering, construction, operation, environmental and social impact assessment and management, and occupational and community health and safety management.
- (c) The Consultant shall not (and shall procure that its personnel, sub-consultants and sub-contractors shall not):
- (i) offer, promise, give or authorise the giving of any Bribe, rebate, payoff, influence payment, kickback or other unlawful payment including facilitation payments, to any Public Official in order to obtain or retain business, gain any unfair advantage or influence any act or decision of a Public Official;
 - (ii) partake in any Sanctionable Practices, corrupt, obstructive, collusive or coercive practices, the financing of terrorism or make prohibited payments, or deal with funds of illicit origin;
 - (iii) breach any Applicable Laws; or
 - (iv) partake in any activity whatsoever where such activity could reasonably be expected to cause InfraCo or any of its affiliates to partake in any Sanctionable Practice or violate or to be in breach of any Applicable Laws or any of the codes, policies or procedures of InfraCo or the PIDG,

(paragraphs 1(a), 1(b) and 1(c) being the “**InfraCo Standards**”).

2. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

- (a) The Consultant acknowledges and agrees that the Client shall have the right to terminate or suspend its involvement, undertakings and/or dealings in connection with the Consultant without liability and with immediate effect where the Client reasonably believes that any non-compliance or infringement of any of the InfraCo Standards has occurred.
- (b) The Consultant shall provide the Client with such further assurances or certificates that the Client may request from time to time, including to certify to the Client, in writing, signed by a duly appointed and authorized officer of the Consultant, that the Consultant and its personnel, sub-consultants and sub-contractors and any persons acting for or on behalf of the Consultant in connection with the Contract have at all times during the relevant preceding period complied with the InfraCo Standards. The Consultant shall provide such supporting evidence of compliance as the Client may reasonably request.
- (c) The Consultant acknowledges and agrees that the Client (itself or through its representatives) may inspect the conduct and performance of the Services and any Exceptional Services and review and make copies of all relevant books, records and accounts of the Consultant in connection with the Contract, and continue to monitor and conduct background checks on the Consultant, its associates and/or affiliates for the purposes of monitoring compliance with the InfraCo Standards. The Consultant shall provide the Client with unobstructed access to all relevant sites, books, records and accounts for such purpose.
- (d) The Consultant represents, warrants and undertakes that:
- (i) it shall do everything within its power to ensure that the Services and any Exceptional Services are conducted and implemented in accordance with the InfraCo Standards;
 - (ii) that it is aware of and has considered the Client's policy of zero tolerance towards bribery and corruption in agreeing to enter into the Contract and undertake the Services and any Exceptional Services, and that it is aware of and has considered that the Client is subject to the InfraCo Standards prohibiting improper payments and bribes to private sector persons and to Public Officials, and that neither the Consultant, nor any persons acting for or on behalf of it in connection with this Contract, has taken, or will take any action or engage in any activity which would lead to the Client being in violation of the InfraCo Standards;
 - (iii) it does not engage in Bribery, does not direct, authorise or knowingly permit any person who acts on its behalf or provides services to it, to engage in Bribery and that it will not, during the term of this Contract, or, if different, during the period of time from the date on which this Contract is signed until this Contract expires, engage in, or direct, authorise, or knowingly permit a person acting on its behalf or providing services to it, to engage in Bribery;
 - (iv) it has not:
 - (A) been convicted of any offence under an Applicable Law, including in relation to bribery, corruption or money laundering; or
 - (B) been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving bribery, corruption or money laundering or for breach of any Applicable Law;
 - (v) it agrees to indemnify the Client against any and all losses and damages resulting from or due to:
 - (A) any Bribery or breach of an Applicable Law by it or its directors or officers made in connection with the Contract or the Services and any Exceptional Services;
 - (B) where any of the InfraCo Standards are breached or violated due to the Consultant's actions or omissions;

- (vi) it shall ensure compliance with the InfraCo Standards by it and its personnel, sub-consultants and sub-contractors and any persons acting for or on behalf of the Consultant in connection with the Contract;
- (vii) it does not, and will not, make any political donations for the benefit of, or on behalf of the Client, or in relation to the Contract;
- (viii) neither it or any of its shareholders, beneficial owners or affiliates are designated as a Restricted Party;
- (ix) it will not delegate the performance of services under the Contract or otherwise engage any sub-consultant, sub-contractor or agent in relation to the Services or any Exceptional Services without the prior written approval of the Client in accordance with Sub-Clause 1.7 of the General Conditions [*Assignments and Sub-Contracts*], and will ensure that any such sub-contracting arrangement is set out in a written agreement which incorporates all material terms of this Contract regarding conduct, compliance, confidentiality and representations and warranties, and that the Client shall be a third party beneficiary of, and entitled to enforce, such provisions; and
- (x) any material breach or violation of any of these representations and warranties will entitle the Client with no liability to terminate or suspend all dealings and arrangements with the Consultant with immediate effect.

3. DEFINED TERMS

The terms as used in this Appendix 5 shall have the means ascribed below:

- (a) **“Bribe”** or **“Bribery”** is where:
 - (i) a person:
 - provides a benefit to another person; or
 - causes a benefit to be provided to another person; or
 - offers to provide, or promises to provide, a benefit to another person; or
 - causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (ii) the benefit is not legitimately due to the other person; and
 - (iii) the first-mentioned person does so with the intention of influencing a Public Official (who may be the other person) in the exercise of the Public Official's duties as a Public Official in order to:
 - obtain or retain business; or
 - obtain or retain a business advantage that is not legitimately due to the recipient or intended recipient of the business advantage (who may be the first-mentioned person).
- (b) **“Public Official”** means any individual who holds a legislative, administrative or judicial position of any kind (whether appointed or elected) of a country or territory, or subdivision thereof, exercises a public function for a country or territory, or subdivision thereof, or for any public agency or public enterprise of any country or territory, or subdivision thereof, or is an official or agent of a public international organisation.
- (c) **“Restricted Party”** means any person who is identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by InfraCo, PIDG (including its members or donors), and/or any of their affiliates are prohibited or restricted.

- (d) **“Sanctionable Practice”** means any of the following:
- (i) offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) any arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) impairing or harming, or threatening to impair or harm, directly or indirectly, any part of the property of a party to influence improperly the actions of the party;
 - (v) engaging in any activity, or entering into any transaction, either principally or through some other person, or being involved with any person (i) in breach of any Applicable Law, (ii) prohibited by any resolution issued by the United Nations Security Council or UN Charter; (iii) sanctioned or prohibited by any of the United Nations (including in relation to the United Nations Security Council or UN Charter), the European Union, World Bank or a member of the PIDG, (iv) on the World Bank Listing of Ineligible Firms from time to time, or (v) convicted, indicted, or subjected to any similar criminal sanction for engaging in money laundering or financing of terrorism;
 - (vi) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statement to investigators in order to materially impede any investigation or enquiry by or on behalf of InfraCo or its affiliates or the PIDG, or their duly appointed representatives, advisors or constituted members into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (vii) actions or inactions intended to impede the exercise of any rights of audit and access to information of InfraCo or its affiliates or the PIDG, or their duly appointed representatives, advisors or constituted members.

