

Date: 7th October 2017

RFP for Hiring of Architectural Services for Designing Sports Arena in Berhampur Municipal Corporation, Berhampur.

Commissioner, BeMC.
Berhampur Municipal Corporation,
In front of Town Police Station,
Berhampur-760002
Contact No: 0680-2250290

Invitation for Bid

Letter No. 19413/ XXXX-E.13-23/17

Dated: 07.10.2017.

Sealed proposals are invited by the Commissioner, BeMC from the Architect consultancy firms/ agencies for Hiring of Architectural Services for Designing Sports Arena based in Berhampur Municipal Corporation area on single package basis for a period of one year *(The Contract will be initially for a period of one year from the date of deployment of the personnel in the office of the BeMC and can be renewed on mutually agreed terms, on satisfactory performance of the Agency)* to be selected on Quality And Cost Based Selection (QCBS) process. The bidders have to submit technical and financial proposal. Further details of the services requested are provided in the various annexure enclosed with this letter.

1. Completed Proposal for the work in prescribed format shall be received up to **18th October, 2017 up to 4.00 PM.**

The sealed proposals can be sent well in advance by registered post or speed post or in person to the

**Commissioner, BeMC.
Berhampur Municipal Corporation,
In front of Town Police Station,
Berhampur-760002
Contact No: 0680-2250290,
Email: mcbemc08@gmail.com**

2. The Proposal received shall be opened **20th October, 2017 up to 4.00 PM.** in the presence of representatives of bidders. Bidders are requested to ensure presence of their representative at the time of opening of the bid, who must submit an authorization letter from the bidder.
3. This RfP includes the following documents:
 - i. This Letter of Invitation
 - ii. Instructions to Bidders (see Annexure - I)
 - iii. Data Sheet and Check List (see Annexure - II)
 - iii. Technical Proposal Standard Forms (see Annexure – III)
 - iv. Financial Proposal Standard form (see Annexure—IV)
 - v. Terms of Reference (ToR) (see Annexure – V)
 - vi. Standard Contract Document (see Annexure - VI)
 - v. Bank Guarantee Format for Performance Security (see Annexure - VII)
4. While all information/data given in the RFP are, to the best of the Client's knowledge, accurate within the consideration of scope of the proposed contract, the Client holds no responsibility for accuracy of information and it is the responsibility of the Bidder to check the validity of information/data included in this document.

5. The Client reserves the right to cancel the entire bid process or part of it, at any stage without assigning any reason thereof.

Interested Bidders may obtain further information from the office of the **Commissioner, BeMC. , Berhmapur Municipal Corporation, In front of Town Police Station, Berhampur-760002, Contact No: 0680-2250290.**

Sd/- 07.10.2017

**Commissioner
Berhmapur Municipal Corporation**

Annexure – I

Instructions to Bidders

1. Introduction

- 1.1. These instructions should be read in conjunction with information specific to the consulting services contained in the Covering Letter, Data Sheet and accompanying documents.
- 1.2. The bidder to submit single Technical and Financial Proposal separately and selection shall be based on QCBS.
- 1.3. The Bidder shall bear all costs associated with the preparation and submission of its proposal and contract negotiation.
- 1.4. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to award of contract without thereby incurring any liability to the bidder.
- 1.5. In no case, sub-letting of "overall works" would be accepted.

2. Eligible Bidder

- a. Agency (Consultancy firms) should exist in the field of architectural services at least for 5 years.
- b. Engineering consultant must have Architects on its role having valid Registration certificate from **Council of Architect.**
- c. Agencies (Consultancy firms) should have successfully completed and provided Comprehensive Architectural Services towards at least one project costing Rs 5 Crores or more in the last 5 years

3. Conflict of Interest

Conflict of interest exists in the event of: (i) conflicting assignments, typically monitoring and evaluation/environmental assessment of the same project by the eligible Bidder; (ii) Agencies or institutions who have a business or family relation with the Client directly or indirectly; and (iii) practices prohibited under the anti-corruption policy of the Government of India and Government of Odisha.

4. Disclosure

- 4.1 Bidders have an obligation to disclose any actual or potential conflict of interest. Failure to do so may lead to disqualification of the Bidder or termination of its Contract.
- 4.2 Bidders must disclose if they are or have been the subject of any proceedings (such as blacklisting) or other arrangements relating to bankruptcy, insolvency or the financial standing of the Bidder, including but not limited to appointment of any officer such as a receiver in relation to the Bidder's personal or business matters or an arrangement with creditors, or of any other similar proceedings.
- 4.3 Bidders must disclose if they have been convicted of, or are the subject of any proceedings relating to:
 - a) a criminal offence or other serious offence involving the activities of a criminal organization, or where they have been found by any regulator or professional body to have committed professional misconduct;
 - b) Corruption including the offer or receipt of an inducement of any kind in relation to obtaining any contract;
 - c) Failure to fulfill any obligations in any jurisdiction relating to the payment of taxes or social security contributions.

5. Anti-corruption Measure

- 5.1 Any effort by Bidder(s) to influence the Client in the evaluation and ranking of technical Proposals, and recommendation for award of Contract, may result in the rejection of the Proposal.

5.2 A recommendation for award of Contract shall be rejected if it is determined that the recommended Bidder has directly, or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question. In such cases BeMC shall blacklist the Bidder either indefinitely or for a stated period of time, disqualifying it from participating in any BeMC related bidding for the said period.

6. Clarification on Provisions of the RFP Document

Interested Bidders may seek clarification on any of the provisions in the RFP document through e-mail to mcbemc08@gmail.com addressed to the Client's Representative. Such requests for clarification shall be entertained up to 17th October, 2017. Response to all clarifications received through e-mail and shall be mailed back to the prospective Bidders within 3 days.

7. Pre-Bid Conference

No pre-bid conference shall be held, clarifications if any are to be obtained as per clause-6 above.

8. Amendment of the RFP document

8.1 At any time before submission of Proposals, the Client may amend the RFP by issuing an addendum through e-mail and web hoisting in the BeMC website i.e. berhampur.gov.in

8.2 Any such addendum will be binding on all the Bidders.

8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their Proposals, the Client may, at its discretion, extend the deadline for the submission of the Proposals.

9. Language of Proposals

The Proposal and all related correspondence exchanged between the Bidder and the Client shall be written in the English language.

10. Cost of bidding

The Bidder shall bear all costs associated with the preparation and submission of its Proposal. The Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

11. Bid Prices

- a. GST to be paid by the client on the total amount of consultancy fee.
- b. The rates should be quoted in Indian Rupees only.

12. Submission of Proposal

The bidder is advised to visit the site of works at his own expense and obtain all requirements of the project that may be necessary for preparing the quotation.

a. Each bidder shall submit Technical Bid and Financial Bid separately

b. The bidder shall seal the quotation in an envelope addressed to the Commissioner, Berhampur Municipal Corporation, Berhampur. The envelope will also bear the following

identification:- Quotation for: "Designing of Sports Arena for Berhampur Municipality Corporation "

c. Quotations must be received in the office of the Commissioner, BeMC If the specified date is declared a holiday, quotations shall be received upto the appointed time on the next working day.

13. Documents comprising the Proposal

Bidders shall submit separate sealed envelopes, for the Technical and Financial Proposal. The Technical Proposals will be opened at the date and time specified in the Data Sheet.

- a. Audited Balance Sheet for the last three Years.
- b. Valid PAN Card.
- c. GST registration certificate

14. Proposal validity

Quotation shall remain valid for a period not less than One Year after the deadline date specified for submission.

15. Format and Signing of Proposals

- 15.1 A Technical and Financial Proposal (original) as mentioned in the Data Sheet shall be submitted in the prescribed format attached with this RfP document at *Annexure- III & Annexure-IV*
- 15.2 The original Proposal shall be signed by a person duly authorized to sign on behalf of the Bidder. The name and position of the person signing the authorization must be typed or printed below the signature. All pages of the Proposal shall be signed by the person signing the Proposal.
- 15.3 Any interlineations, erasures, or overwriting shall be valid only if signed or initialed by the person signing the Proposal.

16. Deadline for Submission of Proposals

The Client may, at its discretion, extend the deadline for the submission of Proposal by amending the RfP, in which case all rights and obligations of the Client and Bidders subject to the previous deadline shall thereafter be subject to the deadline as extended.

The cost of tender paper Rs. 6,300 /- in shape of Bank Draft and EMD 1% in shape of Bank Draft shall be accompanied with the RFP.

17. Late Proposals

The Client will not consider any Proposal that arrives after the deadline prescribed by the Client for submission of Proposals in the Data Sheet. Any Proposal received after the respective deadline for submission shall be declared late, rejected, and returned unopened to the Bidder.

18. Opening of Quotations;

Quotations will be opened in the presence of bidders or their representatives who choose to attend on the date and time and at the place specified in the letter of invitation.

19. Evaluation Process.

The Technical Bids shall be evaluated by BeMC under the Chairmanship of Commissioner, BeMC and After evaluation process is over the Financial Bids of the qualified bidders shall be opened.

20. Presentation:

The consultant will have to make a presentation to CLIENT after opening of the RFP. The presentation shall cover in sufficient, detail the appreciation of the project, Approach and Methodology, proposed organizational structure, work program, implementation strategy, provisions to secure and retain professionals. The objective of presentation is to enable CLIENT to evaluate the consultant regarding their understanding and preparedness for the assignment. Clarifications, if any, as required by CLIENT will also be discussed. The date and venue of presentation will be decided by CLIENT and intimated on the day of opening of bid or otherwise at least one week in advance. The presentation to cover the details is given as above.

21. Client's Right to Accept any Proposal, and to Reject any or all Proposals

The Client reserves the right to accept or reject any Proposal, and to annul the bidding process and reject all Proposals at any time prior to Contract award, without thereby incurring any liability to the Bidders.

22. Award of Contract Notification

- 22.1 Prior to the expiration of the Proposal validity period, the Client shall notify the successful Bidder, in writing, that its Proposal has been accepted. At the same time, the Client shall notify all other Bidders of the results of the bidding.
- 22.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

23. Performance Security

Within 7 days of receiving letter of acceptance, the successful bidder shall furnish to the BMC the performance security (either a bank guarantee or a bank draft in favour of the Employer) for an amount equivalent of 2 % of the contract price.

24. Negotiations/Clarifications

The successful Bidder will be informed in writing of the date, place and time for negotiations/clarifications, if any. Representatives conducting negotiations on behalf of the Bidder must have written authority to negotiate and conclude a Contract.

25. Signing of Contract

- 25.1 After notification, the Client shall communicate to the successful Bidder to sign the Contract. Standard Contract Document (see Annexure - VI)
- 25.2 Pursuant to negotiations, the successful Bidder shall sign, date, and return the Contract, along with necessary supporting documents, to the Client.
- 25.3 All formalities of negotiation and signing of contract will be completed within Fifteen (15) days of notification of award.

Annexure – II

Data Sheet and Check List

A. Data Sheet:

1.	Title of Consulting Service: Hiring of Architectural Services for Designing Sports Arena at BeMC.
2.	Name of the Client : Berhampur Municipal Corporation, Berhampur.
3.	Method of selection: Quality And Cost Based Selection (QCBS) through bids from consultancy firms/ agencies.
4.	Selection of consultancy firm/agency: The bidders have to submit the technical Proposal giving their credentials, experience, financial status as per technical proposal form given at Annexure – III & Financial proposal as per Annexure – IV . The evaluation shall be made as per evaluation criteria specified at Annexure – I (Clause-19).
5.	Technical proposal to be submitted: , As per the form given at Annexure –III along with all supporting documents.
6.	Financial proposal to be submitted: , AS per the form given at Annexure-IV.
7.	Address for submission of Proposals: Commissioner, BeMC. Berhampur Municipal Corporation, In front of Town Police Station, Berhampur-760002 Contact No: 0680-2250290, Email: mcbemc08@gmail.com ,
8.	Proposals shall remain valid for one year after the submission date indicated in this Data Sheet.
9.	Clarifications may be requested not later 17 th October 2017. All requests for clarifications will be directed to the Client's representative. The Client shall respond to requests for clarifications by electronic means within three (3) days.
10.	The Bidder is required to include with its proposal written confirmation of authorization to its representative to sign on behalf of the Bidder:
11.	Joint Ventures or Consortium offer: - NOT permissible
12.	Bidders Eligibility Criteria – Applicable AS specified at clause - 2 ANNEXURE-I
13.	While submitting the proposal the bidder has to ensure that the technical Proposal for the each package in original to be kept in sealed envelope with superscription above two sealed envelopes to be kept in an outer envelope marked as under.
14.	The outer envelope must be labeled with: a) Title: "Proposal for Hiring of Architectural Services for Designing Sports Arena at BeMC" b) RFP Number & date. c) Last date of bid Submission ;

	<p>d) Full address of bid submission authority with contact no and email on the right;</p> <p>e) Full address of the Bidder with contact no and email on the left.</p> <p>f) On the envelope clearly write/print in bold capital letters "DO NOT OPEN EXCEPT IN THE PRESENCE OF THE CLIENT'S REPRESENTATIVE AND PRIOR TO 20th October, 2017 (4 PM)".</p>
15	If any envelope is not sealed and marked as instructed, the Client will assume no responsibility for the misplacement or premature opening of envelopes leading to disqualification of the Bidder from the bidding process.
16	<p>Tender fee must be deposited:</p> <p>Tender fee of Rs. 6,300/- (non-refundable) to be deposited.</p> <p>Earnest Money Deposit (EMD) to be submitted:</p> <p>EMD of 1% of the RFP cost (Refundable) to be deposited</p> <p>The bidders who had offered in last tender (cancelled) and have not taken back the EMD need not submit further EMD.</p>
17	<p>Form for Tender fee & Earnest will be: in shape of demand draft in favour of the Commissioner, Berhampur Municipal Corporation payable at Berhampur.</p> <p>Bids not accompanied by tender fees and EMD shall stand rejected.</p>
18	A Bank Guarantee(2% of the value of the tender) is to be submitted by the winning Bidder before execution of agreement:
19	<p>Proposals must be submitted no later than the following date and time:</p> <p>18th October 2017 up to 4 PM.</p>
20	<p>Date and time for public opening of the Technical Proposals received:</p> <p>20th October 2017 at 4.00 P.M. Date & time of opening of Financial proposal will be communicated later to eligible bidders.</p>

B. Check List:

The bidders are requested to check the following points before submitting the bids:

i)	1.	Whether the Technical Proposals have been properly marked, superscripted, labeled and sealed, as required?
	2.	Whether each proposal has been ink-signed by the appropriate authority? Have all the pages of the proposal been ink-signed?
	3.	Whether the Audited balance sheet for last three years been submitted along with the proposal and chartered accountants certificate for consultancy turnover?
	4.	Have the Tender Fee and EMD been enclosed with the technical proposal?
	5.	Whether the number of pages of the proposal properly indexed?
ii)		All the bidders should send:
	a.	Agency's consent letter
	b.	Brief Profile of the Agency
	a.	Experience of successfully executing at least one similar project for at least 5 year (AS specified at Clause-2.a) with total contract value of the project awarded being not less than Rs. 5 Crore (AS specified at Clause-2.c) - copy of work order/certificate to be enclosed).
	b.	Proof of agency having at least 5 years of experience of providing similar services in the context.

Annexure -III

Technical Proposal Letter of Submission

Letter No.:

Place:

Date:

From:

[Name of Consultant with
Complete Address of Communication]

To:

**Commissioner, BeMC.
Berhampur Municipal Corporation,
In front of Town Police Station,
Berhampur-760002
Contact No: 0680-_____,
Email: mcbemc08@gmail.com**

Subject: Hiring of Architectural Services for Designing Sports Arena at BeMC (**Technical Proposal** _)

We, the undersigned, offer to provide the services for the above in accordance with your Request for Proposal dated _____, We are hereby submitting our Technical Proposal (As per Appendix-1) both in hard copy and soft copy format sealed in an envelope.

We have examined the information provided in your Request for Proposal (RFP) and offer to undertake the work described in accordance with requirements and as per fee payable specified in RFP. This proposal is valid for acceptance for 120 days and we confirm that this proposal will remain binding upon us and may be accepted by you at any time before this expiry date.

We accept that any contract that may result will comprise the contract documents issued with the RFP and be based upon the documents submitted as part of our proposal; and placed by the **(Name of the agency/institution)**. The Proposal has been arrived at independently and without consultation, communication, agreement or understanding (for the purpose of restricting competition) with any other party invited to tender for this contract.

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

I confirm that I have the authority of **(Name of the agency/institution)** to submit proposals/tenders and to clarify any details on its behalf.

We understand you are not bound to accept any proposal you receive.

Yours sincerely,

Enclosures:

Signature [In full and initials]:
Name and Title of Signatory:

Name of Firm:

Address:

APPENDIX – 1

FORMAT FOR SUBMISSION OF TECHNICAL PROPOSAL

A. General Details:

SN	Name of the organization / Firm/ Institute	
1.	Permanent address Tel : Fax : Email id :	
2.	Name of the Authorized person for submitting proposal: Mobile No. : Email id : <i>(Attach Authorization letter of Competent Authority)</i>	
3.	Demand draft Details Tender fee Amount : DD No. : Issuing Date : Name of the Bank:	
4.	Demand draft Details OF EMD Amount : DD No. : Issuing Date : Name of the Bank:	
5.	Discloser information as per clause-4 Instruction to Bidder (Annexure-I)	
6.	Whether the agency was ever blacklisted: Y/N if yes whether that blacklisting was not cancelled: Y/N <i>(If yes, attach copy of same and the affidavit)</i>	
7.	Brief professional background of the organization	
8.	Confirm to carry assignment as per TOR of RFQ	
9.	Confirm to accept all term & conditions specified in RFQ documents	
10.	Proof of agency having at least 5 years of experience of providing similar services in the context of Urban/Rural Poverty Alleviation	(Give project details & Duration)

B. Financial Details:

SN	Year	Consultancy Turnover	Net worth
1.	2014-15		
2.	2015-16		
3.	2016-17		
4.	Avg. for 3 years		

(Certificate from Chartered Accountant for the consultancy turn over to be enclosed along with the copies of balance sheets.)

G. Methodology including Management Plan

A detailed write-up under the following heads to be submitted along with this offer.

- i. Appreciation of the project and response to the ToR.
- ii. Methodology including work plan and proposed management plan.
- iii. Provisions to secure and retain professionals.

Authorized Signature [In full and initials]: Name and Title of Signatory:

Name of Firm:

Address:

ANNEXURE- IV

FINANCIAL PROPOSAL

Annexure – V

TERMS OF REFERENCE (TOR)

SCOPE OF WORK

- (i) Conceptualization of sports Arena as per the client's requirement based on the modern technology as well as importance to be taken towards conservation of energy.
- (ii) Preparation of conceptual design as per the design brief, cliental requirement and finalizing the same incorporating the desired changes / improvements etc.
- (iii) Structural designing of the building structures and its various components.
- (iv) Preparation of sanitary, plumbing, drainage, water supply, sewerage designs and drawings.
- (v) Preparation of LT power supply, electrical distribution, fitting fixture position designs and details.
- (vi) Preparation of fire fighting arrangement details, fire detection, fire protection and security systems etc. If required.
- (vii) Architectural drawings required for Landscaping and other related infrastructure.
- (viii) Preparation of detailed cost Estimate, B.O.Q for the project.
- (ix) Preparation of Detailed Tender Call Notice (DTCN) for floating in NEWS papers/ Web sites for selection of contractors to execute the work.

TERMS & CONDITIONS

Client shall execute the Agreement within seven days from the date of issue of Letter of Acceptance(LoA).

Payment by the client shall be made to the selected bidder as per following.

No	Report	Payments
1	On submission and acceptance of Inception Report	15% of the contract value
2	On submission and acceptance of Interim Report	25% of the contract value
3	On submission and acceptance of Dissemination Report	10% of the contract value
4	On submission and acceptance of Draft Final Report	20% of the contract value
5	On submission and acceptance of Final report	15% of the contract value
6	On submission and acceptance of Bid Documents	15% of the contract value

2 (two) sets of drawings shall be given for execution of work at site.

The fee towards architectural services shall be remain valid for One year.

GST shall be paid separately as per prevailing Govt. order.

Annexure -VI

Standard Form of Contract

CONTENTS

- I. **General Conditions of Contract**
 1. General Provisions
 2. Commencement, Completion, Modification and Termination of Contract
 3. Obligations of the Consultancy firm/agency
 4. Consultancy firm/agency's' Personnel and Sub-Consultancy firm/agencies
 5. Obligations of the Client
 6. Fairness and Good Faith
 7. Settlement of Disputes
 8. Liquidated Damages

I. General Conditions of Contract

1. GENERAL PROVISIONS

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

(a) "Applicable Law" means the laws and any other instruments having the force of law in Odisha for the time being.

(b) "Consultancy firm/agency" means any private or public entity that will provide the Services to the "Client" under the Contract.

(c) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is the General Conditions (GC), the Special Conditions (SC) and the Appendices.

(d) "Day" means calendar day.

(e) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.

(f) "Foreign Currency" means any currency other than the currency of the "Client's" country.

(g) "GC" means these General Conditions of Contract.

(h) "Government" means the Government of Odisha

(i) "Local Currency" means Indian Rupees.

(j) "notice" Written communication sent to Address for communication mentioned in contract.

(k) "Party" means the "Client" or the Consultancy firm/agency, as the case may be, and "Parties" means both of them.

(l) "Personnel" means professionals and support staff provided by the Consultancy firm/agency assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had their domicile outside the Government's country; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile inside the Government's country; and "Key Personnel" means the Personnel referred to in Clause GC 4.2(a).

(m) "Reimbursable expenses" means all assignment-related costs [such as travel, translation, report printing, secretarial expenses, subject to specified maximum limits in the Contract].

(n) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented.

(o) "Services" means the work to be performed by the Consultancy firm/agency pursuant to this Contract, as described in hereto.

(p) "Third Party" means any person or entity other than the "Client", or the Consultancy firm/agency.

(q) "In writing" means communicated in written form with proof of receipt.

1.2 Relationship Between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the “Client” and the Consultancy firm/agency. The Consultancy firm/agency, subject to this Contract, has 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 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the applicable laws of Odisha.

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

1.5 Notices

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

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

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

1.7 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the “Client” or the Consultancy firm/agency may be taken or executed by the officials specified in the SC.

1.8 Taxes and Duties: The Consultancy firm/agency and Personnel shall be liable to pay such direct and indirect taxes, duties, fees and other impositions levied under the applicable laws of Odisha.

1.9 Fraud and Corruption

1.9.1 Definitions: It is the Client’s policy to require that Clients as well as Consultancy firm/agency observe the highest standard of ethics during the execution of the Contract. In pursuance of this policy, the Client defines, for the purpose of this provision, the terms set forth below as follows:

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

1.9.2 Measures to be taken by the Client

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

1.9.3 Commissions and Fees

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

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

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

2.2 Termination of Contract for Failure to Become Effective: If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SC Client may, by not less than twenty one (21) days written notice to the Consultancy firm/agency , declare this Contract to be null and void, and forfeit the EMD.

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

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

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

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

(b) In cases of substantial modifications or variations, the prior written consent of the Client is required.

2.7 Force Majeure

2.7.1 Definition

- a. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable and not brought about by or at the instance of the Party claiming to be affected by such events and which has caused the non-performance or delay in performance, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other extreme adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.
- b. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or by or of such Party's Sub-Consultancy firm/agency or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- c. Subject to clause 2.7.2, Force Majeure shall not include insufficiency of funds or inability to make any payment required hereunder.

2.7.2 No Breach of Contract: The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken:

- a. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- b. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- c. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- d. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultancy firm/agency, upon instructions by the "Client", shall either demobilize or continue with the Services to the extent possible, in which case the Consultancy firm/agency shall continue to be paid proportionately and on prorated basis, under the terms of this Contract.
- e. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8.

2.8 Suspension: The "Client" may, by written notice of suspension to the Consultancy firm/agency, suspend all payments to the Consultancy firm/agency hereunder if the Consultancy firm/agency 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 Consultancy firm/agency to remedy such failure, if capable of being remedied, within a period not exceeding thirty (30) days after receipt by the Consultancy firm/agency of such notice of suspension.

2.9 Termination

2.9.1 By the “Client”: The “Client” may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (i) of this Clause GC 2.9.1..

- a. If the Consultancy firm/agency fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the “Client” may have subsequently approved in writing.
- b. If the Consultancy firm/agency becomes (or, if the Consultancy firm/agency consists of more than one entity, if any of its Members becomes and which has substantial bearing on providing Services under this contract) insolvent or go into liquidation or receivership whether compulsory or voluntary.
- c. If the Consultancy firm/agency fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.
- d. If the Consultancy firm/agency, in the judgment of the “Client”, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- e. If the Consultancy firm/agency submits to the “Client” a false statement which has a material effect on the rights, obligations or interests of the “Client”.
- f. If the Consultancy firm/agency places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Client.
- g. If the Consultancy firm/agency fails to provide the quality services as envisaged under this Contract. The Consultancy Monitoring Committee (CMC) formulated to monitor the progress of the assignment may make judgment regarding the poor quality of services, the reasons for which shall be recorded in writing. The CMC may decide to give one chance to the Consultancy firm/agency to improve the quality of the services.
- h. If, as the result of Force Majeure, the Consultancy firm/agency is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- i. If the “Client”, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.1.1 In such an occurrence the “Client” shall give a not less than thirty (30) days’ written notice of termination to the Consultancy firm/agency, and sixty (60) days’ in case of the event referred to in (i).

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

- a. If the “Client” fails to pay any money due to the Consultancy firm/agency pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the Consultancy firm/agency that such payment is overdue.
- b. If, as the result of Force Majeure, the Consultancy firm/agency is unable to perform a

material portion of the Services for a period of not less than sixty (60) days.

- c. If the "Client" fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.
- d. If the "Client" 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 Consultancy firm/agency may have subsequently approved in writing) following the receipt by the "Client" of the Consultancy firm/agency's notice specifying such breach.

2.9.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GC 3.3 hereof, (iii) the Consultancy firm/agency's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Law.

2.9.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Consultancy firm/agency 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 Consultancy firm/agency and equipment and materials furnished by the "Client", the Consultancy firm/agency shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination: Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the "Client" shall make the following payments to the Consultancy firm/agency:

- a. If the Contract is terminated pursuant to Clause 2.9.1 (h), (i) or 2.9.2, remuneration pursuant to Clause GC 6.3(h) (i) hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6.3(h)(ii) hereof for expenditures actually and reasonably incurred prior to the effective date of termination;
- b. If the agreement is terminated pursuant of Clause 2.9.1 (a) to (g), the Consultancy firm/agency shall not be entitled to receive any agreed payments upon termination of the contract. However, the "Client" may consider to make payment for the part satisfactorily performed on the basis of Quantum Merit as assessed by it, if such part is of economic utility to the Client. Applicable Under such circumstances, upon termination, the client may also impose liquidated damages as per the provisions of Clause 9 of this agreement. The Consultancy firm/agency will be required to pay any such liquidated damages to client within 30 days of termination date.

2.9.6 Disputes about Events of Termination: If either Party disputes whether an event specified in paragraphs (a) through (h) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANCY FIRM/AGENCY

3.1 General

3.1.1 Standard of Performance: The Consultancy firm/agency 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 Consultancy firm/agency shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the "Client", and shall at all times support and safeguard the "Client's" legitimate interests in any dealings with Sub-Consultancy firm/agency or Third Parties.

3.2 Conflict of Interests: The Consultancy firm/agency shall hold the "Client'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 Consultancy firm/agency shall promptly disclose the same to the Client and seek its instructions.

3.2.1 Consultancy firm/agency not to benefit from Commissions, Discounts, etc.:

- a. The payment of the Consultancy firm/agency pursuant to Clause GC 6 hereof shall constitute the Consultancy firm/agency's only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the Consultancy firm/agency 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 Consultancy firm/agency shall use its best efforts to ensure that any Personnel and agents of either of them, similarly shall not receive any such additional payment.
- b. Furthermore, if the Consultancy firm/agency, as part of the Services, has the responsibility of advising the "Client" on the procurement of goods, works or services, the Consultancy firm/agency shall comply with the Client's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the "Client". Any discounts or commissions obtained by the Consultancy firm/agency in the exercise of such procurement responsibility shall be for the account of the "Client".

3.2.2 Consultancy firm/agency and Affiliates Not to Engage in Certain Activities: The Consultancy firm/agency agrees that, during the term of this Contract and after its termination, the Consultancy firm/agency and any entity affiliated with the Consultancy firm/agency, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultancy firm/agency's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities: The Consultancy firm/agency shall not engage, and shall cause their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality: Except with the prior written consent of the "Client", the Consultancy firm/agency 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 Consultancy firm/agency and its Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Insurance to be Taken out by the Consultancy firm/agency: The Consultancy firm/agency (i) shall take out and maintain, at their own cost but **on terms and conditions approved by the "Client"**, insurance against the risks, and for the coverages specified in the SC, and (ii) at

the "Client's request, shall provide evidence to the "Client" 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 Consultancy firm/agency (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall periodically permit the "Client" or its designated representative and/or the Client, and up to five years from expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the "Client" or the Client, if so required by the "Client" or the Client as the case may be.

3.6 Consultancy firm/agency's Actions Requiring "Client's Prior Approval: The Consultancy firm/agency shall obtain the "Client's prior approval in writing before taking any of the following actions: (a) Any change or addition to the Personnel.

3.7 Reporting Obligations: The Consultancy firm/agency shall submit to the "Client" the reports and documents specified hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

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

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

3.10 Equipment and Materials Provided by the Consultancy firm/agency: Equipment or materials brought into the Government's country by the Consultancy firm/agency and the Personnel and used either for the Project or personal use shall remain the property of the Consultancy firm/agency or the Personnel concerned, as applicable.

4. CONSULTANCY FIRM/AGENCY'S PERSONNEL

4.1 General: The Consultancy firm/agency shall employ and provide such qualified and experienced Personnel and Sub-Consultancy firm/agency 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 Consultancy firm/agency's Key Personnel are as per the Consultancy firm/agency's proposal and are described in Appendix C. If any of the Key Personnel has already been approved by the "Client", his/her name is listed as well.
- b. If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix C may be made by the Consultancy firm/agency by written notice to the "Client", provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the "Client's written approval.
- c. If additional work is required beyond the scope of the Services specified in, the estimated periods of engagement of Key Personnel set forth may be increased by agreement in writing between the "Client" and the Consultancy firm/agency. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

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

4.4 Removal and/or Replacement of Personnel:

- a. Except as the "Client" may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultancy firm/agency, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Consultancy firm/agency shall forthwith provide as a replacement a person of equivalent or better qualifications.
- b. If the "Client" (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 Consultancy firm/agency shall, at the "Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the "Client".
- c. Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultancy firm/agency may wish to claim as a result of such

replacement, shall be subject to the prior written approval by the "Client". The rate of remuneration applicable to a replacement person will be the rate of remuneration paid to the replacement person. Also (i) the Consultancy firm/agency shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.5 Resident Project Manager: If required by the SC, the Consultancy firm/agency shall ensure that at all times during the Consultancy firm/agency's performance of the Services a resident project manager, acceptable to the "Client", shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE "CLIENT"

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

- a. Provide the Consultancy firm/agency and Personnel with work permits and such other documents as shall be necessary to enable the Consultancy firm/agency or Personnel to perform the Services.
- b. Arrange for the Foreign Personnel to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India.
- c. Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.
- d. Provide to the Consultancy firm/agency, Sub-Consultancy firm/agency and Personnel any such other assistance as may be specified in the SC.

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

5.3 Services, Facilities and Property of the "Client":

- a. The "Client" shall make available to the Consultancy firm/agency and its Personnel, for the purposes of the Services and **free of any charge**, the services, facilities and property described at the times and in the manner specified in said.
- b. In case that such services, facilities and property shall not be made available to the Consultancy firm/agency as and when specified in Appendix E, the Parties shall agree on any time extension that it may be appropriate to grant to the Consultancy firm/agency for the performance of the Services.

5.4 Payment: In consideration of the Services performed by the Consultancy firm/agency under this Contract, the "Client" shall make to the Consultancy firm/agency such payments and in such manner as is provided by Term of Reference (Payment condition) this Contract.

5.5 Counterpart Personnel:

- a. If necessary, the "Client" shall make available to the Consultancy firm/agency free of charge such professional and support counterpart personnel, to be nominated by the "Client" with the Consultancy firm/agency's advice.
- b. Professional and support counterpart personnel, excluding "Client"'s liaison personnel, shall work under the exclusive direction of the Consultancy firm/agency. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultancy firm/agency that is consistent with the position occupied by such member, the Consultancy firm/agency may request the replacement of such member, and the "Client" shall not unreasonably refuse to act upon such request.

6. FAIRNESS AND GOOD FAITH

6.1 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.

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

7. SETTLEMENT OF DISPUTES

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

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

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

7.4 The decision of the majority of arbitrators shall be final and binding upon both parties. The

expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Client and the Consultancy firm/agency. 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. Liquidated Damages

- 8.1** The parties hereby agree that due to negligence of act of any party, if the other party suffers losses, damages the quantification of which may be difficult, and hence the amount specified hereunder shall be construed as reasonable estimate of the damages and both the parties agree to pay such liquidated damages, as defined hereunder as per the provisions of this Contract.
- 8.2** The amount of liquidated damages under this Contract shall not exceed [10] % of the total value of the contract as specified.
- 8.3** The liquidated damages shall be applicable under following circumstances:
- a. If the deliverables are not submitted as per schedule as specified in SC 10, the Consultancy firm/agency shall be liable to pay 1% of the total cost of the services for delay of each week or part thereof.
 - b. If the deliverables are not acceptable to the Client as mentioned in Clause 6.3 (f), and defects are not rectified to the satisfaction of the Client within 30 days of the receipt of the notice, the Consultancy firm/agency shall be liable for Liquidated Damages for an amount equal to [1]% of total cost of the services for every week or part thereof for the delay.