

Section 6. Standard Form of Contract

STANDARD FORM OF CONTRACT

Consultants' Services

Contents

- I. Form of Contract**
- II. General Conditions of Contract**
 - 1. General Provisions**
 - Commencement, Completion, Modification and**
 - 2. Termination of Contract**
 - 3. Obligations of the Consultant**
 - 4. Consultants' Personnel and Sub-Consultants**
 - 5. Obligations of the Employer**
 - 6. Payments to the Consultant**
 - 7. Fairness and Good Faith**
 - 8. Settlement of Disputes**
 - 9. Liquidated Damages**
 - 10. Miscellaneous Provisions**
- III. Special Conditions of Contract**
- IV. Appendices**
 - Appendix A – Description of Services**
 - Appendix B - Reporting Requirements**
 - Appendix C - Staffing Schedule**
 - Appendix D - Cost Estimates in Foreign Currency**
 - Appendix E - Duties of the Employer**

CONTRACT FOR CONSULTANTS' SERVICES

between

[name of the Client]

and

[name of the Consultant]

Dated:

I Form of Contract

(Text in brackets [] is optional; all notes should be deleted in final text)

This CONTRACT (hereinafter called the "Contract") is made the [day] day of the month of [month], [year], between, on the one hand, [name of client] (hereinafter called the "Client") and, on the other hand, [name of Consultant] (hereinafter called the "Consultant").

[Note: If the Consultant consist of more than one entity, the above should be partially amended to read as follows: "...(hereinafter called the "Client") and, on the other hand, a joint venture/consortium/association consisting of the following entities, each of which will be jointly and severally liable to the Client for all the Consultant's obligations under this Contract, namely, [name of Consultant] and [name of Consultant] (hereinafter called the "Consultant").]

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that it has the required professional skills, and personnel and technical resources, has 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;
 - (b) The Special Conditions of Contract;
 - (c) The following Appendices: *[Note: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix]*
 - Appendix A: Description of Services
 - Appendix B: Reporting Requirements
 - Appendix C: Staffing Schedule
 - Appendix D: Breakdown of Contract Price
 - Appendix F: Duties of the Employer
2. The mutual rights and obligations of the Client and the Consultant 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) the Client shall make payments to the Consultants in accordance with the provisions of the Contract.

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 *[name of Client]*

[Authorized Representative]

For and on behalf of *[name of Consultant]*

[Authorized Representative]

[Note: If the Consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

General Conditions of Contract

1. General Provisions

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 laws and any other instruments having the force of law in India for the time being.
- (b) “Consultant” means any private or public entity that will provide the Services to the “Employer” under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is this General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (d) “Day” means calendar day.
- (e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (f) “Foreign Currency” means any currency other than the currency of the “Employer’s” country.
- (g) “GC” means these General Conditions of Contract.
- (h) “Government” means the Government of India
- (i) “Local Currency” means Indian Rupees.
- (j) “Member” means any of the entities that make up the joint venture/consortium/association; and “Members” means all these entities.
- (k) “Party” means the “Employer” or the Consultant, as the case may be, and “Parties” means both of them.
- (l) “Personnel” means professionals and support staff provided by the Consultants or by any Sub-Consultants and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the Government’s country; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside the Government’s country; and “Key Personnel” means the Personnel referred to in Clause GC 4.2(a).

- (m) “Reimbursable expenses” means all assignment-related costs [such as travel, translation, report printing, secretarial expenses, subject to specified maximum limits in the Contract].
- (n) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (o) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (p) “Sub-Consultants” means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- (q) “Third Party” means any person or entity other than the “Employer”, or the Consultant.
- (r) “In writing” means communicated in written form with proof of receipt.

1.2 Relationship Between the Parties : Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the “Employer” and the Consultant. The Consultant, subject to this Contract, has complete charge of Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the applicable laws of India.

1.4 Headings: The headings shall not limit, alter or affect the meaning of this Contract.

1.5 Notices

1.5.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered post to such Party at the address specified in the SC.

1.5.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.

1.6 Location: The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, as the “Employer” may approve.

1.7 Authority of Lead Partner: In case the Consultant consists of a joint venture/consortium/association of more than one entity, the Members hereby authorize the entity specified (Lead Consultant) in the SC to act on their behalf in exercising all the Consultant’s rights and obligations

towards the “Employer” under this Contract, including without limitation the receiving of instructions and payments from the “Employer”. However, each member or constituent of Consortium of Consultant shall be jointly and severally liable for all obligations of the Consultant under the Contract.

1.8 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the “Employer” or the Consultant may be taken or executed by the officials specified in the SC.

1.9 Taxes and Duties: The Consultant, Sub-Consultants and Personnel shall be liable to pay such direct and indirect taxes, duties, fees and other impositions levied under the applicable laws of India.

1.10 Fraud and Corruption

1.10.1 Definitions: It is the Employer’s policy to require that Employers as well as Consultants observe the highest standard of ethics during the execution of the Contract. In pursuance of this policy, the Employer defines, for the purpose of this provision, the terms set forth below as follows:

- (i) “Corrupt practice” means the offering, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;
- (ii) “Fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;
- (iii) “Collusive practices” means a scheme or arrangement between two or more consultants, with or without the knowledge of the Employer, designed to establish prices at artificial, non-competitive levels;
- (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;

1.10.2 Measures to be taken by the Employer

- (a) The Employer may terminate the contract if it determines at any time that representatives of the consultant were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of that contract, without the consultant having taken timely and appropriate action satisfactory to the Employer to remedy the situation;
- (b) The Employer may also sanction against the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the Consultant has, directly or through an agent, engaged in corrupt,

fraudulent, collusive or coercive practices in competing for, or in executing, an Employer-financed contract;

1.10.3 Commissions and Fees

At the time of execution of this Contract, the Consultants shall disclose any commissions or fees that may have been paid or are agreed to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract: This Contract shall come into force and effect on the date (the "Effective Date") of the "Employer's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the conditions precedent and effectiveness conditions, if any, listed in the SC have been met.

2.2 Termination of Contract for Failure to Become Effective: If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SC, either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services: The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SC.

2.4 Expiration of Contract: Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

2.5 Entire Agreement: This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any other statement, representation, promise or agreement not set forth herein.

2.6 Modifications or Variations: (a) any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GC 7.2 here of, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party. (b) In cases of substantial modifications or variations, the prior written consent of the Employer is required.

2.7 Force Majeure

2.7.1 Definition (a) For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable and not brought about by or at the instance of the Party claiming to be affected by such events and which has caused the non-performance or delay in performance, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other extreme adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or by or of such Party’s Sub-Consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

(c) Subject to clause 2.7.2, Force Majeure shall not include insufficiency of funds or inability to make any payment required hereunder.

2.7.2 No Breach of Contract: The failure of a Party to fulfil any of its obligations hereunder 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 has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be taken: (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

(b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

(c) 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.

(d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the “Employer”, shall either:

(i) Demobilize, or

(ii) Continue with the Services to the extent possible, in which case the Consultant shall continue to be paid proportionately and on prorata basis, under the terms of this Contract.

(e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8.

2.8 Suspension: The “Employer” may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall allow the Consultant to remedy such failure, if capable of being remedied, within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 Termination

2.9.1.1 by the “Employer”: The “Employer” may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause GC 2.9.1.1

(a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the “Employer” may have subsequently approved in writing.

(b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its Members becomes and which has substantial bearing on providing Services under this contract) insolvent or go into liquidation or receivership whether compulsory or voluntary.

(c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

(d) If the Consultant, in the judgment of the “Employer”, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

(e) If the Consultant submits to the “Employer” a false statement which has a material effect on the rights, obligations or interests of the “Employer”.

(ee) If the Consultant places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Employer.

(f) If the consultant fails to provide the quality services as envisaged under this Contract. The Consultancy Monitoring Committee (CMC) formulated to monitor the progress of the assignment may make judgment regarding the poor quality of services, the reasons for which shall be recorded in writing. The CMC may decide to give one chance to the consultant to improve the quality of the services.

(g) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(h) If the “Employer”, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.1.2 In such an occurrence the “Employer” shall give a not less than thirty (30) days’ written notice of termination to the Consultants, and sixty (60) days’ in case of the event referred to in (h).

2.9.2 By the Consultant: The Consultant may terminate this Contract, by not less than thirty (30) days’ written notice to the “Employer”, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2.

(a) If the “Employer” fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.

(b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(c) If the “Employer” fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

(d) If the “Employer” is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the “Employer” of the Consultant’s notice specifying such breach.

2.9.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 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 Clause GC 3.3 hereof, (iii) the Consultant’s obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Law.

2.9.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 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 “Employer”, the Consultant shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination: Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the “Employer” shall make the following payments to the Consultant:

(a) If the Contract is terminated pursuant to Clause 2.9.1 (g), (h) or 2.9.2, remuneration pursuant to Clause GC 6.3(h) (i) hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6.3(h)(ii) hereof for expenditures actually and reasonably incurred prior to the effective date of termination;

(b) If the agreement is terminated pursuant of Clause 2.9.1 (a) to (f), the consultant shall not be entitled to receive any agreed payments upon termination of the contract. However, the “Employer” may consider to make payment for the part satisfactorily performed on the basis of Quantum Merit as assessed by it, if such part is of economic utility to the Employer. Applicable Under such circumstances, upon termination, the client may also impose liquidated damages as per the provisions of Clause 9 of this agreement. The consultant will be required to pay any such liquidated damages to client within 30 days of termination date.

2.9.6 Disputes about Events of Termination: If either Party disputes whether an event specified in paragraphs (a) through (g) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (30) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance: The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the “Employer”, and shall at all times support and safeguard the “Employer’s legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.2 Conflict of Interests: The Consultant shall hold the “Employer’s interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. If during the period of this contract, a conflict of interest arises for any reasons, the Consultant shall promptly disclose the same to the Employer and seek its instructions.

3.2.1 Consultant not to benefit from Commissions, Discounts, etc.: (a) The payment of the Consultant pursuant to Clause GC 6 hereof shall constitute the Consultant’s only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the

Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

(b) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the “Employer” on the procurement of goods, works or services, the Consultant shall comply with the Employer’s applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the “Employer”. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the “Employer”.

3.2.2 Consultant and Affiliates Not to Engage in Certain Activities: The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant’s Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities: The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality: Except with the prior written consent of the “Employer”, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and its Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Insurance to be Taken out by the Consultant: The Consultant (i) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain insurance, at their (or the Sub-Consultants’, as the case may be) own cost but on terms and conditions approved by the “Employer”, insurance against the risks, and for the coverage specified in the SC, and (ii) at the “Employer’s request, shall provide evidence to the “Employer” showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.5 Accounting, Inspection and Auditing: The Consultant (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall periodically permit the “Employer” or its designated representative and/or the Employer, and up to five years from expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the “Employer” or the Employer, if so required by the “Employer” or the Employer as the case may be.

3.6 Consultant’s Actions Requiring “Employer’s Prior Approval: The Consultant shall obtain the “Employer’s prior approval in writing before taking any of the following actions:

- (a) Any change or addition to the Personnel listed in Appendix C.
- (b) Subcontracts: the Consultant may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the “Employer”. Notwithstanding such approval, the Consultant shall always retain full responsibility for the Services. In the event that any Sub-Consultants are found by the “Employer” to be incompetent or incapable or undesirable in discharging assigned duties, the “Employer” may request the Consultant to provide a replacement, with qualifications and experience acceptable to the “Employer”, or to resume the performance of the Services itself.

3.7 Reporting Obligations: The Consultant shall submit to the “Employer” the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

3.8 Documents Prepared by the Consultant to be the Property of the “Employer”: All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the “Employer” under this Contract shall become and remain the property of the “Employer”, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the “Employer”, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, but shall not use anywhere, without taking permission, in writing, from the Employer and the Employer reserves right to grant or deny any such request.. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the “Employer’s prior written approval to such agreements, and the “Employer” shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

3.9 Equipment, Vehicles and Materials Furnished by the “Employer”: Equipment, vehicles and materials made available to the Consultant by the “Employer”, or purchased by the Consultant wholly or partly with funds provided by the “Employer”, shall be the property of the “Employer” and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the “Employer” an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the “Employer’s instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the “Employer” in writing, shall insure them at the expense of the “Employer” in an amount equal to their full replacement value.

3.10 Equipment and Materials provided by the Consultants: Equipment or materials brought into the Government’s country by the Consultant and the Personnel and used either for the Project or personal use shall remain the property of the Consultant or the Personnel concerned, as applicable.

4. CONSULTANTS' PERSONNEL AND SUB-CONSULTANTS

4.1 General: The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services.

4.2 Description of Personnel: (a) the title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are as per the consultant's proposal and are described in Appendix C. If any of the Key Personnel has already been approved by the "Employer", his/her name is listed as well.

(b) If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix C may be made by the Consultant by written notice to the "Employer", provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the "Employer's written approval.

(c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix C may be increased by agreement in writing between the "Employer" and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

4.3 Approval of Personnel: The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the "Employer". In respect of other Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the "Employer" for review and approval a copy of their Curricula Vitae (CVs). If the "Employer" does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the "Employer".

4.4 Removal and/or Replacement of Personnel: (a) except as the "Employer" may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the "Employer" (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the "Employer's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the "Employer".

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, 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 “Employer”. The rate of remuneration applicable to a replacement person will be the rate of remuneration paid to the replacement person. Also (i) the Consultant 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.

4.5 Resident Project Manager: If required by the SC, the Consultant shall ensure that at all times during the Consultant’s performance of the Services a resident project manager, acceptable to the “Employer”, shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE “EMPLOYER”

5.1 Assistance and Exemptions: Unless otherwise specified in the SC, the “Employer” shall use its best efforts to ensure that the Government shall:

(a) Provide the Consultant, Sub-Consultants and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.

(b) Arrange for the Foreign Personnel to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India.

(c) 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.

(d) Provide to the Consultant, Sub-Consultants and Personnel any such other assistance as may be specified in the SC.

5.2 Change in the Applicable Law Related to Taxes and Duties: If, after the date of this Contract, there is any change in the Applicable Laws of India with respect to taxes and duties, which are directly payable by the consultant for providing the services i.e. service tax or any such applicable tax from time to time, which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1(b).

5.3 Services, Facilities and Property of the “Employer”: (a) The “Employer” shall make available to the Consultant and its Personnel, for the purposes of the Services and free of any

charge, the services, facilities and property described in Appendix E, at the times and in the manner specified in said Appendix E.

(b) In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix E, the Parties shall agree on any time extension that it may be appropriate to grant to the Consultant for the performance of the Services.

5.4 Payment: In consideration of the Services performed by the Consultant under this Contract, the “Employer” shall make to the Consultant such payments and in such manner as is provided by Clause GC 6 of this Contract.

5.5 Counterpart Personnel: (a) If necessary, the “Employer” shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the “Employer” with the Consultant’s advice, if specified in Appendix E.

(b) Professional and support counterpart personnel, excluding “Employer’s liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the “Employer” shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE CONSULTANT

6.1 Total Cost of the Services (a) the total cost of the Services payable is set forth in Appendix D as per the consultant’s proposal to the Employer and as negotiated thereafter.

(b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the amount specified in Appendix-D.

(c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to any of the Clauses GC 4.2 (c) or 5.2 hereof, the Parties shall agree that additional payments shall be made to the Consultant in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of Payment: All payments shall be made in Indian Rupees. [In case the payment is to be made in the currency other than Indian Rupees, the same shall be mentioned instead of Indian Rupees]

6.3 Terms of Payment: The payments in respect of the Services shall be made as follows:

(a) The consultant shall submit the invoice for payment when the payment is due as per the agreed terms. The payment shall be released as per the work related milestones achieved and as per the specified percentage as per SC 13.

(b) Once a milestone is completed, the consultant shall submit the requisite deliverables as specified in this Contract. The Employer shall release the requisite payment upon acceptance of the deliverables. However, if the Employer fails to intimate acceptance of the deliverables or its objections thereto, within 30 days of receipt of it, the Employer shall release the payment to the consultant without further delay.

(c) Final Payment : The final payment as specified in SC 13 shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the "Employer". The Services shall be deemed completed and finally accepted by the "Employer" and the final report and final statement shall be deemed approved by the "Employer" as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the "Employer" unless the "Employer", within such ninety (90) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount, which the "Employer" has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the Consultant to the "Employer" within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the "Employer" for reimbursement must be made within twelve (12) calendar months after receipt by the "Employer" of a final report and a final statement approved by the "Employer" in accordance with the above.

(d) For the purpose of payment under Clause 6.3 (b) above, acceptance means; acceptance of the deliverables by the Employer after submission by the consultant and the consultant has made presentation to the CMC / Employer (Mention this if presentation is required) with / without modifications to be communicated in writing by the Employer to the consultant.

(e) If the deliverables submitted by the consultant are not acceptable to the Employer / CMC, reasons for such non-acceptance should be recorded in writing; the Employer shall not release the payment due to the consultant. This is without prejudicing the Employer's right to levy any liquidated damages under clause 9. In such case, the payment will be released to the consultant only after it re-submits the deliverable and which is accepted by the Employer.

(f) All payments under this Contract shall be made to the accounts of the Consultant specified in the SC.

(g) With the exception of the final payment under (c) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder, unless the acceptance has been communicated by the Employer to the consultant in writing and the consultant has made necessary changes as per the comments / suggestions of the Employer communicated to the Consultant.

(h) In case of early termination of the contract, the payment shall be made to the consultant as mentioned here with: (i) Assessment should be made about work done from the previous

milestone, for which the payment is made or to be made till the date of the termination. The consultant shall provide the details of persons reasonably worked during this period with supporting documents. Based on such details, the remuneration shall be calculated based on the man month rate as specified. (ii) A reasonable assessment of the reimbursable and miscellaneous expenses shall be made based on details furnished by the consultant in this regard with supporting documents and based on the assessment of the work done and the respective rates as provided. Wherever such an assessment is difficult, the rates should be arrived at by calculating the amount on pro-rata basis. The total amount payable shall be the amount calculated as per (i) and (ii) above plus any applicable tax.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith: The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract: The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement: Performance of the contract is governed by the terms & conditions of the contract, in case of dispute arises between the parties regarding any matter under the contract, either Party of the contract may send a written Notice of Dispute to the other party. The Party receiving the Notice of Dispute will consider the Notice and respond to it in writing within 30 days after receipt. If that party fails to respond within 30 days, or the dispute cannot be amicably settled within 60 days following the response of that party, clause GC 8.2 shall become applicable.

8.2 Arbitration: In the case of dispute arising upon or in relation to or in connection with the contract between the Employer and the Consultant, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by the Employer and the Consultant, the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the Secretary of the Ministry / Department. The

Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings.

8.3. Arbitration proceedings shall be held in India at the place indicated in SC and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

8.4 The decision of the majority of arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Employer and the Consultant. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the award.

9. Liquidated Damages

9.1 The parties hereby agree that due to negligence of act of any party, if the other party suffers losses, damages the quantification of which may be difficult, and hence the amount specified hereunder shall be construed as reasonable estimate of the damages and both the parties agree to pay such liquidated damages, as defined hereunder as per the provisions of this Contract.

9.2 The amount of liquidated damages under this Contract shall not exceed 10 % of the total value of the contract as specified in Appendix D.

9.3 The liquidated damages shall be applicable under following circumstances:

(a) If the deliverables are not submitted as per schedule as specified in SC 13, the Consultant shall be liable to pay 1% of the total cost of the services for delay of each week or part thereof.

(b) If the deliverables are not acceptable to the Employer as mentioned in Clause 6.3 (f), and defects are not rectified to the satisfaction of the Employer within 30 days of the receipt of the notice, the Consultant shall be liable for Liquidated Damages for an amount equal to 0.05 % of total cost of the services for every week or part thereof for the delay.

10. Miscellaneous provisions:

(i) "Nothing contained in this Contract shall be construed as establishing or creating between the Parties, a relationship of master and servant or principal and agent.

(ii) Any failure or delay on the part of any Party to exercise right or power under this Contract shall not operate as waiver thereof.

(iii) The Consultant shall notify the Employer of any material change in their status, in particular, where such change would impact on performance of obligations under this Contract.

(iv) Each constituent of the Consultant, in case of a consortium, shall be jointly and severally liable to and responsible for all obligations towards the Employer for performance of works/services including that of its Associates/Sub Contractors under the Contract.

(v) The Consultant shall at all times indemnify and keep indemnified the Employer against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under the Project.

(vi) The Consultant shall at all times indemnify and keep indemnified the Employer against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Consultant's) employees or agents or by any other third Party resulting from or by any action, omission or operation conducted by or on behalf of the Consultant.

(vii) The Consultant shall at all times indemnify and keep indemnified the Employer against any and all claims by Employees, Workman, Contractors, sub-contractors, suppliers, agent(s), employed engaged or otherwise working for the Consultant, in respect of wages, salaries, remuneration, compensation or the like.

(viii) All claims regarding indemnity shall survive the termination or expiry of the Contract.

(ix) It is acknowledged and agreed by all Parties that there is no representation of any type, implied or otherwise, of any absorption, regularization, continued engagement or concession or preference for employment of persons engaged by the Consultant for any engagement, service or employment in any capacity in any office or establishment of the Government of India/ State or the Employer.

11. Performance Security

The Performance Security shall be provided to the Employer no later than the date specified in the Contract and shall be issued in an amount specified in the SCC, by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the total cost of services is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a bank guarantee.

III. Special Conditions of Contract:

SC Clause	Ref. of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1	1.5	The addresses are: I. PCE-cum-Secretary State Mission Director (Smart Cities) Attention:Mr. G T Bhutia Facsimile: G T Bhutia II. Consultant : Attention : Facsimile :
2	1.7	{Lead Partner is <i>[insert name of member]</i> } Note: If the Consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SC 1.6 should be inserted here. If the Consultant consists only of one entity, this Clause SC 1.8 should be deleted from the SC.
3	1.8	The Authorized Representatives are: For the "Employer": Navin Rai, Joint Chief Town Planner cum Nodal Officer (Smart Cities Mission-Sikkim), UDHD, Gangtok, Sikkim. For the Consultant:
4	1.9	(a) The client shall reimburse Service Tax payable in India as per Applicable Law. The consultant shall register itself for service tax with appropriate authority in India & shall provide the registration number to the client. b) Tax will be deducted at source as per the prevailing Income Tax Rules.
5	1.10.3	Not Applicable
6	2.1	The effectiveness conditions are the following: I. Approval of the contract by the Employer II. Appropriate security for advance payment acceptable to the "Employer" III. Any unforeseen reason forcing closure of the programme before effectiveness of the contract.
7	2.2	The time period shall be one month

SC Clause	Ref. of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
8	2.3	The time period shall be 15 days
9	2.4	The time period shall be 36 Months after the final date of signing of the proposed reforms.
10	3.4	Limitation of the Consultants' Liability towards the "Employer" (i) The ceiling on Consultant's liabilities shall be limited to (a) total cost, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the consultants to such liabilities whichever of (a) or (b) is higher.
11	3.5	The risks and the insurance coverage shall be as follows: a.) Third Party motor vehicle liability insurance as required under India's Motor Vehicles Act, 1988, by the Consultant or its Personnel or any Sub-Consultants or their Personnel for the period of consultancy; b.) Third Party liability insurance, with a minimum coverage of <i>[insert amount and currency]</i> ; c.) Professional liability insurance, with a minimum coverage equal to estimated remuneration and reimbursable as per 3.4 of SC of the consultancy; d.) Employer's liability and Workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Laws of India, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and e.) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services, by theft, fire or any natural calamity. f.) Any other law/rule as applicable in India.
12	4.6	Not Applicable
13	6.1(b)	The ceiling in local currency is: <i>[insert amount and currency]</i>
14	6.3	10% of the Contract Value will be paid as mobilization advance , if so desired, on submission of bank guarantee of the amount equal to

SC Clause	Ref. of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
		<p>110% of the advance sought by the Consultant.</p> <p>The First instalment of recovery shall be effected form each running bill paid immediately following the payment of mobilisation advance and the last instalment of the recovery shall be affected during the third month preceding the month in which the due date of completion falls. The various instalments of recovery shall be of equal amounts.</p> <p>For Time Based components: For Task 1 and Task 3: On Time based as mentioned in Appendix A, Description of Services and described below: (i) Remuneration of Personnel as indicated in Financial proposal submission Form Fin 3, and as agreed during Negotiations, will be reimbursed on monthly basis as per this contract according to the agreed work plan. (ii) Payment for Reimbursable Expenses as indicated in Financial proposal submission Form Fin 4, be reimbursed on actual/ and as agreed during Negotiations and as per Appendix of Financial Proposal – Section 4 (iii) Payment for Provisional Sum as per Appendix of Financial Proposal – Section 4</p> <p>For Lump Sum component: For Task 2: Based on pro rata on achievement of deliverables as mentioned in Appendix A, Description of Services.</p>
15	8.3	The Arbitration proceedings shall take place in Gangtok, Sikkim, India.
16	11	The Performance Security amount is 10% of the Contract value.

Binding signature of Employer Signed by _____
Binding signature of Consultant Signed by _____
(for and on behalf of _____ duly authorized vide Resolution
No _____ dated _____ of the Board of Directors of _____)

In the presence of
(Witnesses)

- 1.
- 2.

IV. Appendices

APPENDIX A – DESCRIPTION OF SERVICES

Note: This Appendix will include the final Terms of Reference worked out by the “Employer” and the Consultants during technical negotiations, dates for completion of various tasks, place of performance for different tasks/activities, specific tasks/activities/outcome to be reviewed, tested and approved by “Employer”, etc.

APPENDIX B - REPORTING REQUIREMENTS

Note: List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

APPENDIX C – STAFFING SCHEDULE

(Include here the agreed (negotiated staffing schedule including the engagement of sub-contractors, if any)

APPENDIX D – Total COST OF SERVICES IN

(Include here the rates quoted in the financial proposal or the negotiated rates, whichever is applicable)

APPENDIX E - DUTIES OF THE “EMPLOYER”

(Include here the list of Services, facilities and property to be made available to the Consultant by the “Employer”).

APPENDIX F

Earnest Money Deposit

Bank Guarantee

1**Bank’s Name, and Address of Issuing Branch or Office**.....

2

3 **Beneficiary: Name and Address of Employer**

4

5m
Date:.....

6

7E
MD No.:.....

8

9 We have been informed that **name of the Consultant** (hereinafter called "the Consultant") has submitted to you its bid dated (hereinafter called "the Bid") for Project Management Consultancy services of Gangtok Smart City Development Limited (GSCDL) under Invitation for Bids No. ("the IFB").

10 Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

11 At the request of the Consultant, we **name of Bank**. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **amount in figures** (**amount in words**) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant is in breach of its obligation(s) under the bid conditions, because the Consultant:

- I. Withdraw the proposal during the validity period or any extension agreed by the consultant.
- II. has varied or modified in a manner not acceptable to the Employer after opening of Proposal during the validity period or any extension thereof.
- III. tries to influence the evaluation process.
- IV. Evaluated as First ranked withdraws his proposal during negotiations (failure to arrive

at consensus by both the parties shall not be construed as withdrawal of proposal by the consultant).

12 This guarantee will expire: (a) if the Consultant is the successful Consultant, upon our receipt of copies of the Contract Agreement signed by the Consultant and the performance security issued to you upon the instruction of the Consultant; and (b) if the Consultant is not the successful Consultant, upon the earlier of (i) our receipt of a copy your notification to the Consultant of the name of the successful Consultant; or (ii) twenty-eight days after the expiration of the Consultant's bid.

13 Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

14 This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

15

16*Bank's seal and authorized signature(s)*

Note: All italicized text is for use in preparing this form and shall be deleted from the final document