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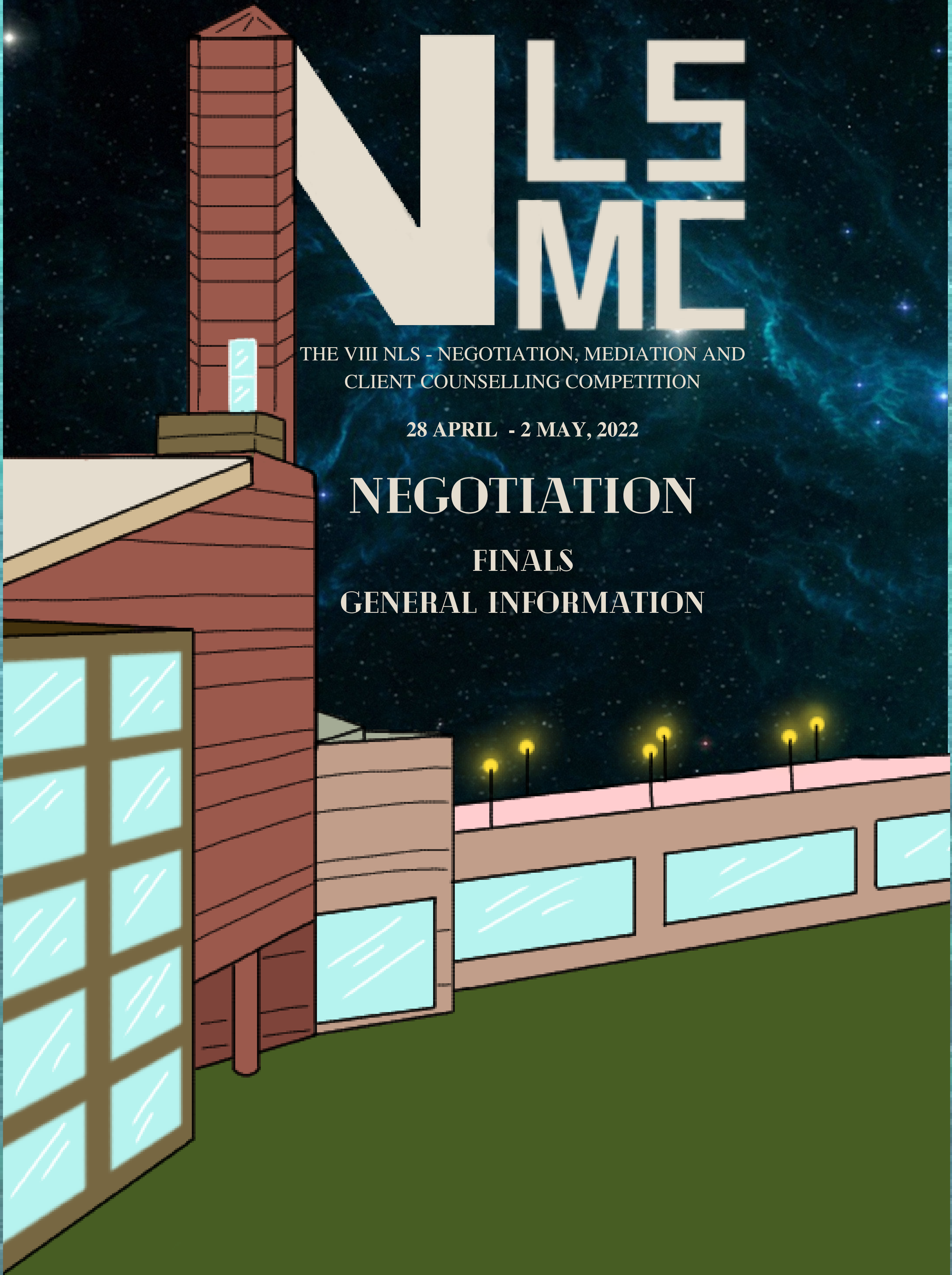
THE VIII NLS - NEGOTIATION, MEDIATION AND
CLIENT COUNSELLING COMPETITION

28 APRIL - 2 MAY, 2022

NEGOTIATION

FINALS

GENERAL INFORMATION



NEGOTIATION FINALS

BACKGROUND

1. In Samvat 3048, the Department of Outer Space & Extra-Terrestrial Missions (“OUTSET”) of the Government of Terrabot conceptualized a ten-year plan to colonize the exo-planet of Zygon within the Hercules galaxy. This mission, titled ‘Mission Zygon’ was planned to be executed by sending an initial team consisting of microbiologists, engineers, geologists, geneticists et al to conduct preliminary surveys and run the research and development expeditions on Zygon by Samvat 3053, followed by export of the first tranche of certain floral and faunal species by Samvat 3054 to determine habitability and adaptability and thereafter, of 10 teams of prescreened humans, as part of the colonization process that Terrabot hoped to achieve by Samvat 3060 in Phase 1 of the Mission.

2. At the time of the conceptualization, there was no public procurement policy governing space tech and outer space missions at Terrabot and the method of first- come- first- serve was popular with the governmental agencies for strategic green-field projects. Brex Space Solutions (“Brex”) had taken advantage of the lack of a firm policy on such matters and had promptly leveraged its robust leadership and vast business network to open a channel for discussions with OUTSET with a view to stake its claim for running the Mission.

3. Following sustained discussions between OUTSET and Brex, a widely publicized joint press conference was held by OUTSET and Brex to disclose their common objective and ongoing discussions. However, since no headway could be made for almost 2 years since the start of discussions between TSSA and Brex for a variety of reasons that included Brex’s hesitation to singularly take on the unconditional commitment and responsibility of being the primary funder of the mission for the next decade or so, OUTSET decided to abandon the method of private treaty and instead to explore alternate options.

4. Thereafter intensive discussions were held between various departments and ministries of the Government of Terrabot, pursuant to which it was decided that the entire scheme and process of colonization would be undertaken by Terrabot’s national space agency through public-private partnerships on the basis of global tender to be issued.

TERRABOT SPACE SERVICES AGENCY

5. The Terrabot Space Services Agency (“TSSA”), the national space agency of Terrabot, operating under the aegis of OUTSET, accordingly, issued a Global Notice inviting Tender in Samvat 3050 calling upon interested bidders for bids on the basis that the successful bidder would enter into a public-private partnership with TSSA for the execution of Mission Zygon (“Tender”).

6. Relevant conditions of the Tender appended as Schedule A.

THE TENDER

7. The Tender had been segregated into two stages:

- A. Stage I: Pre-qualification technical bid and Management interview
- B. Stage II: Price bid

8. During Stage I of the Tender, the bidders were to be evaluated on three assessment criteria viz. i. Existing R&D and Technological Credentials of the bidder, ii. Management and Financial Strength, and iii. Equipment & Facilities available with the Bidder to execute the proposed mission.

9. The Bidders were then to be marked on a four-point scale with TSSA comments viz. Average, Above Average, Good and Excellent in the order of the superiority of their respective scores on the above assessment criteria and only those Bidders who scored “Good” or higher in at least two criteria were eligible to progress to the price bid stage and submit their financial bids in the tendering process.

THE BIDDERS

10. During Stage I of the Tender process, competing bids were received from three entities, Terrabot-based Brex, Aeris-based Orion Technologies (“Orion”), and Benedicta-based Rousseau Space Technology (“Rousseau”). [The nations of Terrabot and Aeris did not always have friendly relations, and recent history showed that the two nations had been involved in certain border disputes for many decades, before a perpetual truce was mediated between them through the influence of the League of Nations.]

11. Something must be said about each of the three entities:

- a. Brex was a corporate behemoth in the space tech & engineering industry and was globally reputed to possess unmatched advantages over its nearest rivals. But after it had recently onboarded a number of investors, it had been rumored that all was not well with and within Brex.
- b. Aeris was a relatively recent entrant in the industry and while it had tasted some successes in small measure, it was looking for its big opportunity to make a mark. Its irreverent attitude towards establishment and cash rich coffers made it a threat to any serious industry player, regardless of their vintage.
- c. While both Brex and Aeris were personality driven entities, Rousseau had been steadily working in the industry but did not possess the profile or the ambitions of Brex or Aeris. It recognized that its chances of eventually succeeding in the Tender were practically remote.

BID EVALUATION

12. After detailed bid evaluation at the pre-qualification stage and extensive discussions held by TSSA with the Management of each of the three Bidders, the preliminary score on the three assessment criteria could be summarized as follows:

	R&D/ Tech Cred	Management/ Financial Strength	Equipment & Facilities
Brex	Excellent	Good	Excellent
Orion	Above Average	Excellent	Good
Rousseau	Average	Good	Good

13. The results of the pre-qualification stage were made public as part of the rules of complete transparency prescribed in the Global Tender document issued by TSSA.

ORION'S AMBITIONS AND PROPOSED PARTNERSHIP WITH BREX

14. Given the unambiguous lead that Brex had at the first stage of the Tender, Orion approached Brex with an offer to merge resources with Brex specifically in connection with

execution and management of the entire Mission and to submit the price bids as a single entity, all with prior written approval from TSSA as stipulated in the Tender. Orion also secretly desired to leverage Brex's friendly relations with the Head of TSSA and 1.OUTSET to become part of the prestigious and one-of-a-kind inter-planetary colonization Mission led by the human race.

15. Brex, on the other hand, was supremely confident of its technological prowess, superior quality of existing equipment and R&D and competitive advantage, and believed that it required no external help, support or assistance in so far as the Tender in question was concerned and rebuffed all merger proposals communicated by Orion. This, despite certain internal constraints known only to Brex.

16. Deeply hurt by the fact that Brex had declined its offer to enter into any commercial partnership with Orion, Orion promptly approached Rousseau with the sole purpose of defeating Brex in the Tender and proposed that Orion and Rousseau come together as a consortium and pool their financial and technological resources, capabilities, credentials and R & D, and seek TSSA's approval to submit a joint & common financial bid in the Tender. Having nothing to lose in the Tender, given the inter se standings at the end of Stage I, Rousseau acceded to Orion's request. Orion was to be the lead member of the Consortium.

17. This proposed partnership and announcement of a joint bid submission by Orion and Rousseau was strongly (and publicly) opposed by Brex. TSSA was, however, conscious of the global public scrutiny on the Mission and Tender, and thus proceeded to allow the request received from the Consortium of Orion and Rousseau in accordance with the Tendering Rules. Resultantly, both Brex and the consortium of Orion and Rousseau were allowed to advance to the second stage and submit their price bids.

18. As events unfolded, despite all the machinations of Orion, Brex emerged as L1 bidder following completion of Stage II of the Tender given the competitive price bid it had submitted and its clear win at the pre-qualification stage. It was thus slated for grant of award of the Tender by TSSA.

ORION'S OBJECTIONS TO THE AWARD

19. Aggrieved by the decision of TSSA to award the Tender to Brex, Orion in its individual capacity (Rousseau had refused to join in the challenge out of its wish to avoid controversy and concerns about falling foul with governmental agencies and Brex) decided to immediately challenge the decision of TSSA before the Grievance Redressal Authority set up in connection

with the Tender, on the following grounds:

- a. Unconscionable bias shown by TSSA towards Brex
- b. Breach of the covenant of transparency prescribed in the Tender document
- c. Manipulation of the price bid by Brex
- d. Suppression of acute financial distress by Brex

20. The complaint before the Grievance Redressal Authority set up under the Tender Conditions came to be decided against Orion, and TSSA was allowed to finalize the award of the Tender to Brex, and to formalize its partnership with Brex by executing the relevant public-private partnership agreements and related documents for Mission Zygon.

21. In the circumstances, Orion immediately approached the Supreme Constitutional Court of Terrabot by filing a petition against TSSA and managed to obtain an ad interim injunction that effectively prohibited TSSA from acting in furtherance of the Tender, directly or indirectly, till Orion's objections against the Tender process were adjudicated by the Supreme Constitutional Court.

22. Prior to the next date of hearing in the petition before the Supreme Constitutional Court of Terrabot, Brex filed detailed objections to the petition on merits, and TSSA filed a motion for summary dismissal of the Petition on grounds of maintainability of the petition.

23. Given the existing injunction from the Supreme Constitutional Court and external pressures being exerted by the supporters and lobbyists of Orion and Rousseau, officers of TSSA at the highest levels informally discussed the option of cancelling the Tender altogether. The decision was not easy as it would inevitably delay the entire process by at least 2 years given the procedural formalities and approvals that Global tenders had to go through in Terrabot.

24. In the background, Orion once again approached Brex to re-negotiate the possibility of a strategic partnership and conditions to withdraw its petition to enable Mission Zygon to proceed.

25. Given the sheer scale and size of Brex confronted with the unstoppable and limitless ambitions of Orion, any war between them will certainly bleed both parties grievously and may well escalate into a fight unto death. Each entity is keenly aware that given the stakes involved and the nature of their respective objectives and strategic interests, their leaders are required to display immense creativity to be able to find solutions that are commercially viable and mutually acceptable for each and both of them if they are to move forward with their plans of becoming undisputed market leaders within the spheres of influence in the industry.

SCHEDULE A

RELEVANT COVENANTS OF THE TENDER DOCUMENT

MISSION ZYGON: THE FUTURE

I. Our planet, Ceres, is about 4.5 billion years old, and in another 5 billion years from now, our star will make it impossible for humans to survive on this planet. However, studies indicate that our planet undergoes extinction level events every 250 million years or so on an average. More than ever, we have also become acutely aware that while extinction of our species could be precipitated on account of the natural events such as solar storms, meteor strikes, ice age etc., the threat of extinction level events being caused on account of the acts of omission and commission on part of our species (global warming, nuclear holocaust, bio-chemical warfare or simply fatal resource crunch etc) cannot be disregarded.

II. Keeping in mind that there have been so many species that once dwelled this universe but were wiped off their existence simply because they failed to anticipate their end or to take preemptive measures such as setting up colonies on satellites or exoplanets that could function like safe harbors and were better suited for their existence, it is vital that we deem their errors as reminders and lessons for our species.

III. Over the last thousand years or so, the human species has been immensely successful in placing satellites and space stations in outer space, developing artificial intelligence, decoding the genome of all living species, perfecting human cloning, sending space probes beyond our star system, mining space bodies for life-sustaining minerals, peering into the heart of black holes, Higgs Bosons and Planck particles, deconstructing the nature of life and matter, mastering the unification of the five fundamental forces and of the inherent unity of wave-particle and mass-energy, deciphering the origin of the cosmos, develop photonic spacecrafts capable of travelling at 99% of the speed of light et al.

IV .But during the same period, our planet has been rapidly losing its life-sustaining force, vigor and vitality. Prolonging the existence of our species promises to unravel the layers within layers that underline and surround our existence.

V. It is, therefore, imperative to develop ways and means to ensure the continued existence of the human species. Prolonged space monitoring and exploration has established that the exoplanet, Zygon, within the Hercules galaxy, lies in the Goldilocks Zone and is the

most likely candidate for sustaining human life on long term basis. Zygon is rich in elements and minerals essential for life and due to its unique orbital placement and motion, Zygon will also offer greater protection from solar flares, cosmic debris and meteor strike for billions of years.

VI. While the community of nations have been unsuccessfully engaged in this herculean exercise to colonize Zygon over the last hundred years or so, Terrabot is determined to take the lead in this endeavor. With the ambition of making the existence of human race perpetual in this universe, the Government of Terrabot has decided to set up colonies of human race on planet Zygon and invest it with sufficient flora and fauna from our planet.

VII. [X]

VIII. [X]

IX. [X]

TRANSPARENCY, FAIRNESS AND COMPETITIVE PRACTICES

X. TSSA believes in complete transparency and fairness and adopting competitive practices for the purpose of evaluation of the bids and award of the Tender.

XI. For this purpose, TSSA is compliant with all national regulations concerning government Tenders and its proposed partnership agreements are in compliance with the anti-trust and competition regulations of our nation.

XII. To ensure transparency in the Tender, TSSA shall share the result of the Tender along with all documents (other than confidential documents as may be described or marked so by a Bidder) that it may have relied on to award a Tender to a particular Bidder.

XIII. Further, to ensure the fair and consistent implementation of all its policies across the institution, TSSA has issued a Transparency and Fairness Code to avoid even the possibility of favoritism and bias, whether actual or perceived, in dealing with potential Bidders. Similarly situated Bidders should be treated alike and have equal access to TSSA resources.

XIV. A Bidder may bid individually or in consortium with other entities. Reconstitution of the consortium shall not be permitted during or after the Tender process except where TSSA

believes, for reasons to be recorded in writing and with reference to compelling documentary evidence, that such reconstitution is likely to further the objectives of the Tender as well as to promote and achieve the objectives of the Mission.

- *XV. [X]*
- *XVI. [X]*
- *XVII. [X]*

EVALUATION AND ACCEPTANCE OF TENDER

XVIII. TSSA shall cause an objective evaluation of the Tenders at every stage taking into consideration the prescribed criterion for quality along with price bids received.

XIX. At the Pre-Qualification Stage (Stage I), Bids shall be evaluated on the following criterion:

- ***1. Research & Development & Technological Credentials***

Bidders will be evaluated on their existing Research and Development facilities developed over the last five years in the field of inter planetary travel, temporary and permanent survival and habitation in atmospheres and conditions similar to Planet Zygon and adaptability procedures to conditions not conducive to human survival on earth.

- ***2. Management & Financial Strength***

Bidders will be evaluated on the experience, training and expertise of their existing team of scientists including the team proposed to be transported to Zygon for preliminary analysis and review in Samvat 3053. TSSA shall also interview and evaluate the Management of the Bidders to ascertain their suitability for entering into public- private partnership with the Government for the Mission.

- ***3. Equipment & Facilities***

XX. Bidders will be evaluated on the technical soundness of their existing space crafts, space suits and other technical know-how associated with the equipment required for Mission Zygon. Bidders will also be evaluated on the basis of their existing storage and equipment maintenance facilities and their ability to expand the same for the Mission.

XXI. A Bidder shall not be permitted to approach TSSA more than once or submit a pre-qualification bid other than with proof of compelling documentary evidence to support a second consideration of its bid.

XXII. [X]

XXIII. [X]

XXIV. After evaluation and comparison of Tenders during Stage I, TSSA shall evaluate the price bids received from the qualifying Bidders and accept the lowest Tender ascertained. Provided the lowest bid shall not constitute the sole criteria for award of the Tender, and TSSA may, at its sole discretion, award the Tender to any Bidder other than L1, for reasons to be recorded in writing, and such reasons must include the determination that such Bidder is more suited for the Mission.

XXV. [X]

XXVI. [X]

XXVII. [X]

CUMULATIVE SCORES TO BE CONSIDERED

XXVIII. Scores received during Stage I shall be carried over and taken into consideration during the evaluation of financial bids of the Bidders. L1 shall be determined on the basis of the cumulative scores received by the Bidders during both the Stages.

FRAUD, BRIBERY AND MANIPULATION

XXIX. Fraud: is the intentional distortion of financial statements or other records by persons internal or external to the TSSA, which is carried out to obtain an advantage, avoid an obligation or cause loss to another party. Fraud is therefore a deliberate, dishonest act by an individual or group of people whether within TSSA or associated with TSSA, including a proposed private partner which can be committed, and may include: False representation; Failing to disclose information; and Abuse of position.

XXX. Bribery: is offering, promising or giving someone a financial or other advantage to induce or reward that person to perform their functions or activities improperly. It is also an

offence to request, receive or accept a bribe.

XXXI. Manipulation: is the dishonest appropriation or distortion of property or data or facts or documents belonging to another or available with the TSSA with the intention of changing the results of the award of the Tender either in favor of the appropriating party or against another honest party.

XXXII. [X]

XXXIII. [X]

XXXIV. [X]

GRIEVANCE REDRESSAL AUTHORITY

XXXV. Any grievances, complaints, disputes or issues arising from and in connection with the Tender document, Tender procedure or Tender award shall be referred to the Grievance Redressal Authority comprising of three members i.e., a former officer of TSSA who shall be not be below the rank Deputy Director, TSSA, a former officer of the Government of Terrabot who shall not be below the rank of Additional Secretary of the Terrabot Cabinet, and Former Justice of the Supreme Constitutional Court of Terrabot.

FIRST APPEAL

XXXVI. First appeal may be preferred before the First Appellate Authority constituted by the TSSA within 30 days from the expiry of the receipt of the decision from the Grievance Redressal Authority (delay may be condoned by the Appellate Department if sufficient cause is shown).

SECOND APPEAL

XXXVII. Second appeal may be preferred before the Second Appellate Authority constituted by the TSSA, within 90 days from the expiry of the receipt of the decision from the First Appellate Authority (delay may be condoned by the Appellate Department if sufficient cause is shown).

[Unless provided otherwise under the general facts and/or confidential information, the laws of Terrabot are pari materia with laws of Republic of India as on 31st March 2022 and parties may, where they deem necessary, negotiate within the framework of the laws of India.]

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