

**STANDARD FORM OF CONTRACT**

**Name of Assignment:**

**SELECTION OF AN AGENCY FOR SETTING UP A HIGH PERFORMANCE  
PROGRAMME FOR ATHLETICS AT KALINGA STADIUM IN BHUBANESWAR,  
ODISHA**



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**Project Name:**  
**SELECTION OF AN AGENCY FOR SETTING UP A HIGH PERFORMANCE  
PROGRAMME FOR ATHLETICS AT KALINGA STADIUM IN BHUBANESWAR,  
ODISHA**

**Contract No. \_\_\_\_\_**

**between**

**Department of Sports and Youth Services,  
Government of Odisha**

**and**

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**Dated: \_\_\_\_\_**

**I. Form of Contract**

This CONTRACT (hereinafter called the “**Contract**”) is made the \_\_\_\_ day of the month of \_\_\_\_\_, 20\_\_, between, on the one hand, **Department of Sports and Youth Services, Government of Odisha** (hereinafter called the “**Client**”) and \_\_\_\_\_, a \_\_\_\_\_ (company / firm) duly incorporated under the provisions of \_\_\_\_\_, with its registered office at \_\_\_\_\_, on the other hand, (hereinafter called the “**Agency**”).

**WHEREAS**

- (a) Odisha is fast emerging as one of the important hubs for sports in the country with world-class sporting events being organised in the State. The successful hosting of the 22nd Asian Athletics Championships and Hockey World League in 2017 has signaled Odisha's emergence as a strong force in the 'Global Sports Arena'. The Government of Odisha has been actively promoting sports in the State and has been creating necessary infrastructure and other facilities that are a pre-requisite for organizing high standard sporting events, nurturing sports persons as well as for the overall development of sports in the State. The Government of Odisha is now keen to partner with a reputed company or limited liability partnership incorporated or

registered, as applicable, in India (the “**Agency**”) to establish a High Performance Program (the “**HPP**”) for athletics at the Kalinga Stadium in Bhubaneswar.

- (b) The Client has, by way of its request for proposal for Selection of an Agency for setting up a High Performance Programme for athletics at Kalinga Stadium in Bhubaneswar, Odisha on \_\_\_ July, 2018 (hereinafter called the “**RFP**”), invited proposals for providing certain services for the High Performance Program as defined in this Contract (hereinafter called the “**Services**”).
- (c) The Agency submitted its proposal dated \_\_\_\_\_, 2018 in response to the RFP for award of the Contract (the “**Proposal**”), whereby the Agency represented to the Client that it has the required professional skills, expertise and technical resources and is willing to provide the Services on the terms and conditions set forth in this Contract.
- (d) The Client has, by way of a letter of award dated \_\_\_\_\_ (the “**LOA**”), accepted the offer of the Agency to provide the Services on the terms and conditions set forth in this Contract.

NOW THEREFORE, the Parties hereto hereby agree as follows:

- 1. The following documents shall constitute the Contract:
  - (i) The Special Conditions of Contract;
  - (ii) The General Conditions of Contract (including Attachment 1 “Corrupt and Fraudulent Practices);
  - (iii) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Details of Experts, Staffs and Services forming part of HPP
    - Appendix C: Remuneration Cost Estimates
    - Appendix D: Form of Performance Security
    - Appendix E: Services Schedule
  - (iv) RFP;
  - (v) LOA; and
  - (vi) the Proposal.

All of the foregoing documents are referred to herein as the Contract. In the event of a conflict, ambiguity or discrepancy between:

- (a) the contents of the Contract, the document specified earlier in the list set out above shall prevail over the latter documents;
- (b) between two or more Clauses of the Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

- (c) between any two appendices, the appendix relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail.

2. The mutual rights and obligations of the Client and the Agency shall be as set forth in the Contract. In particular,

- (a) the Agency shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Client shall make payments to the Agency in accordance with the provisions of the Contract.

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

For and on behalf of Department of Sports and Youth Services, Odisha

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For and on behalf of \_\_\_\_\_ {agency}

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{ Authorised Signatory – with Power of Attorney to enter into the agreement }



## II. General Conditions of Contract

### A. GENERAL PROVISIONS

<b>1. Definitions</b>	<p>Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:</p> <ul style="list-style-type: none"><li>(a) “Activity” means an activity or action specified in the Terms of Reference, which is to be performed by the Agency as a part of the scope of Services.</li><li>(b) “Additional Resource” means any professional and support staff, in addition to the Key Experts and the Programme Support Staff, who may be engaged by the Agency to provide the Services.</li><li>(c) “Applicable Law” means all laws in force and effect in India, as on the date of the Contract, or which may be promulgated or brought into force and effect after the date of the Contract, including all regulations, rules and notifications made thereunder and all judgments, decrees, injunctions, writs, orders, directives and notifications issued by any court or Authority, as may be in force and effect during the subsistence of the Contract and applicable to either Party, their obligations or this Contract, from time to time.</li><li>(d) “Affiliate(s)” shall be as per definition provided in the RFP.</li><li>(e) “Authority” means the GoI, GoO or any local authority or any department, instrumentality or agency thereof or any statutory body or corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Client or the Agency) or commission under the direct or indirect control of the central, state or local government or any political sub-division thereof or any court, tribunal or judicial body within India.</li><li>(f) “Breakage Costs” means the amount payable by the Client to the Agency that is attributable to the losses, costs, claims and expenses that have been or will reasonably and properly be incurred by the Agency in respect of: (i) any contracts placed that cannot be terminated, without such losses, costs, claims and expenses being incurred; and (ii) any expenditure incurred in anticipation of the performance of the Services, provided however that the Agency has used its reasonable endeavors to mitigate the losses, costs, claims and expenses incurred, as a result of the termination of the Contract due to a Client default (as set out in Clause 18.1.5), to the extent that such losses, costs, claims and expenses are or may be incurred in connection with the performance of the Services.</li></ul>
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	<p>For the avoidance of doubt, the Breakage Costs shall mean any losses, costs, claims and expenses incurred or to be incurred in respect of: (i) any contracts placed that cannot be terminated, without such losses, costs, claims and expenses being incurred; and (ii) any expenditure incurred in anticipation of the performance of the Services, provided however that the Agency has used its reasonable endeavors to mitigate the losses, costs, claims and expenses incurred.</p> <p>(g) deleted</p> <p>(h) “Clause” means a clause of the GCC, as may be supplemented by the SCC.</p> <p>(i) “Client” shall have the meaning ascribed to it in the preamble of the Contract.</p> <p>(j) “Client Event of Default” has the meaning ascribed to it in Clause 18.1.5.</p> <p>(k) “Client Indemnified Party” has the meaning ascribed to it in Clause 19.1.</p> <p>(l) “Communication” has the meaning ascribed to it in Clause 6.1.</p> <p>(m) “Completion Certificate” means the certificate issued or deemed to be issued by the Client to the Agency to certify satisfactory completion of the Services and handover of the monitoring, supervision and control over the High Performance Programme to the Client or any other agency nominated by it, in accordance with Clause 41.7.</p> <p>(n) “Conflict of Interest” shall have the meaning ascribed to it in Clause 21 read with clause 3 of section 1 of the RFP.</p> <p>(o) “Agency” shall have the meaning ascribed to it in the preamble of the Contract.</p> <p>(p) “Agency Event of Default” has the meaning ascribed to it in Clause 18.1.1.</p> <p>(q) “Agency Indemnified Party” has the meaning ascribed to it in Clause 19.2.</p> <p>(r) “Contract” shall have the meaning ascribed to it in clause 1 of the Form of Contract.</p> <p>(s) deleted</p> <p>(t) “Day” means a working day unless indicated otherwise.</p> <p>(u) “Delay Event” has the meaning given to it in Clause 29.3.</p> <p>(v) “Deliverable” means a work product (including reports, software, know-how, designs, analysis, drawings, technical information, solutions, data base, Programme data and other documents) to be prepared and submitted by the Agency as a part of the Services, in accordance with the terms of this Contract and the term</p>
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	<p>“Deliverables” shall be construed accordingly. The list of Deliverables to be provided by the Agency, if any, is set out in the Terms of Reference.</p> <p>(w) deleted</p> <p>(x) deleted</p> <p>(y) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause 10.</p> <p>(z) “Expert Pool” means the team of Key Experts engaged by the Agency, to perform the Services, which at a minimum must include such number of Key Experts, as specified in Appendix B and Form TECH-4 of the RFP. It is clarified that the Expert Pool will not include any Programme Support Staff.</p> <p>(aa) “Force Majeure” shall have the meaning ascribed to it in Clause 16.</p> <p>(bb) “GCC” means these General Conditions of Contract.</p> <p>(cc) “GoO” means the Government of Odisha</p> <p>(dd) “GoI” means the Government of India.</p> <p>(ee) “Good Industry Practices” means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used and exercised by a skilled and experienced Agency engaged in the performance of services of the type, size and nature similar to the Services.</p> <p>(ff) “Indemnified Party” has the meaning ascribed to it in Clause 19.3.</p> <p>(gg) “Indemnifying Party” has the meaning ascribed to it in Clause 19.3.</p> <p>(hh) “Intellectual Property Rights” means, in respect of the Services, any copyright, trademarks, technology, know-how, industrial processes, proprietary information, licenses, patents, permissions from or agreements with licensors of any processes, methods and systems incorporated or to be incorporated in the performance of the Services, registered designs, franchises, trade secrets, data bases, source codes, brand names, service marks, trade names, and any other intellectual and industrial property rights, whether registrable or not, subsisting or recognized under the Applicable Law or laws of any other jurisdiction, including all applications, renewals, extensions and revivals thereof.</p> <p>(ii) “Key Expert” means an individual engaged by the Agency, as a part of the Expert Pool, to provide the Services or any part thereof, who has the minimum qualification and experience as specified in</p>
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	<p>paragraph 6.4 of the Terms of Reference in the RFP for the position that such individual holds in the Expert Pool and whose curriculum vitae (CV) was evaluated as a part of the Agency's Technical Proposal and approved by the Client at the time of finalization of the Contract.</p> <p>(jj) “LOA” has the meaning ascribed to it in recital (d) of the Contract.</p> <p>(kk) “Local Currency” means the official currency of India (i.e., Indian Rupees).</p> <p>(ll) “Module” means a component of the High Performance Programme in relation to which the Agency is required to provide the Services, as described in greater detail in the Terms of Reference.</p> <p>(mm) “Party” means the Client or the Agency, as the case may be, and “Parties” means both of them.</p> <p>(nn) “Payment Schedule” means the schedule for payment of the Price to the Agency, as set out in the SCC.</p> <p>(oo) “Performance Security” means a duly executed, irrevocable and unconditional bank guarantee to be procured and maintained by the Agency in accordance with Clause 51 read with the SCC, to secure the due and proper performance of the Contract.</p> <p>(pp) “Person” means any individual, company, corporation, firm, partnership, trust, sole proprietor, limited liability partnership, co-operative society, government company or any other legal entity.</p> <p>(qq) “Personnel” means, collectively, the Expert Pool, Programme Support Team, and any other personnel of the Agency engaged by the Agency to perform the Services or any part thereof under the Contract.</p> <p>(rr) “Programme Support Team” means the team of Programme Support Staff engaged by the Agency to perform the Services, which at a minimum must include such number of Programme Support Staff, as specified in Form TECH-4 of the RFP. It is clarified that the Programme Support Team will not include any Key Experts.</p> <p>(ss) “Programme Support Staff” means an individual engaged by the Agency, as a part of the Programme Support Team, to provide the Services or any part thereof, who has the minimum qualification and experience as specified in paragraph 6.4 of the Terms of Reference of the RFP for the function that such individual is required to perform as a part of the Programme Support Team.</p> <p>(tt) “Project Office” means the office space provided by the Client to the Agency within the Client’s office/premises in the city of Bhubaneswar, for the Agency to set up its project office for the</p>
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	<p>Personnel and Additional Resources, if any, who are or will be engaged to provide the Services.</p> <p>(uu) “Proposal” has the meaning ascribed to it in recital (c) of the Contract.</p> <p>(vv) deleted</p> <p>(ww) “Remuneration” means the aggregate remuneration payable for the Expert Pool and the Programme Support Team, based on the agreed man month rates for the Key Experts and the Programme Support Staff, as set out in Appendix C.</p> <p>(xx) “Reports” has the meaning ascribed to it in Clause 26.</p> <p>(yy) “RFP” has the meaning ascribed to it in recital (b) of the Contract.</p> <p>(zz) deleted</p> <p>(aaa) “SCC” means the special conditions of contract with specific details and information to supplement (and not override) the GCC.</p> <p>(bbb) “Section” means a section of the Contract.</p> <p>(ccc) “Services” means the work to be performed by the Agency pursuant to this Contract, as described in Appendix A hereto.</p> <p>(ddd) “Services Schedule” means the schedule showing the sequence, method and timing of execution of the Services and related activities and the Deliverable Due Dates, as set out in Appendix E.</p> <p>(eee) “Taxes” means all taxes, duties, imposts, levies and charges pursuant to any law (whether currently in force or coming into force on or after the Effective Date), including income tax, service tax, value added tax, central sales tax, customs duty excise duty, fees, cess, octroy, entry tax, and any interest, surcharge, penalty or fine in connection therewith.</p> <p>(fff) “Third Party” means any person or entity other than the Client and the Agency.</p> <p>(ggg) “Technical Proposal” means the technical proposal forming part of the Proposal submitted by the Agency in response to the RFP.</p> <p>(hhh) “Terms of Reference” means the terms of reference set out in Appendix A that explain the objectives and scope of the Services, activities, tasks to be performed, respective roles and responsibilities of the Client and Agency, and expected results and deliverables of the High Performance Programme.</p> <p>(iii) “Total Value of Contract” means, collectively, the Remuneration, and any Taxes payable in connection with the performance of the Services.</p> <p>(jjj) “Variation” has the meaning ascribed to it in Clause 14.2.</p> <p>(kkk) “Variation Order” has the meaning to it in Clause 14.3.</p>
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<p><b>2. Relationship between the Parties</b></p>	<p><b>2.1.</b> 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 Agency. The Agency, subject to this Contract, has complete charge of the Personnel, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.</p>
<p><b>3. Governing Law</b></p>	<p><b>3.1.</b> This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.</p>
<p><b>4. Language</b></p>	<p><b>4.1.</b> This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.</p>
<p><b>5. Headings</b></p>	<p><b>5.1.</b> The headings are for convenience of reference only and shall not limit, alter or affect the meaning of this Contract.</p>
<p><b>6. Communications</b></p>	<p><b>6.1.</b> Any communication, approval, notice, report, consent, certificate or request required or permitted to be given or made pursuant to this Contract (“<b>Communication</b>”) shall be in writing in the language specified in the SCC. Unless otherwise specified in the Contract, any such Communication shall be sent by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the address specified in the SCC. Any Communication sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address specified in the SCC.</p> <p><b>6.2.</b> A Party may change its address for Communication hereunder by giving the other Party notice of such change to the address specified in the SCC.</p>
<p><b>7. Location</b></p>	<p><b>7.1.</b> The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in India or elsewhere, as the Client may approve.</p>
<p><b>8. Authorized Representatives</b></p>	<p><b>8.1.</b> Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client</p>

	or the Agency may be taken or executed by the officials specified in the SCC.
<b>9. Corrupt and Fraudulent Practices</b>	<b>9.1.</b> The Agency shall comply with the Client’s policy in regard to corrupt and fraudulent practices as set forth in Attachment 1 to the GCC.
<b>a. Commissions and Fees</b>	<b>9.2.</b> The Client requires the Agency to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party 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 or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions by the Bank.

**B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

<b>10. Effectiveness of Contract</b>	<b>10.1</b> This Contract shall come into force and effect on the date (the “Effective Date”) of the Client’s notice to the Agency instructing the Agency to begin carrying out the Services.
<b>11. Commencement of Services</b>	<b>11.1</b> The Agency shall confirm availability of the Key Experts for the term of the Contract and begin carrying out the Services no later than the date specified in the SCC.
<b>12. Expiration of Contract</b>	<b>12.1</b> Unless terminated earlier pursuant to Clause 18, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC, unless extended in accordance with this Contract.
<b>13. Entire Agreement</b>	<b>13.1</b> This Contract constitutes the entire understanding between the Parties regarding the scope of the Services and supersedes all prior written or oral understandings, offers, agreements, communication or representations affecting the same subject matter. It is clarified that the obligations of the Agency under the RFP shall continue to subsist and shall be deemed to form part of the Contract.
<b>14. Modifications or Variations</b>	<b>14.1.</b> 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.

**14.2.** Both the Client and the Agency may, at any time during the term of the Contract, propose a variation to the Services, the Terms of Reference (as set out in Appendix A), Payment Schedule and/or any other provision of the Contract (**Variation**).

**14.3.** *Client Proposed Variation*

(i) The Client may, at any time during the term of the Contract, instruct the Agency, by issuing a written notice, to carry out a Variation (a **Variation Order**). Provided that, the Client shall not propose a Variation which is not technically or financially feasible, such feasibility being determined in accordance with Good Industry Practice, or any Variation that constitutes unrelated work.

(ii) Within fifteen (15) days of receipt of a Variation Order, the Agency shall submit a proposal setting out in sufficient detail the implications of the proposed Variation, including the (a) description of the work required or no longer required; (b) an estimate of the increase or decrease in the Total Value of Contract; (c) the Service Schedule; and (d) Payment Schedule.

(iii) Based on its review of the proposal submitted by the Agency, the Client may: (a) accept the proposal and the corresponding adjustments to the Total Value of Contract, Services Schedule and Payment Schedule; (b) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Agency; or (c) reject the proposal submitted by the Agency and withdraw the Variation Order, within seven (7) days from the date of receipt of the Agency's proposal under Clause 14.3(ii).

(iv) If the Client accepts the Agency's proposal under Clause 14.3(ii) of this Section, it shall issue an instruction identifying the offer that is being accepted and requesting the Contractor to proceed with the Variation. Upon the Client's acceptance of the Agency's proposal, the Agency shall proceed with the Variation.

(v) To the extent the Client seeks amendments and/or justification in the proposal submitted by the Agency, the Agency shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 14.3(iv), the Agency shall proceed with the Variation.

(vi) On implementation of a Variation Order, the Agency shall be entitled to the agreed increase in the Total Value of Contract and/or adjustment to the Services Schedule or Payment Schedule for carrying out the Variation.

(vii) Notwithstanding anything to the contrary in this Clause 14.3, the Agency shall be bound to implement any Variation that is necessitated by a Change in Law (*discussed in Clause 15 below*) and any consequent adjustment in the Total Value of Contract, Services Schedule or Payment Schedule, on account of such Variation, shall be determined in accordance with Clause 15 below.

**14.4. Agency Proposed Variation**

(i) The Agency may propose a Variation, which it considers necessary or desirable to improve the quality of the Services. While proposing a Variation, the Agency shall submit a proposal to the Client, with a statement setting out: (a) detailed particulars of the Variation; (b) the work required or no longer required; (c) an estimate of any adjustment in the Total Value of Contract; (d) any adjustment to the Services Schedule or Payment Schedule; and (e) any other effect the proposed Variation would have on the Services or on any other provision of the Contract.

(ii) Based on its review of the Variation proposed by the Agency, the Client may: (a) confirm the Variation; (b) provide its comments on the proposed Variation; or (c) reject the proposed Variation, while giving reasons in writing for such rejection, within seven (7) days of the submission of the proposal for a Variation. Upon the Client's acceptance of the proposed Variation, the Agency shall proceed with the Variation.

(iii) To the extent the Client seeks amendments in the proposed Variation, the Agency shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 14.4(ii), the Agency shall proceed with the Variation.

(iv) If the Parties are unable to reach agreement regarding the terms of a Variation Order, such disagreement shall be resolved pursuant to Clauses 50.

	<p><b>14.5.</b> Notwithstanding anything contained in this Clause 14, a Variation made necessary due to any act, omission or default of the Agency in the performance of its obligations under the Contract will not result in any increase in the Total Value of Contract or extension of any Deliverable Due Date.</p> <p><b>14.6.</b> No Variation invalidates the Contract. The Agency agrees that a Variation may involve the omission of any part of the Services and further, the Agency agrees that the Client may engage others to perform that part of the Services which has been omitted. The Agency further acknowledges that any omission or omissions will not constitute a basis to allege that the Client has repudiated the Contract no matter the extent or timing of the omission(s).</p> <p><b>14.7.</b> Notwithstanding anything contained in this Clause 14, the Client shall not agree to any Variation if: (i) the Agency seeks any Variation in its obligations which is due to any shortcoming or deficiency in the documents provided by the Agency; (ii) the Variation relates to repeat performance of any Services due to the Agency's failure to comply with the Client's requirements; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law.</p>
<p><b>15. Change in Law</b></p>	<p><b>15.1.</b> For the purposes of this Contract, “Change in Law” means the occurrence of any of the following events after the date of execution of the Contract: (i) the modification, amendment or repeal of any existing Applicable Law; (ii) the enactment, promulgation, bringing into effect, adoption of any new Applicable Law; (iii) change in the interpretation or application of any Applicable Law by any Authority; (iv) the introduction of a requirement for the Agency to obtain any new approval or permit or the unlawful revocation of an applicable approval or permit; or (v) the introduction of any new Tax or a change in the rate of an existing Tax.</p> <p>Change in Law does not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Agency; (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of the Contract and which is a matter of public knowledge; or (iii) a draft statutory instrument or delegated legislation that has been published prior to the date of the Contract, which is under the</p>

	<p>active consideration or contemplation of the GoI or GoO and which is a matter of public knowledge.</p> <p><b>15.2.</b> If, after the date of this Contract, there is any Change in Law which:</p> <ul style="list-style-type: none"> <li>(i) increases the cost incurred by the Agency in performing the Services; and/or</li> <li>(ii) affects the Services Schedule,</li> </ul> <p>then the Agency may notify the Client and appropriate adjustments shall be made to the Total Value of Contract and/or the Services Schedule to account for the Change in Law. The notice shall be accompanied by all supporting documents, details and information required by the Client to assess the claims of the Agency. Provided that, if a Change in Law becomes applicable as a result of a delay by the Agency in providing the Services, other than due to a Delay Event, then the Agency shall not be entitled to any adjustment in the Total Value of Contract and/or the Services Schedule.</p> <p>Where it is not possible to address the effect of a Change in Law (through an adjustment in the Total Value of Contract and/or the Services Schedule), the Parties shall agree on a mechanism, including amending the terms of the Contract, to mitigate the adverse effects of the Change in Law. If the Parties are unable to reach an agreement within thirty (30) days of the notification of a Change in Law, then the matter shall be referred to dispute resolution in accordance with Clause 50.</p>
<p><b>16. Force Majeure</b></p>	
<p><b>a. Définition</b></p>	<p><b>16.1</b> For the purposes of this Contract, “Force Majeure” means any of the following events, which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances:</p> <ul style="list-style-type: none"> <li>(i) acts of God;</li> <li>(ii) accidents, except as may be attributable to the Parties;</li> <li>(iii) earthquake, storm or flood;</li> <li>(iv) fires or explosions, except as may be attributable to the Parties;</li> <li>(v) acts of Authorities, except as may be attributable to the Parties;</li> </ul>

	<p>(vi) epidemics;</p> <p>(vii) war, terrorism, sabotage, civil commotions/civil disorder, or riots; and</p> <p>(viii) general strikes or lockouts or other industrial action/confiscation (which are not restricted to the Agency or its Personnel).</p> <p><b>16.2</b> Force Majeure shall not include: (i) any event which is caused by the negligence or intentional act or omission of a Party or any Personnel or its agents or employees, (ii) any event which a diligent Party could reasonably have been expected to take into account at the time of the conclusion of this Contract, or be able to avoid or overcome in the carrying out of its obligations hereunder; (iii) insufficiency of funds or commercial hardship; and (iv) unavailability, or increase in the cost of any Personnel or component required to perform the Services, unless such unavailability or increase in costs is due to a Force Majeure event.</p>
<p><b>b. No Breach of Contract</b></p>	<p><b>16.3</b> 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 reasonable precautions, due care and reasonable alternative measures to mitigate and overcome the effects of the Force Majeure event. Performance of any obligations affected by a Force Majeure event must be resumed as soon as reasonably possible after the abatement of such Force Majeure event.</p>
<p><b>c. Measures to be Taken</b></p>	<p><b>16.4</b> 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.</p> <p><b>16.5</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) calendar 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.</p> <p><b>16.6</b> Any period within which the Agency is required to complete any action or task, in terms of the Services Schedule, shall be extended</p>

	<p>for a period equal to the time during which the Agency was unable to perform such action as a result of an event of Force Majeure.</p> <p><b>16.7</b> During the period of their inability to perform the Services as a result of an event of Force Majeure, the Agency, upon instructions by the Client, shall either: (i) demobilize, in which case the Agency shall be reimbursed for additional costs it reasonably and necessarily incurs in demobilization, and, if required by the Client, in reactivating the Services; or (ii) continue with the Services to the extent reasonably possible, in which case the Agency shall continue to be paid under the terms of this Contract for the part of the Services performed by it during the subsistence of the Force Majeure event and be reimbursed for additional costs reasonably and necessarily incurred in demobilizing for the part of the Services which are affected by the Force Majeure event and, if required by the Client, in reactivating such part of the Services.</p> <p><b>16.8</b> Not later than thirty (30) days after the Agency has, as a result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on the appropriate measures to be taken in the circumstances.</p> <p><b>16.9</b> 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 50.</p> <p><b>16.10</b> Save and except as expressly provided in the Contract, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising from any event of Force Majeure or the exercise by it of any right pursuant to this Clause 16.</p>
<p><b>d. Prolonged Force Majeure</b></p>	<p><b>16.11</b> If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty (180) days, the affected party may issue a notice of termination of the entire Contract or such part of the Services as is affected by the Force Majeure event, in accordance with Clause 18 below.</p>
<p><b>17. Suspension</b></p>	<p><b>17.1</b> The Client may, by written notice of suspension to the Agency, suspend all payments to the Agency hereunder if the Agency fails to perform or is in breach of any of its obligations under this Contract,</p>

	<p>including the carrying out of the Services, provided that such notice of suspension: (i) shall specify the nature of the failure or breach, and (ii) shall request the Agency to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Agency of such notice of suspension.</p>
<p><b>18. Termination</b></p>	<p><b>18.1.</b> This Contract may be terminated by either Party as per provisions set out below:</p>
<p><b>a. By the Client</b></p>	<p><b>18.1.1</b> A “Agency Event of Default” means any of the events set out below, unless such event has occurred as a consequence of a default by the Client as set out in Clause 18.1.5, a Change in Law or any event of Force Majeure (“Agency Event of Default”):</p> <ul style="list-style-type: none"> <li>(i) if the Agency fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 17 within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently granted in writing;</li> <li>(ii) if the Agency becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;</li> <li>(iii) if the Client, in its sole discretion and for any reason whatsoever which reason is required to be recorded in writing, decides to terminate this Contract;</li> <li>(iv) if the Agency’s liability to pay delay liquidated damages reaches the cap on delay liquidated damages specified in Clause 29.8 but the delay in respect of which the delay liquidated damages are payable continues to exist;</li> <li>(v) if the Agency fails to confirm availability of Key Experts as required in Clause 11;</li> <li>(vi) if the Agency replaces any Key Expert in contravention of the provisions of this Contract;</li> <li>(vii) if the Agency has engaged in corrupt, fraudulent, collusive, coercive, undesirable or restrictive practice in bidding for or in subsequently executing the Contract;</li> <li>(viii) if the Agency fails to furnish, renew and/or maintain the Performance Security in accordance with this Contract;</li> <li>(ix) if the Agency assigns or novates its rights and obligations under this Contract without the prior written consent of the Client;</li> </ul>

	<p>(x) if any of the Agency’s representations and warranties are found to be false and/or misleading; or</p> <p>(xi) if the Agency is in breach of any Applicable Laws.</p> <p><b>18.1.2</b> Without prejudice to other provisions of this Contract, upon the occurrence of a Agency Event of Default, the Client may deliver a notice to the Agency specifying the nature of the breach and giving a cure period of thirty (30) days to the Agency to cure the Agency Event of Default.</p> <p>Provided that, in case of occurrence of a Agency Event of Default set out in Clauses 18.1.1(ii), 18.1.1(iv), 18.1.1(vii), the Client shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.</p> <p><b>18.1.3</b> Subject to Clause 18.1.2, and except in case of the event set out at Clause 18.1.1(iii), if by the end of the cure period, the Agency has not remedied the Agency Event of Default or taken steps to remedy the Agency Event of Default to the satisfaction of the Client, then the Client shall have the right to issue a termination notice, upon which this Contract shall terminate forthwith.</p> <p><b>18.1.4</b> Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Agency Event of Default set out in Clauses 18.1.1(i), 18.1.1(iv) or 18.1.1(vi), to the extent such Agency Event of Default affects one or more of the Modules but not the entire Contract, the Client shall have the right to partially terminate the Contract with respect to the Modules affected by such Agency Event of Default and not the entire Contract. Such partial termination shall not impact the validity of the Contract or the obligations of the Agency with regard to the Modules which are not affected by the Agency Event of Default.</p> <p>Upon total or partial termination of the Contract for a Agency Event of Default, the Client will have the right to engage a third party Agency to complete the Services or the Modules which have been deleted from the Agency’s scope and the Client shall recover the incremental costs incurred by the Client in engaging a third party Agency from the Agency.</p>
<p><b>b. By the Agency</b></p>	<p><b>18.1.5</b> A “Client Event of Default” means any of the following events set out below, unless such event has occurred as a consequence of a</p>

default by the Agency as set out in Clause 18.1.1, a Change in Law or any event of Force Majeure:

- (i) if the Client fails to pay any undisputed money due to the Agency pursuant to this Contract within forty five (45) calendar days after receiving written notice from the Agency that such payment is overdue;
- (ii) if the Client is in material breach of its obligations under this Contract and has not remedied the same within forty five (45) days (or such longer period as the Agency may have subsequently approved in writing) following the receipt by the Client of the Agency's notice specifying such breach;
- (iii) if the Client becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; or
- (iv) if the Client suspends the performance of the Services for more than sixty (60) days, for reasons not attributable to the Agency.

**18.1.6** Without prejudice to other provisions of this Contract, upon the occurrence of a Client Event of Default, the Agency may deliver a notice to the Client specifying the nature of the breach and giving a cure period of thirty (30) days to the Client to cure the Client Event of Default.

Provided that, in case of occurrence of a Client Event of Default set out in Clauses 18.1.5(iii) or 18.1.5(iv), the Agency shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.

Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Client Event of Default set out in Clauses 18.1.5(i) or 18.1.5(ii), to the extent such Client Event of Default affects one or more of the Modules but not the entire Contract, the Agency will not have a right to terminate the entire Contract for such Client Event of Default, but will only have a right to partially terminate the Contract with respect to the Modules affected by such Client Event of Default. Such partial termination shall not impact the validity of the Contract or the obligations of the Agency and the Client with regard to the Modules which are not affected by the Client Event of Default.

<p><b>c. Termination for Force Majeure</b></p>	<p><b>18.1.7</b> If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty (180) days, then either Party may issue a notice of termination to the other Party. Upon receipt of this notice, the Parties shall have a period of fifteen (15) days to agree on the manner in which the Contract may be progressed upon cessation of the Force Majeure event and the variations, if any, required to the Contract to address the consequences of the Force Majeure event. If on the expiry of the fifteen (15) day period, the Parties fail to arrive at an agreement, either Party may immediately terminate this Contract by written notice to the other Party.</p> <p>Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Force Majeure event which affects one or more of the Modules but not the entire Contract, the Contract may be partially terminated with respect to the Modules affected by such Force Majeure event. Such partial termination shall not impact the validity of the Contract or the obligations of the Agency with regard to the Modules which are not affected by the Force Majeure event.</p>
<p><b>d. Cessation of Rights and Obligations</b></p>	<p><b>18.1.8</b> Upon termination of this Contract pursuant to Clause 18, or upon expiration of this Contract pursuant to Clause 12, all rights and obligations of the Parties hereunder shall cease, except (i) any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any provision of the Contract as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry or termination of the Contract, (ii) the obligation of confidentiality set forth in Clause 22, (iii) the Agency's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 25, (iv) the indemnity obligations of the Parties as set out in Clause 19; (v) the obligations in relation to intellectual property rights under Clause 27; and (vi) any right which a Party may have under the Applicable Law.</p>
<p><b>e. Cessation of Services</b></p>	<p><b>18.1.9</b> Upon termination of this Contract by either Party, the Agency shall: (i) 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; and (ii) transfer to the Client all documents, data, programmes, applications, software, equipment etc. developed or acquired by the Client for the purposes of performing the Services along with the right to use the Intellectual Property in</p>

	<p>such documents, data, programmes, applications, software, equipment for the High Performance Programme.</p>
<p><b>f. Payment upon Termination</b></p>	<p><b>18.1.10</b> Upon termination or partial termination of this Contract for a Agency Event of Default (except the event set out in Clause 18.1.1(iii) above), the Client shall make the following payments to the Agency:</p> <ul style="list-style-type: none"> <li>(i) Remuneration for the duly and satisfactorily completed Deliverables for all tasks forming part of Terms of Reference, prior to the date of termination, in accordance with Clause 43. Less</li> <li>(ii) all amounts previously paid to the Agency under the Contract for all tasks forming part of Terms of Reference;</li> <li>(iii) all amounts due to the Client from the Agency, including any damages payable by the Agency to the Client in respect of all tasks forming part of Terms of Reference; and</li> <li>(iv) the incremental cost incurred by the Client in engaging a third party to complete tasks forming part of Terms of Reference,.</li> </ul> <p>If the aggregate of (ii), (iii), and (iv) above is: (a) less than (i) above, the Client shall pay the differential amount to the Agency within thirty (30) days of the Agency raising an invoice for the amount; or (b) more than (i) above, then the Agency shall pay the differential amount to the Client within thirty (30) days of the Client raising an invoice for the amount, failing which the Client may invoke the Performance Security to recover such amounts.</p> <p><b>18.1.11</b> Upon termination or partial termination of this Contract for a Client Event of Default, a Force Majeure event or for the event set out in Clause 18.1.1(iii) above, the Client shall make the following payments to the Agency:</p> <ul style="list-style-type: none"> <li>(i) Remuneration for the duly and satisfactorily completed Deliverables for all Modules or terminated Modules, as the case may be, prior to the date of termination, in accordance with Clause 43; and</li> <li>(ii) if the Contract is terminated for a Client Event of Default or for the event set out in Clause 18.1.1(iii), any Breakage Costs reasonably incurred by the Agency as a direct result of termination or partial termination of the Contract; Less</li> </ul>

	<p>(iii) all amounts previously paid to the Agency under the Contract for all Modules or terminated Modules, as the case may be;</p> <p>(iv) all amounts due to the Client from the Agency, including any damages payable by the Agency to the Client in respect of all Modules or the terminated Modules, as the case may be.</p> <p>The Client shall pay the termination compensation specified in this Clause 18.1.11 to the Agency within thirty (30) days of the Agency raising an invoice for that amount.</p>
<p><b>19. Indemnity and Limitation of Liability</b></p>	<p><b>19.1 Agency's indemnity</b></p> <p>The Agency must indemnify and hold harmless the Client and the Client's staff, their Affiliates and directors of their Affiliates (each a "Client Indemnified Party") from and against any and all claims and losses suffered or incurred by the Client Indemnified Party, including claims by a third party, arising out of:</p> <ul style="list-style-type: none"> <li>(i) any failure of the Agency to pay taxes or any statutory dues;</li> <li>(ii) any non-compliance or violation of Applicable Law or applicable permits by the Agency;</li> <li>(iii) breach of the Agency's representations and warranties set out in the Contract;</li> <li>(iv) bodily injury, sickness or death of any person whatsoever;</li> <li>(v) breach of the Agency's obligations under the Contract;</li> <li>(vi) physical damage to the Project Office or any property therein;</li> <li>(vii) loss of or physical damage to property of any third party; or</li> <li>(viii) infringement of the Intellectual Property Rights of any third party by the Agency under the Contract.</li> </ul> <p><b>19.2 Client's indemnity</b></p> <p>The Client agrees to indemnify and hold harmless the Agency and the Personnel (each a "Agency Indemnified Party") from and against any</p>

and all claims or losses suffered or incurred by the Agency Indemnified Party arising out of:

- (i) breach of the Client's representations and warranties under the Contract; or
- (ii) any non-compliance or violation of Applicable Laws or any Client's applicable permits or consents by the Client.

**19.3** On receipt of a notice of any claim, which would entitle any Party (“Indemnified Party”) to claim indemnification from the other Party (“Indemnifying Party”), the Indemnified Party shall, within a reasonable time, provide a written notice of the claim to the Indemnifying Party along with all the documents available with it in respect of the claim, specifying in detail the claim, the amount claimed by the third party, the date on which the claim arose and the nature of the default to which such claim relates (including a reference to the applicable provision of the Contract) and the Indemnifying Party shall settle the claim accordingly. The Indemnifying Party shall be entitled to but not obliged to participate in and control the defence of any such suit, action or proceeding at its own expense or direct the Indemnified Party to defend such claim, at the cost of the Indemnifying Party. If the Indemnifying Party elects to control the defence of any such suit, action or proceeding, the Indemnified Party shall render all necessary assistance for the purposes of enabling the Indemnifying Party to take the action referred to in this Clause 19.3. The Indemnifying Party may also request the Indemnified Party, at the cost of the Indemnifying Party to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against the third party the Indemnifying Party's rights in relation to the matter and in connection with proceedings related to the matter, use reputable advisers and lawyers chosen by the Indemnifying Party. The Indemnified Party shall not settle any such suit, action or proceeding without the prior written consent of the Indemnifying Party.

**19.4** The Indemnifying Party agrees and acknowledges that it shall fully indemnify the Indemnified Party for all amounts paid and/or costs incurred by the Indemnified Party in accordance with this Clause 19.

**19.5** Unless otherwise specified in the Contract, neither Party shall be liable to the other Party for any kind of indirect, punitive or

	<p>consequential loss or damage or for any economic loss, loss of profit, loss of revenue, loss of use or business interruption which may be suffered by the other Party in connection with this Contract, except for losses caused by the fraud or wilful misconduct of the Party.</p> <p><b>19.6</b> The Party entitled to the benefit of an indemnity under this Clause 19 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.</p> <p><b>19.7</b> The obligation to indemnify stipulated in this Clause 19 is:</p> <ul style="list-style-type: none"> <li>(i) continuing, separate and independent obligation of the Parties from their other obligations and shall survive the termination of this Contract; and</li> <li>(ii) shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied to reduce claims made against the affected Party.</li> </ul> <p><b>19.8</b> For the purpose of this Clause 19: (i) “claim” means any claim, liability, proceeding, cause of action, action, suit, demand at law or in equity, in each case brought against either Party (including by any third party); and (ii) “loss” means all losses (excluding consequential losses, indirect losses and loss of profit), damages, liabilities, fines, interest, awards, penalties, costs (including, reasonable legal costs, lawyers' and arbitrators' fees), charges and expenses of whatever nature or howsoever occasioned including any of the above suffered by the non-defaulting Party or a third party as a result of any act or omission in the course of or in connection with the performance, non-performance or deficiency in the performance of obligations under this Contract.</p>
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**C. RIGHTS AND OBLIGATIONS OF THE AGENCY**

<b>20. General</b>	
<b>a. Standard of Performance</b>	<b>20.1</b> The Agency shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with Good Industry Practices and this Contract, and shall observe sound management practices, and employ appropriate technology and

	<p>safe and effective equipment, machinery, materials and methods. The Agency shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client’s legitimate interests in any dealings with third parties.</p> <p><b>20.2</b> The Agency shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.</p> <p><b>20.3</b> The Agency shall not subcontract any part of the Services.</p>
<p><b>b. Law Applicable to Services</b></p>	<p><b>20.4</b> The Agency shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that all of its Personnel comply with the Applicable Law.</p> <p><b>20.5</b> Throughout the duration of the Contract, the Agency shall comply with the prohibitions in India in relation to the import of goods and services when as a matter of law or official regulation, there is a prohibition on entering into or maintaining commercial relations with the country from where the import is proposed to be made.</p> <p><b>20.6</b> The Agency shall obtain, maintain and comply with the terms of all applicable permits, including work permits for its Personnel, required to perform the Services, at its own risk and cost.</p>
<p><b>21. Conflict of Interest</b></p>	<p><b>21.1</b> The Agency shall hold the Client’s interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.</p>
<p><b>a. Agency Not to Benefit from Commissions, Discounts, etc.</b></p>	<p><b>21.1.1</b> The Remuneration of the Agency pursuant to Clauses 42 through 47 shall constitute the Agency’s only payment in connection with this Contract or the Services and the 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 Agency shall use its best efforts to ensure that the Personnel and agents of either of them, similarly shall not receive any such additional payment.</p> <p><b>21.1.2</b> Furthermore, if the Agency, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Agency shall comply with the applicable procurement guidelines of the GoO, and shall at all times exercise such</p>

	responsibility in the best interest of the Client. Any discounts or commissions obtained by the Agency in the exercise of such procurement shall be to the account of the Client.
<b>b. Agency and Affiliates Not to Engage in Certain Activities</b>	<b>21.1.3</b> The Agency agrees that, during the term of this Contract and after its termination, the Agency and its Affiliates, shall be disqualified from providing goods, works, or non-consulting services resulting from or directly related to the Services, for the implementation of the High Performance Programme, unless otherwise indicated in the SCC.
<b>c. Prohibition of Conflicting Activities</b>	<b>21.1.4</b> The Agency shall not engage, and shall cause its Personnel to not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
<b>d. Strict Duty to Disclose Conflicting Activities</b>	<b>21.1.5</b> The Agency has an obligation and shall ensure that its Personnel shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Agency or the termination of its Contract.
<b>22. Confidentiality</b>	<p><b>22.1</b> Except with the prior written consent of the Client, the Agency and the Personnel shall not at any time communicate to any person or entity any proprietary or confidential information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Client to the Personnel; any information provided by or relating to the Client, its technology, technical processes, business affairs or finances or any other information acquired in the course of the Services, nor shall the Agency and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services subject to:</p> <ul style="list-style-type: none"> <li>(a) all Confidential Information shall be identified as confidential at the time of disclosure;</li> <li>(b) each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, applicable to either party, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or</li> </ul>

	<p>indirectly, to certain countries, or for certain end uses or end users.</p> <p>Notwithstanding the aforesaid, the Agency and the Personnel may disclose such information to the extent that such information:</p> <p>(i) was in the public domain prior to its delivery to the Agency/Personnel or becomes a part of the public domain from a source other than the Agency/Personnel;</p> <p>(ii) was obtained from a third party with no known duty to maintain its confidentiality;</p> <p>(iii) is required to be disclosed under Applicable Laws or judicial/administrative/arbitral process or by any government instrumentality, provided that such disclosure is made: (a) after giving a prior written notice to the Client; and (b) using reasonable efforts to ensure that such disclosure is accorded confidential treatment;</p> <p>(iv) is provided to the professional advisers, agents, auditors or representatives of the Agency on a needs basis as is reasonable under the circumstances, provided that the Agency shall require such professional advisers, agents, auditors or representatives to undertake in writing to keep the information provided confidential, and further provided that the Agency shall use best efforts to ensure compliance with such undertaking.</p> <p>(v) is independently developed by the recipient or is already in the possession of the recipient;</p>
<p><b>23. Liability of the Agency</b></p>	<p><b>23.1</b> Subject to the exclusions set out in the SCC, the overall liability of the Agency and the Client under this Contract shall not exceed the amounts specified in the SCC.</p> <p><b>23.2</b> The Parties agree and acknowledge that the provisions of this Clause 23 read with the SCC in respect of limitation and exclusion of liabilities is an agreed allocation of risk between the Parties, the sufficiency of which the Parties hereby agree and acknowledge.</p>
<p><b>24. Insurance to be Taken out by the Agency</b></p>	<p><b>24.1</b> The Agency: (i) shall take out and maintain, at its own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client within fifteen (15) days of the request, showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Agency shall ensure that such insurance is in place prior to commencing the Services as stated in Clause 11.</p>

<p><b>25. Accounting, Inspection and Auditing</b></p>	<p><b>25.1</b> The Agency shall keep accurate and systematic accounts and records in respect of the Services, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs and the basis thereof.</p> <p><b>25.2</b> The Agency shall permit, the Client and/or persons appointed by the Client to inspect all accounts and records relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Client, if requested by the Client. Any act intended to materially impede the exercise of the Client’s inspection and audit rights provided for under this Clause 25.2 shall constitute a material breach of the Contract, which would give the Client the right to terminate the Contract.</p>
<p><b>26. Reporting Obligations</b></p>	<p><b>26.1</b> The Agency shall submit to the Client the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix (the “Reports”).</p>
<p><b>27. Proprietary Rights of the Client in Reports and Records</b></p>	<p><b>27.1</b> The Client shall own all Intellectual Property Rights in the Deliverables, Reports, programmes, data, information such as plans, specifications, technical information, solutions, models, databases, software, supporting records, or other documents and material compiled or prepared by the Agency for the Client in the course of the Services. The Agency shall, upon termination or expiration of this Contract, deliver all such Deliverables, Reports, data, information and documents to the Client, together with a detailed inventory thereof. The Agency may retain a copy of such Deliverables, Reports, documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.</p> <p><b>27.2</b> Subject to Clause 27.1 above, all Intellectual Property Rights in the documents, know-how, data and programme details used in connection with preparing the Deliverables and the Services, which are proprietary to the Agency or its third party licensors shall belong to the Agency, or, as the case may be, its third party licensors and the Agency hereby grants to the Client a royalty-free, irrevocable, non-exclusive licence to use, modify and reproduce the Deliverables and any Intellectual Property Rights contained in the Services for any purpose whatsoever connected with the High Performance Programme; and the licence hereby granted shall carry the right to grant sub-licences and shall be transferable to third parties only in</p>

	<p>relation to the High Performance Programme. The cost of such license shall be deemed to be included in the Total Value of Contract.</p> <p><b>27.3</b> The Agency shall not use the technology, technical information, software, designs or know-how licensed for the purposes of providing the Services for any purposes unrelated to the Contract, without the prior written approval of the Client.</p> <p>The Agency shall indemnify and hold harmless the Client from and against all claims and losses that the Client may suffer or incur on account of infringement (or alleged infringement) of any third party's Intellectual Property Rights in performance of the Services.</p>
<p><b>28. Equipment, Vehicles and Materials</b></p>	<p><b>28.1</b> Equipment, vehicles and materials, if any made available to the Agency by the Client, or purchased by the 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 Agency shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions.</p> <p><b>28.2</b> Any equipment or materials owned or purchased by the Agency or its Personnel at its own cost for use either in the performance of the Services or personal use shall remain the property of the Agency or Personnel concerned, as the case may be.</p>
<p><b>29. Timelines for Completion and Liquidated Damages</b></p>	<p><b>29.1</b> The Agency shall perform the Services strictly in accordance with the Services Schedule and complete each Deliverable on or before the relevant Deliverable Due Date.</p> <p><b>29.2</b> If the Agency fails to comply with the Services Schedule for reasons attributable to the Agency, then, without prejudice to the right of the Client to recover delay liquidated damages, the Client may, in its sole discretion, revise the Services Schedule to mitigate the effects of such delay and the Agency shall comply with the revised Services Schedule.</p> <p><b>29.3</b> Subject to Clause 29.4 below, the Agency shall be entitled to a day-for-day extension of the relevant Deliverable Due Date if and only to the extent that performance of Services is or will be delayed due to any of the following reasons (each such event, a <b>Delay Event</b>):</p>

- (i) any delay, impediment or prevention caused by or attributable to the Client, or the Client's personnel, including any delay or impediment in accessing the Project Office;
- (ii) an order issued by the Client to suspend the Services, unless such suspension is attributable to an act or omission of the Agency or the Personnel;
- (iii) any delay in the approval of any Deliverable in accordance with Clause 41;
- (iv) occurrence of a Force Majeure event, provided that the requirements of Clause 16 above have been complied with;
- (v) Change in Law;
- (vi) delay by any Authority in renewing any applicable permit, despite the Agency having applied for such renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
- (vii) any Variation;
- (viii) any order of a court restraining the performance of the Contract in full or in any part thereof, for reasons not attributable to the Agency;
- (ix) delay caused in complying with any instructions of the Client or the Client's representative, which instructions are not attributable to any default or failure of the Agency; or
- (x) delay in providing any services, facilities or property required to be provided by the Client in accordance with Appendix A.

**29.4** The Agency shall promptly provide the Client with: (i) a notice upon becoming aware of any Delay Event listed in Clause 29.3 above; and (ii) a notice of its claim for extension of any Deliverable Due Date, with such notice specifying the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Agency, the mitigation measures being taken or proposed to be taken by the Agency, and any other information relevant to claim such extension.

**29.5** The Agency shall ensure that the particulars provided to the Client under Clause 29.4 above are kept up to date and shall continuously submit such further particulars as may be necessary or which may be requested by the Client, from time to time.

**29.6** Any extension in accordance with this Clause 29 shall be implemented by way of a Variation Order in accordance with Clause 14.

	<p><b>29.7</b> If there are two or more concurrent causes of delay and only one of those concurrent causes is a cause of delay which would entitle the Agency to an extension of time in accordance with this Clause 29, then the Agency shall not be entitled to an extension of time for the period of such concurrency.</p> <p><b>29.8</b> Subject to Clause 29.3 above, if the Agency fails to complete any Deliverable in a manner satisfactory to the Client on or before the relevant Deliverable Due Date, the Agency shall pay to the Client delay liquidated damages at the rate set out in the SCC for each week of delay until completion of the Deliverable. Provided that the aggregate delay liquidated damages payable by the Agency to the Client under the Contract shall not exceed the maximum amount set out in the SCC.</p>
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**D. PERSONNEL**

<p><b>30. Description of Key Experts (Core Team)</b></p>	<p><b>30.1</b> The title, agreed job description, minimum qualification and time-input estimates of each Key Expert to carry out the Services are described in Appendix B.</p> <p><b>30.2</b> If required to comply with the provisions of Clause 20.a, adjustments with respect to the estimated time-input of Key Experts set forth in Appendix B may be made by the Agency with prior approval of the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any Key Expert by more than 10% or one week, whichever is longer; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the maximum Remuneration set forth in Clause 42.1.</p> <p><b>30.3</b> If any additional work is required by the Client beyond the scope of the Services specified in Appendix A pursuant to a Variation Order the estimated time-input for the Key Experts and maximum Remuneration payable by the Client may be increased by agreement in writing between the Client and the Agency in accordance with Clause 15. .</p>
<p><b>31. Replacement of Key Experts</b></p>	<p><b>31.1</b> A request for substitution of a Key Expert during the term of the Contract may be considered based on the Agency’s written request and only in circumstances outside the reasonable control of the</p>

	<p>Agency, including but not limited to death or medical incapacity of any Key Expert. In such case, the Agency shall submit a written request for replacement of the Key Expert with a person of equivalent or better qualifications and experience, and at the same man month rate as specified in Appendix C for such Key Expert being replaced. The request for replacement of a Key Expert should state in sufficient detail the reasons for the proposed replacement and should be accompanied by the CV of the substitute Key Expert with details of his experience and qualification and in the format set out in Form TECH-4 of the RFP. Any such submission of replacement by the Agency shall have to be submitted to the client, at least 30 days in advance.</p> <p><b>31.2</b> The client may make a request in writing for the substitution of a key expert/ programme support team member with an equal or better qualification and experience. On receiving request, the Agency shall provide substitution within 30 days of receipt of request on the same man-month rate for the respective key expert/ programme support team member as agreed in the Appendix-C.<del>deleted</del></p>
<p><b>32. Approval of Additional Resources</b></p>	<p><b>32.1</b> If during the term of the Contract, Additional Resources are required to carry out the Services, then one party shall submit a written request to the other party, stating in sufficient detail the reasons for requiring Additional Resources. The Agency shall, on receiving/submitted request, submit detailed CVs of the Additional Resources in the format set out in Form TECH-4 of the RFP for the approval of the client. The remuneration payable to such new Additional Resources shall be mutually discussed between the Parties at the time of appointment of the relevant Additional Resources and payments made to the Additional Resources shall be made in addition to the contract amount.</p>
<p><b>33. Removal of Personnel</b></p>	<p><b>33.1</b> If the Client finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that Agency's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices (as specified in Attachment 1 to the GCC) while performing the Services, the Agency shall, at the Client's written request, provide a replacement for such Personnel.</p> <p><b>33.2</b> In the event that any of Personnel is found by the Client to be incompetent or incapable in discharging assigned duties, the Client,</p>

	<p>specifying the grounds therefore, may request the Agency to provide a replacement.</p> <p><b>33.3</b> The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by the Client.</p>
<p><b>34. Replacement/ Addition/ Removal of Personnel – Impact on Payments</b></p>	<p>34.1 Except as the Client may otherwise agree: (i) the 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 or removed.</p> <p>34.2 The Agency will access and deploy extra number of personnel after obtaining approval of the client to complete a deliverable within specified timeline, if required.</p>
<p><b>35. Working Hours, Overtime, Leave, etc.</b></p>	<p><b>35.1</b> Working hours and holidays for Personnel are set forth in Appendix B.</p> <p><b>35.2</b> The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix B.</p> <p><b>35.3</b> Any taking of leave by Key Experts shall be subject to the prior approval by the Agency who shall ensure that absence for leave purposes will not delay the progress and or impact the overall performance of the Services.</p>

**E. RIGHTS AND OBLIGATIONS OF THE CLIENT**

<p><b>36. Assistance and Exemptions</b></p>	<p><b>36.1</b> Unless otherwise specified in the SCC, the Client shall use its best efforts to:</p> <p>(i) Assist the Agency with obtaining any applicable permits, including work permits and such other documents as shall be necessary to enable the Agency to perform the Services.</p> <p>(ii) Assist the Agency with promptly obtaining, for the Personnel who are not residents of India and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India while carrying out the Services under the Contract.</p>
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	<p>(iii) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel who are not residents of India and their eligible dependents. Provided that, clearance through customs of any property required for the Services will remain the primary obligation of the Agency and the Agency shall not be entitled to any extension of time on account of any delay in obtaining any customs clearance.</p> <p>(iv) Issue to officials, agents and representatives of the government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.</p> <p>(v) To the extent permissible under Applicable Laws, assist the Agency and the Personnel with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity under Applicable Laws.</p> <p>(vi) Provide to the Agency any such other assistance as may be specified in the SCC.</p>
<p><b>37. Access to Project Office</b></p>	<p><b>37.1</b> The Client warrants that on and from the Effective Date and until the expiry or early termination of the Contract, the Agency shall have unimpeded and unhindered access to the Project Office for the performance of the Services, at no additional cost to the Agency. The Agency will be responsible for any damage to the Project Office or any property thereon resulting from such access and will indemnify the Client in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Client.</p> <p><b>37.2</b> The Client shall provide basic utilities (including water and electricity) to the Agency at the Project Office, at no additional cost to the Agency.</p>
<p><b>38. Services, Facilities and Property of the Client</b></p>	<p><b>38.1</b> The Client shall make available to the Agency and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.</p> <p><b>38.2</b> In case that such services, facilities and property shall not be made available to the Agency as and when specified in Appendix A, the Parties shall agree on (i) any time extension that it may be</p>

	<p>appropriate to grant to the Agency for the performance of the Services, (ii) the manner in which the Agency shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Agency as a result thereof. Any adjustment to the Services Schedule and/or the Remuneration pursuant to this Clause 38 shall be by way of a Variation in accordance with Clause 14.</p>
<p><b>39. Counterpart Personnel</b></p>	<p><b>39.1</b> The Client shall make available to the Agency free of charge such professional and support personnel, to be nominated by the Client with the Agency’s advice, as specified in Appendix A.</p> <p><b>39.2</b> If counterpart personnel are not provided by the Client to the Agency as and when specified in Appendix A, the Client and the Agency shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Agency as a result thereof. Any adjustment to the Remuneration pursuant to this Clause 39 shall be by way of a Variation in accordance with Clause 14.</p> <p><b>39.3</b> Professional and support counterpart personnel, excluding Client’s liaison personnel, shall work under the exclusive direction of the Agency, who will be solely responsible for any and all acts and omissions of such personnel. If any such personnel fails to perform adequately any work assigned to such member by the Agency that is consistent with the position occupied by such member, the Agency may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.</p>
<p><b>40. Payment Obligation</b></p>	<p><b>40.1</b> In consideration of the Services performed by the Agency under this Contract, the Client shall make payments of the Remuneration to the Agency in such manner as is provided in Clause 43 read with the SCC.</p>
<p><b>41. Review and Approval of Deliverables and Completion Certificate</b></p>	<p><b>41.1</b> The Client shall review and provide comments on all Deliverables and other documents submitted by the Agency, including any subsequent amendments to these documents, in a timely manner so as to enable the Agency to perform the Services in accordance with the Services Schedule and to comply with its obligations within the time lines prescribed under the Contract.</p>

**41.2** Unless otherwise specified in the Terms of Reference, the Agency shall submit copies of each draft Deliverable to the Client for its review and approval in a manner such that the final approved Deliverable is submitted to the Client within the time lines specified in the Services Schedule.

**41.3** The Client shall review and provide comments, if any, on each draft Deliverable submitted by the Agency or notify the Agency of its approval of the draft Deliverable within fifteen (15) days from the date of receipt of the draft Deliverable. The Client shall have the right to require the Agency to amend or modify the draft Deliverable if the Client identifies any deficiencies or shortcomings in the draft Deliverable. If the Agency receives any comments, suggestions or instructions to modify the draft Deliverable from Client, then the Agency shall modify the draft Deliverable to correct any shortcomings or deficiencies identified by Client and submit the revised Deliverable to the Client for its approval. This process shall continue until the draft Deliverable is approved by the Client.

**41.4** Upon approval of a Deliverable by the Client in accordance with Clause 41.3, the Agency shall issue a Deliverable Acceptance Certificate to the Client for the approved Deliverable, and the Client shall duly endorse the Deliverable Acceptance Certificate to signify its acceptance of the relevant Deliverable. The Client will endorse the Deliverable Acceptance Certificate within twenty (20) working days of receipt of the Deliverable Acceptance Certificate. The performance of the Services (covered by the relevant Deliverable) shall be complete upon the endorsement of the Deliverable Acceptance Certificate for such Services by the Client.

**41.5** Notwithstanding any review or approval of a Deliverable by the Client or issuance of a Deliverable Acceptance Certificate by the Client, the Agency shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the final Deliverable. Subject to Clause 29.3, the Agency shall not be entitled to any extension of a Deliverable Due Date or compensation for complying with the requirements of this Clause 41.

**41.6** Notwithstanding any review or approval of a Deliverable by the Client or issuance of a Deliverable Acceptance Certificate by the Client, at the time of implementation of the High Performance Programme, if the Client discovers any inaccuracies, discrepancies or

	<p>shortcomings in a Deliverable, then the Client shall have the right to require the Agency to rectify any such discrepancy, inaccuracy or shortcoming in the relevant Deliverable, without any additional cost to the Client.</p> <p><b>41.7</b> Within ninety (90) days of the expiry of the post implementation support period, the Agency shall facilitate the smooth transfer of the overall monitoring, supervision and control of the implementation of the High Performance Programme to the Client or any other agency nominated by it.</p> <p>Within twenty (20) working days of the expiry of the ninety (90) day transition period and the successful handing over of the monitoring, supervision and control of the High Performance Programmes as certified by the Client, the Client shall issue the Completion Certificate to the Agency. The issue of the Completion Certificate shall certify that the Services have been completed in accordance with the Contract.</p> <p>Upon issuance of the Completion Certificate by the Client, the Agency shall be entitled to the last milestone payment as per the Payment Schedule.</p>
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**F. PAYMENTS TO THE AGENCY**

<p><b>42. Total Value of Contract</b></p>	<p><b>42.1</b> In consideration of the Services, the Client shall pay to the Agency the Remuneration in accordance with the Payment Schedule.</p> <p><b>42.2</b> deleted</p> <p><b>42.3</b> The Agency is deemed to have satisfied itself of the correctness and sufficiency of the Remuneration and except as otherwise provided in the Contract, the Remuneration payable under this Contract shall not exceed the ceilings in INR specified in the SCC. Any payments in excess of the ceilings for any additional scope of work or otherwise shall only be by way of a Variation in accordance with Clause 14.</p>
<p><b>43. Remuneration and Reimbursable Expenses</b></p>	<p><b>43.1</b> The Client shall pay to the Agency on quarterly basis for the billable amount as per the contract.</p> <p><b>43.2</b> All payments shall be at the rates set forth in Appendix C.</p>

	<p><b>43.3</b> The man month rates considered for the Remuneration will not be adjusted for the term of the Contract.</p> <p>43.4 The Remuneration shall cover: (i) such salaries and allowances as the Agency shall have agreed to pay to the Personnel as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Personnel list in Appendix B, (iii) the Agency’s profit, and (iv) any other items as specified in the Clause 43.2 of the SCC.</p>
<p><b>44. Taxes and Duties</b></p>	<p><b>44.1</b> The Agency and Personnel are responsible for meeting any and all Tax liabilities arising out of the Contract in India or elsewhere, unless it is stated otherwise in the SCC.</p> <p><b>44.2</b> Goods and Service tax and related cess itemized and finalized during Contract negotiations and specified in the SCC shall be reimbursed to the Agency.</p> <p><b>44.3</b> All payments made by the Client to the Contractor shall be subject to deductions and withholding of applicable Taxes in accordance with Applicable Laws.</p>
<p><b>45. Currency of Payment</b></p>	<p><b>45.1</b> Any payment under this Contract shall be made in Indian Rupees.</p>
<p><b>46. Mode of Billing and Payment</b></p>	<p><b>46.1</b> Billings and payments in respect of the Services shall be made in accordance with the Payment Schedule.</p> <p><b>46.2</b> <i>Quarterly invoices.</i> For the payments specified in Clauses 43.1(i), 43.1(iii) and 43.1(iv) above, as soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Agency shall submit to the Client, in duplicate, itemized invoices stating: (i) the Remuneration payable for the Programme Support Staff and Key Experts who have provided Services in the relevant month based on the man month rates specified in Appendix C, including all applicable Taxes. Each quarterly invoice shall be accompanied by the time sheets of the Programme Support Staff and Key Experts who have provided Services in the month to which the invoice relates and other supporting documents, as may be specified in the SCC. Each quarterly invoice will include a description of the Services</p>

	<p>provided, the name and agreed man month rate of the Programme Support Staff and the Key Expert providing the Services in the relevant month.</p> <p>The Client shall pay the Agency’s quarterly invoices within thirty (30) days after the receipt by the Client of such quarterly invoices with supporting documents. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Agency, the Client may add or subtract the difference from any subsequent payments to the Agency.</p> <p><b>46.3</b> deleted</p> <p><b>46.4</b> Notwithstanding anything to the contrary in the Contract, the Client may withhold from any payment due to the Agency any amounts that the Client deems reasonably necessary or appropriate because of any one or more of the following reasons:</p> <ul style="list-style-type: none"> <li>(i) any overpayments made by the Client in a previous payment;</li> <li>(ii) any payment required to be withheld under any Applicable Law;</li> <li>(iii) the invoice is not accompanied by all necessary supporting documents;</li> <li>(iv) a dispute exists as to the accuracy or completeness of any invoice; or</li> <li>(v) any amounts due to the Client from the Agency under the Contract.</li> </ul> <p><b>46.5</b> All payments under this Contract shall be made by wire transfer to the accounts of the Agency specified in the SCC.</p> <p><b>46.6</b> The payments made to the Agency pursuant to this Contract do not constitute acceptance of the Services nor relieve the Agency of any obligations hereunder.</p>
<b>47. deleted</b>	<b>deleted</b>

**G. FAIRNESS AND GOOD FAITH**

<b>48. Good Faith</b>	<p><b>48.</b> 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.</p>
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## H. MISCELLANEOUS

<b>49. Amicable Settlement</b>	<p><b>49.1</b> The Parties shall seek to resolve any dispute amicably by mutual consultation.</p> <p><b>49.2</b> If either Party objects to any action or inaction of the other Party, the objecting Party may send a written notice of dispute to the other Party providing in detail the basis of the dispute. The Party receiving the notice of dispute will consider it and respond in writing within fourteen (14) days after receipt. If such Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause 50 shall apply.</p>
<b>50. Dispute Resolution</b>	<p><b>50.1</b> Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to arbitration in accordance with the provisions specified in the SCC.</p>
<b>51. Performance Security</b>	<p><b>51.1</b> The Agency shall furnish to the Client the Performance Security in the format set out in Appendix D, from a scheduled commercial bank in India, to secure the performance of its obligations under the Contract. The Performance Security shall be for an amount specified in the SCC.</p>
<b>52. Assignment</b>	<p><b>52.1</b> Except as expressly permitted in the Contract, the Agency shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under the Contract, without the prior written consent of the Client.</p> <p><b>52.2</b> The Client shall be entitled to assign, transfer or novate its rights and obligations under the Contract or any part thereof to any third party or to an affiliate, without the requirement of any further consent from the Agency, provided that where such assignment is made to a third party, the Client shall use its best efforts to ensure that the third party to whom the benefits and obligations under the Contract or any part thereof has been assigned, has the necessary financial capability to comply with the obligations under the Contract.</p>
<b>53. Representation and Warranties</b>	<p><b>53.1</b> <u>Client's Representations and Warranties</u> The Client makes the following representations and warranties to the Agency:</p>

- (i) it has power to enter into this Contract and comply with its obligations under it;
- (ii) this Contract and the transactions under it do not contravene its constituent documents or any Applicable Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- (iii) it has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it; and
- (iv) its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract.

**53.2 Agency's Representations and Warranties**

The Agency makes the following representations and warranties to the Client:

- (i) it has been incorporated/registered as a company/firm under the laws of [*Insert country of incorporation/registration*] and is validly existing under those laws;
- (ii) it has power to enter into this Contract and comply with its obligations under it;
- (iii) this Contract and the transactions under it do not contravene its constituent documents or any applicable law of its jurisdiction or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- (iv) it has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it;
- (v) its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;
- (vi) it is not in breach of any Applicable Law in a way which may result in a material adverse effect on its business or financial condition;
- (vii) there is no pending or threatened proceeding affecting the Agency or any of its assets that would affect the

	<p>validity or enforceability of this Contract, the ability of the Agency to fulfil its commitments under this Contract, or that could have a material adverse effect on the business or financial condition of the Agency;</p> <p>(viii) it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under the Contract;</p> <p>(ix) it has the necessary skill and experience to perform the Services in accordance with this Contract;</p> <p>(x) it owns or has the right to use and license to the Client all Intellectual Property Rights in relation to the Services and the Deliverables to be provided under this Contract;</p> <p>(xi) the performance of the Services shall not infringe the Intellectual Property Rights of any third party and that the Agency has not received notice of any claim, and is not aware of any facts or circumstances that may give rise to such claim;</p> <p>(xii) it will perform its obligations under the Contract and conduct its business with a high level of integrity which is reasonably expected of an international contractor of similar size and profile, conducting a similar line of business, and will not engage in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices; and</p> <p>(xiii) without prejudice to any express provision contained in the Contract, the Agency acknowledges that prior to the execution of the Contract, the Agency has after a complete and careful examination made an independent evaluation of the Terms of Reference and any information provided by or on behalf of the Client and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Agency in the course of performance of its obligations hereunder.</p>
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## II. General Conditions

### Attachment 1: Corrupt and Fraudulent Practices

- 1.1 The Agency and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the selection process. Notwithstanding anything to the contrary contained in the RFP, the Client shall reject a Proposal without being liable in any manner whatsoever to the Agency, if it determines that the Agency has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the selection process. In such an event, the Client shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, *inter alia*, time, cost and effort of the Client, in regard to the RFP, including consideration and evaluation of such Agency’s Proposal.
- 1.2 Without prejudice to the rights of the Client under the RFP and the rights and remedies which the Client may have under the LOA or the Contract, if an Agency is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the selection process, or after the issue of the LOA or the execution of the Contract, such Applicant or Agency shall not be eligible to participate in any tender or RFP issued by the Client during a period of 2 (two) years from the date such Agency is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 1.3 For the purposes of this clause, the following terms shall have the meaning hereinafter respectively assigned to them:
  - (i) “corrupt practice” means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the selection process) or the LOA or has dealt with matters concerning the Contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the selection process; or (b) save as provided herein, engaging in any manner whatsoever, whether during the selection process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Services or the LOA or the

Contract, who at any time has been or is a legal, financial or technical Agency/ adviser of the Client in relation to any matter concerning the Contract;

- (ii) “fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the selection process;
- (iii) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the selection process;
- (iv) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>1</sup>;
- (v) “undesirable practice” means (a) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or (b) having a Conflict of Interest; and
- (vi) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Agency’s with the objective of restricting or manipulating a full and fair competition in the selection process.

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<sup>1</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

**III. Special Conditions of Contract**

<b>Number of GCC Clause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
<b>3.1</b>	The Contract shall be construed in accordance with the law of India.
<b>4.1</b>	The language is: English
<b>6.1 and 6.2</b>	<p>The addresses are:</p> <p>Client : Department of Sports and Youth Services</p> <p>Attention :</p> <p>Facsimile :</p> <p>E-mail (where permitted):</p> <p>Agency:</p> <p>Attention :</p> <p>Facsimile :</p> <p>E-mail (where permitted) :</p>
<b>8.1</b>	<p>The Authorized Representatives are:</p> <p>For the Client:</p> <p>For the Agency:</p>
<b>11.1</b>	<p><b>Commencement of Services:</b>  <b>The number of days shall be 30 (Thirty) Days from issuance of LOA</b></p> <p>Confirmation of Key Experts' availability to perform the Services shall be submitted by the Agency to the Client in the form of a written statement signed by each Key Expert.</p>

<b>12.1</b>	<b>Expiration of Contract:</b>  The term of the Contract shall be three (3) years, which may be extended on mutually agreed terms and conditions, up to the expiry of the sixth (6 <sup>th</sup> ) year from the Effective Date, subject to satisfactory performance of the Services by the Agency. If the term of the Contract is extended pursuant to the Clause 13 of the GCC, then the Agency shall also extend the validity of the Performance Security for an equivalent period.
<b>21.</b>	The Client reserves the right to determine on a case-by-case basis whether the Agency should be disqualified from providing Services described in Clause 21.1.3.

<p><b>23.1</b></p>	<p>(i) The maximum overall liability of the Agency under this Contract shall not exceed the Total Value of Contract.</p> <p>(ii) Provided that the above limitation of liability shall not apply and the Agency’s liability shall be unlimited in the following instances:          (a) for damage to third parties caused by the Agency, any Personnel, person or firm acting on behalf of the Agency in carrying out the Services;          (b) if any limitation or exclusion from liability is prohibited by the Applicable Law.          (c) for breach of Applicable Law and any applicable permits;          (d) for breach of any third party Intellectual Property Rights;          (e) for fraud and wilful misconduct;          (f) for any gross negligence;          (g) for damage to or loss of third party property;          (h) for misrepresentation by the Agency; and          (i) bodily injury or loss of life.</p> <p>(iii) Except in the case of gross negligence or willful misconduct on the part of the Agency, the Personnel or any person or a firm acting on behalf of the Agency in carrying out the Services, the Agency shall not be liable to the Client for any indirect or consequential loss or damage.</p> <p>(iv) The maximum overall liability of the Client under this Contract shall not exceed the Total Value of Contract.</p>
<p><b>24</b></p>	<p>The Agency shall take out a Professional Indemnity Insurance for value equal to the total value of contract.</p>
<p><b>42.2</b></p>	<p><b>The ceiling in local currency on the Remuneration is:</b></p>
<p><b>43.1</b></p>	<p><b>Payments shall be made according to the following schedule (Payment Schedule)<sup>2</sup>:</b>          (a) To be paid quarterly throughout the term of the contract. The Remuneration shall be paid as per actual man months deployed by the Agency.</p>

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<sup>2</sup> Based on the discussions with the Consultant, the manner in which each milestone payment will be allocated between different Modules will be set out here.

	<p>(b) Only Goods and Service Tax chargeable in respect of this Contract for the Services provided by the Agency shall be reimbursed by the Client to the Agency.</p> <p>(c) The maximum amount of such taxes on remuneration amount is Rs. _____/- (Rupees _____ Only) as per prevailing service tax rates i.e. 18%. This may be modified in accordance with change in law applicable to taxes.</p>
<p><b>44.1 and 44.2</b></p>	<p><b><u>For domestic Agency / personnel and foreign Agency/personnel who are permanent residents in India</u></b></p> <p>(a) Other than any indirect local Taxes chargeable in respect of this Contract for the Services provided by the Agency, which shall be reimbursed by the Client to the Agency, the Agency and the Personnel shall pay the Taxes levied under Applicable Laws during the term of the Contract and the Client shall perform such duties in regard to the deduction of such Taxes as may be lawfully imposed.</p> <p>The Client warrants that the Client shall reimburse the Agency for any indirect Taxes imposed under Applicable Laws , on the Agency in respect of:</p> <p>(i) any payments whatsoever made to the Agency and the Personnel, in connection with the carrying out of the Services;</p> <p>(ii) any equipment, materials and supplies brought into India by the Agency for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</p> <p>(iii) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;</p> <p>(iv) any property brought into India by the Agency or the Personnel (other than nationals or permanent residents of the India), or the eligible dependents of such Personnel for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client’s country, provided that:</p> <p>(i) the Agency and its Personnel shall follow the usual customs procedures of India in importing property into India; and</p> <p>(ii) if the Agency or Personnel do not withdraw but dispose of any property in India upon which customs duties and Taxes have been exempted, the Agency or Personnel, as the case may be, (a) shall bear such customs duties and Taxes in conformity with Applicable Laws; or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into India.</p>
<p><b>46.2</b></p>	<p>Each quarterly invoice will be accompanied by the following supporting documents in accordance with the Terms of Reference set out in the RFP:</p>

	<ul style="list-style-type: none"> <li>(i) Time sheet of the relevant Personnel; and</li> <li>(ii) Progress reports             <ul style="list-style-type: none"> <li>a. Planned Schedule of tasks as initial planning report</li> <li>b. Activities undertaken during the quarter</li> <li>c. Achievement against planned activities</li> <li>d. Details of experts visit and activities undertaken</li> <li>e. Planned activities and tasks for the next quarter</li> </ul> </li> </ul>
<p><b>46.5</b></p>	<p><b>The accounts are:</b>  for local currency INR:  Account Name: -  Bank Name: -  Branch Address: -  Bank Account No: -  IFSC Code No: -</p>
<p><b>50.1</b></p>	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:             <ul style="list-style-type: none"> <li>(i) the Client and the Agency shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>Registrar, The Indian Council of Arbitration, New Delhi.</i></li> <li>(ii) If, in a dispute subject to paragraph (i) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>Registrar, The Indian Council of Arbitration, New Delhi.</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</li> </ul> </li> <li>2. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</li> </ol>

	<p>3. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(i) through 1(ii) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Agency’s home country. For the purposes of this Clause, “home country” means any of:</p> <ul style="list-style-type: none"> <li>(i) the country of incorporation of the Agency; or</li> <li>(ii) the country in which the Agency’s principal place of business is located; or</li> <li>(iii) the country of nationality of a majority of the Agency’s shareholders.</li> </ul> <p>However, the above restriction will not apply if the Agency’s home country is India.</p>
	<p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> <li>(i) the seat of the arbitration shall be India and the arbitration proceedings shall, unless otherwise agreed by the Parties, be held in Bhubaneswar;</li> <li>(ii) the English language shall be the official language for all purposes;</li> <li>(iii) the arbitration shall be governed by the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time;</li> <li>(iv) responsibility of payment for all costs of arbitration shall be as per the arbitration award; and</li> <li>(v) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</li> </ul>
<p><b>51</b></p>	<p>Performance Security</p> <ul style="list-style-type: none"> <li>(i) The Performance Security shall be for 5% of the value of Contract payable for that (one) year and the Agency shall submit the performance guarantee for every subsequent year as per the value of contract payable in the subsequent year.</li> </ul>

	<ul style="list-style-type: none"><li>(ii) The Agency would be required to maintain the performance guarantee for the period of the contract.</li><li>(iii) The Performance Security shall be issued by a Scheduled Commercial bank in India and acceptable to the Client. The Performance Security shall be valid until a date 60 days beyond the issuance of the Completion Certificate.</li><li>(iv) The Client shall not make a claim under the Performance Security, except for amounts to which the Client is entitled under the Contract in the event of:<ul style="list-style-type: none"><li>(a) failure by the Agency to extend the validity of the Performance Security on extension of the validity of the contract, in which event the Client may claim the full amount of the Performance Security,</li><li>(b) failure by the Agency to pay the Client an amount due, as either agreed or determined pursuant to the dispute resolution process specified in the Contract, within forty two (42) days after determination of the dispute;</li><li>(c) failure by the Agency to pay any damages due to the Client under the Contract;</li><li>(d) failure by the Agency to pay any amounts that are due to the Client on termination of the Contract;</li><li>(e) the Agency engaging in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practice.</li></ul></li><li>(v) If the Performance Security is or becomes invalid for any reason during the term of the Contract, the Agency shall immediately notify the Client and provide the Client with a replacement Performance Security in the form set out in Appendix D within five (5) days of the earlier Performance Security becoming invalid.</li><li>(vi) If the validity period of the Performance Security is less than the period specified in sub-clause (ii) above, then no later than thirty (30) days before the expiry of the Performance Security, the Agency shall obtain an extension of the validity of such Performance Security and provide the Client with a copy of the renewed security. If the Agency fails to extend the Performance Security, the Client shall be entitled to draw on and claim the un-drawn amount thereunder, provided that the amount so received shall be treated as a cash security and to the extent that there are no outstanding claims, shall be released upon submission of a new Performance Security acceptable to the Client.</li><li>(vii) The provision, maintenance or renewal of the Performance Security by the Agency in accordance with the terms of the Contract,</li></ul>
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	<p>shall be a condition precedent to any payment by the Client to the Agency.</p> <p>(viii) On completion of the contractual obligations under the Contract by the Agency, the Client shall return the Performance Security within twenty one (21) days of the last payment made to the Agency under the Contract.</p>
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**IV. Appendices**

**APPENDIX A – TERMS OF REFERENCE**

*[This Appendix shall include the final Terms of Reference (TORs) worked out by the Client and the Agency during the negotiations; dates for completion of various tasks (Deliverables Milestones); location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Agency's team; specific tasks that require prior approval by the Client.]*

*Insert the text based on the Section 6 (Terms of Reference) of the RFP and modified based on the Forms TECH-1 through TECH-4 in the Agency's technical proposal. Highlight the changes to Section 6 of the RFP]*

**APPENDIX B - KEY EXPERTS**

*[Insert a table based on Form TECH-4 of the Agency's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]*

*[Specify Hours of Work for Key Experts: List here the hours of work for Key Experts; travel time; entitlement, if any, to leave pay; public holidays list; etc. Make sure there is consistency with Form TECH-4. In particular: one month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours. ]*

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## APPENDIX C – REMUNERATION COST ESTIMATES

1. Monthly rates for the Personnel:

*[Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] of the Agency's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3] at the negotiations or state that none has been made.]*

2. *[When the Agency has been selected under Quality-Based Selection method, or the Client has requested the Agency to clarify the breakdown of very high remuneration rates at the Contract's negotiations also add the following:*

*“The agreed remuneration rates shall be stated in the attached Model Form I. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Agency’ Representations regarding Costs and Charges” submitted by the Agency to the Client prior to the Contract’s negotiations.*

*Should these representations be found by the Client (either through inspections or audits pursuant to Clause 27.2 or through other means) to be materially incomplete or inaccurate, the Client shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Client before any such modification, (i) the Client shall be entitled to offset any excess payment against the next quarterly payment to the Agency, or (ii) if there are no further payments to be made by the Client to the Agency, the Agency shall reimburse to the Client any excess payment within thirty (30) days of receipt of a written claim of the Client. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with Clause 47.1(d) of this Contract.”*

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**Appendix D - Form of Performance Security**

*[On Appropriate Stamp Paper]*

**Bank Guarantee No. [●]**

To,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS \_\_\_\_\_, a company incorporated under the Company Act, 1956/2013 with its registered office at \_\_\_\_\_ (hereinafter called “the Agency”) has undertaken, in pursuance of contract no. \_\_\_\_\_ dated \_\_\_\_\_ for providing \_\_\_\_\_ Bhubaneswar (the High Performance Programme), herein after called “the contract”.

AND WHEREAS it has been stipulated by you in the said contract that the Agency shall furnish you with a bank guarantee by a scheduled commercial bank 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 Agency such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the Agency, up to a total of Rs. \_\_\_\_\_ (INR \_\_\_\_\_ only), and we undertake to pay you, upon your first written demand declaring the Agency to be in default under the contract and without cavil or argument, any sum or sums within the limits of Rs. \_\_\_\_\_ (INR \_\_\_\_\_ only) 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 Agency 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 \_\_\_\_\_.

Our \_\_\_\_\_ branch \_\_\_\_\_\*(Name & Address of the \_\_\_\_\_\*branch) is liable to pay the guaranteed amount depending on the filing of claim and any part thereof under this Bank Guarantee only and only if you serve upon us at our \_\_\_\_\_\* branch a written claim or demand and received by us at our \_\_\_\_\_\* branch on or before Dt. \_\_\_\_\_ otherwise bank shall be discharged of all liabilities under this guarantee thereafter.

.....

(Signature of the authorized officer of the Bank)

.....

Name and designation of the officer

.....

.....

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

\*Preferably at the headquarters of the authority competent to sanction the expenditure for purchase of goods/ services.

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**APPENDIX E – SERVICES SCHEDULE**