

# **ADDENDUM/CORRIGENDUM**

**Dated 21<sup>st</sup> November 2016**

**To**

**Invitation of Proposal**

**FOR**

**Contents Development for the course on  
“Certificate Programme in Technology Management”**

**1. Section 1.6: Timeframe (Note on ‘Award of Contract’)**

A template of the draft contract indicating contractual terms & conditions for award of work is enclosed herewith.

**2. Section 2.5: Evaluation of Proposals (Technical Evaluation)**

- a. The Technical Evaluation of only those bidders will be carried out who meet the eligibility requirements as specified in the ‘Invitation of Proposal’ document.
- b. All eligible bidders will have to make a presentation on their respective Technical Proposals before a Technical Evaluation Committee (TEC) of CDC.

**3. Section 2.9: Date for submission of Proposal**

The last date and time for submission of proposals has been extended to **5<sup>th</sup> December 2016** upto **3:00 P.M.** The proposals have to be sent only in hard copy by post/courier/by-hand. E-mails will not be considered. The proposals will be opened on **5<sup>th</sup> December 2016** at **3:30 P.M.**

All other requirements as mentioned in ‘Invitation of Proposal’ document for the above assignment remain unchanged.

**Draft Contract**

**I. FORM OF CONTRACT**

This Contract is made at New Delhi (place) on the \_\_\_\_\_ day of the month \_\_\_\_\_ between **Consultancy Development Centre**, an Autonomous Institution of the Department of Scientific and Industrial Research (DSIR), Ministry of Science and Technology, New Delhi - (hereinafter called "CDC") of the First Party

**AND**

\_\_\_\_\_ having their Registered Office at \_\_\_\_\_ and a place of business at \_\_\_\_\_ (hereinafter called "Consultant / Expert") of the Second Party.

**WHEREAS**

- (a) The Consultant / Expert, having represented to CDC that he has the required professional skills, personnel and technical resources, has offered to carry out the services in response to the Invitation of Proposal and Addendum / Corrigendum hosted on CDC website [www.cdc.org.in](http://www.cdc.org.in).
- (b) CDC has accepted the Proposal dated \_\_\_\_\_ for the assignment on " \_\_\_\_\_ " submitted by the Consultant to provide the services on the terms and conditions set forth in this Contract.

**NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL CONVENANTS HEREIN CONTAINED, IT IS HEREBY AGREED between the Parties as follows:**

- 1) The following documents shall be deemed to form an integral part of this Contract:
  - a. General Conditions of the Contract (GCC)
  - b. Special conditions of the Contract (SCC)
  - c. The following Appendices:
    - Appendix A -Description of Services
    - Appendix B - Reporting Requirements
    - Appendix C - Staffing Schedule
    - Appendix D - Total cost of Services and schedule of payments
    - Appendix E - Work Plan
    - Appendix F – Model Bank Guarantee Format for Performance Security
  - d. Consultant Proposal dated ----- **(Annexure – I)**
  - e. Consultant Presentation dated ----- **(Annexure – II)**
- 2) The mutual rights and obligations of CDC and the Consultant shall be as set forth in the Contract, in particular:
  - a. The Consultants shall carry out and complete the Services in accordance with the provisions of the Contract; and w.e.f. ....,
  - b. The “CDC” shall make payments to the Consultant 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.

Signed by -----

1. For and on behalf of [**Consultancy Development Centre**]

In presence of

(Witnesses)

(i)

(ii)

[Authorized Representative]

2. For and on behalf of **[Consultant / Expert]**

In presence of  
(Witnesses)

(i)

(ii)

[Authorized Representative]

## II. GENERAL CONDITIONS OF CONTRACT (GCC)

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

- i. "Applicable Law" means the laws and any other instruments having the force of law in India.
- ii. "Client" means the CDC with which the selected Consultant signs the contract for the services.
- iii. "Project Review Committee" (PRC) means a Committee constituted to monitor the progress of the assignment and may make judgement giving reasons thereafter which shall be recorded in writing.
- iv. "Consultant" means any entity or person that may provide or provides the Services to the CDC under the Contract.
- v. "Contract" means the Contract signed by the Parties and all the Contract documents listed in its Clause 1 of the Contract.
- vi. "Day" means calendar day.
- vii. "Effective Date" means the date on which this Contract comes into force.
- viii. "GCC" means these General Conditions of Contract.
- ix. "Government" means the Government of India
- x. "Indian Currency" means Indian Rupees (INR).
- xi. "In writing" means communicated in written form with proof of receipt.
- xii. "Liquidated Damages" herein- may be specified as "LD".
- xiii. "Local Currency" means Indian Rupees (INR).
- xiv. "LOA" means the Letter of Award issued by CDC conveying its acceptance of the proposal of the successful Consultant.
- xv. "Member" means any of the entities which constitute registered joint venture/consortium/association; and "Members" means all these entities.
- xvi. "Party" means CDC or the Consultant, as the case may be, and "Parties" means both of them.
- xvii. "Personnel" means professionals and support staff provided by the 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 country; "Local Personnel" means such professionals and support staff who at the time of being so provided have their domicile inside the country;
- xviii. "Proposal" includes both the Technical Proposal and the Financial Proposal.
- xix. "Invitation of Proposals" means the details for proposals invitation prepared by CDC for the selection of

Consultants.

- xx. "Services" means the work to be performed by the Consultant pursuant to the Contract.
- xxi. "Sub-Consultant" means any person or entity to whom/which the Consultant sub Contracts any part of the Services, with approval of CDC.
- xxii. "Third Party" means any person or entity other than CDC, or the Consultant

**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 CDC 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 on his behalf. The Consultant will be exclusively liable to pay remuneration to his Sub-Consultant and salary to his employees.

**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 against acknowledgement to an authorized representative of the Party to whom the communication is addressed, or when sent by registered/ speed post/ courier to the addresses specified below.

Authorized Representative	Name of Consultant / Expert
Consultancy Development Centre,	(In case of Agency, it should indicate the name
Core 4 B, 2 <sup>nd</sup> Floor, India Habitat Centre,	& designation of Authorized Representative)
Lodhi Road, New Delhi –110003	Address of Correspondence
Tel #	Tel.:
Fax #	Fax:
E-mail:	E-mail:

**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 under 1.5.1 above.

**1.6 Location:** The Services shall be performed covering such locations as are specified in **Appendix –A** here to and, where the location of a particular task is not so specified, at such locations, as the CDC may notify in writing.

1.7 **Authority of Leader:** In case the Consultant consists of a consortium of more than one entity, the Members shall authorize the entity specified (called Leader) to act on their behalf in exercising all the Consultant’s rights and obligations towards CDC under this Contract, including without limitation the receiving of instructions and payments from CDC. However, each member or constituent of Consortium 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 or any amendment thereof by CDC or the Consultant may be taken or executed by the officials specified below.

Authorized Representative	Name of Consultant / Expert
Consultancy Development Centre,	(In case of Agency, it should indicate the name & designation of Authorized Representative)
Core 4 B, 2 <sup>nd</sup> Floor, India Habitat Centre,	Address of Correspondence
Lodhi Road, New Delhi –110003	Tel.:
Tel #	Fax:
Fax #	E-mail:
E-mail:	

The Consultant shall issue Power of Attorney in favour of its Authorized representative.

1.9 **Taxes and Duties:** The Consultant shall be liable to pay all direct and indirect taxes, duties, fees and other impositions levied under the laws of India, applicable at the time of submission of the Proposal **and any changes thereafter in accordance with clause 5.2.**

#### 1.10 **Fraud and Corruption**

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

- (i) “corrupt practice” means the offering, receiving, or soliciting, directly or indirectly, of any thing of value (whether in cash or kind) 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 CDC, designed to establish prices at artificial, noncompetitive 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 CDC

- a) CDC may terminate the Contract if it comes to know at any point of time that representatives of the Consultant were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of the Contract .without the Consultant having taken timely and appropriate action satisfactory to CDC to remedy the situation after receipt of Notice.
- (b) CDC after issue of Show Cause Notice to Consultant may also sanction against the Consultant, declaring the Consultant ineligible, either indefinitely or for a stipulated period of time, to be awarded a Contract, if it at any point of time comes to know that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, any CDC financed Contract.

## 2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 2.1 **Effectiveness of Contract:** This Contract shall come into force and effect on the date of acceptance of LOA or signing of the Contract or any future date as specifically stated in the Contract.
- 2.2 **Termination of contract for Failure to become effective:** If the Consultant does not Furnish Performance Security within 30 days after the date of the issue of LOA/Contract Signed by the Parties whichever is earlier or does not commence the services within 10 days after the date of contract signed, the ***CDC shall declare the Contract to be null and Void, and in the event of such a declaration, CDC shall have Claim for damage against the other Party with respect hereto.***
- 2.3 **Commencement of Services:** The Consultant shall begin carrying out the Services Immediately but not later than ten days from the Effective Date.
- 2.4 **Completion of Contract:** Unless terminated earlier, pursuant to clause 2.10 hereof, the Consultant shall complete the entire work in the ***agreed timeframes***, which may be extended with the agreement of both parties.
- 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 **Rate of Progress:**
  - If, at any time:
    - a. Actual progress is too slow to complete within the Time for Completion, and/ or
    - b. Progress has fallen (or will fall) behind the current programme,



CDC may instruct the Consultant to submit, a revised work plan and supporting report describing the revised methods which the Consultant proposes to adopt in order to expedite progress and comply with the Contract.

Unless the CDC notifies otherwise, the Consultant shall adopt these revised methods, which may require increases in the working hours and/ or in the numbers of Consultant's Personnel and/or Goods, at the risk and cost of the Consultant. If these revised methods cause the CDC to incur additional costs, the Consultant shall pay these costs to the CDC, in addition to any delay damages.

## **2.7 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 7.2 here of, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party and cost implication thereof.
- (b) In cases of substantial modifications or variations, a supplementary Agreement between CDC and Consultant is required.

## **2.8 Force Majeure**

### **2.8.1 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-Agencies 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 signing of the Contract, and avoid or overcome with utmost persistent effort in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or manpower or inability to make any payment required for execution of services under this Contract.

2.8.2 **No Breach of Contract:** 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 Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all possible precautions, due care and all Measures, with the objective of carrying out the terms and conditions of this Contract.

2.8.3 **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 sufficient and satisfactory 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 CDC, shall either: (i) Demobilize or (ii) continue with the Services to the extent possible, in which case the CDC on being satisfied shall continue to pay proportionately to the Consultant 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 8 hereunder.

2.9 **Suspension:** CDC 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.

2.10 **Termination**

2.10.1 **By CDC:** CDC may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause.

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of issued by **CDC**, within thirty (30) days of receipt of such notice or within such further period as CDC 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 goes into compulsory liquidation.
- (c) If the Consultant, in the judgment of CDC, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- (d) If the Consultant submits to CDC a false statement which has a material effect on the rights, obligations or interests of CDC.
- (e) If the Consultant places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to CDC.
- (f) If the Consultant fails to provide the quality services as envisaged under this Contract. The Project Review Committee (PRC) 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 PRC/ CDC 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 CDC, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

In such an occurrence CDC shall give a not less than thirty (30) days' written advance notice before terminating the Contract of Agencies, and sixty (60) days' in case of the event referred to in (g) and 100 (hundred) days in case it does not pay the Award amount as per Award against it passed by arbitration **as specified in clause 8.**

2.10.2 **By the Consultant:** The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to CDC, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause

- (a) If CDC fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 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 CDC fails to comply with any final decision reached as a result of Arbitration pursuant to Clause 8 hereof.
- (d) If CDC 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 CDC of the Consultant's notice specifying such breach.

2.10.3 **Cessation of Rights and Obligations:** Upon termination of this Contract pursuant to Clauses 2.2 or 2.10 hereof, or upon expiration of this Contract pursuant to Clause 2.4 thereof, 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 3.3 hereof, (iii) the Consultant's obligation to pay Damages or Liquidated Damages permit inspection, copying and auditing of their accounts and records as set forth in Clause 3.5 hereof, and (iv) any right which a Party may have under the Law.

2.10.4 **Cessation of Services:** Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.10.1 or 2.10.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close and vacate the premises of CDC in a prompt and orderly manner. With respect to documents prepared by the Consultant and equipment and materials furnished by CDC, the Consultant shall proceed as provided, respectively, by Clauses 3.9 hereof.

2.10.5 **Payment upon Termination:** Upon termination of this Contract pursuant to Clauses 2.10.1 or 2.10.2 hereof, CDC shall make the following payments to the Consultant:

- (a) If the agreement is terminated pursuant of Clause 2.10.1 (a) to (f), the Consultant shall not be entitled to receive any agreed payments upon termination of the Contract. However, CDC may consider making payment for the part satisfactorily performed on the basis of Quantum Merit as assessed by it, if such part is of economic utility to CDC **subject to recovery of its dues, as permissible**. Under such circumstances, upon termination, CDC may also impose liquidated damages as per the provisions of Clause 10 hereof. The Consultant will be required to pay any such liquidated damages and compensation as permissible under Contract Act to CDC within Thirty (30) days of termination date.
- (b) In the event of termination under 2.10.1 (g & h ), the payment schedule as specified in this contract shall not apply and the costs of work delivered by Consultant and the cost of demobilization of Consultant teams will be mutually decided and paid by CDC to Consultant.

2.10.6 **Disputes about Events of Termination:** If either Party disputes whether an event specified in paragraphs (a) through (h) of Clause 2.10.1 or in Clause 2.10.2 hereof has occurred, such Party may, if it chooses within forty-five (45) days after receipt of notice of termination from the other Party, may seek settlement under Clause 8 hereof.

### 3. OBLIGATIONS OF THE CONSULTANT

- 3.1. **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 CDC, and shall at all times support and safeguard CDC legitimate interests in any dealings with Sub-Consultants or Third Parties.
- 3.2. **Conflict of Interests:** The Consultant shall hold CDC'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 CDC and seek its instructions for compliance.
- 3.2.1 **Consultant not to benefit from Commissions, Discounts, etc :**
- (a) The payment of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's only payment in connection with this Contract. 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 on account of commission or discount, etc.
- (b) Furthermore, if the consultant, as part of the Services, has the responsibility of advising the CDC on the procurement of goods, works or services, the Consultant shall comply with the CDC's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of CDC. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the benefit and account of CDC.
- 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, shall be disqualified from providing goods, works or 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 CDC, 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, award of Contract and its execution.
- 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 CDC, insurance against the risks and for the coverage's specified and (ii) at CDCs request shall provide evidence to CDC 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 wherever desired provide relevant information sought pertaining to the project to CDC or its designated representative and/ or CDC, and up to five years from expiration or termination of this Contract.
- 3.6 **Consultant's actions requiring CDC prior approval:** The Consultant shall obtain CDC's prior approval in writing before taking the following action:
- (a) Any change or addition to the Personnel listed in **Appendix - C**
  - (b) **Sub-Contracts:** the Consultant may sub-contract work relating to the Services to an extent and with such experts and entities as may be approved in advance by CDC. Notwithstanding such approval, the Consultant shall always remain fully responsible for the Services. In the event that any Sub-Consultants are found by CDC to be incompetent or incapable or undesirable in discharging assigned duties, CDC may request the Consultant to provide a replacement, with qualifications and experience acceptable to CDC, or to resume itself the performance of the Services.
- 3.7 **Reporting Obligations:** The Consultant shall submit to CDC 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 **IPR :** CDC will have sole and complete right and IPR on all the information/ documents/ software/ tools etc. developed and produced as part of this assignment/ study.

3.9 **Documents Prepared by the Consultants to be the Property of CDC:** All documentation including data, analysis, other documents and software prepared by the Consultant for CDC, under this contract shall become and remain the property of CDC, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to CDC, 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 CDC and CDC 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 CDC's prior written approval to such agreements, and CDC shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Any Software/Hardware procured for the Project will also be the property of CDC.

3.10 **Unforeseeable Difficulties:** The Consultant shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Services. By signing the Contract, the Consultant accepts responsibility for having foreseen all difficulties and costs of successfully completing the Services. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, except as otherwise stated in the contract

#### 4. **CONSULTANTS' PERSONNEL AND SUB-AGENCIES**

4.1 **General:** The Consultant shall employ and provide at its own cost 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 CDC his/ her name is to be listed as well.

(b) If required to comply with the provisions of clause 3.1. 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 CDC, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% (Ten Percent) 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 6.1 of this Contract. Any other such adjustments shall only be made with CDC'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 CDC and the Consultant, at a rate to be mutually decided. In case where payments under this Contract exceed the ceilings set forth in Clause 6.1 hereof, this will be explicitly mentioned in such 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 CDC. In respect of other Personnel, which the Consultant proposed to use in the carrying out of the Services, the Consultant shall submit to CDC for review and approval a copy of their Curriculum Vitae (CVs). If CDC 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 CDC.

4.4 **Removal and / or Replacement of Personnel:**

- (a) Except as CDC 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 CDC (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 CDC's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to CDC.

## 5. OBLIGATIONS OF CDC

5.1 Assistance and Exemptions: Unless otherwise specified, CDC shall use its best efforts to ensure that it shall:

- (a) Provide the Consultant including Sub-Consultants and Personnel with all relevant information and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.
- (b) Issue to officials and representatives of the CDC all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services. Provide to the Consultants Sub-Consultants and Personnel any such other assistance to facilitate performance of the Contract.

5.2 **Change in the Applicable Law Related to Taxes and Duties:** If, after the date of this Contract, there is any change of rate of levy under the existing 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 other applicable tax from time to time, which increase or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 6.1. However, in case of any new or fresh tax or levy imposed after submission of the Proposal the



Consultant shall be entitled to reimbursement on submission of proof of payment of such Tax or Levy.

5.3 **Payment:** In consideration of the Services performed by the Consultant under this Contract, CDC shall make to the Consultant such payments and in such manner as is provided by clause 6 of this Contract.

## 6. PAYMENTS TO THE CONSULTANT

### 6.1 Total Cost of the Services:

- (a) The total cost of the Services payable for services to be rendered for is set forth in Section 1 of **Appendix – D** as per the Consultant's proposal to CDC and as discussed thereafter
- (b) Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1, payments under this Contract shall not exceed the amount specified in **Appendix-D**.
- (c) Notwithstanding Clause 6.1(b) hereof, if pursuant to any of the Clauses 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 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause 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.

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

- (a) The schedule of payments in respect of the services shall be as per details as specified in **Appendix – D**.
- (b) Once a milestone is completed, the Consultant shall submit the requisite deliverables as specified in this Contract. CDC shall release the requisite payment upon acceptance of the deliverables. The Consultant shall submit the invoice for the payment. However, if CDC fails to intimate acceptance of the deliverables or its objections thereto, within Thirty (30) days of receipt of it, CDC shall release the payment to the Consultant without further delay.
- (c) **Final Payment:** The final payment shall be made only after the final report and a final statement, identified as deliverable, shall have been submitted by the Consultant and approved as satisfactory by CDC. The Services shall be deemed completed and finally accepted by CDC and the final report and final statement shall be deemed approved by CDC as satisfactory after ninety (90) calendar days after receipt of the final report and final statement by CDC, if within such ninety (90) day period, CDC does not give written notice to the Consultant specifying in detail deficiencies in the Services specified, the final report or final statement. The Consultant shall thereupon promptly make all necessary corrections, and thereafter the foregoing process shall be repeated. Any extra amount, which CDC 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 CDC within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by CDC for reimbursement must be made within two (2) calendar months after receipt by Consultant of a final report and final statement approved by CDC in accordance with the above.

- (d) For the purpose of payment under Clause 6.3 above acceptance means; acceptance of the deliverables by CDC after submission by the Consultant.
- (e) If the deliverables submitted by the Consultant are not acceptable to CDC, reasons for such non-acceptance should be recorded in writing; CDC shall not release the payment due to the Consultant. This is without prejudice CDC'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 deliverables and which is accepted by CDC.
- (f) All payments under this Contract shall be made to the account of the consultant.
- (g) With the exception of the final payment under (c) above, payments made to Consultant do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder, unless the acceptance has been communicated by CDC to the Consultant in writing and the Consultant has made necessary changes as per the comments/ suggestions of CDC communicated to the Consultant.
- (h) In case of earlier 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 termination. The Consultant shall provide the details of persons reasonably worked during this period with supporting documents. CDC shall be entitled to adjust/ recover Damages/ Compensation and Liquidated Damages due under the Contract.

## 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 make their best efforts to agree on such action as may be necessary to remove the cause or causes of such non-fairness, but no failure to agree on any action pursuant to this Clause may give rise to a dispute subject to Arbitration in accordance with Clause 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 Thirty (30) days after receipt. If that Party fails to respond within Thirty (30) days, or the dispute cannot be amicably settled within Sixty (60) days following the response of that Party, clause 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 CDC 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 CDC and the Consultant, the third arbitrator shall be chosen by the two arbitrators so appointed by the Parties which 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 Thirty (30) days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the Secretary DSIR of the Ministry of Science and Technology, Government of India. 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 New Delhi 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 CDC 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.
- 8.5 Notwithstanding any references to arbitration, the parties shall continue to perform their respective work/ obligation under the Contract.

## 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 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 for delay by Consultant under this Contract shall not exceed 10 % (Ten Percent) of the total value of the Contract as specified in **Appendix – D**.
- 9.3 The liquidated damages for delay by Consultant shall be applicable under following Circumstances:
- (a) If the deliverables are not submitted as per schedule, the Consultant shall be liable to pay 1% (One Percent) of the **total** cost of the services related to that deliverable (**Appendix D** – Schedule of payment) for delay of each week or part thereof subject to clause 9.2.
- (b) If the deliverables are not acceptable to CDC as mentioned in Clause 6.3(e), and defects are not rectified

to the satisfaction of CDC within 30 (Thirty) days of the receipt of the notice, the Consultant shall be liable for Liquidated Damages for an amount equal to 1% (One Percent) of **total** cost of the services related to that deliverable for every week or part thereof for the delay subject to clause 9.2.

(c) Notwithstanding anything mentioned above, the Consultant shall not be made liable for any delay due to non availability of timely approval, timely review and timely escalation by CDC or its state level counterparts or any stake holders not directly attributable to the Consultant.

9.4 Notwithstanding anything to the contrary contained in this agreement but subject to the Indemnifications specifically agreed to by the Consultant herein, in no event shall the Aggregate liability of the Consultant under this agreement exceed the total cost of services Paid to the Consultant.

## **10. CONFLICT OF INTEREST**

10.1. CDC's policy requires that Consultants should provide professional, objective, and impartial advice and at all times hold CDC's interest paramount, strictly avoid conflicts with other assignments or their own corporate interests.

10.2. Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict to interest and shall not be engaged by CDC, under any of the circumstances set forth below :

10.2.1 A firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

10.2.2 A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be conflict with the assignment of the Consultant or other work to be executed for the same or other of CDC.

10.2.3 A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of CDC's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to CDC throughout the selection process and the execution of the Contract.

10.2.4 Consultant have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of CDC, or that may reasonably be perceived as having this effect. Failure to disclose said situations by Consultant may lead to the disqualification of the Consultant or

termination of its Contract.

- 10.2.5 No current employees of CDC shall work as Consultants to CDC. Recruiting of former government employees of CDC or former ministries, departments or agencies is acceptable provided no conflict of interest exists.
- 10.2.6 If a short listed Consultant could derive a competitive advantage from having provided consulting services related to the assignment in question, CDC shall make available to all short listed Consultants all information that would in that respect give such Consultant any competitive advantage over competing.
- 10.2.7 In case a short-listed Consultant intends to associate Sub-Consultants (who have not been short-listed) and / or individual expert(s), such Sub-Consultant and/ or individual expert(s) shall be subject to prior approval of CDC.

## 11. **PERFORMANCE SECURITY**

- 11.1 For the due performance of the program/ project in accordance with the terms and conditions specified in the Letter of Award (LOA) the Consultant shall on the day or before signing the Contract which shall not be later than 30 (thirty) days of the issue of the Letter of Award, furnish to CDC a performance security in the form of an irrevocable and unconditional Bank Guarantee for an amount equal to 10% (Ten Percent) of Contract Value.
- 11.2 The Bank Guarantee shall be in favour of Consultancy Development Centre (CDC), issued by the State Bank of India or any Nationalized or scheduled Indian Bank, approved by the Reserve Bank of India and acceptable to CDC. The Bank Guarantee shall be in the Proforma acceptable to CDC and enclosed at **Appendix F.**
- 11.3 It is expressly understood and agreed that the performance security is intended to secure the performance of entire Contract. It is also expressly understood and agreed that the as Performance security is not to be construed to cover all the damages detailed / stipulated in various clauses in the Contract document.
- 11.4 The performance Bank Guarantee shall be initially valid for six months after the scheduled completion date. It will be discharged by CDC and returned to the Consultants not later than 6 (six) months following the date of completion of the Consultant's obligations, under the Contract.
- 11.5 Should the program/ project period, for whatever reason be extended, the Consultant, shall at his own cost, get the validity period of Bank Guarantee in respect of performance security furnished by him extended and shall furnish the extended / revised Bank Guarantee to CDC before the expiry date of the Bank Guarantee originally furnished.

12. **CONTRACT PRICE**

12.1 Contract price shall remain *firm* and fixed for the entire Contract period, except changes in the Tax Law, as covered by Clause 5.2 above.

13. **TRANSFER OF CONTRACT**

13.1 Consultant shall not assign or transfer the contract or any part thereof without prior written consent of CDC.

13.2 Consultant shall act as an independent entity fully performing responsible for all services under the contract. It shall maintain complete control over its Sub-Consultants and employees, which shall in no case represent CDC or act in its name without written its prior written approval.

14. **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 CDC of any material change in its status as legal entity, in particular, where such change or winding up proceeding which would impact on performance of obligations under this Contract.
- (iv) Each member/*constituent of the Consultant, in case of a consortium*, shall be jointly and severally liable to and responsible for all obligations towards CDC for performance of services.
- (v) The Consultant shall at all times indemnify and keep indemnified CDC against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under the Contract.
- (vi) The Consultant shall at all times indemnify and keep indemnified CDC 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 Sub-Consultant or caused 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 CDC against any and all claims by Employees, Workman, Consultants, sub -consultants, suppliers, agent(s), employed engaged or otherwise working for the Consultant, in respect of their 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 subsequent engagement, service or employment in any capacity in any office or establishment of the Government of India or CDC.

**III. SPECIAL CONDITIONS OF CONTRACT (SCC)**

***APPENDIX A - DESCRIPTION OF SERVICES***



***APPENDIX B - REPORTING REQUIREMENTS***

***APPENDIX C - STAFFING SCHEDULE***

***APPENDIX D - TOTAL COST OF SERVICES IN INDIAN RUPEES***

***APPENDIX E - WORK PLAN***

**MODEL BANK GUARANTEE FORMAT FOR PERFORMANCE SECURITY**

To

Consultancy Development Centre  
Core 4 B, 2nd Floor, India Habitat Centre,  
Lodi Road, New Delhi - 110 003

WHEREAS .....  
(name and address of the supplier) (hereinafter called "the supplier") has undertaken, in pursuance of contract no..... dated ..... to supply (description of goods and services) (herein after called "the contract").

AND WHEREAS it has been stipulated by you in the said contract that the supplier shall furnish you with a bank guarantee by a scheduled commercial recognized by you for the sum specified therein as security for compliance with its obligations in accordance with the contract;

AND WHEREAS we have agreed to give the supplier such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of ..... (amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the supplier before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed thereunder or of any of the contract documents which may be made between you and the supplier shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the ..... day of ....., 20.....

.....  
(Signature of the authorized officer of the Bank)

.....  
Name and designation of the officer

.....  
Seal, name & address of the Bank and address of the Branch