

Volume II
Standard Form of Contract

STANDARD FORM OF CONTRACT
CONTRACT FOR CONSULTANCY SERVICES

Between

[Name of client]

[Name of Consultants]

[Date]

I. Form of Contract

Contract to undertake [name of assignment]

This CONTRACT (hereinafter called the "Contract") is made on the [Date in words] day of the month of [month] [year in 'yyyy' format], by and between

The-----, hereinafter referred to as the "Client" which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the First Part.

and

[Name of Consultants and registered address]

(hereinafter called the "Consultants")

WHEREAS

- a) The Client has requested the Consultants to provide certain consulting services as defined in the General Conditions attached to this Contract (hereinafter called the "Services");
- b) The Consultants, having represented to the Client that they have the required professional skills, personnel and technical resources, have agreed to provide the services on the terms and conditions set forth in this Contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- a) The General Conditions of Contract (hereinafter called "GC");
- b) The Special Conditions of contract (hereinafter called "SC");
- c) The following Appendices:

Appendix A: Terms of reference containing, inter-alia, the Description of the Services and reporting requirements,

Appendix B: Consultants', Sub consultants, Key Personnel and Sub Professional Personnel, Task assignment, work programme, manning schedule, qualification requirements of key personnel and schedule for submission of various deliverables

Appendix C: Approach and methodology

Appendix D: Duties of the Client

Appendix E: Cost Estimate

Appendix F: "Conformed Document" which incorporates all the changes, modifications and results of the contract discussion

Appendix G: Copy of Letter of Award

Appendix H: Copy of letter of Award/ acceptance by Consultant

Appendix I: Copy of Bank Guarantee for Performance Security

Appendix J: Clarifications

Appendix K: Hours of work for Consultants' Personnel

Appendix L: Correspondences

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
 - a) The Consultants shall carry out the Services in accordance with the provisions of the Contract; and
 - b) Client will make payments to the Consultants in accordance with the provisions of the Contract.
3. Priority of documents: The Parties expressly agree that in the event of any conflict, inconsistency or contradiction between any clauses forming part of the documents constituting the Contract, and more particularly mentioned in Clause 1 (of this contract) hereinabove, the documents shall be interpreted in the following order of precedence:
 - a) The provisions of this Contract shall override all provisions of other documents comprising the Contract.
 - b) the provisions of the SC shall be subject to the Contract, but shall override all provisions of other documents comprising the Contract;
 - c) the provisions of the GC shall be subject to the Contract SC, but shall take precedence over all other documents comprising the Contract; and
 - d) the Appendices shall subject to each of the Contract, SC and the GC
 - e) Any decision of the Client in relation to the priority of documents shall be final and binding upon the Consultant

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF CLIENT

[Signature]

[Name]

[Designation]

FOR AND ON BEHALF OF CONSULTANT

[Signature]

[Name]

[Designation]

Witness:

1. [Signature, name and address]

2. [Signature, name and address]

II. General Conditions of Contract

1.1 General provisions

1.1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Applicable Law” means the all laws, bye-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees and any other instruments having the force of law in India as they may be issued and in force from time to time;
- b) “Affiliate” means, with respect to any Party, any other entity that, directly or indirectly: (a) Controls such Party; (b) is Controlled by such Party; (c) is Controlled by the same person who, directly or indirectly, Controls such Party; and “Control” with respect to any person, shall mean: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting share capital, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such person; (b) the possession, directly or indirectly, of a voting interest of more than 50%; and the terms “Controlling” and “Controlled by” shall be construed accordingly;
- c) “Client” means the Party named in the Contract, who employs the Consultant;
- d) “Consultant” or “Consultants” means the party named in the Contract, who is employed as an independent professional firm by the Client to perform the Services;
- e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) constitute a part, together with all other documents listed in this signed Contract;
- f) “Contract Price” means the price to be paid for the performance of the Services;
- g) “GC” means the General Conditions of Contract;
- h) “Government” means the Government of Client’s country;
- i) “Local Currency” means the currency of the Government;
- j) “Member”, in case the Consultants consist of a joint venture of more than one entity, means any of these entities, and “Members” means all of these entities; “Member in Charge” means the entity specified in the SC to act on behalf of Each Member in exercising all the Consultants’ rights and obligations towards the Client under this Contract;
- k) “Material Adverse Effect” means material adverse effect on (a) the ability of the Consultant to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;
- l) Master Services Agreement (MSA) shall mean the same as “contract”;
- m) “Party” means the Client or the Consultants, as the case may be, and Parties means both of them;

- n) "Performance Security" shall mean the irrevocable and unconditional bank guarantee provided by the Consultant from a scheduled Indian bank as guarantee for the performance of its obligations in respect of the Contract;
 - o) "Personnel" means persons hired by the Consultants or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
 - p) "Project" means "[name of assignment]";
 - q) "SC" means the Special Conditions of Contract by which these General Conditions of the Contract may be amended or supplemented;
 - r) "Services" means the work to be performed by the Consultants pursuant to this Contract as described in TOR;
 - s) "Sub-consultant" means any entity to which the Consultants subcontract any part of the Services in accordance with the provisions of this contract; and,
 - t) "Work Order" means a specific directive or order to perform a defined scope for a defined duration and fee
 - u) "Corrupt Practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.
 - v) "Fraudulent Practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.
- 1.1.2 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India and shall be subject to the exclusive jurisdiction of the Courts at New Delhi.
- 1.1.3 Language: This Contract has been executed in the language specified in the SC, which shall be binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.1.4 Notices: Any notice, request or consent made pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 1.1.5 Location: The Services shall be performed at such locations as whether in Country or elsewhere, as the Client may approve.
- 1.1.6 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultants may be taken or executed by the officials in the SC.
- 1.1.7 Taxes and Duties: Unless otherwise specified in the SC, the Consultants, Sub-consultants and their Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price. The Client shall be entitled to deduct any Taxes required to be deducted at source under Applicable Law from any payments to be made by it to the Consultant. Further, in the event that the Client receives notification or assessment of any Taxes (whether as an agent, or in

substitution of the Consultant, any Sub-consultants or its Personnel, servants, agents or otherwise) in respect of or arising out of the performance of the Consultant's obligations under this Agreement which remain outstanding, the Client shall notify the Consultant of the same and the Consultant shall promptly take all necessary action for settlement and/or any other lawful disposal of such notification or assessment. Furthermore, the Consultant shall pay forthwith on demand to the Client all costs including fines and penalties, which the Client may incur as a result of:

- 1.1.7.1 the Client having been required by any governmental authority to pay any Taxes which the Consultant is liable to bear hereunder; or
- 1.1.7.2 any cost actually sustained by the Client for failure by the Consultant to pay any Taxes for which it is responsible under this Contract
- 1.1.8 Interpretation: In the Contract, unless the context otherwise requires:
 - 1.1.8.1 The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.
 - 1.1.8.2 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), includes a reference to any document, agreement, deed or other instrument as may be varied, amended, supplemented, restated, novated or replaced, from time to time.
 - 1.1.8.3 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), means a reference to such document, agreement, deed or other instrument and to all appendices, annexes, schedules and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be.
 - 1.1.8.4 A reference to any Applicable Law includes any amendment, modification, re-enactment or change in interpretation or applicability of such Law and a reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to
 - 1.1.8.5 Where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning.
 - 1.1.8.6 The words 'include' and 'including' are to be construed without limitation. The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to the Contract as a whole. Where a wider construction is possible, the words 'other' and 'otherwise' shall not be construed *ejusdem generis* with any foregoing words.
 - 1.1.8.7 In the Contract, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of the Contract.
 - 1.1.8.8 Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.
 - 1.1.8.9 The rule of interpretation which requires that a Contract be interpreted against the person or Party drafting it shall have no application in the case of this Contract.
 - 1.1.8.10 References to a person (or to a word importing a person) shall be construed so as to include:
 - a) Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other

Governmental Authority (whether or not in each case having separate legal personality);

- b) That person's successors in title and assigns or transferees permitted in accordance with the terms of the Contract; and
- c) References to a person's representatives shall be to its officers, Personnel, legal or other professional advisors, subcontractors, agents, attorneys and other duly authorized representatives.

1.2 Commencement, completion, modification and termination of contract

1.2.1 Effectiveness of Contract: This Contract shall come into effect on the date the Contract is signed by both the Parties, or such other date as may be stated as per SC.

1.2.2 Commencement of Services: The Consultants shall commence the Services from 15th (fifteen) day of effectiveness of the Contract or any date prior to that with written approval from the Client.

1.2.3 Expiration of Contract: Unless terminated earlier pursuant to relevant clauses in this contract hereof, this Contract shall expire when Services have been completed and all payments have been made at the end of such time period after the Effective Date as shall be specified in the SC.

1.2.4 Modification: Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

1.2.5 Force Majeure

1.2.5.1 Definition: For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under the Contract impossible or so impractical to be considered impossible under the circumstances, and includes, but not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions.

1.2.5.2 No Breach of Contract: The failure of a party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:

- a) has taken all precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and
- b) has informed the other party as soon as possible about the occurrence of such an event.
- c) the dates of commencement and estimated cessation of such event of Force Majeure; and
- d) the manner in which the Force Majeure event(s) affects the Party's obligation(s) under the Contract.

1.2.5.3 The Parties agree that neither Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.

- 1.2.6 Extension of Time: Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 1.2.7 Payments: During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultants shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the services and in reactivating the services after the end of such period.
- 1.2.8 Joint and Several Liability: Collective action by Members
- 1.2.8.1 In the event the Consultant appoints sub-consultants, the Members shall be deemed to be jointly and severally liable to the Client for the performance of this Contract.
- 1.2.8.2 any decision (including without limitation, any waiver or consent), action, omission, communication or notice of the Member in Charge on any matters related to this Contract shall be deemed to have been on its behalf and shall be binding on it. The Client shall be entitled to rely upon any such action, decision or communication from the Member in Charge;
- 1.2.8.2.1 consolidated invoices for the Services performed by all the Members shall be prepared and submitted by the Member in Charge and the Client shall have the right to release payments solely to the Member in Charge and the Client shall not in any manner be responsible or liable for the inter se allocation of payments, works etc. among the Members;
- 1.2.8.2.2 any notice, communication, information or documents to be provided to the Consultant shall be delivered to the authorized representative of the Consultant (as designated pursuant to Clause 1.1.6 of the GCC) and any such notice, communication, information or documents shall be deemed to have been delivered to all the Members.

1.3 Termination

- 1.3.1 By the client: The Client may terminate this Contract, by not less than thirty (30) days' or sixty (60) written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in this clause:
- a) if the Consultants do not remedy a failure in the performance of their obligations under the Contract, within a period of sixty (60) days, after being notified or within such further period as the Client may have subsequently approved in writing;
 - b) within thirty (30) days, if the Consultants become insolvent or bankrupt;
 - c) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days;
 - d) within thirty (30) days, if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to relevant clauses hereof;
 - e) within thirty (30) days, if the Consultant submits to the Client a false statement which has a material effect on the rights, obligations or interests of the Client. If the Consultant places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Client;
 - f) within thirty (30) days, if the Consultant, in the judgment of the Client has engaged in Corrupt or Fraudulent Practices in competing for or in executing the Contract;

- g) if the Client, in its sole discretion and for any reason whatsoever, within a period of sixty (60) days' decides to terminate this Contract.
- 1.3.2 By the Consultants: The Consultants may terminate this Contract, by not less than thirty (30) day's' written notice to the Client, such notice to be given after the occurrence of the events specified in this clause:
- a) if the Client fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to relevant clauses hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue ; or
 - b) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- 1.3.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to actual Termination, or upon expiration of this Contract pursuant to relevant clause hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in relevant clause 1.4.3 hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records, (iv) the rights of indemnity of the Client and (v) any right which a Party may have under the Applicable Law.
- 1.3.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to relevant clauses hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall handover all project documents under procedure described in this contract.
- 1.3.5 Payment upon termination: Upon termination of this Contract, the Client will make the following payments to the Consultants:
- a) Remuneration pursuant to relevant clauses for Services satisfactorily performed prior to the effective date of termination;
 - b) If the Contract is terminated pursuant to Clause 1.3.1a), b), d), e) or f), the Consultant shall not be entitled to receive any agreed payments upon termination of the Contract. However, the Client may consider to make payment for the part satisfactorily performed on the basis of the quantum merit as assessed by it, in its sole discretion, if such part is of economic utility to the Client. Under such circumstances, upon termination, the Client may also impose liquidated damages as per the provisions of relevant clauses of this Contract. The consultant will be required to pay any such liquidated damages to Client within 30 days of termination date.
- 1.3.6 Disputes about Events of Termination: If either Party disputes Termination of the contract under relevant clauses hereof, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration under relevant clauses hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

1.4 Obligations of the Consultants

- 1.4.1 General: The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound

management practices, and employ appropriate advanced technology and safe methods. The Consultants shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-consultants or third parties.

1.4.2 Conflict of interest

1.4.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.: The remuneration of the Consultants pursuant to relevant clauses hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services, and the Consultants shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultants shall use their best efforts to ensure that the Personnel, any Sub-consultants and agents of either of them, similarly shall not receive any such additional remuneration.

1.4.2.2 Consultants and Affiliates Not to Engage in Certain Activities: The Consultants agree that, during the term of this Contract and after its termination, the Consultants and their affiliates, as well as any Sub-consultant and any of its affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services for the period of two years.

1.4.2.3 Prohibition of Conflicting Activities: Neither the Consultants nor their Sub-consultants nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; and
- b) after the termination of this Contract, such other activities as may be specified in the SC.

1.4.3 Confidentiality: The Consultants, their Sub-consultants, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

1.4.4 Consultant's Actions Requiring Client's Prior Approval: The Consultants shall obtain the Client's prior approval in writing before taking any of the following actions:

- a) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub consultant and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, (ii) that the Consultants shall remain fully liable for the performance of the Services by the Sub consultant and its Personnel pursuant to this Contract, (iii) that the extent of sub-contracting would be restricted to 30 (thirty) percent of the contract price, and (iv) the Client will be provided by the Consultant with particulars (name, financial & technical background, sub-consultancy fee) of the sub-consultant.
- b) appointing such members of the Personnel, as are not mentioned in the Technical Proposal, and
- c) any other action that may be specified in the SC.

- 1.4.5 Reporting Obligations: The Consultants shall submit to the Client the reports and documents specified in TOR, in the numbers, and within the periods set forth in this contract.
- 1.4.6 Documents Prepared by the Consultants to be the Property of the Client: All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultants pursuant to this contract shall become and remain the property of the Client, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client, together with a detailed inventory thereof. The Consultants may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the SC.
- 1.4.7 Liability of the Consultants: Subject to additional provisions, if any, set forth in the SC, the Consultants' liability under this Contract shall be as provided by the Applicable Law. In the event of any dispute whatsoever in between the consultant and the sub-consultant, the Client shall not be liable in any manner for any liability.
- 1.4.8 Insurance to be taken out by the Consultants: The Consultants (i) shall take out and maintain, and shall cause any Sub consultants to take out and maintain, at their (or the Sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverages, as shall be specified in the Special Conditions (SC), and (ii) within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Client, copies of such policy certificates, copies of the insurance certificates and evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the terms of this Contract. (iii) if the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Client will apart from having other recourse available under this Contract have the option without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultants, and the Consultants shall be liable to pay such amounts on demand by the Client. (iv) the insurance policies so procured shall mention the Client as the beneficiary of the Consultants and the Consultants shall procure an undertaking from the insurance company in this regard.

1.5 Consultants' personnel

1.5.1 Description of Personnel

- 1.5.1.1 The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultants' core team are described in this contract. The core team are hereby approved by the Client. If additional work is required beyond the scope of the Services specified in TOR, the level of effort and/or staff assigned may be increased by agreement in writing between the Client and the Consultants, provided that any such increase shall not, except as otherwise agreed, cause payments under this Contract to exceed the ceilings set forth in this Contract.
- 1.5.1.2 If required to comply with the provisions of this Contract, adjustments with respect to level of effort, staff assignments, time may be made by the Consultants by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement, scope, qualifications of team or deliverables and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in this Contract. Any other such adjustments shall only be made with the Client's prior written approval.

1.5.2 Removal and/or Replacement of Key Personnel

- 1.5.2.1 The Client will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Key Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications to the satisfaction of the Authority. In case of a critical vacancy, the consultant shall provide a temporary resource for no more than 6 (six) months. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 10 (ten) percent of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 20 (twenty) percent of the total remuneration specified for the Key Personnel who is proposed to be substituted
- 1.5.2.2 If the Client finds that any of the Personnel have (i) committed serious misconduct or has been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.
- 1.5.2.3 Any of the Personnel provided as a replacement under clauses above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the personnel replaced.

1.6 Obligations of the client

- 1.6.1 Assistance and Exemptions: Unless otherwise specified in the SC, the Client will use its best efforts to ensure that the Government will provide the Consultants, Sub-consultants and Personnel with work permits and such other documents as necessary to enable the Consultants, Sub consultants or Personnel to perform the Services:
- 1.6.1.1 assist for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all supporting papers for necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India;
- 1.6.1.2 facilitate prompt clearance through customs of any property required for the Services;
- 1.6.1.3 issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;
- 1.6.2 Access to land: The Client warrants that the Consultants shall have, free of charge, unimpeded access to all land in the Government's country in respect of which access is required for the performance of the Services.

1.7 Payments to the consultants

- 1.7.1 Payment terms: The Consultants total remuneration including out of pocket expenses shall not exceed the Contract Price and shall be a fixed lump sum including all staff costs, Sub-consultants' costs, printing, communications, travel, accommodation, and

the like, and all other costs incurred by the Consultant in carrying out the Services. In addition to these, any conditions mentioned in the SC shall also be applicable to this contract. The Contract Price may only be increased, if the parties have agreed to additional payments in accordance with relevant clauses hereof.

- 1.7.2 No payment shall become eligible for the next stage until the Consultant completes to the satisfaction of the Client the work pertaining to the preceding stage.
- 1.7.3 Currency: The price is payable in local currency i.e. Indian Rupees.
- 1.7.4 Payment for Additional Services: For the purpose of determining the remuneration due for additional services as may be agreed under relevant clauses for modification in this contract.

1.8 Settlement of disputes

- 1.8.1 Amicable Settlement: The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 1.8.2 Disputes Settlement: Any dispute between the Parties as to matters arising out of and relating to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provision specified in the SC.

1.9 Responsibility for accuracy of project documents

1.9.1 General

- 1.9.1.1 The Consultant shall be responsible for accuracy of the Designs, drawings, estimate and all other details prepared by him as part of these services. He shall indemnify the client against any inaccuracy in the work, which might surface during implementation of the project. The Consultant will also be responsible for correcting, at his own cost and risk, the drawings including any re-survey/ investigations and correcting layout etc. if required during the execution of the Services.
- 1.9.1.2 The Consultant shall be fully responsible for the accuracy of plans and drawings. The Consultant shall indemnify the Client against any inaccuracy / deficiency in the designs and drawings noticed and the Client will bear no responsibility for the accuracy of the designs and drawings submitted by the Consultants.

1.10 Liquidated damages

If the selected Consultant fails to complete the Assignment, within the period specified under the contract, the consultant shall pay to the Client, fixed and agreed liquidated damages, and not as penalty, @ 1% of the contract fees for each week of delay or part thereof. The aggregate maximum of liquidated damages payable to the Client under this clause shall be subject to a maximum of 15% of the total contract fees.

1.11 Representation, warranties and disclaimer

- 1.11.1 The Consultant represents and warrants to the Client that:
 - 1.11.1.1 it is duly organised, validly existing and in good standing under the applicable laws of its Country;
 - 1.11.1.2 it has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby;

- 1.11.1.3 it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Contract;
- 1.11.1.4 it has the financial standing and capacity to undertake the Project;
- 1.11.1.5 this Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 1.11.1.6 it is subject to laws of India with respect to this Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 1.11.1.7 there are no actions, suits, proceedings, or investigations pending or, to the Consultant's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Consultant under this Contract or materially affect the discharge by the Consultant of its obligations under the Contract.
- 1.11.1.8 no representation or warranty by the Consultant contained herein or in any other document furnished by it to the Client contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- 1.11.1.9 no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Consultant, to any person by way of fees, commission or otherwise for securing the Contract or for influencing or attempting to influence any officer or employee of the Client in connection therewith.

1.12 Miscellaneous

1.12.1 Assignment and Charges

1.12.1.1 The Contract shall not be assigned by the Consultant save and except with prior consent in writing of the Client, which the Client will be entitled to decline without assigning any reason whatsoever.

1.12.1.2 The Client is entitled to assign any rights, interests and obligations under this Contract to third parties.

1.12.2 Indemnity: The Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys' fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services related to or rendered pursuant to the Contract (collectively "Indemnified matter"). As soon as reasonably practicable after the receipt by the Client of a notice of the commencement of any action by a third party, the Client will notify the Consultant of the commencement thereof; provided, however, that the omission so to notify shall not relieve the Consultant from any liability which it may have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and/or contribution asserted shall survive and until their final resolution thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.

1.12.3 Governing Law and Jurisdiction: The Contract shall be construed and interpreted in accordance with and governed by the Applicable Law of India and subject to relevant

clauses hereof and the SC, the Courts at New Delhi, India shall have exclusive jurisdiction over all matters arising out of or relating to the Contract.

1.12.4 Waiver

1.12.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under the Contract:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under the Contract;
- b) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- c) shall not affect the validity or enforceability of the Contract in any manner.

1.12.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Contract or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance or any variation or the relinquishment of any such right hereunder.

1.12.5 Survival: Termination of the Contract (a) shall not relieve the Consultant or the Client of any obligations hereunder which expressly or by implication survive Termination hereof, and (b) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

1.12.6 Notices: Unless otherwise stated, notices to be given under the Contract including but not limited to a notice of waiver of any term, breach of any term of the Contract and termination of the Contract, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses specified in the SC. The notices shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

1.12.7 Severability: If for any reason whatever any provision of the Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under the Contract or otherwise.

1.12.8 No Partnership: Nothing contained in the Contract shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. Nothing in this contract shall be construed to create an employment or agency relationship, partnership or joint venture between the employees, agents, or sub-consultant of the consultants and the Client

1.12.9 Language: All notices required to be given under the Contract and all communications, documentation and proceedings which are in any way relevant to the Contract shall be in the language specified the SC.

- 1.12.10 Exclusion of Implied Warranties etc.: The Contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in the Contract.
- 1.12.11 Agreement to Override Other Agreements: The Contract supersedes all previous agreements or arrangements between the Parties, including any memorandum of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.
- 1.12.12 Counterparts: The Contract may be executed in two counterparts, each of which when executed and delivered shall constitute an original of the Contract

III. Special Conditions of Contract

1.13 The Special Conditions of Contract

The Special Conditions (SC) of contract contains number of amendments and supplements to clauses in the General Conditions of the Contract.

1.1.1 (f) The contract price payable in Indian Rupees is----- (Inclusive of GST)

1.1.1(j) The Member in-charge is [name of consultant].

1.1.1(n) Performance security: The Consultant shall prior to the Effective Date and as a condition precedent to its entitlement to payment under this Contract, provide to the Client a legal, valid and enforceable Performance Security in the form of an unconditional and irrevocable bank guarantee as security for the performance by the Consultant of its obligations under this Contract, in the form set out in this contract, in an amount equal 10 (ten) percent of the total cost of Financial Proposal under this Assignment. The Performance Security shall be obtained from a scheduled commercial Indian bank, in compliance with Applicable Laws. The Performance Security shall be extended accordingly such that the Performance Security remains valid until the expiry of a period of six (6) months from the date of submission of the last deliverable under this Contract. The Client shall have the right to claim under the Performance Security and appropriate the proceeds if any of the following occur:

(a) the Consultant becomes liable to pay liquidated damages;

(b) occurrence of any of the events listed in sub-clauses (a) through (f) of Clause 1.3.1 of the GCC;

(c) any material breach of the terms hereof; and/or

1.1.3 The language is English.

1.1.4 The client address is [name, designation, telephone, facsimile, address].

1.1.4 The consultant address is [name, designation, telephone, facsimile, address].

1.1.6 The Authorized Representative for the client is [name, designation].

1.1.6 The Authorized Representative for the consultant is [name, designation].

1.1.7 For domestic consultants/personnel and foreign consultants/personnel who are permanent residents in India The Consultants and the personnel shall pay the taxes, duties, fees, levies/expenses and other impositions levied under the existing, amended or enacted laws during life of this contract and the Client will perform such duties in regard to the deduction of such tax as may be lawfully imposed. The Consultant will be paid by CLIENT only service tax over and above the cost of Financial Proposal. All other applicable taxes, levies, duties, etc., if any, shall be borne by Consultant.

1.2.1 The date on which this Contract will come into effect is [date].

1.2.1 The duration of assignment shall be 12 (twelve) months with option to extend with mutual written agreement. During hand holding and assistance period no permanent deployment of Key staff is required, however, they are expected to remain available for meetings and discussions as and when called during the stated period.

1.4.1 Limitation of the Consultants' Liability towards the Client

(a) Except in case of negligence or wilful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying

out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's property, shall not be liable to the Client:

- (i) for any indirect or consequential loss or damage; and
- (ii) For any direct loss or damage that exceeds (i) the total payments for Professional Fees and Reimbursable Expenditure made or expected to be made to the Consultants hereunder, or (ii) the proceeds the Consultants may be entitled to receive from any insurance maintained by the consultants to cover such a liability, whichever of (i) or (ii) is higher.

(b) This limitation of liability shall not affect the Consultants' liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services.

1.4.7 Risks and coverage

(a) Third Party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Consultants or their Personnel or any Sub consultants or their Personnel for the period of consultancy.

(b) Third Party liability insurance with a minimum coverage, for Rs.1,00,00,000/- (Rupees one crore) for the period of consultancy.

(c) Professional Liability Insurance: Consultants will maintain at its expense, Professional Liability Insurance including coverage for errors and omissions caused by Consultant's negligence, breach in the performance of its duties under this Contract from an Insurance Company permitted to offer such policies in India, for a period of five years beyond completion of Consultancy Services commencing from the Effective Date, (i) For an amount not exceeding total payments for Professional Fees and Reimbursable Expenditures made or expected to be made to the Consultants hereunder or (ii) the proceeds, the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (i) or (ii) is higher with a minimum coverage of [insert amount and currency]. The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in the contract. In case of joint venture or 'in association', the policy should be in the name of joint venture / in association entity and not by the individual partners of the joint venture/association.

(d) Employer's liability and workers' compensation insurance shall be in respect of the Personnel of the Consultants and of any Sub consultant, in accordance with the relevant revisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and all insurances and policies should start from the date of commencement of services and remain effective as per relevant requirements of contract agreement.

(e) Any other insurance that may be necessary to protect the Client, its employees and its assets (against loss, damage or destruction, at replacement value) including rioting and all Force Majeure Events that are insurable.

1.7 Consultancy fee will be paid in accordance with the following milestone based payment schedule on submission and acceptance of report. The payments will be made in the following manner after successful completion of milestone

End of month	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
%	4%	4%	4%	4%	4%	4%	12%	12%	12%	12%	12%	16%

payment of contract value												
------------------------------------	--	--	--	--	--	--	--	--	--	--	--	--

The relevant core staff of the consultant will be required to give a presentation to client regarding the broad features of the deliverable before the submission of each deliverable as per the delivery milestone. The comments of the client shall be incorporated in the scheduled deliverable.

- 1.7.1 Payment shall be made within 45 days of receipt of the invoice and approval of the relevant deliverables, and within 75 days in the case of the final payment, on achievement of milestones.

- 1.8 Dispute settlement: If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of or relating to or under this RFQ cum RFP or Contract, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above-mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat/venue/place of arbitration shall be New Delhi and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties. The parties shall bear the cost of Arbitration unless the Arbitrator decides otherwise. The existence of the dispute or the initiation or continuance of any arbitration proceedings will not delay or postpone the performance/obligation of the Parties. The Parties and the arbitrator shall maintain confidentiality and shall not disclose the existence, content or result of any dispute without the prior written consent of the other Party.