

Schedule 2: Form of Agreement

(See Clause 1.2.3)

AGREEMENT

FOR

Evaluation Study of _____

CONTENTS

1. General

- 1.1 Definitions and Interpretation
- 1.2 Relation between the Parties
- 1.3 Rights and Obligations
- 1.4 Governing law and jurisdiction
- 1.5 Language
- 1.6 Table of contents and headings
- 1.7 Notices
- 1.8 Location
- 1.9 Authority of Member-in-Charge
- 1.10 Authorised representatives
- 1.11 Taxes and duties
- 1.12 Communications

2. Commencement, Completion and Termination of Agreement

- 2.1 Effectiveness of Agreement
- 2.2 Commencement of Services
- 2.3 Termination of Agreement for failure to commence Services
- 2.4 Expiry of Agreement
- 2.5 Entire Agreement
- 2.6 Modification of Agreement
- 2.7 Force Majeure
- 2.8 Suspension of Agreement
- 2.9 Termination of Agreement

3. Obligations of the Consultant

- 3.1 General
- 3.2 Conflict of Interest
- 3.3 Confidentiality
- 3.4 Liability of the Consultant
- 3.5 Insurance to be taken out by the Consultant
- 3.6 Accounting, inspection and auditing
- 3.7 Consultant's actions requiring the Authority's prior approval
- 3.8 Reporting obligations
- 3.9 Documents prepared by the Consultant to be the property of the Authority
- 3.10 Providing access to the Project Office and Personnel
- 3.11 Accuracy of Documents

4. Consultant's Personnel

- 4.1 General
- 4.2 Deployment of Personnel
- 4.3 Approval of Personnel

- 4.4 Substitution of Key Personnel
- 4.5 Working hours, overtime, leave etc.
- 4.6 Team Leader and Project Manager

5. Obligations of the Authority

- 5.1 Assistance in clearances etc.
- 5.2 Access to land and property
- 5.3 Payment

6. Payment to the Consultant

- 6.1 Cost estimates and Agreement Value
- 6.2 Currency of payment
- 6.3 Mode of billing and payment

7. Liquidated damages and penalties

- 7.1 Performance Security
- 7.2 Liquidated Damages
- 7.3 Penalty for deficiency in Services

8. Fairness and Good Faith

- 8.1 Good Faith
- 8.2 Operation of the Agreement

9. Settlement of Disputes

- 9.1 Amicable settlement
- 9.2 Dispute resolution
- 9.3 Conciliation
- 9.4 Arbitration

ANNEXES

- Annex-1: Terms of Reference
- Annex-2: Deployment of Personnel
- Annex-3: Estimate of Personnel Costs
- Annex-4: Cost of Services
- Annex-5: Payment Schedule
- Annex-6: Bank Guarantee for Performance Security

AGREEMENT

Consultancy **for** **Evaluation** **Study** **of**
.....

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the day of the month of 20..., between, on the one hand, the President of India acting through Development Monitoring & Evaluation Office (hereinafter called the “**Authority**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for conducting an Evaluation Study (hereinafter called the “**Consultancy**”) for the **Evaluation Study of** _____ (hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. General

1.1. Definitions and Interpretation

- 1.1.1. The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:
 - (a) “**Agreement**” means this Agreement, together with all the Annexes;
 - (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
 - (c) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
 - (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
 - (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
 - (f) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;

- (g) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) “**Government**” means the Government of;
- (i) “**INR, Rs. or ₹**” means Indian Rupees;
- (j) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (k) “**Party**” means the Authority or the Consultant, as the case may be, and Parties means both of them;
- (l) “**Personnel**” means persons hired by the Consultant as employees and assigned to the performance of the Services or any part thereof;
- (m) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (n) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (o) “**Third Party**” means any person or entity other than the Government, the Authority, the Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2. The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award.

1.2. **Relation between the Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3. **Rights and obligations**

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4. Governing law and jurisdiction

This Agreement, its meaning and interpretation, and the relation between the parties shall be governed by the Laws of India for the time being in force. Irrespective of the place of delivery, the place of performance or the place of payments under the agreement, the agreement shall be deemed to have been made at the place from which the Letter of Award (LoA or Agreement, in absence of LoA) has been issued. Unless otherwise specified in the agreement, the courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the agreement. .

1.5. Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

1.6. Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city as the Authority's

office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8. Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9. Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10. Authorised Representatives

- 1.10.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

- 1.10.2. The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

.....

.....

Tel:

Mobile:

Email:

- 1.10.3. The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

.....

.....

Tel:

Mobile:

Email:

1.11. Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it

1.12. Communications

All communications under the agreement shall be served by the parties to each other in writing, in the agreement's language, and served in a manner customary and acceptable in business and commercial transactions. The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later. No communication shall amount to an amendment of the terms and conditions of the agreement, except a formal letter of amendment of the agreement expressly so designated.

2. Commencement, Completion and Termination of Agreement

2.1. Effectiveness of Agreement

This Agreement shall come into force and effect on the date of this Agreement (the "Effective Date").

2.2. Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3. Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 2 (two) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Authority reserves the right to take action as per the Bid Security or Bid Security Declaration Form.

2.4. Expiry of Agreement

Unless terminated earlier according to Clauses 2.3 or 2.9, this Agreement will expire under two conditions (i) 90 (ninety) days after delivering the final report (refer to Clause 6.3 (d) of the Terms of reference) to the Authority. or (ii) three years from the effective date, whichever occurs first, unless extended by mutual consent of the parties.

2.5. Entire Agreement

2.5.1. This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2. Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6. Modification of Agreement

There shall be no modification in the terms and conditions of this Agreement unless the reasons are beyond the control of both parties i.e. the Applicant and the Authority. In no circumstances, the cost should be higher than the agreement cost due to modifications in the terms and conditions.

2.7. Force Majeure

2.7.1. Definition

- (a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, 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 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 such Party’s agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2. No breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement 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 Agreement.

2.7.3. Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfill its obligations hereunder with a minimum of delay.
- (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 event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

2.7.4. Extension of time

Any period within which a Party shall, pursuant to this Agreement, 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.

2.7.5. Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8. Suspension of Agreement

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 21 (twenty one) days after receipt by the Consultant of such notice of suspension.

2.9. Termination of Agreement

2.9.1. By the Authority

The Authority may, by not less than 21 (twenty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 21 (twenty-one) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) 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 60 (sixty) days; or

- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2. By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty-five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- (c) 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 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3. Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 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, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4. Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 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 they shall proceed as provided respectively by Clauses 3.9 hereof.

2.9.5. Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6. Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement 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. Standards of Performance

The Consultant shall perform the Services and carry out its 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 and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Third Parties.

3.1.2. Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3. Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Personnel and agents of the Consultant, comply with the Applicable Laws.

3.2. Conflict of Interest

3.2.1. The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2. Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of one and a half years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3. Prohibition of conflicting activities

Neither the Consultant nor its Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4. Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that its Personnel and agents shall not receive any such additional remuneration.

3.2.5. The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, anti-competitive practice, conflict of interest, obstructive practice. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, *inter alia*, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

- 3.2.6. Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7. For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means making an offer, solicitation or acceptance of a bribe, reward or gift or any material benefit in exchange for an unfair advantage in the Procurement Process or to otherwise influence the Procurement Process
- (b) **“fraudulent practice”** means any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a Procurement Process or to secure a Contract, or in the execution of the agreement;
- (c) **“coercive practice”** means harming or threatening to harm persons or their property to influence their participation in the Procurement Process or affect the execution of the agreement
- (d) **“Anti-competitive practice”** means any collusion, Proposal-rigging or anti-competitive arrangement, or any other practice including cartels coming under the purview of the Competition Act, 2002, between two or more Applicants, with or without the knowledge of the Authority, that may impair the transparency, fairness, and the progress of the Procurement Process or to establish Proposal prices at artificial, non-competitive levels
- (e) **“Conflict of interest”** means participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; if they are part of more than one Proposal in the procurement; or if their personnel have a relationship or financial or business transactions with any official of Authority who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) Applicant from the Authority with an intent to gain unfair advantage in the Procurement Process or for personal gain
- (f) **“Obstructive practice”** means materially impede Authority’s investigation into allegations of one or more of the above-mentioned prohibited practices either by deliberately destroying, falsifying, altering; or concealing evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or by impeding the Authority’s rights of an audit or access to information.

3.3. Confidentiality

The Consultant, and its Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of

the foregoing that is provided by the Authority to the Consultant, and its Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority's employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, and its Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, and its Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, and its Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4. Liability of the Consultant

3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive

from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.1, whichever of (a) or (b) is higher.

- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5. Insurance to be taken out by the Consultant

- 3.5.1. The Consultant shall, for the duration of this Agreement, take out and maintain, at its own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as stipulated in the contract or any applicable law including Labour Codes; and at the Authority's request, shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.6. Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

3.7. Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) any other action that is specified in this Agreement.

3.8. Reporting obligations

The Consultant shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.9. Documents prepared by the Consultant to be property of the Authority

- 3.9.1. All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the

ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.

3.9.2. The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.9.3. The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'Claims') which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10. Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project Office and to all Personnel during office hour. The Authority's official, who has been authorised by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.11. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. Consultant's Personnel

4.1. General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2. Deployment of Personnel

4.2.1. The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and person day rates are specified in Annex-3 of this Agreement.

- 4.2.2. Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-3 may be made by the Consultant by written notice to the Authority, provided that: (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 20% (twenty per cent) or one week, whichever is greater, and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.2 of this Agreement. Any other adjustments shall only be made with the written approval of the Authority.

4.3. Approval of Personnel

- 4.3.1. The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.
- 4.3.2. If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-6) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4. Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 10% (ten per cent) 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 per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

4.5. Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the person days of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6. Team Leader and Project Manager

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In

addition, the Consultant shall designate a suitable person as Project Manager (the “**Project Manager**”) who shall be responsible for day to day performance of the Services.

5. Obligations of the Authority

5.1. Assistance in clearances etc.

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Personnel with work permits and such other documents as may be necessary to enable the Consultant, and its Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (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.

5.2. Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.3. Payment

In consideration of the Services performed by the Consultant under this Agreement, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6. Payment to the Consultant

6.1. Cost estimates and Agreement Value

- 6.1.1. An abstract of the cost of the Services payable to the Consultant is set forth in Annex-4 of the Agreement.
- 6.1.2. Except as may be otherwise agreed under Clause 2.6, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is ₹ (Rupees.)

6.2. Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3. Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:

- (a) No mobilisation Advance shall be paid to the consultant. The payment shall be made as per the Annexure 5 Payment Schedule of the RFP.
- (b) The Consultant shall be paid for its services as per the Payment Schedule at Annex-5 of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (c) The Authority shall cause the payment due to the Consultant to be made within 45 (forty-five) days after the receipt by the Authority of duly completed bills with necessary particulars (the “**Due Date**”).
- (d) The final payment under this Clause 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 Authority. The Services shall be deemed completed and finally accepted by the Authority and the final deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.
- (e) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (f) 30% (thirty per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon completion of Services. In the event of non-completion of Services within 2 (two) years of the Effective Date, the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 24 (twenty-four) months from the Effective Date, including travel costs and personnel costs, at the agreed rates.
- (g) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. Liquidated Damages and Penalties

7.1. Performance Security

- 7.1.1. The Authority shall retain by way of performance security (the “**Performance Security**”), 3% (three per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as

specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and payable to the Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

- 7.1.2. The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-6 of this Agreement.

7.2. Liquidated Damages

- 7.2.1. Liquidated Damages for error/variation

In case any error or variation or plagiarism is detected in the data, data analysis or reports, submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 10% (ten per cent) of the Agreement Value.

- 7.2.2. Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 1% (one per cent) of the Agreement Value per week, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

- 7.2.3. Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3. Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8. Fairness and Good Faith

8.1. Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

8.2. Operation of the Agreement

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement 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 failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. Settlement of Disputes

9.1. Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2. Dispute resolution

9.2.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

9.2.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3. Conciliation

In the event of any Dispute between the Parties, either Party may call upon CEO, NITI Aayog and the Chairman of the Board of Directors of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4. Arbitration

9.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules

of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State where the Authority has its headquarters and the language of arbitration proceedings shall be English.

- 9.4.2. There shall be a sole arbitrator whose appointment or an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment¹ shall be made in accordance with the Rules.
- 9.4.3. The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4. The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED		SIGNED, SEALED AND DELIVERED	
For and on behalf of		For and on behalf of	
Consultant:		Authority	
	(Signature)		(Signature)
	(Name)		(Name)
	(Designation)		(Designation)
	(Address)		(Address)
In the presence of:			
1.		2.	

¹ Where the Agreement Value specified in Clause 6.1.2 of this Agreement is expected to be less than ₹ 2 crores, the provision for a sole arbitrator shall be retained and where the Agreement Value is likely to be more than ₹ 2 crores, the provision for a Board shall be retained.

Annex-1: Terms of Reference

(Refer [Clause 3.1.2](#) of Schedule 2 Form of Agreement)

(Reproduce Schedule-1 of RFP)

Annex-2: Deployment of Personnel

(Refer [Clause 4.2](#) of Schedule 2 Form of Agreement)

(Reproduce as per Form-9 of Appendix-I)

Annex-3: Estimate of Personnel Costs

(Refer [Clause 4.2](#) of Schedule 2 Form of Agreement)

(Reproduce as per Form-3 of Appendix-II)

Annex-4: Cost of Services

(Refer [Clause 6.1](#) of Schedule 2 Form of Agreement))

(Reproduce as per Form-2 of Appendix-II)

Annex-5: Payment Schedule

The payment schedule linked to the specified deliverables above is given below:

Key Date No.	Description of Deliverables	Payment
KD1	Inception Report approved by Authority	20%
KD2	Mid Term Report approved by Authority	30%
KD3	Draft Evaluation Report approved by Authority	30%
KD4	Final Evaluation Report approved by Authority	20%
	Total	100%

Annex-6: Bank Guarantee for Performance Security

(Refer [Clause 7.1.2 of Schedule 2](#))

To

[The President of India /Governor of]

acting through

.....

.....

.....

In consideration of acting on behalf of the [President of India/Governor of] (hereinafter referred as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, having its office at (hereinafter referred as the “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s Agreement no. dated valued at ₹ (Rupees), (hereinafter referred to as the “**Agreement**”) the assignment for consultancy services in respect of the Project, and the Consultant having agreed to furnish a Bank Guarantee amounting to ₹ (Rupees) to the Authority for performance of the said Agreement.

We, (hereinafter referred to as the “**Bank**”) at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding ₹ (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding ₹ (Rupees).

3. We, (indicate the name of the Bank) do hereby undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of

the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to ₹ crore (Rupees crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with Paragraph 2 hereof, on or before [..... (indicate the date falling 365 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, theday of, 20.....

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.