

F.No.Y-17/5/2024-Costing Cell (E-35575)
Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Consumer Affairs
(Costing Cell)

Krishi Bhawan, New Delhi
Dated:10.2024

Notice Inviting Bid

Sub: REQUEST FOR PROPOSAL (RFP) FOR ENGAGEMENT OF CONCURRENT AUDITOR FOR BRANCHES AND HO OF NAFED AND NCCF.

CRITICAL DATE SHEET

Published Date	04.10.2024
Bid Submission Start Date	05.10.2024
Bid Submission End Date	25.10.2024
Bid Opening Date (Technical)	28.10.2024

Online bids are invited from shortlisted EOI bidders, as specified in the RFP document, by the Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, for request for proposal (RFP) for engaging services of a concurrent auditor for branches and HO of NAFED and NCCF.

2. The complete bid document can be viewed/downloaded from the website of <https://eprocure.gov.in/eprocure/app> and <https://consumeraffairs.nic.in> from 04.10.2024.
3. The shortlisted EOI bidders, as specified in the RFP document, may submit the bids online complete in all respects in accordance with the terms & conditions as prescribed in the RFP document. All the required documents, duly signed, are to be uploaded along with the tender documents.
4. The competent authority in the Department of Consumer Affairs reserves the right to accept or reject all or any of the bids at any time or amend/withdraw any of the terms and conditions contained in the RFP document without assigning any reason, therefor.


(T. R. Sathish Chandran)
Joint Director (Cost)
Tele: 011 - 23384390

Copy to:- Technical Director, NIC, Department of Consumer Affairs with the request to upload the aforesaid notice on the website of the Department for wider publicity.

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Section I: Request for Proposal Letter (RFPL)

1. Request for Proposal Letter (RFPL)

The President of India, through the Head of Procurement of the Procuring Entity, in the Procuring Organisation (hereinafter referred to as 'the Authority', 'the Head of Procurement', 'the Procuring Entity' and 'the Procuring Organisation' respectively), invites proposals (hereinafter referred to as 'the Proposal(s)') exclusively from the Auditors shortlisted in the preceding EOI process (please see Tender Information Summary (TIS) appended to this letter for reference), for entering into a contract for the delivery of Audit/Consultancy Services (hereinafter referred to as 'the Services'), using the selection method as specified in TIS. This Request for Proposal (RFP) Document, reference number, RFP No. RFP/Y-17/2/2023-Costing Cell (hereinafter referred to as 'the RFP Document'), gives further details.

2. The RFP Document

2.1 Auditors must read the complete 'RFP Document'.

This RFPL, an integral part of the RFP Document, serves the limited purpose of invitation and does not purport to contain all relevant details for submitting Proposals. 'Tender Information Summary' (TIS) appended to this letter gives a salient summary of the relevant information, including the Type of Contract and Selection Method to evaluate RFP. Any generic reference to RFPL shall also imply a reference to TIS as well. However, Auditors must go through the complete RFP Document for details before submission of their Proposals.

2.2 Availability of the RFP Document

The RFP Document shall be published on the e-Procurement Portal for download after the date and time of the start of availability till the deadline for availability as mentioned in TIS. Unless otherwise stipulated in TIS, the downloaded RFP Document is free of cost. If the Procuring Entity happens to be closed on the deadline for the availability of the RFP Document, the deadline shall not be extended. Any query/ clarification regarding downloading RFP Documents and uploading Proposals on the e-Procurement portal may be addressed to the Help Desk in the eProcurement Portal (please refer to TIS for details).

2.3 Clarifications

A Consultant may seek any clarification of the RFP Document through the eProcurement Portal before the date and time stipulated in TIS. This deadline shall not be extended in case of any intervening holidays. No other means of submission of queries shall be entertained.

3. Eligibility and Qualification Criteria for Participation in this RFP

The shortlisted Auditor must continue to meet the eligibility and qualification criteria prescribed in the preceding EOI document (based on which they were shortlisted) as of the date of his Proposal submission and should continue to meet these criteria till the award of the contract. To this extent, the relevant portions of the EOI Document and the Auditor's

submissions thereto shall be deemed part of this RFP process.

4. Purchase Policies of the Government

As detailed in the EOI process, Central Government policies restrict the participation of entities from i) Certain countries sharing land borders with India and ii) Countries that restrict the participation of Bidders from India. Auditors have already submitted declarations regarding these restrictions during the EOI process. They should ensure that they continue to comply with such declarations.

5. Pre-Proposal Conference:

If indicated in TIS, Auditors are requested to attend a Pre-Proposal conference to clarify the RFP's technical requirements and commercial conditions at the time, date, and place mentioned therein.

6. Submission of Proposals:

Proposals must be uploaded by the submission deadline mentioned in TIS. If the office happens to be closed on that date, this deadline shall not be extended. Further details are given in ITC.

7. Proposal Opening

Proposals received shall be opened online on or after the specified date and time in TIS. If the office is closed on the specified date of opening of the Proposals, the opening shall be done on the next working day at the same time.

Note: For further details, please refer to appended TIS and the complete RFP Document.


Digitally Signed by
Tender Inviting Authority (TIA)
T. R. Sathish Chandran,
Joint Director (Cost),
011-23384390

Appendix: Tender Information Summary (TIS)

Appendix to RFPL: Tender Information Summary (TIS)

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor (Ref ITC-clause 1.4)

Shortlisted Auditors from whom Proposals are exclusively Invited		
Preceding EOI Process		REOI Reference No. REOI/Y-17/2/2023-Costing Cell
Sr. No.	Auditors	Address
1.	R V K S And Associates	147, Rajparis Trimeni Towers, First Floor, G N Chetty Road, T Nagar, Chennai
2.	Jain Paras Bilala and Company	50 Ka 2, Jyoti Nagar, Jaipur-302005 (Raj.)
3.	UCC & Associates LLP	1315, Ansal tower-38, Nehru Place, New Delhi-110019

Tender Information Summary (TIS)			
1.0 Basic Tender Details			
Tender Name of Assignment	Title/ of ENGAGEMENT OF CONCURRENT AUDITOR FOR BRANCHES AND HO OF NAFED AND NCCF.		
Tender Reference Number	RFP/Y-17/2/2023-Costing Cell	Tender ID	2024_DoCA_820515_1
Tender Type	RFP - Limited Tender	Tender Category	Services
No. of Covers	Two Covers	Product Category	Audit
Selection Method	LCS	Appointing Authority for Arbitration	Head of The Procuring Organisation
Form of Contract	Lumpsum		
Organisation:	Ministry of Consumer Affairs, Food & Public Distribution	The Procuring Entity:	Department of Consumer Affairs
Authority on whose behalf RFP is invited	President of India	Through the	Head of Procurement
Tender Inviting Authority (TIA)	Joint Director (Cost), Department of Consumer Affairs	Address	Room No. 372B, Department of Consumer Affairs, Krishi Bhawan, New Delhi - 110001

2.0 Critical Dates (ITC-clauses 6, 7; 8; 9, and 10)			
Published Date	<i>04.10.2024</i>	Proposal Validity (Days from the date of Proposal Opening) – ITC-clause 8.3	<i>180 days, 03.04.2025</i>
Document Download Start Date & Time	<i>04.10.2024, 04:00 PM</i>	Document Download End Date & Time	<i>25.10.2024, 05:00 PM</i>
Clarification Start Date & Time	<i>05.10.2024, 09:00 AM</i>	Clarification End Date & Time	<i>13.10.2024, 05:00 PM</i>
Proposal Submission Start Date & Time	<i>05.10.2024, 09:00 AM</i>	Proposal Submission Closing Date & Time	<i>25.10.2024, 05:00 PM</i>
Proposal Opening (techno-commercial Proposal) Date & Time	<i>28.10.2024, 10:30 AM</i>		
Technical Proposal Presentation / Customers Testimonials	<i>To be intimated later</i>	Proposal Opening (Financial Proposal) Date & Time	<i>To be intimated later</i>
3.0 Terms of Reference (ITC-Clause 4)			
Consignee/State:	<i>New Delhi</i>	GSTIN Code of Consignee	<i>07</i>
Period of Contract	<i>For one year.</i>		
ServiceDetails:	<i>As per TOR in Section VI.</i>		
4.0 Obtaining the RFP Document and clarifications (ITC-Clause 6)			
eProcurement and Procuring Entity's Portal and helpdesk	https://eprocure.gov.in/e-procure/app	0120-4001 002; 0120-4001 005; 0120- 4493395; 0120-6277 787 or support-eproc@nic.in or cPPP-doe@nic.in	
	https://consumeraffairs.nic.in/		

Cost of RFP Document (INR)	<i>Nil</i>		
Office/ Contact Person/ email for clarifications	<i>Same as TIA above</i>		
5.0 Pre-Proposal Conference (ITC-clause 7)			
Is a Pre-Proposal Conference proposed to be held?	<i>[No]</i>		
6.0 Preparation and Submission and Opening of Proposals (ITC-clause 8, 9 and 10)			
Proposals to be addressed To	President of India, Through Head of Procurement, Procuring Entity		
Instructions for Online Proposal Submission	https://etenders.gov.in/eprocure/app?page=HelpForContractors&service=page		
Language of Submission	<i>English</i>	Bid Validity	<i>90 days from Bid opening date</i>
Proposal Opening Place	<i>On e-procurement portal(s) mentioned above</i>		
7.0 Documents relating to Bid Security (ITC-clause 8.4) and Performance Security (ITC-clause 13.1.2)			
Bid Security (EMD) Amount in INR:	<i>Rs.2,50,000/-</i>	Is Bid Securing Declaration permitted in lieu of Bid Security	<i>No</i>
Performance Security	<i>3% of Order value</i>	Minimum Fees	<i>Rs.80,00,000/- (excluding taxes)</i>
Bid/ Performance Security to be addressed/ in favour of	<i>Pay and Accounts Office, Department of Consumer Affairs, New Delhi payable at Delhi/New Delhi</i>		
Form of Bid/ Performance Security	<i>Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt from a commercial bank, Bank Guarantee (including e-Bank Guarantee) from a Commercial Banks or online payment in an acceptable form</i>		

Section II: Instructions to Consultants (Auditors) (ITC)

1. The RFP Document

1.1. Basic Tender Details

This 'RFP Document' Document (hereinafter referred to as 'the RFP Document') details the terms and conditions for entering a contract for delivery of the Consultancy Services (hereinafter called 'the Services') described in Section VI: "Terms of Reference". The 'Services' may include incidental Goods, Works, and other Services if so indicated. In this RFP Document, any generic reference to 'Services' shall be deemed to include such incidental Goods, Works, and other Services. Proposals are invited exclusively from the Auditors shortlisted (hereinafter called 'the Auditors') in the preceding EOI process (please see TIS for reference).

1.2. Interpretations, Definitions, Abbreviations and Document Conventions

Section IV: General Conditions of Contract (GCC), details tenets of interpretation (GCC- clause 1.1), definitions (GCC-clause 1.2), document conventions (GCC-clause 1.3) and abbreviations (GCC-clause 1.4), which shall also apply to the rest of the RFP Document.

1.3. Overview of Contents

- 1) Unless otherwise stipulated in AITC, the Sections, Forms and Formats comprising this RFP Document are described in ITC-clauses 1.4, 1.5 and 1.6 below. A separate BOQ file for Financial Proposal on the eProcurement Portal is also part of this RFP Document. Any generic reference to RFP Document shall also imply a reference to any/ all the sections, Forms, Formats and the BOQ file or other files that comprise this RFP Document.
- 2) Auditors must submit the Proposal in the Forms/ Formats mentioned in ITC- clauses 1.5 and 1.6 below (as relevant).

1.4. Sections of the RFP Document

- 1.4.1 Sections of the RFP Document: Unless otherwise stipulated in AITC, the RFP Document contains the following sections, which are described in subsequent sub-clauses:

Section I: Request for Proposal Letter (RFPL) and its Appendix: Tender Information Summary

Section II: Instructions to Consultants (Auditors) (ITC)

Section III: Appendix to Instructions to Auditors (AITC)

Section IV: General Conditions of Contract (GCC)

Section V: Special Conditions of Contract (SCC)

Section VI: Terms of Reference

Section VII: Evaluation/ Scoring Criteria

- 1.4.2 Section I - RFPL and its Appendix – Tender Information Summary (TIS) provides a synopsis of information relevant for a Consultant to decide on participating in the RFP. Auditors must fill up 'Form T-7: Terms and Conditions - Compliance' regarding any proposed deviations from this Section.
- 1.4.3 Section II along with Section III provides the relevant information as well as instructions to assist the Auditors in preparing their proposals. It also includes the mode and procedure adopted for receipt/ opening, evaluation of Proposals, and contract award. In case of a conflict, provisions of AITC shall prevail over those in the ITC. Any generic reference to ITC shall also imply a

reference to AITC as well. Auditors must fill up 'Form T-7: Terms and Conditions - Compliance' regarding any proposed deviations from these Sections.

1.4.4 Section IV and Section V describe the conditions governing the resulting contract. In case of a conflict, provisions of the SCC shall prevail over those in the GCC. Any generic reference to GCC shall also imply a reference to SCC as well. In case of any conflict, provisions of GCC/ SCC shall prevail over those in ITC/ AITC. Auditors must fill up 'Form T-7: Terms and Conditions - Compliance' regarding any proposed deviations from terms and conditions in these Sections.

1.4.5 Section VI describe the background, purpose/ objectives, description/ scope, deliverables/ outcomes, timelines, Procuring Entity's inputs and counterpart personnel, statutory requirements of Services required etc.

1.4.6 Section VII: Evaluation/ Scoring Criteria

1) Section VII – Evaluation/ Scoring Criteria lay down a minimum criteria to be evaluated on a pass/ fail basis to qualify for the next stage of Financial Evaluation.

2) Auditors must fill up the following Forms regarding this Section:

- a) Form T-2: Consultant's Organisation and Experience
- b) Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference

1.5. Forms (To be filled, digitally signed, and uploaded by Auditors)

Please refer to ITC-clause 1.4 above to relate the following forms to the corresponding Sections.

1) Technical Proposal:

- a) Form T-1: Proposal Form – (To serve as a covering letter to both the Techno-commercial and Financial Proposals)
- b) Form T-1A: Consultant's Commercial Information
- c) Form T-2: Consultant's Organisation and Experience
- d) Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference
- e) Form T-7: Terms and Conditions - Compliance
- f) Form T-8: Checklist for Auditors. The consultant must also upload the Checklist to confirm that he has complied with all the instructions in the RFP Document and that nothing is inadvertently left out. This checklist is only for general guidance, is not comprehensive, and does not absolve the Consultant from complying with all the requirements stipulated elsewhere in the RFP Document.
- g) Form T-9A: Bank Guarantee Format for Earnest Money Deposit
- h) Any other format/ Form if stipulated in AITC or considered relevant by the Consultant.

2) Financial Proposal

The financial proposal is to be submitted in a separate file available on the eProcurement Portal.

1.6. Other Formats: to be specified later by the Procuring Entity.

- 1) Format 1: Contract Form (Required after Letter of Award) Appendix A: Terms of Reference
 - (a) Appendix B: Key Experts

- (b) Appendix C: Remuneration Cost Estimates
- (c) Appendix E-1: Bank Guarantee Format for Performance Security

2. Procuring Entity - Rights and Disclaimers

2.1. The Procuring Entity

Proposals are to be addressed to the President of India through the Head of Procurement, Procuring Entity in the Procuring Organisation (headed by the Head of the Procuring Organisation). The Tender Inviting Authority (TIA) is the designated officer for uploading and clarifying this RFP Document. The contract may designate, as required, a counterpart Contract Manager (or Contract Management Team); and Paying authority who shall discharge the designated function during contract execution.

2.2. Right to Intellectual Property and confidentiality:

- 1) The RFP Document and associated correspondence are subject to copyright laws and shall always remain the property of the Procuring Entity and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent.
- 2) However, Auditors may share these to prepare and submit their Proposals with their employees, Sub-consultant(s) or holding Company after obtaining an undertaking of confidentiality similar to that imposed on the Consultant.
- 3) This condition shall also apply to Auditors who do not submit a Proposal after downloading it or are not awarded a contract.
- 4) The obligation of the Auditors under sub-clauses above, however, shall not apply to information that:
 - a) now or hereafter is or enters the public domain through no fault of Consultant;
 - b) is legally possessed by Consultant at the relevant time and was not previously obtained, directly or indirectly, from the Procuring Entity; or
 - c) otherwise lawfully becomes available to Consultant from a third party with no obligation of confidentiality.
- 5) The provisions of this clause shall survive completion or termination for whatever reason of the Procurement Process or the contract.

2.3. Right to Reject any or all Proposals

The Procuring Entity reserves its right to accept or reject any or all Proposals, abandon/ cancel the Procurement Process, and issue another EOI/ RFP for the same or similar Services before the award of the contract. It would have no liability to the affected Consultant(s) or any obligation to inform them of the grounds for such action(s).

2.4. Disclaimers

2.4.1 Regarding the Purpose of the RFP Document

The RFP Document is neither an agreement nor an offer to the prospective Consultant(s) or any other party. The purpose of the RFP Document is to provide the Consultant(s) with information to assist them in participation in this Procurement Process.

2.4.2 Regarding Documents/ guidelines

The RFP Document, ensuing communications, and Contracts shall determine the legal and commercial relationship between the Auditors and the Procuring Entity. No other Government or Procuring Entity's document/ guidelines/ Manuals, including its Procurement Manual (for internal and official use of its officers), notwithstanding any mention thereof in the RFP Document, shall have any locus-standii in such a relationship. Therefore, such documents/ guidelines/ Manuals shall not be admissible in legal or dispute resolution or grievance redressal proceedings.

2.4.3 Regarding Information Provided

Information contained in the RFP Document or subsequently provided to the Consultant(s) is on the terms and conditions set out in the RFP Document or subject to which that was provided. Similar terms apply to information provided verbally, in the documentary, or any other form, directly or indirectly, by the Procuring Entity, its employees, or associated agencies.

2.4.4 Regarding RFP Document:

- 1) The RFP Document does not purport to contain all the information Consultant(s) may require. It may not address the needs of all Auditors. They should conduct due diligence, investigation, and analysis, check the information's accuracy, reliability, and completeness, and obtain independent advice from appropriate sources. Information provided in the RFP Document to the Consultant(s) is on various matters, some of which may depend upon interpreting the law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Procuring Entity, its employees and other associated agencies accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- 2) The Procuring Entity, its employees and other associated agencies make no representation or warranty for the accuracy, adequacy, correctness, completeness or reliability of any assessment, assumption, statement, or information in the RFP Document. They have no legal liability, whether resulting from negligence or otherwise, for any loss, damages, cost, or expense arising from/ incurred/ suffered, howsoever caused, to any person, including any Consultant, on such account.

3. Auditors – Participation in this RFP process

2.1. Eligibility to Participate

- 1) As the RFP following the earlier EOI shortlisting process, this invitation is open only to Auditors who have been shortlisted therein or are specifically invited to participate. It is not permissible for the shortlisted Auditors to transfer this RFP to any other firm without the permission of the Procuring Entity. Proposals from Auditors who have not been shortlisted shall not be entertained.
- 2) Continued Eligibility:
 - a) The shortlisted Consultant must continue to meet the eligibility criteria prescribed in the EOI document (based inter-alia on which they were shortlisted), including restrictions on Auditors from specified countries as of the date of his Proposal submission and should continue to meet these till the award of the contract. Auditors shall be required to declare continued fulfilment of Eligibility Criteria in Form T-1 'Proposal Form (Covering Letter)'. Auditors must provide evidence of their continued

- eligibility to the Procuring Entity if requested.
- b) Furthermore, it is the Consultant's responsibility to ensure that its Experts, joint venture members, Sub-Auditors, agents (declared or not), service providers, suppliers and/or their employees similarly continue to meet such eligibility criteria.
- 3) Change in Structure or Associations:
 - a) Changes in Structure: Any change in the structure, formation, eligibility, or qualifications of a shortlisted Consultant after being shortlisted/ invited to bid before submitting Proposals shall be subject to the written approval of the Procuring Entity. In the case of a JV/C, a change in the structure or formation of any member shall require such approval.
 - b) Association among Shortlisted Auditors: Unless otherwise stipulated in TIS/ AITC, if a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other Auditors in the form of a Joint Venture or as Sub-Auditors, it may do so with either (a) non-shortlisted Consultant(s) or (b) shortlisted Auditors, without vitiating the shortlisting criteria of the REOI. The shortlisted Consultant shall be a lead member when associating with non-shortlisted firms as a joint venture. If shortlisted Auditors associate with each other, any of them can be a lead member. A shortlisted Consultant must obtain the Procuring Entity's written approval in all such cases.
 - c) Any such changes shall be submitted for approval to the Procuring Entity no later than 14 days after publishing the RFP document. Such approval shall be denied if (i) a shortlisted Consultant proposes to associate with an ineligible Consultant or, in case of an ineligible joint venture, any of its members (ii) because of the change, the consultant no longer substantially meets the qualification criteria outlined in REOI document, or (iii) if, in the opinion of the Procuring Entity, a substantial reduction in competition may result.
 - 4) Participation in only one Proposal: The shortlisted Consultant shall not participate in more than one Proposal in this RFP Process. Participation in any capacity by a Consultant (including the participation of a Consultant as a Sub-consultant or as a member of a JV/C or vice-versa) in more than one Proposal shall result in the disqualification of all Proposals in which he is a party. Unless otherwise stipulated in TIS, this does not preclude a Sub-consultant or a Consultant's staff (if they are not submitting a proposal in their own name) from participating as Sub-consultant/ Key Experts/ Non-Key Experts in more than one Proposal. A shortlisted Consultant shall not be allowed to participate both as an individual Consultant and as a part of the joint venture or as a Sub-consultant.
 - 5) Sub-contracting: The Consultant shall not subcontract the whole of the Services to sub-Auditors. However, subject to the restrictions outlined in this RFP Document, a Consultant may propose sub-contracting a part of the contract for specialised items of services, provided such a sub-consultant does not circumvent the eligibility and qualification criteria based on which the Consultant was shortlisted in the EOI process. The names and details of the sub-Auditors must be clearly stated in the proposal submitted by the Consultant. Despite any approval of the Procuring Entity for such arrangements, the Consultant shall be solely and directly responsible for executing sub-contracted portions of the contract. The total value of the sub- contracted portion of services must not exceed the fraction of the contract value as specified in the RFP Document/ Contract (if not so specified, 25 (twenty-five)

per cent). Sub-contracting by the Consultant without the approval of the Procuring Entity shall be a breach of contract.

2.2. Conflict of Interest

The Consultant must provide professional, objective, and impartial advice, holding the Procuring Organisation's interests paramount at all times, and shall not try to get benefits beyond the legitimate payments and credentials in the contract. He should strictly avoid conflicts with other assignments or their corporate interests. Auditors must disclose to the Procuring Entity in Form T-1 'Proposal Form (Covering Letter)' any actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Organisation. Failure to disclose such situations shall be treated as a violation of the Code of Ethics (ITC-Clause 15) and shall attract penalties mentioned therein. Proposals found to have a conflict of interest shall be rejected as nonresponsive. Without limitation on the generality of the preceding, a Consultant in this Procurement Process shall be considered to have a conflict of interest if the Consultant:

- 1) Conflicting Associations:
 - a) directly or indirectly controls, is controlled by or is under common control with another Consultant; or
 - b) receives or has received any direct or indirect subsidy/ financial stake from another Consultant; or
 - c) has the same correspondence address or same legal representative/ agent as another consultant for purposes of this proposal; or
 - d) has a relationship with another Consultant, directly or through common third parties, that puts it in a position to have access to information about or influence the Proposal of another Consultant or influence the decisions of the Procuring Entity regarding this Procurement Process; or
- 2) Unfair Competitive Advantage and Conflicting Activities: had (or any of its Affiliates) been engaged by the Procuring Entity to provide goods, works, or services for a project, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or services. Conversely, a firm (or any of its Affiliates) hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods or works or services resulting from or directly related to the consulting services for such preparation or implementation.
- 3) Conflicting Assignments: would (including its Experts and Sub-Auditors) or any of its Affiliates) be or are providing consultancy services in another assignment for the same or another Procuring Entity that, by its nature, may conflict with this assignment.
- 4) Commissions and Gratuities: The Consultant shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of the resulting Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.
- 5) Conflicting Relationships: has close business/ family relationship with a staff of the Procuring Organisation who are/ would be directly/ indirectly involved in any of the following activities:
 - a) preparation of the RFP document or TOR of the Procurement Process

- b) evaluation of Proposals or award of Contract, or
- c) implementation/ supervision of the resulting Contract

4. The Terms of Reference (TOR) and Form of Contract

4.1. Facilities to be provided by the Procuring Entity

All inputs, relevant project data, and reports required for preparing the Consultant's Proposal shall be included in the TOR. Unless otherwise stipulated in the TOR, utilities or facilities (e.g., Rooms, Furniture, Transport, Access to IT Services etc.) shall NOT be provided by the Procuring Entity to the Consultant.

4.2. Forms of BOQ/ Contract and Selection Methods

Evaluation of Proposals and the resulting Contract shall be based on the form of BOQ/ Contract and the Selection method applicable for the RFP, as elaborated in ITC-Clause 11 and 12 below.

4.2.1 Time-Based (Inputs Admeasurement) form of BOQ/ Contract:

Unless otherwise stipulated in the TIS form of BOQ/ Contract shall be 'Time-Based (Inputs Admeasurement)'. In such contracts, the Consultant shall provide services on a timed basis according to the Terms of Reference. The Consultant's remuneration shall be determined based on the time spent by the Consultant in carrying out the Services based on (i) agreed-upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment and (ii) reimbursable expenses using actual expenses and/or agreed unit prices.

4.2.2 Lumpsum form of BOQ/ Contract

If it is stipulated in TIS that this is a Lumpsum form of BOQ/ Contract, then in this type of Contract, the Payments shall be linked to outputs (deliverables) such as reports, drawings, bills of quantities, bidding documents, or software programs.

4.2.3 Other forms of BOQ:

TIS may stipulate other forms of BOQ, e.g. Unit Rate (Output Admeasurement) or Percentage forms of BOQ. AITC would detail the evaluation process for such forms of BOQ.

4.2.4 Selection Method

- 1) Unless otherwise specified in TIS, the selection method applicable in this RFP shall be Quality and Cost Basis Selection (QCBS). If so stipulated in TIS/ AITC following selection methods can also be used in this RFP:
 - a) Least Cost Selection (LCS)
 - b) Fixed Budget Selection (FBS).
 - c) Single Source Selection (SSS)
- 2) Please refer to ITC-Clause 11 and 12 for details.

4.3. Inputs of Key Experts

4.3.1 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement shall make the Proposal non-responsive.

4.3.2 Procuring Entity may indicate in the RFP Document the estimated Key Experts' time input

(expressed in person-month) or the estimated total cost of the assignment, but not both. This estimate is indicative, and the Auditors should base their proposal on their own estimates. However, if the Consultant has a strong justification (to be recorded in the Proposal) to include lesser time input of Key Experts than that indicated in the TOR, it shall be treated as a deviation and dealt with as per ITC- Clause 11.1.2.

4.3.3 In the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed for assignments. The total available budget shall be given in the RFP Document, indicating whether it is inclusive or exclusive of taxes. Proposals exceeding the total available budget will be rejected.

5. Proposal Prices, Taxes and Duties

5.1. Prices

5.1.1 Competitive and Independent Prices

The prices should be arrived at independently, without restricting competition, any consultation, communication, or agreement with any other Consultant or competitor relating to:

- i) those prices; or
- ii) the intention to submit an offer; or
- iii) the methods or factors used to calculate the prices offered.

The prices should not be knowingly disclosed by the Consultant, directly or indirectly, to any other Consultant or competitor before the Financial Proposal opening unless otherwise required by law.

5.1.2 Price Components

Consultant shall indicate in the Price Schedule prices/ rates against all the specified components, including the unit prices and total Proposal prices.

5.1.3 Price Schedule

Auditors are to upload only the downloaded BOQ (in excel format) after entering the relevant fields without any alteration/ deletion/ modification of other portions of the excel sheet. All the columns in the price schedule should be filled up as required. If any column does not apply to a Consultant, he should clarify the same.

Auditors shall fill in rates other than zero value in the specified cells without leaving them blank.

The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the Services to be delivered and the incidental goods/ works to be supplied, location of the Consultant, site(s) of the delivery of Services, terms of delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour, Mining & Forest of the Consultant's country and in India.

5.1.4 Provisions of GST

Break up of different price elements, i.e., as per GST Act, shall be indicated separately, along with its associated HSN code and GST rate.

While quoting the basic rate, the Consultant should offset the input credit available as

per the GST Act.

Please refer to ITC-Clause 5.3 for further details.

5.1.5 Currencies of Proposal and Payment

- 1) Unless otherwise stipulated in the AITC, the Consultant's currency of Proposal and payment shall be quoted entirely in Indian Rupees. All payments shall be made in Indian Rupees only.
- 2) Where the AITC permits quotations in different currencies, then, for Services performed in or sourced from India, prices shall be quoted in Indian rupees only, and for Services performed from foreign locations, prices shall be quoted in Indian rupees or the currency stipulated in the AITC. For evaluation, all quoted prices shall be converted into Indian Rupees as per the procedure mentioned in ITC-clause 11.4.2 below.

5.1.6 Non-compliance

Tenders, where prices are quoted in any other way, shall be rejected as nonresponsive.

5.2. Firm/ Variable Price

5.2.1 Firm Price

Unless otherwise stipulated in the AITC, prices quoted by the Consultant shall remain firm and fixed during the currency of the contract and not subject to variation on any account.

5.2.2 Price Variation Clause:

- 1) In case the RFP Documents require/ permit offers on a variable price basis, the price quoted by the Auditors shall be subject to adjustment during the original delivery period to take care of the changes in the input cost of labour, material, and fuel/ power components under the price variation formula as stipulated in the RFP Document.
- 2) If a Consultant submits a firm price quotation against a variable price quotation requirement, that Proposal shall be prima-facie acceptable and considered further, taking the price variation asked for by Consultant as nil.

5.3. Taxes

The Consultant and its Sub-Auditors and Experts are responsible for meeting all tax liabilities arising from the Contract.

5.3.1 GST Registration Status:

- 1) All the Auditors should ensure that they are GST compliant and that their quoted tax structure/ rates are as per GST Act/ Rules. Auditors should be registered under GST and furnish a GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under a specific notification/ circular/ section/ rule issued by statutory authorities.
- 2) GST Registration Number (15-digit GSTIN). If the Consultant has multiple business verticals in a state and has separate registration for each vertical, the GSTIN of each vertical concerned with the service delivery shall be quoted. If the services provided are from multiple states, the Consultant should mention GST registration numbers for each state separately.
- 3) Composition scheme: If the Consultant has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration

certificate.

- 4) **Exemption from Registration:** If a Consultant is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. Consultant claiming exemption in this respect shall submit a valid certificate from practising Chartered Accountant (CA)/ Cost Accountant with Unique Document Identification Number (UDIN) to the effect that Consultant fulfils all conditions prescribed in notification exempting him from registration. Such Consultant/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Procuring Entity directly to concerned authorities. The consultant should note that his offer would be loaded with the payable GST under the RCM. Further, the Consultant should notify and submit to the Procuring Entity within 15 days of becoming liable for registration under GST.

5.3.2 HSN Code and GST Rate:

- 1) If provided in this RFP Document, the HSN (Harmonized System of Nomenclature) code shall be only indicative. It shall be the responsibility of the Consultant to ensure that they quote the exact HSN Code and corresponding GST rate for each activity of the Services being offered by them
 - a) As per the GST Act, the Proposal and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separately from the Proposal/ contract price (exclusive of GST).
 - b) If the price is stated to be inclusive of GST, the Consultant must declare the current applicable rate included in the price. Auditors should quote 'GST' if payable extra on the total basic rate of each service and quoted GST in '%' inclusive of cess.
- 2) **Applicability to Imported Goods/ Services:** If imported into India, the supply of commodities, services, or both shall be considered as supply under inter-state commerce/ trade and shall attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Custom Assessable Value' plus the 'Basic Customs duty applicable thereon'.

5.4. Payments

5.4.1 General

Unless otherwise stipulated in AITC, the usual payment term is 100% on delivery and acceptance of Services at 'the Site' by the Procuring Entity and production of all required documents. However, periodic "On Account" payments shall be made unless otherwise stipulated as per the procedure laid down in GCC.

5.4.2 No Advance Payments

Unless otherwise stipulated in AITC, the Procuring Entity shall make no advance payment of any type (Mobilization, secured advances, etc.). If AITC does stipulate advance payments, these shall be subject to conditions stipulated therein.

6. Downloading the RFP Document; Corrigenda and Clarifications

6.1. Downloading the RFP Document

The RFP document can be downloaded as per the details given in RFPL clause 2.2.

6.2. Corrigenda/ Addenda to RFP Document

- 1) Before the deadline for submitting Proposals, the Procuring Entity may update, amend, modify, or supplement the information, assessment or assumptions contained in the RFP Document by issuing corrigenda and addenda. The corrigenda and addenda shall be published in the same manner as the original RFP Document. Without any liability or obligation, the Portal may send intimation of such corrigenda/ addenda to Auditors who have downloaded the document under their login. However, the Auditors must check the website(s) for any corrigenda/ addenda. Any corrigendum or addendum thus issued shall be considered a part of the RFP Document.
- 2) To give reasonable time to the prospective Auditors to take such corrigendum/ addendum into account in preparing their Proposals, the Procuring Entity may suitably extend the deadline for the Proposal submission as necessary. After the procuring entity makes such modifications, any Consultant who has submitted his Proposal in response to the original invitation shall have the opportunity to either withdraw his Proposal or re-submit his Proposal superseding the original Proposal within the extended time of submission as per ITC-clause 9.4.1 below.
- 3) The Procuring Entity may extend the deadline for the RFP submission by issuing an amendment. In this case, all rights and obligations of the Procuring Entity and the Auditors previously subject to the original deadline shall then be subject to the new deadline for the RFP submission.

6.3. Clarification of the RFP Document

As detailed in RFPL clause 2.3, a Consultant requiring any clarification regarding the RFP Document may seek clarification through the eProcurement Portal. The Procuring Entity shall respond no later than seven days before the deadline for RFP submission. The query and clarification shall be shared with all Auditors on the portal without disclosing its source. If a modification of the RFP document is warranted due to such clarification, an addendum/ corrigendum shall be issued as per ITC-Clause 6.2 above.

7. Pre-Proposal Conference

- 1) If a Pre-Proposal conference is stipulated in the TIS, prospective Auditors interested in participating in this tender may attend a Pre-Proposal conference to clarify the techno-commercial conditions of the RFP at the venue, date and time specified therein.
- 2) Participation is not mandatory: However, if a Consultant chooses not to (or fails to) participate in the Pre-Proposal conference or does not submit a written query, it shall be assumed that they have no issues regarding the techno-commercial conditions.
- 3) The date and time by which the written queries for the Pre-Proposal must reach the authority and the last date for registration for participation in the Pre-Proposal conference are also mentioned in the TIS. If the dates are not mentioned, such date and time shall be 7 days before the date and time of the pre-Proposal conference.
- 4) Delegates participating in the Pre-Proposal conference must provide a photo identity and an authorization letter from their Company/ principals; else, they shall not be allowed to participate. The pre-Proposal conference may also be held online at the discretion of the Procuring Entity.
- 5) After the Pre-Proposal Conference, Minutes of the Pre-Proposal conference shall be

published on the Procuring Entity's portal within seven days from the Pre-Proposal Conference. If required, a clarification letter and corrigendum to RFP Document shall be issued, containing amendments to various provisions of the RFP Document. As per ITC-clause 6.2 above, to give reasonable time to the prospective Auditors to consider such clarifications in preparing their Proposals, the Procuring Entity may suitably extend, as necessary, the deadline for the Proposal submission.

8. Preparation of Proposals

8.1. The Proposal

8.1.1 Language of the Proposal

Unless otherwise stipulated in the AITC, the Proposal submitted by the Consultant and all subsequent correspondence and documents relating to the Proposal exchanged between the Consultant and the Procuring Entity shall be written in the language specified in the AITC /SCC (hereinafter referred to as the 'Proposal Language'. If nothing is specified, the language shall be English). However, the language of any printed literature furnished by the Consultant in connection with its Proposal may be written in any other language provided a certified translation accompanies it in the Proposal language. For purposes of interpretation of the Proposal, translation in the language of the Proposal shall prevail.

8.1.2 Acquaintance with Local Conditions and Factors

At his own cost, responsibility, and risk, the Consultant is encouraged to visit, examine, and familiarise himself with the local conditions and factors. The Consultant acknowledges that before the submission of the Proposal, he has, after a complete and careful examination, made an independent evaluation of the local conditions, infrastructure, logistics, communications, legal, environmental, and any other conditions or factors which would have any effect on the performance of the contract. Auditors shall be responsible for compliance with Rules, Regulations, Laws and Acts in force from time to time at relevant places. On such matters, the Procuring Entity shall have no responsibility and not entertain any request from the Auditors.

8.1.3 Cost of preparation and submission of Proposals

The Consultant(s) shall bear all direct or consequential costs, losses and expenditures associated with or relating to the preparation, submission, and subsequent processing of their Proposals, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any submission of samples, demonstrations, or presentations which the Procuring Entity may require, or any other costs incurred in connection with or relating to their Proposals. All such costs, losses and expenses shall remain with the Consultant(s), and the Procuring Entity shall not be liable in any manner whatsoever for the same or any other costs, losses and expenses incurred by a Consultant(s) for participation in the Procurement Process, regardless of the conduct or outcome of the Procurement Process.

8.1.4 Interpretation of Provisions of the RFP Document

The RFP document's provisions must be interpreted in the context in which these appear. Any interpretation of these provisions far removed from such context, contrived, or between-the-lines interpretation is unacceptable.

8.1.5 Alternate Proposals are not Allowed.

Unless otherwise stipulated in the AITC, conditional offers, alternative offers, and multiple Proposals by a Consultant shall not be considered. The Portal shall permit only one Proposal to be uploaded.

8.2. Documents comprising the Proposal:

8.2.1 Techno-commercial Proposal/ Cover

"Technical Proposal" shall include inter-alia the scanned copies of duly signed or digitally signed copies of forms as per ITC-Clause 1.6 in pdf format. *The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.*

8.2.2 Financial Proposal/ Cover

"Financial Proposal" shall comprise the Price Schedule (Submitted separately as an excel sheet) available on the eProcurement Portal. Any additional information may be uploaded as a pdf under "Additional Documents" in the "Proposal Cover Content." It should be filled considering all financially relevant details, including Taxes and Duties, as per ITC-clause 5.3. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses in the RFP Document. *No additional technical details which have not been brought out in the Technical Proposal shall be brought out in the Financial Proposal. A Financial Proposal containing material Technical Information not disclosed in the Technical Proposal shall be declared non-responsive.*

8.3. Proposal Validity

- 1) Unless specified to the contrary in the TIS, Proposals shall remain valid for a period not less than 90 days from the deadline for the Proposal submission stipulated in TIS. A Proposal valid for a shorter period shall be rejected as nonresponsive.
- 2) In case the day upto which the Proposals are to remain valid falls on/ subsequently declared a holiday or closed day for the Procuring Entity, the Proposal validity shall automatically be deemed to be extended upto the next working day.
- 3) In exceptional circumstances, before the expiry of the original time limit, the Procuring Entity may request the Auditors to extend the validity period for a specified additional period. The request and the Auditors' responses shall be made in writing or electronically.
 - a) The Consultant has the right to refuse to extend the validity of its Proposal, in which case such Proposal shall not be further evaluated.
 - b) If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts.
 - c) If any Key Experts become unavailable for the extended validity period, the Consultant shall seek permission to substitute another Key Expert. The Consultant shall provide adequate written justification and evidence to the Procuring Entity with the substitution request. In such case, a substitute Key Expert shall have equal or better qualifications and experience than the originally proposed one. The technical evaluation score, however, shall remain based on the evaluation of the CV of the original Key Expert.
 - d) If the Consultant fails to provide a substitute Key Expert with equal or better

qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal shall be rejected.

8.4. Bid Security - Related Documents

- 1) EMD/ BSD as Bid Security: The Consultant shall provide Bid Security as Earnest Money Deposit (EMD) for the amount shown in the TIS.
- 2) Modalities of EMD: Unless otherwise provided in TIS, the earnest money shall be denominated in Indian Rupees. Wherever relevant, it shall be in favour of the Account specified in TIS and shall be furnished in one of the following modalities valid for forty-five days beyond the validity of the proposal:
 - a) Insurance Surety Bonds Account Payee Demand Draft or
 - b) Fixed Deposit Receipt or
 - c) Banker's cheque
 - d) Bank Guarantee from/ confirmed by any of the commercial banks in the format specified in Form T-9A, or
 - e) Payment online in an acceptable form
- 3) Forfeiture of EMD (Enforcement of BSD): EMD shall be forfeited (or in case BSD is permitted, the declaration² shall be enforced from the date of such decision) if the Consultant breaches any of the following obligation(s) under the RFP:
 - (a) withdraws or amends his Proposal or impairs or derogates from the Proposal in any respect within the period of validity of its Proposal; or
 - (b) after having been notified within the period of Proposal validity of the acceptance of his Proposal by the Procuring Entity:
 - i) refuses to or fails to submit the original documents for scrutiny or the required Performance Security within the stipulated time as per the RFP document's conditions.
 - ii) fails or refuses to sign the contract.
- 4) Return of EMD: Unsuccessful Auditors' EMD shall be returned to them without any interest not later than thirty days after the conclusion of the resultant contract. Successful Consultant's EMD shall be returned without any interest after receipt of performance security from them.

9. Signing and Uploading Proposals

9.1. Relationship between Consultant and eProcurement Portal

The Procuring Entity is neither a party nor a principal in the relationship between the Consultant and the organisation hosting the e-procurement portal (hereinafter called the Portal). Auditors must comply with the rules, regulations, procedures, and implied conditions/agreements of the eProcurement portal, including registration, compatible Digital Signature Certificate (DSC) etc. Auditors shall settle clarifications and disputes, if any, regarding the Portal directly with them. In case of conflict between provisions of the Portal with the RFP Document, provisions of the Portal shall prevail. Auditors may study the resources provided by the Portal for Auditors.

9.2. Signing of Proposal

The individual signing/ digitally signing the Proposal or any other connected documents should

submit an authenticated copy of the document(s), which authorizes the signatory to commit and submit Proposals on behalf of the Consultant along with Form T-1: Proposal Form (Covering Letter).

9.3. Submission/ uploading of Proposals.

9.3.1 Submission/ Uploading to the Portal

Further to details mentioned in RFPL clause 6:

- 1) Proposals must be uploaded on the eProcurement Portal mentioned in the TIS until the deadline for the Proposal submission as notified therein. If the office happens to be closed on the deadline to submit the Proposal as specified above, this deadline shall not be extended. No manual Proposals shall be made available or accepted for submission. Proposals submitted through modalities other than those stipulated in TIS shall be liable to be rejected as nonresponsive.
- 2) In the case of downloaded documents, the Consultant must not make any changes to the contents of the documents while uploading, except for filling in the required information—otherwise, the Proposal shall be rejected as nonresponsive. Uploaded Pdf documents should not be password protected. Auditors should ensure the clarity/ legibility of the scanned documents uploaded by them.
- 3) The date and time of the e-Procurement server clock (also displayed on the dashboard of the Auditors) shall be the reference time for deciding the closing time of the Proposal submission. Auditors are advised to ensure they submit their Proposal within the deadline of submission, taking the server clock as a reference, failing which the portal shall not accept the Proposal. No request on the account that the server clock was not showing the correct time and that a particular consultant could not submit their Proposal because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The Procuring Entity shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-Tender process.
- 4) Only one copy of the Proposal can be uploaded, and the Consultant shall digitally sign all statements, documents, and certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the IT Act 2000 as amended from time to time. A proposal submitted by a Joint Venture shall be digitally signed by an authorized representative with a written power of attorney signed by each member's authorized representative to legally bind all members.
- 5) Unless otherwise instructed in the RFP Document, the consultant need not sign or up-load the Sections in ITC-clause 1.4 above while uploading his Proposal. However, they must declare in his Proposal Form (Form T-1: Proposal Form) that they have read, understood, complied with, and stand bound by all requirements of these sections:
- 6) Unless otherwise specified, in TIS, originals of the EMD/ Bid Security instrument must be physically submitted sealed in double cover and acknowledgement be obtained before the bid submission deadline at the venue mentioned in TIS. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for such physical submission, the physical submission deadline shall stand extended to the next working day at the same time and venue.

- 7) The Procuring Entity reserves its right to call for verification, at any stage of evaluation, especially from the successful Consultant(s) before the issue of a Letter of Award (LoA), originals of uploaded scanned copies of documents (uploaded at REOI and in the RFP stages). If a consultant fails at that stage to provide such originals or, in case of substantive discrepancies in such documents, it shall be construed as a breach of the Code of Integrity (see clause 15 below). Such RFP proposals shall be liable to be rejected as nonresponsive and other punitive actions for such a breach.
- 8) Regarding the protected Price Schedule (excel format, Cover-2), the Consultant shall only enter his name in the space provided in the specified location. Consultant shall type rates in the figure only in the rate column of respective service(s) without any blank cell or Zero values in the rate column, without any alteration/ deletion/ modification of other portions of the excel sheet. If space is inadequate, the Consultant may upload additional documents under "Additional Documents" in the "Proposal Cover Content."
- 9) All Proposals uploaded by the Consultant to the portal shall get automatically encrypted. The encrypted Proposal can only be decrypted/ opened by the authorised persons on or after the due date and time. The Consultant should ensure the correctness of the Proposal before uploading and take a printout of the system- generated submission summary to confirm the successful Proposal upload.

9.3.2 Implied acceptance of procedures by Auditors

Submission of Proposal in response to the RFP Document is deemed to be acceptance of the procedures and conditions of e-Procurement and the RFP Document.

9.4. Modification, Resubmission and Withdrawal of Proposals

9.4.1 Modification & Resubmission

Once submitted in e-Procurement, the Consultant cannot view or modify his Proposal since it is locked by encryption. However, resubmission of the Proposal by the Auditors for any number of times superseding earlier Proposal(s) before the submission date and time is allowed. Resubmission of a Proposal shall require uploading all documents, including the financial Proposal, afresh. The system shall consider only the last Proposal submitted.

9.4.2 Withdrawal

- 1) The Consultant may withdraw his Proposal before the Proposal submission deadline, and it shall be marked as withdrawn and shall not get opened during the Proposal opening.
- 2) No Proposal should be withdrawn after the Proposal submission deadline and before the Proposal validity period expires. If a Consultant withdraws the Proposal during this period, the Procuring Entity shall be within its right to forfeit the Bid Security (or enforce the Bid Securing Declaration, if it was allowed in lieu of Bid Security), in addition to other punitive actions provided in the RFP Document for such misdemeanour as per clause 8.4 above.

10. Proposal Opening

The Proposals shall be opened on or after the date & time of the opening stipulated in TIS. Proposals cannot be opened before the specified date & time, even by the Tender Inviting Officer, the Procurement Officer, or the Publisher. If the specified date of Proposal opening falls on is subsequently declared a holiday or closed day for the Procuring Entity, the

Proposals shall be opened at the appointed time on the next working day.

11. Evaluation of Proposals and Award of Contract

11.1. General norms

11.1.1 Evaluation is based only on declared criteria.

- 1) The evaluation shall be based upon scrutiny and examination of all relevant data and details submitted by the Consultant in its/ his Proposal and other allied information deemed appropriate by Procuring Entity. Evaluation of Proposals shall be based only on the criteria/ conditions included in the RFP Document. The Selection Method to be used for evaluation and the Type of Contract (Price Structure) is mentioned in the TIS.
- 2) The determination shall not consider the qualifications of other firms, such as the consultant's subsidiaries, parent entities, affiliates, or any other firm(s) different from the consultant.
- 3) Auditors planning to subcontract any Key Activities indicated in Section VI: terms of Reference and its sub-sections must ensure compliance with ITC-Clause 3 above.
- 4) Information relating to the evaluation of RFPs and evaluation results shall not be disclosed to any participant or any other persons not officially concerned with such process until the notification of shortlisting is made in accordance with clause 13.1 below.

11.1.2 Deviations/ Reservations/ Omissions - Substantive or Minor

- 1) During the evaluation of Proposals, the following definitions apply:
 - a) "Deviation" is a departure from the requirements specified in the RFP Document;
 - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP Document; and
 - c) "Omission" is failing to submit part or all of the information or documentation required in the RFP Document.
- 2) A deviation/ reservation/ omission from the requirements of the RFP Document shall be considered a substantive deviation as per the following norm, and the rest shall be considered a Minor deviation:
 - a) which affects in any substantive way the scope, quality, or performance standards of the Services;
 - b) which limits in any substantive way, inconsistent with the RFP Document, the Procuring Entity's rights, or the Consultant's obligations under the contract; or
 - c) Whose rectification would unfairly affect the competitive position of other Auditors presenting substantively responsive Proposals.
- 3) The decision of the Procuring Entity shall be final in this regard. Proposals with substantive deviations shall be rejected as nonresponsive.
- 4) Variations, deviations, and other offered benefits (Techno-commercial or Financial) above the scope/ quantum of Services stipulated in the RFP Document shall not influence evaluation Proposals. If the Proposal is otherwise successful, such benefits shall be availed by the Procuring Entity, which would become part of the contract.

5) The Procuring Entity reserves the right to accept or reject Proposals with minor deviations. Wherever necessary, the Procuring Entity shall convey its observation as per ITC-clause 11.1.3 below on such 'minor' issues to the Consultant by registered/speed post/ electronically etc., asking Consultant to respond by a specified date. If the Consultant does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that Proposal shall be liable to be rejected as nonresponsive.

11.1.3 Clarification of Proposals and shortfall documents

- 1) During the evaluation of Techno commercial or Financial Proposals, the Procuring Entity may, at its discretion, but without any obligation to do so, ask the Consultant to clarify its Proposal by a specified date. The consultant should answer the clarification within that specified date (or, if not specified, 7 days from receiving such a request). The request for clarification shall be submitted in writing or electronically, and no change in prices or substance of the Proposal shall be sought, offered, or permitted that may grant any undue advantage to such Consultant. Any clarification submitted by a Consultant regarding its Proposal that is not in response to a request by the Purchasing Entity shall not be considered.
- 2) The Procuring Entity reserves its right to, but without any obligation to do so, seek any shortfall information/ documents only in case of historical documents which pre- existed at the time of the Proposal Opening and which have not undergone change since then and do not grant any undue advantage to any Consultant. There is a provision on the portal for requesting Short-fall documents from the Auditors. The system allows taking the shortfall documents from Auditors only once after the technical Proposal opening.
- 3) If the consultant fails to provide satisfactory clarification and/or missing information, its RFP shall be evaluated based on available information and documents.

11.1.4 Contacting Procuring Entity during the evaluation

From Proposal submission to awarding of the contract, no Consultant shall contact the Procuring Entity on any matter relating to the submitted Proposal. If a Consultant needs to contact the Procuring Entity for any reason relating to this tender and/ or its Proposal, it should do so only in writing or electronically. Any effort by a Consultant to influence the Procuring Entity during the processing of Proposals, evaluation, Proposal comparison or award decisions shall be construed as a violation of the Code of Integrity, and the Proposal shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the RFP Document.

11.2. Evaluation of Proposals

11.2.1 Preliminary Examination of Proposals - Determining Responsiveness

A substantively responsive Proposal is complete and conforms to the RFP Document's essential terms, conditions, and requirements without substantive deviation, reservation, or omission. Proposals with substantive techno-commercial deviations or other essential aspects of the RFP shall be rejected as nonresponsive. Only substantively responsive Proposals shall be considered for further evaluation. Procuring entity reserves its right to consider and allow

minor deviations in technical and Commercial Conditions. Unless otherwise stipulated in the AITC, the following are some of the crucial aspects for which a Proposal shall be rejected as nonresponsive:

- 1) The Proposal is not in the prescribed format or is not submitted as per the stipulations in the RFP Document.
- 2) Failure to provide and/ or comply with the required information, instructions etc., incorporated in the RFP Document or evasive information/ reply against any such stipulations.
- 3) Required Bid Security (EMD) (or Bid Securing Declaration BSD if permitted) has not been provided.
- 4) Consultant no longer complies with the eligibility criteria in the preceding EOI process based on which they were shortlisted for participation;
- 5) The Services offered are not eligible as per the provision of this tender.
- 6) The consultant has quoted conditional Proposals or more than one Proposal or alternative Proposals unless permitted explicitly in the AITC.
- 7) The Proposal validity is shorter than the required period.
- 8) The Proposal departs from the essential requirements stipulated in the bidding document;
- 9) The consultant has quoted 'Nil' Service charges/ margin over the minimum wages in Personnel Deployment Schedule.
- 10) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations
- 11) Furnishing wrong and/ or misleading data, statement(s) etc. In such a situation, besides rejecting the Proposal as nonresponsive, it is liable to attract other punitive actions under relevant provisions of the RFP Document for violating the Code of Integrity.

11.2.2 The evaluation process

Unless otherwise stated, only the techno-commercial Proposals shall be opened on the stipulated date of opening of Proposals. After that, the techno-commercial evaluation shall ascertain whether these Proposals meet the requirements of the Terms of Reference, Technical Criteria and Minimum Score. Subsequent opening of financial Proposals and financial evaluation shall be done only of Proposals declared successful in techno-commercial evaluation. The evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation results are declared and Financial proposals are opened.

11.3. Techno-commercial Evaluation

11.3.1 Evaluation of Technical Proposals/ Score

- 1) Procuring Entity shall evaluate the Technical proposal and assign scores as per the scheme of criteria and sub-criteria as laid down in 'Section VII: Evaluation/ Scoring Criteria'. This determination shall, inter-alia, consider the Consultant's (i) "Specific experience of the Consultant (as a firm) relevant to the Assignment"; ii) "Adequacy and quality of the proposed methodology, and work plan"; iii) "Key Experts' qualifications and competence for the Assignment".
- 2) In the case of JV/C, the evaluation of the Technical proposal shall include the credentials of all members, including non-substantial members.
- 3) If it is established that any Key Expert nominated in the Consultant's Proposal was included in the

Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and shall be treated as a violation of the Code of Ethics and would be liable for penalties thereunder.

11.3.2 Evaluation of Conformity to Commercial and Other Clauses

Auditors must comply with all the Commercial and other clauses of the RFP Document as per submissions in Form T-7: 'Terms and Conditions – Compliance'. The Procuring Entity shall also evaluate the commercial conditions quoted by the Consultant to confirm that all essential terms and conditions stipulated in the RFP Document have been accepted without substantive omissions/ reservations/exceptions/ deviation by the Consultant. Deviations from or objections or reservations to critical provisions such as those concerning (but not limited to) Governing laws and Jurisdiction (GCC Clause 3), Consultant's Obligations and Restrictions of its Rights (GCC Clause 5), Performance Bond/ Security (GCC Clause 5.8), Force Majeure (GCC Clause 9.6), Taxes & Duties (GCC Clause 10.2), and Code of Integrity (GCC Clause 13) shall be deemed to be a substantive deviation and treated as unresponsive as per clause 11.1.2 (3) above.

11.3.3 Evaluation of Techno-commercially Suitable Auditors and Opening of Financial Proposals

Each responsive Proposal shall be given a technical score applying the evaluation criteria, sub-criteria, and scoring system specified in Section VII: Evaluation/ Scoring Criteria. A Proposal shall be rejected if it fails to achieve the minimum technical score indicated therein. Proposals that succeed in the above techno-commercial evaluation shall be considered techno-commercially suitable. The list of such techno-commercially suitable Auditors shall be declared on the Portal announcing a date/time and venue for opening their financial Proposals (not less than 10 days from this declaration, in line with ITC-Clause 14 below). The Procuring Entity shall notify all Auditors whether their proposal was found responsive/ non-responsive to the RFP and TOR and whether they met the minimum qualifying technical score. Financial proposals of successful Auditors only shall be opened online. The financial proposals of unsuccessful Auditors shall remain encrypted and unopened.

11.4. Financial Proposals Evaluation and Ranking of Proposals

11.4.1 Financial Proposals Evaluation

- 1) Financial Proposals of all Techno-commercially suitable Proposals are evaluated based on the selection method declared in the RFP Document (LCS/ QCBS/ FBS) and ranked accordingly.
- 2) Unless otherwise stipulated, the evaluation of prices shall be on total outgo from the Procuring Entity's pocket, to be paid to the Consultant or any third party, including all elements of costs as per the terms of the proposed contract, duly delivered, as the case may be, including any taxes, duties, levies etc.
- 3) In the case of JV/C, the financial credentials of non-substantial members shall not be considered in the financial evaluation.
- 4) As per policies of the Central Government, from time to time, the Procuring Entity reserves its option to give purchase preferences to eligible categories of Auditors as

indicated in the RFP Document.

- 5) evaluation of Proposals shall include and consider the following taxes/ duties, as per ITC-clause 5.3 above:
 - a) in the case of Services performed in India or incidental goods of foreign origin already located in India, GST & other similar duties shall be contractually payable on the Services and incidental Goods if a contract is awarded to the Consultant;
 - b) The offers shall be evaluated based on the GST rate quoted by each Consultant, and the same shall be used for determining the inter-se ranking. The Procuring Entity shall not be responsible for any misclassification of the HSN number or incorrect GST rate quoted by the Consultant. Any increase in GST rate due to misclassification of HSN number shall have to be absorbed by the supplier; and
 - c) If GST is quoted extra but with the provision that it shall be charged as applicable at the time of delivery, the offer shall be evaluated for comparison purposes by loading the maximum existing rate of GST for the product/ HSN code.
 - d) If a bidder enters “zero/blank” GST or an erroneous GST, the financial evaluation will be done considering the “Zero” or quoted GST rate, as the case may be. In cases where the successful bidder quotes the wrong GST rate for releasing the order, the following methodology will be followed:
 - i) If the actual GST rate applicable is lower than the quoted GST rate, the actual GST rate will be added to the quoted basic prices. The final cash outflow will be based on the actual GST rate.
 - ii) If the actual GST rate applicable is more than the quoted GST rate, the basic prices quoted will be reduced proportionately, keeping the final cash outflow the same as the overall quoted amount.
- 6) Correction of Errors/ adjustments:
 - a) Loading for Deviations: Unless announced beforehand, the quoted price shall not be loaded based on deviations in commercial conditions. If it is so declared, such loading of a financial Proposal shall be done as per the relevant provisions;
 - b) Discrepancies between Technical and Financial Proposal:
 - i) Activities and items described in the Technical Proposal but not priced in the Financial Proposal shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
 - ii) If a Lump-Sum contract selection method is declared in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made.
 - iii) If a Time-Based contract selection method is declared in the RFP, in case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, any higher quantities in Technical Proposal shall prevail, and the quoted total prices shall be assumed to apply to this higher quantum. The unit rate for such activity shall be accordingly adjusted. No such correction shall be done if quantities are lower in the Technical proposal.
 - c) Discounts and Rebates: If any Consultant offers conditional discounts/ rebates in his Proposal or suo-motu discounts and rebates after the Proposal Opening (techno-

commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a Consultant gets selected as per the selection method, without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;

- d) Price Variation: If the tenders have been invited on a variable price basis, the tenders shall be evaluated, compared, and ranked based on the position as prevailing on the last deadline for techno-commercial Proposal submission and not on any future date.
- 7) Ambiguous Financial Proposal: If the financial Proposal is ambiguous and leads to two equally valid total price amounts, it shall be rejected as nonresponsive.
- 8) Time-Based (Input Admeasurement) Contracts: The Consultant's Proposal must include the Key Experts' time-input person-months not less than the minimum specified, if any.
 - a) Minimum Time Inputs: if a Proposal includes less or more than the required minimum person-month time input, the proposal shall be considered as per sub-clause 6. b)-iii) above for that key-position
 - b) The proposal shall be evaluated based on remuneration cost plus reimbursable expenses as quoted by the Auditors in the prescribed financial forms. The travel expense (TA/DA for authorized travel outside the home station) shall be reimbursed by the Procuring Entity on an actual basis. It shall be limited to the entitlement in Appendix D to the Contract Form. Therefore, travel expenses (TA/DA for authorized travel outside the home station) need not be quoted in the financial proposal for evaluation.
- 9) Least-Cost Selection: In the case of Least-Cost Selection (LCS), the Procuring Entity shall select the Consultant with the lowest evaluated total price among techno- commercially suitable proposals and invite such a Consultant to negotiations as per ITC-Clause 12 below. If the same lowest evaluated price is quoted by more than one Consultant, the consultant with a higher no. of branch offices shall be selected for negotiation.
- 10) Quality and Cost-Based Selection (QCBS): In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them to obtain a combined QCBS (Technical cum Financial) score, as explained in the sub- clauses below. The proposal obtaining the highest total combined score in evaluating quality and cost will be ranked as H-1, followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations as per ITC-Clause 12 below. If two or more bids have the same highest score in the final ranking, the bid with a higher financial score will be H-1.
 - a) The Technical Proposals are given an absolute technical score (Ta out of max 100) based on the evaluation criteria in Section VII: Evaluation/ Scoring Criteria. However, to normalise this w.r.t. Financial Score Sf below, a relative Technical Score (St) based on their relative ranking shall be calculated. The highest evaluated Technical Score (Ta-max) is assigned the maximum relative Technical Score (St) of 100 (Hundred). The formula for determining the relative Technical scores (St) of all other Proposals is as follows:
$$St = 100 \times Ta / Ta\text{-max,}$$
in which "Ta-max" is the highest evaluated absolute Technical Score, "St" is the

relative Technical score calculated, and "Ta" is the absolute Technical Score of the proposal under consideration. This normalisation would avoid any unintended magnification of weightage to the Financial score due to different scales of Technical Scores and Financial Scores.

- b) The Financial Proposals are given cost-score based on the relative ranking of prices, with the lowest evaluated Financial Proposal (Fm) being assigned the maximum financial score (Sf) of 100(Hundred). The formula for determining the financial scores (Sf) of all other Proposals is as follows:

$$Sf = 100 \times Fm / F,$$

in which "Fm" is the price of the lowest offer, "Sf" is the financial score calculated, and "F" is the price of the proposal under consideration.

- c) The weights given to the Technical (T) and Financial (P) Proposals are specified in TIS/ AITC:

T (the weight given to the Technical Proposal) in %, and

P (the weight given to the Financial Proposal) in % (with T + P = 100%)

- d) Proposals would be ranked according to their combined QCBS (weighted technical, St and financial, Sf) scores as follows:

$$S = (St \times T + Sf \times P) / 100.$$

in which "S" is the combined QCBS score, "St" is the relative technical score calculated as per sub-clause a) above and "Sf" is the financial score calculated as per sub-clause b) above.

- e) All scores shall be calculated up to two decimal places only.

- 11) Fixed Budget Selection (FBS): In the case of FBS, those Proposals that exceed the budget indicated in the RFP Document shall be rejected. The Procuring Entity shall select the Consultant having the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP and invite such Consultant to negotiate the Contract. In case more than one Auditors share the same highest technical score, the consultant whose financial proposal is lower shall be invited to negotiate the contract.

11.4.2 Global Tender Enquiry (GTE, International Competitive Bidding)

Unless otherwise stipulated in TIS, the RFP shall be only a Domestic procurement where rates are to be quoted and paid in Indian Rupees (INR) only. If explicitly stipulated in the TIS that this is a Global Tender Enquiry (International Competitive Bidding), the following additional aspects of the evaluation of the financial offer shall also apply:

- 1) Currency of Tender

In GTE tenders, if permitted in AITC, the Proposal price may be in foreign currencies, except for expenditure incurred in India (including incidental Works/ Goods/ Services delivered in India and agency commission, if any) should be stated in Indian Rupees.

- 2) Evaluation of Offers

For financial evaluation, all Proposals shall be converted to Indian Rupees based on the "Bill for Collection (BC) selling" exchange rate on the last deadline for the Proposal submission (Techno-commercial offer) from a source as specified (State Bank of India, if not so specified) in the tender document. The offers would be compared based on the principle of the total outgo from Procuring Entity's pockets, including all applicable

taxes and duties (Customs duty, GST, and GST Cess). For Proposals with Letter of Credit (LC) payment, the likely LC charges (as ascertained from the Procuring Entity's bankers) should also be loaded. Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Custom Assessable Value' plus the 'Basic Customs duty applicable thereon'.

The terms FOB, FAS, CIF, DDP etc., shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris

12. Contract Negotiation

12.1. Invitation to Negotiate

The negotiations shall be held at the date and address announced after the selection of the successful Consultant with their representative(s), who must have written power of attorney to negotiate and sign a contract on behalf of the Consultant. During the negotiations, it shall be ensured that no undue advantage accrues to the Consultant and that nothing shall vitiate the basis on which he has been declared successful. The minutes of negotiations shall be signed by the Procuring Entity and the Consultant's authorized representative.

12.2. Verification of Original Documents

Before issuing a Letter of Award (LoA) to the successful Consultant(s), the Procuring Entity may, at its discretion, ask the Consultant to present the originals of all such documents whose scanned copies were submitted online during shortlisting process and this RFP process. If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement. If the Consultant fails to provide such originals or in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity. Such Proposal shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Code of Integrity.

12.3. Availability of Key Experts:

As a pre-requisite to the negotiations, the invited Consultant shall confirm the availability of all Key Experts included in the Proposal. Failure to confirm the Key Experts' availability may result in the Consultant's Proposal being declared non-responsive and the Procuring Entity proceeding to negotiate the Contract with the next-ranked responsive Consultant.

Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period specified in the invitation letter to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

As per ITC-Clause 11.3.1-4), Procuring Entity reserves its right to seek during negotiations the replacement of the Team Leader/ other Key Experts who score below the minimum score if specified.

12.4. Technical Negotiations

The negotiations include discussions of the Terms of Reference (TORs), the proposed

methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the 'Appendix A: Terms of Reference' part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract lest the quality of the final product, its price, or the initial evaluation be vitiated.

12.5. Financial Negotiations

12.5.1 General

- 1) The Financial negotiations include clarifying the Consultant's tax liability and how it should be reflected in the Contract.
- 2) Lump-Sum form of BOQ: In the case of a Lump-Sum contract, if the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal shall not be negotiated.
- 3) **Time-Based (Input Admeasurement) form of BOQ:** In the case of a Time-Based contract, unit rate negotiations shall not take place except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by comparable Auditors in comparable contracts. Then Procuring Entity may request the Consultant to clarify the breakdown of remuneration rates during the Contract negotiations. At the negotiations, the firm shall be prepared to disclose its audited financial statements for the last three years to substantiate its breakup of remuneration rates. If clarifications are not satisfactory Procuring Entity may ask the Consultant to reduce the rates. The Procuring Entity shall specify the format for clarifying the remuneration rates' structure under this Clause. A breakdown of Remuneration sheets agreed upon at the negotiations shall form part of the negotiated contract and be included as an Annex to Appendix C in the Contract.

12.6. Conclusion of Negotiations

The negotiations are concluded with a review of the finalized draft Contract, which shall be initialled by the Procuring Entity and the Consultant's authorized representative.

If the negotiations fail, the Procuring Entity shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity for the Consultant to respond. If disagreement persists, the Procuring Entity shall declare the proposal non-responsive, informing the Consultant of the reasons for doing so. The Procuring Entity shall invite the next-ranked responsive Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

13. Award of Contract

13.1. Letter of Award (Acceptance - LoA) and Signing of Contract

13.1.1 Letter of Award (LoA)

After 10 days from the conclusion of negotiations (in line with ITC-Clause 14 below), the Consultant whose Proposal has been accepted shall be notified of the award by the Procuring Entity before the expiration of the Proposal validity period by written or electronic means. This notification (hereinafter and in the Conditions of Contract called the "Letter of Award - LoA") shall state the sum (hereinafter and in the contract called the "Contract Price") that the Procuring

Entity shall pay the Consultant in consideration of delivery of Services. The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below. The Procuring Entity, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.

13.1.2 Performance Security

- 1) Within the number of days stipulated in AITC (or 21 days if not specified) of receipt of the Letter of Award (LoA, or the contract if LoA has been skipped), performance Security as per details in GCC-5.8 shall be submitted by the Consultant to the Procuring Entity.
- 2) If the Consultant, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award and forfeit EMD (or enforce Bid Securing Declaration if it was permitted to be submitted in lieu of Bid Security), besides taking any other administrative punitive action like 'Removal from List of Registered Suppliers' etc.

13.1.3 Signing of Contract

- 1) Publication of Results: The Procuring Entity shall send to each techno-commercially suitable Consultant the Notification of Intention to Award the Contract to the successful Consultant. The Notification of Intention to Award shall contain, at a minimum, the following information:
 - a) the name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
 - b) the contract price of the successful Proposal;
 - c) the names of all Auditors included in the short list for RFP, indicating those that submitted Proposals;
 - d) the final combined scores and the final ranking of the Auditors
 - e) The name and address of the successful Consultant(s) receiving the contract(s) shall be published in the Portal and notice board/ bulletin/website of the Procuring Entity.
- 2) After the award notification, the Procuring Entity shall share a copy of the Contract Agreement (as per Format 1: Contract Form along with sub-formats to be specified later by the Procuring Entity) to a successful Consultant for review. The Consultant may point out to the Procuring Entity, in writing/ electronically, any anomalies noticed in the contract within seven days of receipt. The Contract Agreement shall be executed within 21 days after the date of issue of the Letter of Acceptance and after submission and verification of the Performance Security.
- 3) If asked by the Procuring Entity, the successful Consultant shall return the original copy of the contract, duly signed, and dated, within seven days from the date of receipt of the contract, to the Procuring Entity by registered/ speed post or by a suitable digital means.

14. Grievance Redressal/ Complaint Procedure

- 1) The consultant has the right to submit a complaint or seek de-briefing regarding the rejection of his proposal, in writing or electronically, within 10 days of the declaration of techno-commercial or financial evaluation results. The complaint shall be addressed to the Head

of Procurement.

- 2) Within 5 working days of receipt of the complaint, the Tender Inviting Officer shall acknowledge the receipt in writing to the complainant, indicating that it has been received, and the response shall be sent in due course after a detailed examination.
- 3) The Tender Inviting Officer shall convey the final decision to the complainant within 15 days of receiving the complaint. No response shall be given regarding the confidential process of evaluating Proposals and awarding the contract before the award is notified, although the complaint shall be kept in view during such a process. However, no response shall be given regarding the following topics explicitly excluded from such complaint process:
 - a) Only a Consultant who has participated in the procurement process, i.e., pre-qualification, Consultant registration or bidding, as the case may be, can make such representation.
 - b) Only a directly affected Consultant can represent in this regard.
 - c) In the case of EOI, before the bidding of Technical/ financial Proposals, an application for review concerning the technical/ financial Proposal may be filed only by a Consultant who has qualified in the EOI;
 - d) If a technical Proposal has been evaluated before the opening of the financial Proposal, an application for review concerning the financial Proposal may be filed only by a Consultant whose technical Proposal is found to be acceptable.
- 4) No third-party information (RFPs, evaluation results) can be sought or included in the response.
- 5) The following decisions of the Procuring Entity shall not be subject to review:
 - a) Determination of the need for procurement.
 - b) Complaints against Terms of Reference except under the premise that they are either vague or too specific to limit competition
 - c) Selection of the mode of procurement or bidding system;
 - d) Choice of the selection procedure.
 - e) Provisions limiting the participation of Auditors in the Procurement Process, in terms of policies of the Government
 - f) Provisions regarding purchase preferences to specific categories of Auditors in terms of policies of the Central Government
 - g) Cancellation of the Procurement Process except where it is intended to subsequently re-tender the same Services.

15. Code of Integrity in Public Procurement, Misdemeanours and Penalties:

Procuring authorities, Auditors, suppliers, contractors, and Auditors should observe the highest standard of integrity and not indulge in prohibited practices or other misdemeanours, either directly or indirectly, at any stage during the Procurement Process or the execution of resultant contracts. GCC-clause 13 (including the penalties prescribed therein) shall be considered part of this clause of ITC (even though it is not being reproduced here for brevity) and shall apply mutatis mutandis during the pre- award Procurement Process.

Section III: Appendix to Instructions to Consultants (Auditors) (AITC)

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor (Ref ITC-clause 1.4)

Note for Auditors: Following clauses (in column 1), wherever these appear in ITC, shall be taken to be negated or additional provisions be added to, or existing provisions be altered as per column 2. Whenever there is any conflict between the provision in the ITC and that in the AITC, the provision contained in the AITC shall prevail.

ITC-Clauses	To be read as
Nil	

Section IV: General Conditions of Contract (GCC)

General

1.1. Tenets of Interpretation

Unless where the context requires otherwise, throughout the contract:

- 1) The headings of these conditions shall not affect the interpretation or construction thereof.
- 2) Writing or written includes matter either whole or in part, in digital communications, manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal or digitally acceptable authentication, as the case may be.
- 3) Words in the singular include the plural and vice-versa.
- 4) Words importing the masculine gender shall be taken to include other genders, and words importing persons shall include any company, association, or body of individuals, whether incorporated or not.
- 5) Terms and expressions not herein defined shall have the meanings assigned to them in the contract Act, 1872 (as amended) or the Sale of Goods Act, 1930 (as amended) or the General Clauses Act, 1897 (as amended) or of INCOTERMS, (current edition published by the International Chamber of Commerce, Paris) as the case may be.
- 6) Any reference to 'Services' shall also be deemed to include the incidental Works/ Goods.
- 7) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, to date.
- 8) GCC-clause 5.12 (Book Examination clause) shall not apply unless invoked explicitly in the contract.

1.2. Definitions

In the contract, unless the context otherwise requires:

- 1) "Allied Firm" are all business entities that are within the 'controlling ownership interest' (ownership of or entitlement to more than twenty-five per cent of the company's shares or capital or profits) or 'control' (including the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder agreements or voting agreements) of the principal firm acting alone or together or through one or more juridical persons. All successor firms or assigns of the principal firm shall be considered allied firms;
- 2) "Bill of Quantities" (including the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the Proposal;
- 3) "Commercial Bank" means a bank, defined as a scheduled bank under section 2(e) of the Reserve Bank of India Act, 1934;
- 4) "Contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', 'rate contract' or 'framework contract' or 'Letter of Award – LoA' (letter or memorandum communicating to the Consultant the acceptance of his Proposal) or 'Agreement' or a 'repeat order' accepted/ acted upon by the Consultant in specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the Consultant on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
- 5) "Consultant" (as a participant in a Procurement Process - including the term 'contractor',

- 'bidder', 'tenderer', participant' or 'service provider' in specific contexts) means any person or firm or company, including any member of a consortium or joint venture, every artificial juridical person not falling in any of the descriptions of Auditors stated hereinbefore, including any agency branch or office controlled by such person, participating in a Procurement Process;
- 6) "Consultant" (as a contract holder - including the terms 'Supplier' or 'Service Provider' or 'Contractor' or 'Firm' or 'Vendor' or 'Successful Consultant' in specific contexts) means the person, firm, company, or Joint Venture with whom the contract is entered into and shall be deemed to include the Consultant's successors (approved by the Procuring Entity), agents, Sub-consultant, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract;
 - 7) "Contract Manager" means (as distinct from Team Leader of the Consultant) the Procurement Officer or any other officer or a third-party agency who has been assigned the authority to take all actions on behalf of the Procuring Entity during the execution of the contract by the Consultant;
 - 8) "Day", "Month", and "Year" shall mean respectively calendar day, month or year (unless reference to financial year is apparent from the context);
 - 9) "Effective Date" means the date on which this Contract comes into force and effect as per the Contract;
 - 10) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract;
 - 11) "Goods" (including the terms 'Stores', and 'Material(s)' in specific contexts) includes all articles, materials, commodities, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), in specific contexts, procured or otherwise acquired by a Procuring Entity. Any reference to Goods shall be deemed to include small work or some services that are incidental or consequential to the supply of such goods; "Government" means the Central Government or a State Government, as the case may be and includes agencies and Public Sector Enterprises under it in specific contexts;
 - 12) "Intellectual Property Rights" (IPR) means the intellectual property owner's rights concerning possession/ exploitation of such property by others of tangible or intangible intellectual property, including rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI);
 - 13) "Joint Venture (JV or JV/C)" means an association or a Consortium with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.;
 - 14) "Key Expert(s)" means an individual professional (usually identified by name) whose skills, qualifications, knowledge, and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was considered in the technical

- evaluation of the Consultant's proposal;
- 15) "Non-Key Expert(s)" means an individual professional (usually not identified by name) provided by the Consultant or its Sub-Auditors to perform the Services or any part thereof under the Contract;
 - 16) "Parties": The parties to the contract are the "Consultant" and the "Procuring Entity", as defined in GCC clause 2.4;
 - 17) "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' 'Performance Bank Guarantee' or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the successful Consultant or Contractor in the form prescribed for the due performance of the contract;
 - 18) "Procurement" (in the context of Public/ Government 'procurement' or 'Purchase', or 'Acquisition' including an award of Public-Private Partnership projects, in specific contexts) means the acquisition of Goods/ Services/ works or a combination thereof by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) by a Procuring Entity, whether directly or through an agency with which a contract for procurement is entered into, but does not include any acquisition without consideration. The term "procure"/ "procured" or "purchase"/ "purchased" shall be construed accordingly;
 - 19) "Procuring Entity" means the entity in The Procuring Organization procuring Goods, Works, or Services;
 - 20) "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
 - 21) "Procurement Process" (or "Tender"; "RFP"; "EOI", "Tender Enquiry" in specific contexts): 'Procurement Process' is the whole process from the publishing of the RFP Document to the resultant award of the contract. 'RFP Document' means the document (including all its sections, appendices, forms, formats, etc.) published by the Procuring Entity to invite Proposals in a Procurement Process. The RFP Document and Procurement Process may be generically and interchangeably referred to as "Bid Document", "Tender" or "Tender Enquiry," which would be clear from context without ambiguity;
 - 22) "Proposal" (including the term 'tender', 'offer', 'quotation' or 'bid' in specific contexts) means an offer to supply goods, services or execution of works made as per the terms and conditions set out in a document inviting such offers;
 - 23) "Services" means the activities to be performed by the Consultant under this Contract, as described in Appendix A thereto;
 - 24) "Signed" means ink signed or digitally signed with a valid Digital Signature as per IT Act 2000 (amended from time to time). It also includes stamped, except in the case of a Letter of Award or amendment thereof;
 - 25) "Sub-consultant" means a person or corporate body with an agreement with the Consultant to carry out a specific part of the 'Services' while the Consultant remains solely liable for the execution of the Contract;
 - 26) "Variation" means an instruction given by the Contract Manager, which varies the scope, quantum or performance standards of the Service performed;
 - 27) "Works" refer to any activity involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more engineering designs, architectural design, material and technology, labour, machinery, and equipment.

1.3. Document Conventions

All words and phrases defined in GCC-clause 1.2 are written as ‘Capitalised words’ and shall have the defined meaning. The rest of the words shall be as per grammar, inter-alia ‘Services’ shall indicate the definition given in the GCC, while ‘services’ shall have the usual dictionary meaning.

1.4. Abbreviations:

Abbreviation	Definition
AITC	Appendix to Instructions To Auditors
BOQ	Bill of Quantities
BSD	Bid Securing Declaration
CV	Curriculum Vitae
EMD	Monetary guarantee to be furnished by a Consultant along with its proposal
EOI	Expression Of Interest
FBS	Fixed Budget Selection
GCC	General Conditions of Contract
GST	Goods and Services Tax
GSTIN	GST Identification Number
GTE	Global Tender Enquiry (International Competitive Bidding)
HSN	Harmonized System of Nomenclature
IEM	Independent External Monitor
IPR	Intellectual Property Rights
ITC	Instructions To Auditors
JV/C	Joint Venture/ Consortium
LCS	Least Cost Selection
LoA	Letter of Award (Acceptance)
QCBS	Quality and Cost-Based Selection
REOI	Request for Expression of Interest
RFP	Request for Proposal
RFPL	Request for Proposal Letter
SCC	Special Conditions of Contract
TIA	Tender Inviting Authority
TIS	Tender Information Summary
TOR	Terms of Reference

The Contract

2.1. Language of Contract

The contract and all subsequent correspondence documents, during its execution, between the

consultant and the Procuring Entity shall be written in the Language (hereinafter called the contract's language) as stipulated in the Contract (or, if not so specified, in English). However, the language of any printed literature furnished by a Consultant may be written in any other language provided a certified translation accompanies the same in the contract's language. For purposes of interpretation, translation in the contract's language shall prevail.

2.2. The Entire Agreement

This Contract and its documents (referred to in GCC-clause 2.5 below) constitute the entire agreement between the Procuring Entity and the Consultant and supersede all other communications, negotiations, and agreements (whether written or oral) of the Parties made before the date of this Contract. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not outlined in this Contract.

2.3. Severability

If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of the Contract or any of its other provisions and conditions.

2.4. Relationship between Parties

- 1) The parties to the contract are the Consultant and the Procuring Entity, as nominated in the contract.
- 2) Nothing contained herein shall be construed as establishing a relationship in the nature of master and servant or principal and agent between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, is legally the main principal/ master of the Experts and Sub-Auditors, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 3) Authority of Member in Charge: In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the contract to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.
- 4) Authorised Representative: Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the contract.
- 5) Good Faith: The Parties shall act in good faith concerning each other's rights under this Contract and adopt all reasonable measures to ensure the realization of the objectives of this Contract. The Consultant shall always act, in respect of any matter relating to this Contract or the Services, as a faithful adviser to the Procuring Entity and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

2.5. Contract Documents and their Precedence

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

- 1) Valid and authorized Amendments issued to the contract.
- 2) The Agreement consisting of the initial paragraphs, recitals, and other clauses, including the appendices annexed to it and signatures of Procuring Entity, set forth immediately before the GCC;
- 3) Appendix A: Terms of Reference;
- 4) Appendix B: Key Experts;
- 5) Appendix C – Remuneration Cost Estimates;
 - a) Annex to Appendix C: if any.
- 6) the Letter of Award (LoA), if issued
- 7) the SCC
- 8) the GCC
- 9) the Consultant’s Proposal;
- 10) any other document listed in the contract as forming part of this Contract.

2.6. Modifications/ Amendments, Waivers and Forbearances

2.6.1 Modifications/ Amendments of Contract

- 1) After the contract documents have been signed, no modified provisions shall be applicable unless the Procuring Entity suo-moto or, on request from the Consultant, by written order, amend the contract, at any time during the currency of the contract, by making alterations and modifications within the general scope of the Contract. Requests for changes and modifications in the Contract may be submitted in writing by the Consultant to the Procuring Entity.
- 2) If the Consultant does not agree to the suo-moto modifications/ amendments made by the Procuring Entity, he shall convey his views within 14 days from the date of amendment/ modification. Otherwise, it shall be assumed that the Consultant has consented to the amendment.
- 3) Any verbal or written arrangement abandoning, modifying, extending, reducing, or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Procuring Entity unless and until the same is incorporated in a formal instrument and signed by the Procuring Entity, and till then the Procuring Entity shall have the right to repudiate such arrangements.

2.6.2 Waivers and Forbearance

The following shall apply concerning any waivers, forbearance, or similar action taken under this Contract:

- 1) Any waiver of a Procuring Entity’s rights, powers, or remedies under this Contract must be in writing, dated, and signed by an authorized representative of the Procuring Entity granting such a waiver and must specify the terms under which the waiver is being granted.
- 2) No relaxation, forbearance, delay, or indulgence by Procuring Entity in enforcing any of the terms and conditions of this Contract or granting of an extension of time by Procuring Entity to the Consultant shall, in any way whatsoever, prejudice, affect, or restrict the rights of Procuring Entity under this Contract, neither shall any waiver by Procuring Entity of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.

Governing Laws and Jurisdiction

3.1. Governing Laws and Jurisdiction

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

3.2. Changes in Laws and Regulations

Unless otherwise stipulated in the contract, if after the deadline for the Proposal submission (Techno-commercial), any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated, or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased as per GCC clause 2.6, by agreement between the Parties hereto, to the extent that the Consultant has thereby been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the applicable price adjustment provisions.

Communications

4.1 Communications

All communications under the contract shall be served by the parties to each other in writing, in the contract's language, and served in a manner customary and acceptable in business and commercial transactions.

The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later.

No communication shall amount to an amendment of the terms and conditions of the contract, except a formal letter of amendment of the Contract expressly so designated.

Such communications would be an instruction, a notification, an acceptance, a certificate from the Procuring Entity, or a submission or a notification from the Consultant. A notification or certificate required under the contract must be communicated separately from other communications.

4.2 Persons signing the Communications

For all purposes of the contract, including arbitration, thereunder all communications to the other party shall be signed by:

- 1) On behalf of the Consultant: The person who has signed the contract on behalf of the Consultant shall sign all correspondences. A person signing communication in respect of the contract or purported to be on behalf of the Consultant, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the Consultant. If it is discovered at any time that the person so signing has no authority to do so, the Procuring Entity reserves its right, without prejudice to any other right or remedy, to terminate the contract for default in terms of the contract and/ or avail any or all the

remedies thereunder and hold such person personally and/ or the Consultant liable to the Procuring Entity for all costs and damages arising from such misdemeanours.

- 2) On behalf of the Procuring Entity: Unless otherwise stipulated in the contract, the Contract Manager signing the contract shall administer the contract and sign communications on behalf of the Procuring Entity. Paying Authorities mentioned in the contract shall also administer respective functions during Contract Execution.

4.3 Address of the parties for sending communications by the other party.

For all purposes of the contract, including arbitration, thereunder, the address of parties to which the other party shall address all communications and notices shall be:

- 1) The Consultant's address as mentioned in the contract, unless the Consultant has notified change by a separate communication containing no other topic to the Procuring Entity. The Consultant shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid, and
- 2) The Procuring Entity's address shall be the one mentioned in the contract. The Consultant shall also send additional copies to officers of the Procuring Entity presently dealing with the contract.
- 3) In case of communications from the Consultant, copies of communications shall be marked to the Contract Manager and the Procuring Entity's officer signing the contract and as relevant to the Paying Authorities mentioned in the contract. Unless specified before the contract's start, the Procuring Entity and the Consultant shall notify each other if additional copies of communications are to be addressed to additional addresses.

Consultant's Obligations and restrictions on its Rights

5.1. Changes in Constitution/ financial stakes/ responsibilities of a Contract's Business

the Consultant must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract.

- 1) Where the Consultant is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:
 - a) A new partner shall not be introduced in the firm except with the previous consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
 - b) On the death or retirement of any partner of the Consultant firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the contract and/ or avail any or all remedies thereunder.
 - c) If the contract is not terminated as provided in Sub-clause (b) above, notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity in writing or electronically.

5.2. Obligation to Maintain Eligibility and Qualifications

The contract has been awarded to the Consultant based on evaluation and scoring criteria stipulated in the RFP process after he was shortlisted in the preceding EOI process based on eligibility and qualifications criteria stipulated therein. The Consultant is contractually bound to maintain compliance with all such criteria during the execution of the contract. Any change which would vitiate the basis on which the Consultant was shortlisted or awarded the contract should be pro-actively brought to the notice of the Procuring Entity within 7 days of it coming to the Consultant's knowledge.

5.3. Restriction on Potential Conflict of Interests

- 1) Neither the Consultant nor its Sub-Auditors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
 - a) During this Contract's term, any business or professional activities in India that would conflict with the activities assigned to them.
 - b) After this Contract's termination, such other activities as may be stipulated in the contract.
- 2) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.
- 3) During the term of this Contract and after its termination, the Consultant and its affiliates, as well as any Sub-consultant and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the subject Service of this Contract and any continuation thereof) for any project resulting from or closely related to the subject Services of this Contract.
- 4) The payment of the Consultant according to (GCC Clause 10.5) shall constitute the Consultant's only payment in connection with this Contract. The Consultant shall not accept for its benefit any trade commission, discount, or similar payment in connection with activities under this Contract or the discharge of its obligations hereunder. The Consultant shall use its best efforts to ensure that any Sub- Auditors and the Experts and agents of either shall not receive any additional payment.
- 5) The Consultant has an obligation and shall ensure that its Experts and Sub- Auditors shall have an obligation to disclose any actual or potential conflict that impacts their capacity to serve the best interest of the Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant and/ or the termination of the Contract.

5.4. Consequences of breach by Constituents of a Consultant

Should the Consultant or any of its partners, its Sub-Auditors, any of its members in case of JV/C, or their Personnel commit a default or breach of GCC-clause 5.1 to 5.7, the Consultant (in case of JV, by the Lead Member, or in the case of the Lead Member being the defaulter, by the member nominated as Lead Member of the remaining JV/C) shall remedy such breaches within 21 days, keeping the Procuring Entity informed. Procuring Entity may call upon the Lead Member to assign the work of the defaulting member to any other equally competent party acceptable to the Procuring Entity. However, at its discretion, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or

all remedies thereunder. The decision of the Procuring Entity as to any matter or thing concerning or arising out of GCC-clause 5.1 to 5.7 or on any question whether the Consultant or any partner of the Consultant firm has committed a default or breach of any of the conditions shall be final and binding on the Consultant.

5.5. Assignment and Sub-contracting

- 1) the Consultant shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever to any Sub-consultant.
- 2) The Consultant shall notify the Procuring Entity in writing of all such Sub-Auditors, if not already stipulated in the contract, in its original Proposal or later. Such notification shall not relieve the Consultant from any of its liability or obligation under the terms and conditions of the contract. Sub-Auditors must comply with and should not circumvent the Consultant's compliance with its obligations under GCC-clause 5.1 to 5.7.
- 3) If the Consultant sublets or assigns this Contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.

5.6. Obligation to Indemnify Procuring Entity

5.6.1 For breach of IPR Rights

- 1) the Consultant shall indemnify and hold harmless, free of costs, the Procuring Entity and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Services provided by the Consultant under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the contract arising out of or in connection with:
 - a) Any design, data, drawing, specification, or other documents or Services provided or designed by the Consultant for or on behalf of the Procuring Entity.
 - b) The sale by the Procuring Entity in any country of the services/ products produced by the Services delivered by Consultant, and
 - c) The delivery of the Services by the Consultant or the use of the Services at the Procuring Entity's Site
- 2) Such indemnity shall not cover any use of the Services or any part thereof other than for the purpose indicated by or to be reasonably inferred from the contract, neither any infringement resulting from the use of the Services or any part thereof, or any service/products produced thereby in association or combination with any other service, equipment, plant, or materials not delivered by the Consultant.
- 3) If any proceedings are brought, or any claim is made against the Procuring Entity arising out of the matters referred above, the Procuring Entity shall promptly notify the Consultant. At its own expense and in the Procuring Entity's name, the Consultant may conduct such proceedings and negotiations to settle any such proceedings or claim, keeping the Procuring Entity informed.
- 4) If the Consultant fails to notify the Procuring Entity within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the

Procuring Entity shall be free to conduct the same on its behalf at the risk and cost to the Consultant.

- 5) At the Consultant's request, the Procuring Entity shall afford all available assistance to the Consultant in conducting such proceedings or claims and shall be reimbursed by the Consultant for all reasonable expenses.

5.6.2 For Losses and Damages Caused by Consultant

- 1) the Consultant shall indemnify and keep harmless the Procuring Entity, from and against, all actions, suit proceedings, losses, costs, damages, charges, claims, and demands of every nature and description brought or recovered against the Procuring Entity because of any act or omission or default or negligence or trespass of the Consultant, his agents, or employees despite all reasonable and proper precautions may have been taken, during the execution of the Services. The Consultant shall make good at his own expense all resulting losses and/or damages to:
 - a) the Services themselves or
 - b) any other property of the Procuring Entity or
 - c) the lives, persons, or property of others
- 2) In case the Procuring Entity is called upon to make good such costs, loss, or damages or to pay any compensation, including that payable under the provisions of the Workmen's Compensation Act or any statutory amendments thereof, the amount of any costs or charges including costs and charges in connection with legal proceedings, which the Procuring Entity may incur about it, shall be charged to the Consultant. All sums payable by way of compensation under any of these conditions shall be considered reasonable compensation to be applied to the actual loss or damage sustained and whether or not any damage shall have been sustained.
- 3) The Procuring Entity shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings, or in anticipation of legal proceedings being instituted consequent on the action or default of the Consultant, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to Consultant, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise, and the incurring of any such expenses shall not be called in question by the Consultant.

5.7. Confidentiality, Secrecy and Property and IPR Rights

5.7.1 Property Rights

- 1) Physical assets, e.g., Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make an inventory of such equipment, vehicles, and materials available to the Procuring Entity and dispose of such equipment, vehicles, and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their total

replacement value.

- 2) Intangible assets, e.g., license agreements, Software Packages, and memberships for purposes of performance of this contract provided by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be registered accordingly., These shall be obtained in the name of the Procuring entity after obtaining the Procuring Entity's prior written approval. The Procuring entity shall have an encumbered right to use such assets, even after the termination of the Contract. Any restrictions about the future use of these documents and software shall be specified in the Contract.

5.7.2 IPR Rights

All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the Consultant under this Contract shall become and remain the property of the Procuring Entity and shall be subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software but shall not use it for commercial purposes.

5.7.3 Confidentiality

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Procuring Entity to the Consultant in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the Procuring Entity and shall, without the prior written consent of Procuring Entity neither be divulged by the Consultant to any third party, nor be used by him for any purpose other than the design, procurement, or other services and activities required for the performance of this Contract. If advised by the Procuring Entity, all copies of all such information in original shall be returned on completion of the Consultant's performance and obligations under this contract.

5.7.4 Secrecy

If the contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the contract is marked as "Secret", the Consultant shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

5.7.5 Restrictions on the Use of Information

- 1) Without the Procuring Entity's prior written consent, the Consultant shall not use the information mentioned in the sub-clauses above except for performing this contract.
- 2) The Consultant shall treat and mark all information as confidential (or Secret – as the case may) and shall not, without the written consent of the Procuring Entity, divulge to any person other than the person(s) employed by the Consultant in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.
- 3) Notwithstanding the above, the Consultant may furnish to its holding company or its Sub-

consultant(s) such documents, data, and other information it receives from the Procuring Entity to the extent required for performing the contract. In this event, the Consultant shall obtain from such holding company/ Sub-consultant(s) an undertaking of confidentiality (or secrecy – as the case may be) similar to that imposed on the Consultant under the above clauses.

- 4) The obligation of the Consultant under sub-clauses above, however, shall not apply to information that:
 - a) the Consultant needs to share with the institution(s) participating in the financing of the contract;
 - b) now or hereafter is or enters the public domain through no fault of Consultant;
 - c) can be proven to have been possessed by the Consultant at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or
 - d) otherwise lawfully becomes available to the Consultant from a third party with no obligation of confidentiality.
- 5) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the Consultant before the contract date in respect of the contract, the RFP Document, or any part thereof.
- 6) The provisions of this clause shall survive completion or termination for whatever reason of the contract.

5.7.6 Protection and Security of Personal Data

- 1) Where the Consultant is processing Personal Data for the Procuring Entity (as part of Services), the Consultant shall:
 - a) Process the Personal Data only as per instructions from Procuring Entity (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by Procuring Entity;
 - b) Comply with all applicable laws;
 - c) Process the Personal Data only to the extent and in such manner as is necessary for the discharge of the Consultant's obligations under this Contract or as is required by Law or any Regulatory Body;
 - d) Implement appropriate technical and organisational measures to protect Personal Data against unauthorized or unlawful Processing and accidental loss, destruction, damage, alteration, or disclosure. These measures shall be appropriate to the harm which might result from any unauthorized or unlawful Processing, accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - e) Take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
 - f) Obtain prior written consent from the Authority to transfer the Personal Data to any Sub-consultant for the provision of the Services;

- g) Not cause or permit the Personal Data to be transferred, stored, accessed, viewed, or processed outside of India without the prior written consent of the Procuring Entity.
 - h) Ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.
 - i) Ensure that none of the staff and agents publishes or disclose any personal data to any third parties unless directed in writing to do so by the Procuring Entity.
 - j) Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Procuring Entity or compliance with a legal obligation imposed upon the Procuring Entity;
- 2) Notify the Procuring Entity (within five Working Days) if it receives the;
- a) a request from an employee of Procuring Entity to have access to his or other employees' Personal Data; or
 - b) a complaint or request relating to the Procuring Entity's obligations under the law;
- 3) The provision of this clause shall apply during the contract period and indefinitely after its expiry.

5.8. Performance Bond/ Security

- 1) Within twenty-one days (or any other period mentioned in RFP Document or Contract) after the issue of the Letter of Award (LoA or the contract, if LoA is skipped) by the Procuring Entity, the Consultant shall furnish to the Procuring Entity performance security, valid up to sixty days (or any other period mentioned in RFP Document or Contract) after the date of completion of all contractual obligations by the Consultant.
- 2) The amount of Performance security shall be stipulated in the RFP document, or the Contract (or if not specified @ 5% of the contract Price) denominated in Indian Rupees or the currency of the contract and shall be in one of the following forms:
- a) Unless otherwise stipulated in the RFP Document or the Contract, Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt from any commercial bank in India, or online payment in an acceptable form safeguarding the Procuring Entity's interest, or
 - b) Bank Guarantee (including an e-Bank Guarantee) issued by a commercial bank in India, in the prescribed form provided in Appendix E-1 to Format 1: Contract Form to be specified later by the Procuring Entity.
- 3) If the Consultant, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award and forfeit the EMD (or enforce Bid Securing Declaration, if that was submitted in lieu of Bid Security), besides taking any other administrative punitive action like 'Removal from List of Registered Suppliers' etc.
- 4) If the Consultant fails to maintain the requisite Performance Security during the Contract's currency, it shall be lawful for the Procuring Entity at its discretion.
- (a) treat it as a breach of contract and avail any or all contractual remedies provided for breaches/ default, including termination of the Contract for Default, or
 - (b) without terminating the Contract, recover from the Consultant the amount of such security deposit by deducting the amount from the pending bills of the Consultant

under the contract or any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise, howsoever as per GCC-clause 10.4.

- 5) If a contract is amended, the Consultant shall furnish amended Performance Security with revised value and validity within twenty-one days of the issue of such an amendment.
- 6) The Procuring Entity shall be entitled, and it shall be lawful on his part,
 - (a) to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
 - i) Any default, failure, or neglect on the part of the Consultant in the fulfilment or performance in all respect of this contract or any other contract with the Procuring Organisation or any part thereof
 - ii) for any loss or damage recoverable from the Consultant which the Procuring Entity may suffer or be put to for reasons of or due to the above defaults/ failures/ neglect
 - (b) and in either of the events aforesaid to call upon the Consultant to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the Consultant for similar reasons.
- 7) Subject to the sub-clause above, the Procuring Entity shall release the performance security without any interest to the Consultant on completing all contractual obligations. Alternatively, upon the Consultant submitting a suitable separate Defect Liability Security for the duration of Defect Liability obligations, the original Performance Guarantee Security shall be released mutatis mutandis.
- 8) No claim shall lie against the Procuring Entity regarding interest on cash deposits, Government Securities, or depreciation thereof.

5.9. Permits, Approvals and Licenses

Whenever the Services and incidental Goods/ Works delivery requires the Consultant to obtain permits, approvals, and licenses from local public authorities or any third party, it shall be the Consultant's sole responsibility to obtain these and keep them current and valid. Such requirements may include but not be restricted to licences or environmental clearance if required. If requested by the Consultant, the Procuring Entity shall make its best effort to assist the Consultant in complying with such requirements in a timely and expeditious manner without diluting the Consultant's responsibility in this regard.

5.10. Insurances

The Consultant (a) shall take out and maintain, and shall cause any Sub-Auditors to take out and maintain, at its (or the Sub-Auditors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as stipulated in the contract or any applicable law including Labour Codes; and at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid. The Consultant shall ensure that such insurances are in place before commencing the Services as stated in GCC clause 9.2. Alterations to the terms of insurance shall not be made without the

approval of the Contract Manager.

5.11. Accounting, Inspection and Auditing

The Consultant shall keep and make all reasonable efforts to cause its Sub-Auditors to keep accurate and systematic accounts and records in respect of the Services and in such form and detail as shall identify relevant time changes and costs and as per accounting principles prescribed in India.

5.12. Book Examination Clause

If explicitly invoked in the contract, the Procuring Entity reserves the right for 'Book Examination' as follows:

- 1) The Consultant shall, whenever called upon and required to produce or cause to be produced, for examination by any Government Officer duly authorised on that behalf, any cost or other book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document. The Consultant shall also furnish information relating to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract to such Government Officer in such manner as may be required. This Government Officer's decision on the relevancy of any document or information of return shall be final and binding on the parties. The obligation imposed by this clause is without prejudice to the Consultant's obligations under any other statute, rules or orders which shall be concurrently binding on the Consultant.
- 2) The Consultant shall, if the authorised Government Officer so requires (whether before or after the prices have been finally fixed), afford facilities to the Government Officer concerned to visit the Consultant's premises to examine the processes of delivery of Services and estimate or ascertain the cost of performance of Contract. The authorised Government Officer shall have the power, *mutatis mutandis*, to examine all the relevant books of the Consultant's Sub-consultant or any subsidiary or allied firm or company, If any portion of the contract is entrusted or carried out by such entities.
- 3) If, on such examination, it is established that the contracted price is more than the actual cost-plus reasonable profit margin, the Procuring Entity shall have the right to reduce the price and determine the amount to a reasonable level.
- 4) The Consultant or its agency is bound to allow examination of its books within 60 days from the date the notice is received by the Consultant or its agencies calling for the production of documents under sub-clause (1) above. In the event of the Consultant's or his agency's failure to do so, the contract price would be reduced and determined according to the best judgment of the Procuring Entity, which would be final and binding on the Consultant and his agencies.

5.13. Legal Compliance

The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-Auditors comply with the Applicable Law.

5.14. Custody and Return of the Procuring Entity's Assets loaned to Consultant

- 1) The contractors shall sign accountable receipts for all documents and materials or other assets/ properties made over to them by the Contract Manager on behalf of the Procuring Entity. All such assets shall be deemed in good condition when received by the Consultant

unless he has notified the Procuring Entity to the contrary within twenty-four hours of receipt. Otherwise, he shall be deemed to have waived the right to do so at any subsequent stage.

- 2) These assets shall remain the property of the Procuring Entity, and the Consultant shall take all reasonable care of all such assets. The Consultant shall be responsible for all damage or loss from whatever cause while assets are possessed or controlled by the Consultant, staff, workmen, or agents.
- 3) Where the Consultant insures such assets against loss or fire at the request of the Procuring Entity, such insurance shall be deemed to be by way of additional precaution and shall not prejudice the Consultant's liability as aforesaid.
- 4) The Consultant shall return all such assets in good order and repair, reasonable wear and tear excepted, before the completion/ closure/ termination of the contract and shall be responsible for any failure to account for the same or any damage done to that as assessed by the Procuring Entity whose decision shall be final and binding.

Procuring Entity's Obligations

6.1. Assistance by the Procuring Entity

Unless otherwise specified in the Contract, the Procuring Entity shall use its best efforts to:

- 1) Issue instructions and information to its officials, agents, and stakeholders for prompt and effective implementation of the Services.
- 2) Provide to the Consultant any other assistance as specified in the Contract.
- 3) Access to Project Site: The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site if such access is required for the performance of the Services.

6.2. Facilities to be provided by the Procuring Entity

- 1) The Procuring Entity shall make available to the Consultant and the Experts, for the performance of the contract, free of any charge (unless otherwise stated therein), the services, facilities, and property described in the 'Terms of Reference' (Appendix A) as per terms and conditions and against appropriate safeguards (including Insurances, Bank Guarantee, Indemnity Bonds, Retention Money etc.) specified therein. The Consultant shall use such property for the execution of the contract and no other purpose whatsoever.
- 2) In case such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix A, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) how the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof according to GCC clause 10.1.1.

6.3. Counterpart Personnel

- 1) The Procuring Entity shall make professional and support counterpart personnel available to the Consultant, as specified in Appendix A.
- 2) If counterpart personnel are not provided by the Procuring Entity to the Consultant as and when specified in Appendix A, the Procuring Entity and the Consultant 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 Procuring Entity to the Consultant as a result thereof.

- 3) Professional and support counterpart personnel, excluding Procuring Entity's Contract Management and liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform any work assigned to such member by the Consultant that is adequately consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

6.4. Payment Obligation

Considering the Services performed by the Consultant under this Contract, the Procuring Entity shall pay the Consultant for the deliverables specified in Appendix A and in such manner as is provided in the Contract.

Scope of Services and Performance Standards

7.1. Scope of Services

- 1) Services: This contract is for the performance/ delivery of Services of the description, scope/ quantum outlined in Appendix A: 'Terms of Reference' during the contract period specified therein.
- 2) Incidental Works/ Goods/ Other Services: If so stipulated, the Consultant shall be required to perform/ deliver specified incidental Works/ Goods/ other Services as an integral part of the Services in the contract.
- 3) Location: The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Procuring Entity's country or elsewhere, as the Procuring Entity may approve.
- 4) Reporting Requirements: The Consultant shall deliver to the Procuring Entity the reports, deliverables, outputs, and documents specified in Appendix A: 'Terms of Reference', in the form, in the numbers and within the periods outlined in the said Appendix, besides progress reports as per GCC Clause 9.3.
- 5) Standard of Performance:
 - a) The Consultant shall perform and carry out the Services with all due diligence, efficiency, and economy, in accordance with generally accepted professional standards and practices, observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods.
 - b) Unless otherwise specified, the performance standards and quality of the Services shall conform to the Terms of Reference as stipulated in the contract or as per best standards in the market, where not so specified.
 - c) Defects in Services: The Procuring Entity shall promptly notify the Consultant of any identified defects, requesting the correction of the notified defect within a reasonable time. If the Consultant has not corrected notified defect within the time stipulated in the Procuring Entity's notice, the Procuring Entity may suspend payments as per GCC clause 10.6.

7.2. Eligible Services

Unless otherwise stipulated in the Contract, the country of origin of 'Services' and related 'Goods' under the contract shall have their origin in India or other countries (if specified in the Contract). It must conform to the declaration made by the Consultant during the EOI process

regarding Central Government policies restricting the participation of entities from i) Certain countries sharing land borders with India and ii) Countries that restrict the participation of Bidders from India on a reciprocal basis. They should ensure that they continue to be free from such restrictions.

Deployment of Resources

8.1. Site and Assets thereon

8.1.1 Site of Service Delivery

- 1) The site for Service delivery shall be the lands, spaces, and other places on, under, in or through which the Services are to be carried out and any other lands or places provided by the Procuring Entity for the contract.
- 2) No land or building or any other asset belonging to or in possession of the Procuring Entity shall be occupied/ used by the Consultant without the permission of the Procuring Entity. The Consultant shall not use or allow the site to be used for any purposes other than executing or concerning the execution of the services.
- 3) Prohibition of Smoking and Intoxicants: The Consultant shall exercise influence and authority to the utmost extent to secure strict compliance by his staff or any labour employed through Sub-Auditors or petty contractors with all the rules and regulations stipulated by the Procuring Entity relating to the access to the project site, including but not limited to
 - a) Prohibition of Smoking in 'No Smoking Zone' and in Public Places
 - b) Prohibition of the use of any intoxicating substances including, but not limited to, intoxicating beverages during the service period or on-site or near the site or in any of the facilities, sites, buildings, encampments, or tenements owned, occupied by or within the control of the Consultant or any of his employees.
 - c) Safety practices relating to Procuring Entity's staff, Public and third parties
 - d) Maintenance of peace and business-like ambience

8.1.2 Clearance of Site on Completion

- 1) On completion of the services, the Consultant shall hand over the whole project site to the procuring Entity on 'as it was' basis. No final payment in settlement of the accounts for the Services shall be paid to the Consultant till, in addition to any other condition necessary for final payment, site clearance shall have been affected by him.
- 2) In the event of failure on the part of the Consultant to comply with this provision within 7 days after receiving notice for clearance of Procuring Entity's site and lands, the Contract Manager shall cause them to be removed in such a way as deemed fit and convenient and cost as increased by supervision and other incidental charges shall be recovered from the Consultant. The Procuring Entity shall not be held liable for any loss or damage to the Consultant's property as may be on the site and due to such removal.

8.2. Key and Non-key Personnel

8.2.1 General Requirements

- 1) Restrictions on the Employment of Retired Staff or Officers or Managers of Procuring Entity within One Year of their Retirement: the Consultant shall not himself be a retired Government employee of Gazetted rank or engage any employee or associate who is a retired Government employee of Gazetted rank, if such persons have not completed one

year (or any other period prescribed by the relevant authority) from the date of retirement, in connection with this Contract in any manner whatsoever without obtaining prior permission of the relevant authority. If the Consultant is found to have contravened this provision, it shall constitute a breach of contract, and Procuring Entity shall be entitled to terminate the contract and/ or avail any or all the remedies thereunder.

- 2) Team Lead: The Consultant, when he is not personally present on the workplace site, shall nominate a Team Lead during working hours, which shall, on receiving reasonable notice, present himself to the Contract Manager. Orders given by the Contract Manager or his representative to the Team Lead shall be deemed to have the same force as if given to the Consultant.
- 3) The Consultant shall employ and provide qualified and experienced Key and Non- key Experts and Sub-Auditors as required to carry out the Services.

8.2.2 Key Personnel

- 1) The titles, job descriptions, minimum qualifications, and estimated periods of the Consultant's Key Personnel engagement in carrying out the Services are described in Appendix B to the Contract.
- 2) The Key Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix B, and the Consultant's remuneration shall be deemed to cover these items.
- 3) Working hours and holidays for Experts are outlined in Appendix B. Foreign Key Experts carrying out Services in India shall be deemed to have commenced or finished work in respect of the Services several days before their arrival in or after their departure from India, as is specified in Appendix B.
- 4) Any leave-taking by Key Experts shall be subject to the prior approval by the Consultant, who shall ensure that absence for leave purposes shall not delay the progress and or impact adequate supervision of the Services. If Key Experts are not deployed for significant periods, affecting the progress and quality of the assignment, payments may be suspended as per clause 10.6 below.
- 5) Substitution of Key Experts:
 - c) Unless the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.
 - d) Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to compelling or unavoidable situations outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. The substitute shall be of equivalent or higher credentials. Such substitution shall not exceed the limit specified in the Contract (or 30%, if not specified) of total key personnel.
 - e) Substitution of the first 10% of key personnel at the request of the Consultant shall be subject to a reduction of remuneration by a percentage specified in the Contract (or 5%, if not specified) of the remuneration which would have been paid to the original personnel from the date of the replacement till completion of the contract. Such reduction in remuneration shall progressively increase further for subsequent substitutions as specified in the Contract. If not specified, the reduction in remuneration shall be 10% and 15%, respectively, for the subsequent two slabs of 10% substitutions of key personnel (i.e., till 30% substitution). Such reduction shall not apply to the

substitution of experts in pursuance of orders by the Contract Manager as per sub-clause (11) below.

- 6) Additional Key Experts: If additional Key Experts are required to carry out the Services during the execution of the contract, the Consultant shall submit to the Procuring Entity for review and approval a copy of their Curricula Vitae (CVs). If the Procuring Entity does not object in writing (stating the reasons for the objection) within twenty- one (21) days from receiving such CVs, such additional Key Experts shall be deemed approved by the Procuring Entity. The rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts' positions which require similar qualifications and experience.

8.2.3 Non-key Personnel

the Consultant must ensure the deployment of non-key Personnel as per Annexure C, the Terms of Reference, and the approved Works plan as updated. Daily attendance records of such non-key personnel shall be maintained by the Consultant and shared with the Contract Manager. If the Contract Manager believes that the Consultant is not employing sufficient Non-key personnel as is specified or otherwise for the proper execution of the Services, he shall issue a notice to the Consultant for remedial measures. The Consultant shall forthwith, on receiving intimation to this effect, deploy the additional number of non-key personnel as specified by the Contract Manager immediately, and failure on the part of the Consultant to comply with such instructions shall entitle the Procuring Entity to suspend payments as per GCC clause 10.6 for the shortfall in performance or terminate the contract and/ or avail all the remedies thereunder. Such action shall be in addition to the deduction from the Consultant's payment cost of shortfall personnel as per Annexure C.

8.2.4 Removal of Key and Non-key Experts or Sub-Auditors on Orders of the Contract Manager

- 1) The Consultant shall, at the Procuring Entity's written request, provide a replacement, if the Procuring Entity finds that any of the Experts or Sub-consultant:
 - a) commits severe misconduct or has been charged with having committed a criminal act
 - b) persists in any misconduct or lack of care;
 - c) is found to be negligent, incompetent or incapable of discharging assigned duties;
 - d) fails to comply with any provision of the Contract;
 - e) based on reasonable evidence, is determined to have engaged breached the Code of Integrity (including Fraud and Corruption) during the execution of the Works;
- 2) Subject to the requirements in the sub-clause above, and notwithstanding any requirement from the Procuring Entity to request a replacement, the Consultant shall take immediate action as appropriate in response to any violation in the sub-para above. Such immediate action shall include removing (or causing to be removed) such Key/ Non-Key Expert or sub-consultant from carrying out the Services.
- 3) Any replacement of the removed Experts or Sub-Auditors shall possess better qualifications and experience and be acceptable to the Procuring Entity.
- 4) The Consultant shall bear all costs from or incidental to any removal and/or replacement of such Experts.

8.3. Equipment and Tools of Trade

The Consultant must ensure the deployment of Equipment and Tools of Trade necessary to deliver services as per the Terms of Reference and approved Works plan as updated. If the Contract Manager believes that the Consultant is not employing on the Services sufficient Equipment/Tools of Trade as is specified or otherwise for the proper execution of the Services within the prescribed time, the Consultant shall forthwith on receiving intimation to this effect deploy the additional equipment/ tools of the trade as specified by the Contract Manager immediately and failure on the part of the Consultant to comply with such instructions shall entitle the Procuring Entity to suspend payments as per GCC clause 10.6 for the shortfall in performance or terminate the contract and/ or avail any or all the remedies thereunder for breach of contract.

Delivery of Services and delays

9.1. Works plan

- 1) Before the commencement of the Services, the Consultant shall submit for approval of the Contract Manager a Works plan showing the Methods, schedule of delivery of services, and deployment plans for Personnel, Equipment and Materials for the execution of the services. The programme of delivery of Services amended as necessary by discussions with the Contract Manager shall be treated as the agreed Works plan for this Contract. The Services shall be carried out and monitored as per the approved Program as updated.
- 2) The Contract Manager shall direct the order in which the several components of the Services shall be provided, and the Consultant shall execute all orders the Contract Manager gives from time to time without delay. Still, the Consultant shall not be relieved thereby from responsibility for the due performance of the Services in all respects.

9.2. Commencement of Services

- 1) Effective Date of Contract: Consultant shall commence the Services and shall proceed with due expedition and without delay from the effective date of Contract (all dates of delivery shall be counted from such a date), which shall be the date mentioned as the effective date in the contract, or if not so mentioned:
 - a) 15 days from the Procuring Entity's notice (unless specified otherwise) to the Consultant instructing him to begin carrying out the Services. This notice shall confirm that the effectiveness prerequisites listed in the contract have been met.
 - b) If no such order is issued, 15 days from the date of the Issue of the LOA or the signing of the Contract agreement, whichever is earlier.
- 2) Commencement of Services: Not later than the number of days after the Effective Date specified in the Contract or the Notice to proceed, the Consultant shall begin carrying out the Services after confirming the following:
 - a. As required by the Contract, all JV members and key experts needed at the beginning of the assignment are effectively participating.
 - b. That upon provision of Bank Guarantees, advance payments, if any, are implemented.
 - c. That the Procuring Entity has provided facilities (including Data, Documents and Background Information) as per the Contract
 - d. that all parties involved in the assignment (users, security team, and other relevant

departments of the Procuring Entity and other third-party stakeholders) have been informed by the Procuring Entity

e. that all permits, licences, and authorisations have been obtained.

- 3) Termination of Contract for Failure to Become Effective: If this Contract has not become effective (as per sub-clause 1) above) within such period after the date of Contract signature as specified in the Contract, either Party may, by not less than twenty-one (21) days' written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

9.3. Contract Management

9.3.1 Consultancy Management Teams

The Procuring Entity shall nominate a Contract Manager (or a Consultancy Management Team), and the Consultant shall nominate a counterpart Team Lead to monitor the assignment so that the output is in line with the Procuring Entity's objectives of the Contract.

9.3.2 Review of Phases and Milestones

The Contract Manager and Consultant/ Team Lead shall hold progress meetings at various phases and Milestones into which the assignment is divided as per Annexure A. Unless otherwise indicated in Annexure A, the following actions would be taken during such progress meetings.

- 1) Kick-off Meeting: The contract Manager and the Consultant/ Team Lead shall meet at the start of the assignment to ensure that the Contract requirements are clearly understood by all concerned and that the Contract Management procedures are finalised.
- 2) Inception Phase Review: The inception meeting shall be held at a period (specified in Annexure A or the Notice to Proceed) after the effective date of the contract or, if not so specified, within 21 days of the effective date. Before this meeting, the consultant must provide a draft Inception Report for discussion. The Consultant shall submit a final Inception Report within the specified time in the 'Terms of Reference' or as agreed in the Inception Meeting, or if not so specified, within 7 days of the Inception Meeting. Template for Inception Report may be agreed to beforehand in the Inception Meeting. It should, at the minimum, cover comments and suggestions on the following:
 - a) Terms of Reference
 - b) Work plan and staffing schedule
 - c) Facilities to be provided by the Procuring Entity
 - d) Working arrangements and liaison
- 3) Periodic Reviews: Unless otherwise decided by the Contract Manager and the Consultant's Team Lead, periodic review meetings (monthly if not otherwise stipulated) shall be held to review the pace of progress as compared to the Work Plan and remedial actions thereto.
- 4) Deliverables Reviews: The contract Manager and Consultant/ Team Lead may hold other meetings to review and approve specific deliverables or phases (including Interim and Final Reports) as specified in Annexure A or as agreed between the parties.

9.4. Delivery of services, Time of Delivery and Extensions Thereof

9.4.1 Delivery of Services:

The Consultant shall deliver all Services and submit deliverables as per the approved work plan in the manner specified in the Contract.

9.4.2 Time of Delivery of Services is of Essence of the Contract:

- 1) The time for delivery of Services shall be deemed to be the essence of the contract. Subject to any requirement in the contract as to the completion of any portions or portions of the Services before completion of the whole, the Consultant shall fully and finally complete the whole of the services comprised in the contract as per the Delivery and Completion Schedule stipulated in Annexure A: 'Terms of Reference'.
- 2) If at any time during the currency of the contract, the Consultant encounters conditions hindering the timely performance of services; the Consultant shall promptly inform the Procuring Entity in writing about the same and its likely duration.
- 3) He may request to the Procuring Entity for an extension of the delivery schedule not less than one month before the expiry of the date fixed for completion of the services. Procuring Entity may agree to extend the completion schedule, with or without liquidated damages and denial clause, by issuing an amendment to the contract in terms of the following clauses.

9.4.3 Extension for Excusable Delay Not Due to Consultant

- 1) If in the opinion of the Consultant, the progress of Services has at any time been delayed due to the following reasons, then within 15 days of such happening causing delay, he shall give notice thereof in writing to the Contract Manager, but shall nevertheless do due diligence to bring down or make good the delays and to proceed with the services:
 - a) proceedings taken or threatened by or dispute with external third parties arising otherwise than from the Consultant's own default etc. or
 - b) delay due to circumstances beyond the control of either party
 - c) delay authorized by the Contract Manager pending arbitration or
 - d) Any act or neglect of Procuring Entity, e.g.:
 - i) Delay or failure to issue notice to commence the services or
 - ii) delay or failure to issue necessary instructions for which the Consultant had applied explicitly in writing.
 - iii) Delay in or failure to handover of possession of the site or the necessary facilities/ documents/ data or instructions by the Procuring Entity to the Consultant
 - iv) Delay caused by modification issued by the Contract Manager or
 - v) any other delay caused by the Procuring Entity due to any other cause.
- 2) The Consultant may also indicate the period for which the Services are likely to be delayed and ask for a necessary extension of time. On receipt of such request from the Consultant, the Contract Manager shall consider the same and grant such extension of time as, in his opinion, is reasonable regarding the nature and period of delay and the type and quantum of work affected thereby. No other compensation shall be payable for work carried forward to the extended period. The same rates, terms, and conditions as the original Contract shall apply during the extended period.

9.4.4 Extension of Time for Inexcusable Delay Due to Consultant

- 1) If the Consultant fails to deliver the Services within the fixed/ extended period for reasons

other than those stipulated in GCC-clause 9.4.3 above, the Procuring Entity may, if satisfied that the service delivery can still be completed within a reasonable time, extend the period further.

- 2) On such extension, the Procuring Entity shall be entitled without prejudice to any other right and remedy available on that behalf to recover from the Consultant as agreed damages and not by way of penalty Liquidated Damages as per GCC- clause 9.5 below.
- 3) Provided further that if the Procuring Entity is not satisfied that the service can be completed by the Consultant or in the event of failure on the part of the Consultant to complete the service within the extension of time allowed further as aforesaid, the Procuring Entity shall be entitled without prejudice to any other right or remedy available in that behalf, treat the delay as a breach of contract and avail any or all the remedies thereunder, whether or not actual damage is caused by such default.
- 4) Inordinate Delays: Delays due to the Consultant of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays shall be noted as poor performance and be held against the Consultant in future procurements. A show-cause notice shall be issued to the Consultant before declaring it a poor performance. Such delays may be considered a breach of the contract at the option of the Procuring Entity.

9.4.5 Extension of Time for Concurrent Delay Due to Both Parties

If the Contract Manager determines that two or more events responsible for delay overlap each other. The delays may be concurrently attributable to both Procuring Entity and the Consultant. The proportion for extension of time as per GCC-Clause 9.4.3 or 9.4.4 above shall be determined by plotting each contributing concurrent delay on the critical path.

9.5. Damages and Deductions Thereof

9.5.1 Right of the Procuring Entity to recover Damages.

Procuring Entity shall be entitled to, and it shall be lawful to recover Liquidated damages as detailed in this clause from all payments due, any Performance Security, or any retention money.

9.5.2 Liquidated damages

- 1) For delays covered under clause 9.4.4 (Extension of Time for Inexcusable Delay Due to Consultant) above:
 - a) The Procuring Entity shall, without prejudice to other rights and remedies available to the Procuring Entity under the contract, deduct from the contract price as liquidated damages for each week of delay or part thereof until actual delivery or performance, but not as a penalty, a sum equivalent to the 1/2% per cent (or any other percentage if prescribed) of the related monthly bill of the Services. Besides liquidated damages during such a delay, the denial clause as per GCC-clause 9.5.3 shall also apply. Total damages in the contract shall be limited as per clause 9.5.4 below.
 - b) Any failure or delay by any Sub-consultant, though their employment may have been sanctioned, shall not be admitted as a ground for any extension

of time or for exempting the Consultant from liability for any such loss or damage as aforesaid.

9.5.3 Denial Clause:

- 1) For delays covered under clause 9.4.4 (Extension of Time for Inexcusable Delay Due to Consultant) above:
 - a) no increases in price on account of any statutory increase in or fresh Imposition of GST, or on account of any other taxes/ duty/ cess/ levy) leviable in respect of the Services and incidental goods/ works stipulated in the said Contract which takes place after the original delivery date shall be admissible on such of the said Services, as are delivered after the said date; and
 - b) Notwithstanding any stipulation in the contract for an increase in price on any other ground, including the price variation clause, no such increase after the original delivery date shall be admissible on such Services delivered after the said date.
 - c) Nevertheless, the Procuring Entity shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST or on account of any other tax or duty or any other ground as stipulated in the price variation clause, which takes place after the expiry of the original delivery date.

9.5.4 Limit on total Damages

However, deduction on account of damages for delays under this clause put together shall be subject to a maximum of 10% (or any other percentage if prescribed) of the entire value of the Contract of Services. Penalties/ liabilities outside this clause shall be covered by GCC clause 12.

9.6. Force Majeure

- 1) On the occurrence of any unforeseen event beyond the control of either Party, directly interfering with the delivery of Services arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the affected Party shall, within a week from the commencement thereof, notify the same in writing to the other Party with reasonable evidence thereof. Unless otherwise directed by the Procuring Entity in writing, the Consultant shall continue to perform its obligations under the contract as reasonably practicable and seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other except those which had occurred under any other clause of this Contract before such termination.
- 2) Notwithstanding the remedial provisions contained in GCC-clause 9.5 and 12, none of the Party shall seek any such remedies or damages for the other Party's delay and/ or failure in fulfilling its obligations under the contract if it is the result of an event of Force Majeure.

Prices and Payments

10.1. Prices

10.1.1 Contract Price

- 1) The Contract price is outlined in the Contract. The Contract price breakdown is provided in Appendix C, and the total payments under this Contract shall not exceed this Contract price.
- 2) Any change to the Contract price specified above can be only made if the Parties have agreed to the revised scope of Services under GCC clause 2.6 and have amended the Terms of Reference in Appendix A in writing.

10.1.2 Firm Prices

Unless otherwise stipulated in the contract, Prices shall be fixed and firm. If the Price Variation Clause is included, such up and down, variations shall also be payable.

10.1.3 Variations

In case the Contract provides for a Price Variation Clause or variation on any other account, the price shall be subject to adjustment as per such clauses only during the original Delivery Period, subject to the following:

- i. For Extension of Time covered by clause 9.4.5 above, any increase due to such variations during the extended delivery period beyond the original delivery period shall not be paid by the Procuring Entity; however, it shall be entitled to any reduction under GCC clause- 9.5.3 (Denial Clause).
- ii. Taxes and duties, if any, chargeable and payable on the Services shall be charged on the nett price after variations.
- iii. While claiming payments where such variations are applicable, the Consultant must submit its calculations for each invoice, even if the payment for these variations is nil. Any price reduction due to such variations must be passed to the Procuring Entity.
- iv. No Other Claim due to Variations: With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increase in taxes/any other levies/tolls etc.
- v. If the Price Variation clause is applicable as per the contract, the price shall be subject to adjustment to take care of the changes in the cost of labour, material, and fuel/ power components as per the price variation formula specified therein.
- vi. Base Month: Unless otherwise stipulated in the contract, the 'Base Month' for the 'Price Variation Clause' shall be taken as the month before the month of the last date of Proposal submission. Unless the contract has stipulated a different time lag for reckoning Price Variation, the month of reckoning the varied price shall be the month before the month in which delivery has been made. The Price Variation shall be based on the relevant Indices in the Base Month and Month of reckoning.
- vii. Applicability: If the Contract provides for some inputs to be supplied by Procuring Entity free or at a fixed rate, the cost of such inputs shall be excluded from the value of the Goods supplied in the relevant month for payment/recovery Of price variation.

10.2. Taxes and Duties

The Consultant, Sub-Auditors, and Experts shall be entirely responsible for all taxes, duties, fees, levies etc., incurred relating to the delivery of the Services. Further instruction, if any, shall be as provided in the Contract.

If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all

payments and deposit required taxes to respective authorities on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc.

Payment of GST Tax under the contract:

- (a) The payment of GST and GST Cess to the Consultant shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate duly supported with documentary evidence as per the provision of the relevant GST Act and the Rules made there under. The delivery of Services shall be shown as being made in the name, location/ state, and GSTIN of the beneficiary of the Services only; the location of the procurement office of the procuring entity has no bearing on the invoicing.
- (b) Provision w.r.t. E-Invoicing requirement as per GST laws: Consultant who is required to comply with the requirements of E-invoice as per the GST Law, all payments shall be made against proper e-invoice(s) only. Invoices issued in violation shall not be processed for payment, as Procuring Entity shall not be allowed to avail of Input Tax Credit (ITC) against such invoices.
- (c) Returns and details required to be filled under GST laws & rules regarding invoices (or e-invoices) should be filed promptly by the Consultant. If input tax credit (ITC) is not available to Procuring Entity for any reason attributable to the Consultant, then Procuring Entity shall not be liable to pay or reimburse GST (CGST & SGST/UTGST or IGST) claimed in the invoice(s) and shall be entitled to deduct / setoff/ recover such GST amounts (CGST & SGST/UTGST or IGST) together with penalties and interest, if any, by adjusting against any amounts paid or becomes payable in future to the Consultant under this contract or under any other contract.
- (d) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the Consultant shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities at a later date, it (the Consultant) shall refund to the Procuring Entity, the Procuring Entity's share out of such refund received by the Consultant. The Consultant shall also refund the appropriate amount to the Procuring Entity immediately after receiving the same from the concerned authorities.
- (e) All necessary adjustment vouchers, such as Credit Notes/ Debit Notes for any short/ excess delivery of Services or revision in prices or any other reason under the contract, shall be submitted to the Procuring Entity in compliance with GST provisions.
- (f) GST shall be paid as per the rate at which it is liable to be assessed or has been assessed, provided the provision of Services is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:
 - i) The Procuring Entity shall not pay a higher GST rate if leviable due to any misclassification of the HSN number or incorrect GST rate incorporated in the contract due to the Consultant's fault. Wherever the Consultant invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed.
 - ii) However, the Procuring Entity shall not be responsible for the Consultant's tax

payment or duty under a misapprehension of the law.

- iii) The consultant is informed that he shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.
 - iv) In case of profiteering by the Consultant relating to GST tax, the Consultant shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.
- (g) The Consultant should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.
- (h) Liquidated damages or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due. Statutory Variation Clause: Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period (excepting extension under GCC-Clause 9.4.3) shall be borne by the Consultant. The benefit of any reduction in the GST rate must be passed on to the Procuring Entity during the original and extended delivery period. However, GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates occurs after the last proposal submission date.

10.3. Terms and Mode of Payment

- 1) Unless otherwise stipulated, the usual payment term is 100% on delivery and acceptance of Services at 'the Site' by the Procuring Entity and the Consultant's production of all required documents.
- 2) The payments shall be made as per Procuring Entity's payment procedures. Unless otherwise stipulated in the contract, payments above INR 5,000 (or any other specified threshold) to Auditors shall only be made through EFT (Electronic Funds Transfer). The Consultant shall consent in a mandate form for receipt of payment through NEFT (National Electronic Fund Transfer). In case of non-payment through EFT or where the EFT facility is unavailable, payment may be released through cheque.
- 3) In Domestic Contracts, payments shall only be made in Indian Rupees. In Global Tenders, payment to foreign Auditors shall be made in the currency/ currencies authorized in the contract. However, agency commission and local value addition shall be paid only in Indian Rupees.
- 4) The Consultant shall send its claim for payment in writing as per GST-compliant Invoice and documents, when contractually due, along with relevant documents etc., as stipulated in the Contract and as specified therein.
- 5) While claiming payment, the Consultant is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the Consultant's obligations for claiming that payment has been fulfilled as required.

10.4. Withholding and lien in respect of sums claimed:

- 1) Whenever any claim or claims for payment of a sum of money arises against the

Consultant, out of or under the contract, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain such sum or sums, in whole or in part pending finalisation or adjudication of any such claim from

- - a) any security or retention money, if any, deposited by the Consultant.
 - b) Any sum(s) payable till now or hereafter to the Consultant under the same Contract or any other contract with the Procuring Entity if the security is insufficient or if no security has been taken from the Consultant.
- 2) Where the Consultant is a partnership firm or a limited company, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/ limited company, as the case may be, whether in his capacity or otherwise.
 - 3) It is an agreed term of the contract that the sum(s) of money so withheld or retained under the lien referred above shall be kept withheld or retained till the claim arising out of or under the contract is determined under GCC clauses 11 and/ or 12. The Consultant shall have no claim for interest or damages whatsoever on any account regarding such withholding or retention under the supra lien and duly notified to the Consultant.
 - 4) Lien in respect of Claims in other Contracts: Any sum of money due and payable to the Consultant (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Procuring Entity or Government against any claim of the Procuring Entity or Government in respect of payment of a sum of money arising out of or under any other contract made by the Consultant with the Procuring Entity or Government.

10.5. Payments to Consultant

10.5.1 General

- 1) All payments under this Contract shall be made to the Consultant's accounts specified in the contract.
- 2) Currency of Payment: Unless otherwise specified in the Contract, any payment shall be made in Indian Rupees (INR).
- 3) The Itemized Invoices: As soon as practicable and not later than fifteen (15) days after the end of each time interval stipulated in the Contract in this regard (if not stipulated, then after the end of each calendar month), the Consultant shall submit to the Procuring Entity, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable for such an interval under GCC Clause 10.5. Separate invoices shall be submitted for expenses incurred in foreign and local currencies. Each invoice shall show remuneration and reimbursable expenses separately.
- 4) The Contract Manager shall cross-check all relevant records before passing the Consultant's bills. Upon verification of the records by Procuring Entity, payments can be released to the Consultant.
- 5) The Procuring Entity shall pay the Consultant's invoices within sixty (60) days after the receipt by the Procuring Entity of such itemized invoices with supporting documents. Only a portion of an invoice not satisfactorily supported may be withheld from the payment. Should any discrepancy exist between actual payment and costs authorized to be incurred by the Consultant, the Procuring Entity may add or subtract the difference from subsequent

payments.

- 6) Except for the final payment under GCC Clause 10.5.5 below, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations.
- 7) Time-Based (Inputs admeasurement): Unless instructed in writing by the Procuring entity, payments shall not be made for any extra inputs deployed over and above Annexure A, Annexure B, or Annexure C mentioned in the contract. Nevertheless, if such inputs are deployed less than those stipulated, deductions shall be made based on the rates indicated for the inputs listed in Annexures C and D in the contract.
- 8) Unit-Rate (Output admeasurements): Unless otherwise stipulated, payments shall be made monthly for the volume of services rendered during the period.
- 9) Lumpsum: Unless otherwise stipulated, payments shall be made on completion of stipulated milestones or on completion of entire Services, whichever is stipulated in the contract. In the case of Lump-sum Contracts, Payments under this Contract shall not exceed the ceilings in foreign currency and the local currency specified in the contract. For any payments above such ceiling amount, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that permits such amendment.
- 10) Percentage (of Value of Transactions): The payment for the total price of Services calculated at the percentage of the actual value of Activities rendered shall be made every month or on completion of milestones or on completion of entire Services, whichever is stipulated in the contract.

10.5.2 Advance Payments

If the contract provides explicitly for Advance Payments to be made to the Consultant, then on the request of the Consultant, the Procuring Entity shall make the advance payment to the Consultant against submission of an unconditional Bank Guarantee from a Commercial bank acceptable to the Procuring Entity in amounts equal to 110% (one hundred ten per cent) of the amount of the advance payment being requested. Such Bank Guarantee shall be in the form outlined in Appendix E-2 or the other form the Procuring Entity shall have approved in writing. Advance payments shall be released in not less than two instalments commensurate with work progress.

The Bank Guarantee shall remain effective until the advance payment has been repaid, but the amounts repaid by the Consultant shall progressively reduce the guaranteed amount. Interest shall not be charged on the advance payment. However, if the contract is terminated due to the Consultant's default, the Advance payment shall be deemed an interest-bearing advance at the prevailing rate (MIBID - Mumbai Interbank Proposal Rate) on the date of such advance payment.

The Consultant is to use the advance payment only for the performance of Services. The Consultant shall demonstrate that the advance payment has been used by Utilization certificate enclosing copies of invoices or other documents to the Contract Manager. Further instalments shall be released after getting a satisfactory utilization certificate from the Consultant for the earlier instalment.

The advance payment shall be recovered in a time-based manner not linked with the work progress by deducting proportionate amounts from payments otherwise due to the Consultant for the Services performed. Any delayed recoveries due to the late submission of bills by the Consultant shall attract interest at the prevailing rate (MIBID - Mumbai Interbank Proposal Rate). No account of the advance payment or repayment shall be

taken in assessing valuations of Services performed, variations, price adjustments, or liquidated damages.

10.5.3 Remuneration and Reimbursable Expenses

- a) The Procuring Entity shall pay to the Consultant (i) remuneration that shall be determined based on time spent by each Expert in the performance of the Services after the date of commencing of Services or such other date as the Parties shall agree in writing; and (ii) reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.
- b) All payments shall be at the rates outlined in Appendix C.
- c) Unless the Contract provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.
- d) The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts 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 (reinforcement/ support) by home office staff not included in the Experts' list in Appendix B, (iii) the Consultant's profit, and (iv) any other items as specified in the contract.
- e) Any rates specified for Experts not yet appointed shall be provisional and be subject to revision, with the written approval of the Procuring Entity once the applicable remuneration rates and allowances are known.

10.5.4 "On-Account" Payments

- 1) the Consultant shall be entitled to be paid (unless otherwise stipulated in the contract) by way of "On-Account" payment, only for such Services, as in the opinion of the Contract Manager, the Consultant has executed in terms of the contract during the period. All payments due against the Contract Manager or his representative's certificates shall be subject to any deductions, which may be made under the contract, always provided that the Contract Manager may by any certificate make any correction or modification in any previous certificate, which he may have issued. The Contract Manager may withhold any certificate if the Services or any part thereof are not carried out as per the contractual performance standards.
- 2) On-Account Payments Not Prejudicial to Final Settlement: "On-Account" payments made to the Consultant shall be without prejudice to the final settlement of the accounts. They shall not be considered or used as evidence of any facts stated in or inferred from such accounts, any particular quantity of service being executed, or the manner of its execution being satisfactory.
- 3) The Final Payment:

10.5.5 Final Payment

- 1) The final payment under this Clause shall only be made after the final report/ deliverables and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. Completion certificate/ Final payment shall be made only after ensuring that all facilities/ documents/ sites have been returned to the Procuring Entity as per GCC clause

- 5.14. The Services shall be deemed completed and finally accepted by the Procuring Entity.
- 2) The Consultant shall submit a final bill on the Contract Manager's acceptance certificate of final deliverables. The Final payment shall be made as per the following calculations after receiving a clear "No Claim Certificate" signed by the Consultant:
 - a) necessary adjustment for any payments already made or retained
 - b) any deduction which may be made under the contract,
 - c) A complete account of all claims the Consultant may have on the Procuring Entity, and the Contract Manager gave a certificate in writing that such claims are correct,
 - 3) The final report and final invoice shall be deemed approved by the Procuring Entity as satisfactory ninety (90) calendar days after receipt of the final report and final invoice by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall promptly make any necessary corrections, and the preceding process shall be repeated.
 - 4) Any amount that the Procuring Entity has paid or has caused to be paid under this Clause more than the amounts payable under the provisions of this Contract shall be reimbursed by the Consultant to the Procuring Entity within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final invoice approved by the Procuring Entity in accordance with the above.

10.5.6 No Claim Certificate and Release of Contract Securities

The Consultant shall submit a 'No-claim certificate' to the Procuring Entity in such form as shall be required by the Procuring Entity after the Services are finally accepted and before the final payment/ performance securities are released. The Procuring Entity shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the Consultant. The Consultant shall not be entitled to make any claim whatsoever against the Procuring Entity under or arising out of this Contract, nor shall the Procuring Entity entertain or consider any such claim, if made by the Consultant, after he shall have signed a "No Claim" Certificate in favour of the Procuring Entity. The Contractor shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate or demanding arbitration.

10.5.7 Post Payment Audit

Notwithstanding the issue of the Completion Certificate and release of final Payment, the Procuring Entity reserves the right to carry out within 180 days (unless otherwise stipulated in the contract) of such completion/ final payment, a post-payment audit and/ or technical examination of the Services and the final bill including all supporting vouchers, abstracts etc. If any over-payment to the Consultant is discovered due to such examination, the Procuring Entity shall claim such amount from the Consultant.

10.5.8 Signature on Receipts for Amounts

Every receipt for money, which may become payable, or for any security which may become transferable to the contractors under the contract, shall be signed by a person authorized to do so by the Consultant (or otherwise as per GCC-Clause 4.2), to be a suitable and sufficient

discharge to the Procuring Entity in respect of the sums of money or security purported to be acknowledged thereby. In the event of the death of any Consultant or partner during the pendency of the contract, every receipt by anyone of the surviving constituents shall be suitable and sufficient discharge as aforesaid. Nothing in this Clause shall be deemed to prejudice or effect any claim that the Procuring Entity may have against the legal representative regarding any breach of any contract conditions by any Consultant partner/member so dying. Nothing in this clause shall be deemed to prejudice or affect the respective rights or obligations of the Consultant partners/ members and the legal representatives of any deceased Consultant partners/ members.

10.6. Suspension of Payments

The Procuring Entity may, by written notice of suspension to the Consultant, suspend part or all payments to the Consultant hereunder if the Consultant fails to deliver the Services as per the Terms of Reference, including the non-rectification of notified defects in the Services/deliverables, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension. Such a suspension shall not entitle the Consultant to any extension of time for delivery of Service.

10.7. Payment Against Time-Barred Claims

In accordance with the Limitation Act 1963, all claims against the Procuring Entity shall be legally time-barred after three years calculated from when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity is entitled to, and it shall be lawful to reject such claims.

10.8. Commissions and Fees

The Consultant shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of this Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

Resolution of Disputes

11.1. Disputes and Excepted Matters

All disputes and differences between the parties hereto, as to the construction or operation of this Contract, or the respective rights and liabilities of the parties on any matter in question, or any other account whatsoever, but excluding the Excepted Matters (detailed in GCC-Clause 11.2 below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Contract Manager and the Consultant, shall be hereinafter called the "Dispute". The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims citing the relevant Contractual clause to the designated authority requesting invoking the following dispute resolution mechanism. Before any recourse to courts, the dispute shall be resolved through dispute resolution mechanisms detailed subsequently in the sequence mentioned below, and

the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

- 1) Adjudication
- 2) Conciliation
- 3) Arbitration

11.2. Excepted Matters

Matters for which provision has been made in any Clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Procuring Entity, thereon, shall be final and binding on the Consultant. The 'excepted matters' shall stand expressly excluded from the purview of the sub-clauses below, including Arbitration. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but are not limited to:

- 1) Any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
- 2) Issues related to the pre-award Procurement Process or conditions
- 3) Issues related to ambiguity in Contract terms shall not be taken up after a Contract has been signed. All such issues should be highlighted before the signing of the contract by the Consultant.
- 4) Provisions incorporated in the contract which are beyond the purview of The Procurement Entity or are in pursuance of policies of Government, including but not limited to
 - a) Provisions of restrictions in terms of the Make in India policy of the Government
 - b) Provisions regarding restrictions on Entities from Countries having land borders with India in terms of the Central Government's policies in this regard.
 - c) Relaxations stipulated for Startups etc.

11.3. Adjudication

After exhausting efforts to resolve the Dispute with the Contract Manager executing the contract on behalf of the Procuring Entity, the Consultant shall give a 'Notice of Adjudication' specifying the matters which are in question or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procurement or any other authority mentioned in the contract (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication. During his adjudication, the Adjudicator shall give adequate opportunity to the Consultant to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. During the adjudication proceedings, the parties shall not initiate any conciliation, arbitral, or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the Consultant may proceed to invoke the process of Conciliation as follows.

11.4. Conciliation of disputes

- 1) Parties may invoke Conciliation, in terms of the Arbitration and Conciliation Act 1996,

by submitting a “Notice of Conciliation” to the other party with a request to the Head of the Procuring Organisation to notify a Conciliator. Since conciliation is voluntary, within 30 days of “Notice of Conciliation”, the Head of the Procuring Organisation shall notify a sole Conciliator if the other party is agreeable to entering Conciliation. If the other party is not agreeable to Conciliation, the aggrieved party may invoke Arbitration.

- 2) The Conciliator shall proactively assist the parties to reach an amicable settlement independently and impartially within the contract terms within 60 days from the appointment date.
- 3) If the parties agree on a dispute settlement, they shall draw up a written settlement agreement duly signed by the parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties. The dispute shall be treated as resolved on the date of such agreement.
- 4) During the conciliation proceedings, the parties shall not initiate any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.
- 5) Termination of Conciliation: Disputes shall remain alive if the conciliation is terminated as follows:
 - a) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified on the date of such declaration; or
 - b) By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated on the date of such declaration; or
 - c) If the parties fail to reach an agreement on a settlement of the dispute within 60 days of the appointment of the Conciliator
- 6) On termination of Conciliation, the aggrieved party shall be free to invoke Arbitration if the dispute is still alive.

11.5. Arbitration Agreement

11.5.1 This Agreement

- 1) This Arbitration Agreement (hereinafter referred to as this “Agreement”) relating to this Contract (hereinafter called the “Main Agreement” for this agreement) is made under the provisions of The Arbitration and Conciliation Act, 1996, as amended from time to time and the rules thereunder (hereinafter called The Arbitration Act). This Agreement shall continue to survive termination, completion, or closure of the Main Agreement for 120 days afterwards.
- 2) Subject to aforesaid provisions, relevant clauses of the contract shall apply to the appointment of arbitrators and arbitration proceedings under this Agreement.
- 3) The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to the Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the MSMED Act 2006, these provisions shall prevail over this Agreement. However, if an arbitrator has already been appointed under this agreement before the appointment of a conciliator/ arbitrator by the facilitation council,

the arbitrator already appointed under this agreement shall continue to perform the duties including on matters related to delayed payments. Such an arbitrator shall be deemed to be the arbitrator appointed by the facilitation council. None of the parties shall approach the facilitation council to appoint an arbitrator once an arbitrator under this agreement has already been appointed.

11.5.2 Notice for Arbitration

- 1) Authority to Appoint Arbitrator(s): For this Arbitration Agreement, 'The Appointing Authority' to appoint the arbitrator shall be Head of the Procuring Organisation or any other authority or Arbitration Institution named in the contract and includes if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
- 2) In the event of any dispute as per GCC-clause 11.1 above, if the Adjudicator fails to decide within 60 days (as referred in 11.3 above), or the Conciliation is terminated (as referred in sub-clause 11.4 above), then any party to the contract, after 60 days but within 120 days of 'Notice of Dispute' (clause 11.1 above) shall request the other party through a "Notice for Arbitration" in writing that the dispute or difference be referred to arbitration.
- 3) The "Notice for arbitration" shall specify the matters in question or the subject of the dispute or difference, indicating the relevant contractual clause and the amount of claim item-wise.

11.5.3 Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the Dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, with counter-claims or set off. Other matters shall be beyond the jurisdiction of the Arbitrator(s)

11.5.4 Appointment of Arbitrator

- 1) Qualification of Arbitrators:
 - a) In the case of retired officers of The Procuring organisation, they shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 year prior and must not be over 70 years of age on the date of Notice for arbitration.
 - b) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as an officer of the Procuring Organisation, expressed views on any or all of the matters under dispute or differences. A certification to this effect (as per Format 1.1.4) shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely for the reason that one or more arbitrators had, in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
 - c) An Arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed.
 - d) Not be other than the person appointed by The Appointing Authority, and if for any reason that is not possible, the matter shall not be referred to arbitration.
- 2) Replacement of Arbitrators

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

3) Appointment of Arbitrator:

- a) In cases where the total value of all claims in question added together does not exceed Rs 50,00,000/ - (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of the sole Arbitrator. For this purpose, The Appointing Authority shall send to the Consultant, within 60 days from receipt of a written and valid notice for arbitration, a panel of at least four (4) names of retired officers duly indicating their retirement dates.
- b) The Consultant shall be asked to nominate at least two names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the sole arbitrator within 30 days from the receipt of the names of the Consultant's nominees.
- c) In cases where the total value of all claims in question added together exceeds Rs 50,00,000/ - (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Officers of the Procuring Organisation. For this purpose, The Appointing Authority shall send a panel of at least four (4) names of such Officer(s) empanelled to work as Arbitrators duly indicating their retirement date to the Consultant within 60 days from the day when a written and The Appointing Authority receives valid demand for arbitration.
- d) The Consultant shall be asked to nominate at least 2 names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one of them as the Consultant's nominee. It shall also simultaneously appoint the balance number of arbitrators from the panel or outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed within 30 days from the receipt of the names of the Consultant's nominees.
- e) If the Consultant does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed to appoint the arbitral tribunal within 30 days of the expiry of such a time provided to the Consultant.

11.5.5 Failure to appoint Arbitrators.

If The Appointing Authority fails to appoint an arbitrator within 60 (sixty) days, then the appointment of the Arbitrator may be sought under the relevant provision of the Arbitration and Conciliation Act 1996, as amended.

11.5.6 The Arbitral Procedure

- 1) **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date the arbitrator(s) received notice of their appointment. All subsequent time limits shall be counted from such date.
- 2) **Seat and Venue of Arbitration:** The seat of arbitration shall be where the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in section 20 of The Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without affecting the legal jurisdictional issues linked to the seat of the arbitration.
- 3) If the Adjudication and/ or Conciliation mechanisms had not been exhausted before such a reference to Arbitration, the Arbitrator should ask the aggrieved party to approach the designated authority for such mechanisms before the Arbitration proceedings are started.
- 4) The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless otherwise extension has been granted by Arbitral Tribunal.
- 5) On receipt of such claims, the respondent shall submit its defence statement and counter-claim(s), if any, within 60 days of receipt of the copy of claims, unless otherwise extension has been granted by Arbitral Tribunal.
- 6) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal due to the delay in making it.
- 7) Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
- 8) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal daily, and no adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.
- 9) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months under exceptional circumstances where all parties consent to such an extension. The court's approval shall require further extension if the award is not made out within an extended period. When an application for an extension of time is awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.
- 10) **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast-track procedure either before or after the commencement of the arbitration. The award in fast-track arbitration is to be made within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of fast-track arbitration are:
 - a) The dispute is to be decided based on written pleadings only.
 - b) Arbitral Tribunal shall have the power to call for clarifications and the necessary written pleadings.
 - c) An oral hearing may only be held if all the parties request or the arbitral tribunal considers it necessary.
 - d) The parties are free to decide the fees of the arbitrator(s) for a fast-track

procedure.

- 11) Powers of Arbitral Tribunal to grant Interim Relief: The parties to arbitration may approach the arbitral tribunal to seek interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.
- 12) Confidentiality: As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential except in certain situations, like if the disclosure is necessary for the implementation or execution of the arbitral award.
- 13) Obligation During Pendency of Arbitration: Performance of the contract shall, unless otherwise directed by the Procuring Entity, continue during the arbitration proceedings, and no payment due or payable by the Procuring Entity shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

11.5.7 The Arbitral Award

In the case of the Tribunal, comprising three members, any ruling on an award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

The arbitral award shall state item-wise the sum and reasons it is based. The analysis and reasons shall be detailed enough to infer the award.

It is further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act.

The arbitrator's award shall be final and binding on the parties to this Contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award.

A party may apply to the Tribunal within 60 days of receiving the award to make an additional award for claims presented in the arbitral proceedings but omitted from the arbitral award.

11.5.8 Savings

The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.

11.5.9 Cost of Arbitration and fees of the Arbitrator(s)

- 1) The concerned parties shall bear the arbitration cost as per section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Procuring Entity and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Procuring Entity or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be

entitled to a 25% extra fee over such a prescribed fee.

- 2) The arbitrator shall be entitled to a 50 per cent extra fee if the award is made within 6 months as per provisions in section 29(A) (2) of The Arbitration Act. The Arbitrator shall also be entitled to this extra fee in cases where the Fast Track Procedure in section 29 (B) of The Arbitration Act is followed.

Defaults, Breaches, Termination, and closure of Contract

12.1. Termination due to Breach, Default, and Insolvency

12.1.1 Defaults and Breach of Contract

In case the Consultant undergoes insolvency or receivership, neglects or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of contract. Such defaults could include inter-alia:

- 1) Default in Performance and Obligations: if the Consultant fails to deliver any or all of the Services or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and evaluation criteria based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity. In the case of a Joint Venture/ Consortium, If the performance of any JV/C member is persistently un-satisfactory by the Procuring Entity in respect of the responsibilities assigned to him as per the JV agreement, which is part of this Contract.
- 2) Insolvency: If the Consultant being an individual or if a firm, any partner thereof, shall at any time be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- 3) Liquidation: if the Consultant is a company being wound up voluntarily, or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

12.1.2 Notice for Default:

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the Consultant, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the Consultant would be suspended as per GCC clause 10.6 above to safeguard needed recoveries due to invoking contractual remedies.

12.1.3 Remedies for Breaches/ Default

In the event of an unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per the sub-clause above, the Procuring Entity, if so decided, shall

- 1) take one; or more of the following contractual remedies.
 - a) Recover liquidated damages and invoke a denial clause for delays.
 - b) In the case of JV/C, Procuring Entity may call upon the Lead Member to assign the

- work of the defaulting member to any other equally competent party acceptable to the Procuring Entity.
- c) Temporarily withhold payments due to the Consultant till recoveries due to invocation of other contractual remedies are complete.
 - d) Call back any loaned property or payment advances with a levy of interest at the prevailing rate (MIBID - Mumbai Interbank Proposal Rate).
 - e) Encash and/ or Forfeit performance or other contractual securities.
 - f) Prefer claims against the insurance, if any.
 - g) Terminate the Contract for default, fully or partially, including its right for Risk- and-Cost Procurement as per the following sub-clause.
 - h) Initiate proceedings in a court of law for the transgression of a law, tort, and loss not addressable by the other remedies above.
- 2) By written Notice of Termination for Default sent to the Consultant, terminate the contract in whole or in part, without compensation to the Consultant.
- a) Such termination shall not prejudice or affect the rights and remedies, including under the sub-clause below, which have accrued and/ or may accrue to the Procuring Entity after that.
 - b) Unless otherwise instructed by the Procuring Entity, the Consultant shall continue to perform the contract to the extent not terminated.
 - c) All Defect Liability obligations, if any, shall survive despite the termination.
- 3) Risk and Cost Procurement: In addition to termination for default, the Procuring Entity shall be entitled, and it shall be lawful on his part, to procure Services similar to those terminated, with such terms and conditions and in such manner as it deems fit at the “Risk and Cost” of the Consultant. Such Risk and Cost Procurement must be contracted within nine months from the breach of contract. The Consultant shall be liable for any loss which the Procuring Entity may sustain on that account provided the procurement, or, if there is an agreement to procure, such agreement is made. The Consultant shall not be entitled to any gain on such procurement, and the manner and method of such procurement shall be at the discretion of the Procuring Entity. It shall not be necessary for the Procuring Entity to notify the Consultant of such procurement. It shall, however, be at the discretion of the Procuring Entity to collect or not the security deposit from the firm/ firms on whom the contract is placed at the risk and cost of the defaulted firm.

12.1.4 Limitation of Liability

Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the Consultant to the Procuring Entity, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Consultant to indemnify the Procuring Entity concerning IPR infringement.

12.2. Termination for Default/ Convenience of Procuring Entity or Frustration of Contract

12.2.1 Notice for Determination of Contract

The Procuring Entity reserves the right to terminate the contract, in whole or in part, for its (the Procuring Entity's) convenience or frustration of Contract as per the sub-clause below, by serving written 'Notice for Determination of Contract' on the Consultant at any time during the currency of the contract. The notice shall specify that the termination is

for the Procuring Entity's convenience or the contract's frustration. The notice shall also indicate inter-alia, the extent to which the Consultant's performance under the contract is terminated, and the date from which such termination shall become effective.

Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.

Unless otherwise instructed by the Procuring Entity, the Consultant shall continue to perform the contract to the extent not terminated.

All Defect Liability obligations, if any, shall survive despite the termination.

The Services and incidental goods/ works that can be delivered or performed within thirty days after the Consultant's receipt of the notice of termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Services and incidental goods/ works, the Procuring Entity may decide:

- a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
- b) To cancel the remaining portion of the Services and incidental goods/ works and compensate the Consultant by paying an agreed amount for the cost incurred by the Consultant, if any, towards the remaining portion of the Services and incidental goods/ works.

12.2.2 Frustration of Contract

- 1) Notice of Frustration Event: Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party, whether as a result of the Force Majeure clause (GCC 9.6) or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract as necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration, as in the sub-clause above.
- 2) However, the following shall not be considered as such a supervening cause
 - a) Lack of commercial feasibility or viability or profitability or availability of funds
 - b) if caused by either party's breach of obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

12.3. Closure of Contract

12.3.1 Unless terminated earlier under GCC clauses 12.1 and 12.2 above, this Contract shall expire:

- 1) At the end of such a period after the Effective Date as specified in the Contract.
- 2) Upon successful performance of all obligations by both parties, including completion of Defect Liability obligations and final payment
- 3) termination and settlements after that, if any, as per GCC clause 12.1 or 12.2 above.

12.3.2 Cessation of Rights and Obligations

Upon termination of this Contract under Clauses GCC 12.1 or 12.2 hereof or expiration of this

Contract under GCC clause 12.3.1, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality outlined in GCC clause 5.7. (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records outlined in GCC clause 5 and to cooperate and assist in any inspection or investigation, and (iv) any right a Party may have under the Applicable Law.

12.3.3 Cessation of Services

Upon termination of this Contract by notice under Clauses GCC 12.1 or GCC 12.2, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. Concerning documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided by Clauses GCC 9.4 and GCC 5.14.

12.3.4 Payments upon Termination

Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

- (a) payment for Services satisfactorily performed before the effective date of termination; and
- (b) in the case of termination under GCC clause 12.2, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

Code of Integrity in Public Procurement; Misdemeanours and Penalties

13.1. Code of Integrity

Procuring authorities as well as Auditors, suppliers, contractors, and Auditors - should observe the highest standard of ethics and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Procurement Process or during the execution of resultant contracts:

- 1) "Corrupt practice" - making an offer, solicitation or acceptance of a bribe, reward or gift or any material benefit in exchange for an unfair advantage in the Procurement Process or to otherwise influence the Procurement Process;
- 2) "Fraudulent practice" - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a Procurement Process or to secure a Contract, or in the execution of the contract;
- 3) "Anti-competitive practice" - any collusion, Proposal-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more Auditors, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the Procurement Process or to establish Proposal prices at artificial, non-competitive levels;
- 4) "Coercive practice" - harming or threatening to harm persons or their property to influence their participation in the Procurement Process or affect the execution of a contract;

- 5) Conflict of interest” –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; if they are part of more than one Proposal in the procurement; or if their personnel have a relationship or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) Consultant from the Procuring Entity with an intent to gain unfair advantage in the Procurement Process or for personal gain;
- 6) “Obstructive practice” - materially impede procuring entity’s investigation into allegations of one or more of the above-mentioned prohibited practices either by deliberately destroying, falsifying, altering; or concealing evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or by impeding the Procuring Entity’s rights of an audit or access to information;

13.2. Obligations for Proactive Disclosures:

- 1) Procuring authorities, Auditors, suppliers, contractors, and Auditors are obliged under this Code of Integrity to *suo-moto* proactively declare any violation of the Code of Integrity (pre-existing or as and as soon as these arise at any stage) in any Procurement Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.
- 2) Any Consultant must declare, whether asked or not in a Proposal-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or the Ministry/ Department of the Procuring Organisation from participation in Procurement Processes. Failure to do so shall amount to a violation of this code of integrity.

13.3. Misdemeanours

The following shall be considered misdemeanours - if a Consultant, either directly or indirectly, at any stage during the Procurement Process or during the execution of resultant contracts:

- 1) Commits any of the following misdemeanours:
 - (a) Violates the code of Integrity mentioned in GCC-clause 13.1 or the Integrity Pact if included in the Tender/ Contract;
 - (b) Any other misdemeanour, e.g., supply of sub-standard quality of material/ services/ work, non-performance or abandonment of contract, or violations of Bid/ performance Security conditions.
- 2) Commits any of the following misdemeanours:
 - (a) Has been convicted of an offence:
 - i) Under the Prevention of Corruption Act, 1988; or
 - ii) The Indian Penal Code or any other law is in force for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
 - (b) It is determined by the Government of India to have doubtful loyalty to the country

or national security considerations.

- (c) Employs a government servant who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants or employs a government officer within one year (or any other period prescribed by the relevant authority) of his retirement, who has had business dealings with him in an official capacity before retirement.

13.4. Penalties for Misdemeanours

Without prejudice to and in addition to the rights of the Procuring Entity to other remedies as per the Tender-documents or the contract, If the Procuring Entity concludes that a (prospective) Consultant directly or through an agent has committed a misdemeanour in competing for the tender or in executing a contract, the Procuring Entity shall be entitled, and it shall be lawful on his part to take appropriate measures, including the following:

13.4.1 if his Proposals are under consideration in any procurement

- 1) Enforcement of Bid Securing Declaration in lieu of forfeiture or encashment of Bid Security.
- 2) calling off any pre-contract negotiations and;
- 3) rejection and exclusion of Auditors from the Procurement Process

13.4.2 if a contract has already been awarded

- 1) Termination of Contract for Default and availing all remedies prescribed thereunder;
- 2) Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
- 3) Recovery of payments, including advance payments, if any, made by the Procuring Entity along with interest thereon at the prevailing rate (MIBID - Mumbai Interbank Proposal Rate);

13.4.3 Remedies in addition to the above:

In addition to the above penalties, the Procuring Entity shall be entitled, and it shall be lawful on his part, to:

- 1) File information against Consultant or any of its successors with the Competition Commission of India for further processing in case of anti-competitive practices;
- 2) Initiate proceedings in a court of law against Consultant or any of its successors under the Prevention of Corruption Act, 1988 or the Indian Penal Code or any other law for transgression not addressable by other remedies listed in this sub-clause.
- 3) Remove the Consultant or any of its successors from the list of registered suppliers for a period not exceeding two years. Suppliers removed from the list of registered vendors or their related entities may be allowed to apply afresh for registration after the expiry of the removal period.
- 4) Initiate suitable disciplinary or criminal proceedings against any individual or staff found responsible.
- 5) Debar, a Consultant, from participation in future procurements without prejudice to Procuring Entity's legal rights and remedies. Debarment shall automatically extend to all the allied firms of the debarred firm. In the case of a Joint Venture/ consortium, all its members

shall also stand similarly debarred:

- a. A Ministry/ Department (or any of its CPSUs, attached offices, autonomous bodies) may debar a Consultant or any of its successors from participating in any Procurement Process undertaken by all its procuring entities for a period not exceeding two years commencing from the date of debarment for misdemeanours listed in GCC sub- clause 13.3 -1) above. The Ministry/Department shall maintain such a list which shall also be displayed on their website.
- 2) Central Government (Department of Expenditure (DoE), Ministry of Finance) may debar a Consultant or any of its successors from participating in any Procurement Process undertaken by all its procuring entities for a period not exceeding three years commencing from the date of debarment for misdemeanours listed in GCC sub-clause 13.3 – 2) above. DoE shall maintain such a list which shall be displayed on Central Public Procurement Portal (CPPP).

Section V: Special Conditions of Contract (SCC)

Document No. RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor (Ref ITC-clause 1.4)

Note for Auditors: Following Special Conditions of Contract (SCC) shall apply for this procurement. These Special Conditions shall modify/ substitute/ supplement the corresponding (GCC) clauses as indicated below. Whenever there is any conflict between the provision in the GCC and that in the SCC, the provision in the SCC shall prevail.

GCC Clause No.	Topic	To be read as
2.1	Language of Contract	English
12.3.1	Period of Contract	One year. Extendable up to two years, subject to terms and conditions.

Section VI: Terms of Reference

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor (Ref ITC-clause 1.4)

Note for Auditors: Regarding this Section, Auditors must fill Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference

Terms of Reference

1) Recital and Objectives:

To mitigate hardships to consumers due to fluctuations in prices of pulses and other horticulture crops like onion, tomatoes and potatoes, a central sector scheme was introduced in 2015 for providing working capital and other incidental expenses for procurement and distribution of said agri-horticultural commodities. For this purpose, a fund - "Price Stabilization Fund (PSF)" has been created. The Fund is managed by the Price Stabilization Fund Management Committee (PSFMC) of Department of Consumer Affairs, MoCA, F&PD. The intervention is expected to regulate price volatility through procurement by State / UT Government and Central agencies / Central PSUs / Cooperative organizations as decided by respective Ministries of selected produce, maintenance of buffer stocks and calibrated release into the market. Presently, NAFED and NCCF are the Central Nodal Agency (CNAs) for undertaking operations under PSF.

In the 60th meeting of the PSFMC held on 01.03.2024, the committee decided to appoint a Concurrent Auditor to audit the PSF operations of CNAs at HO/Branches/functional centres to check the accounts of the operations in order to ensure proper utilization of funds. The Concurrent Auditor is required to report to the Costing Cell, Department of Consumer Affairs.

2) Form of BOQ/ Contract – Lumpsum

3) Description of Services

a) Short Description and Broad Scope of Services:

Concurrent Audit of various activities related to PSF operations undertaken by CNAs at HO along with branches and submission of audit report to the Department of Consumer Affairs.

b) Key Activities:

- i) The auditor shall check as to whether the applicable PSF guidelines, orders issued from time to time by the Competent Authority and the internal guidelines/Standard Operating Procedures of CNAs are fully adhered. Any deviations from the said guidelines are required to be reported.
- ii) Checking and reporting of Funds received from PSF:
 - a) Preparation of consolidated, commodity wise and branch wise Cash Flow Statement (CFS) as per proforma prescribed by Department of Consumer Affairs. Such CFS shall be reconciled with the receipts and payments of the PSF fund manager.
 - b) Checking and verification of the PSF cash books/bank books and to ensure that the cash in hand/bank books are reconciled on monthly basis and necessary actions are taken for unmatched transactions.

- c) Checking and verification of payment transactions to ensure that they are made as per the applicable PSF guidelines, orders issued from time to time by the Competent Authority and the internal guidelines/Standard Operating Procedures of CNAs.
- iii) Checking and reporting of sales, purchases, and other incomes and expenses to ensure that no applicable PSF guidelines, orders issued from time to time by the Competent Authority and the internal guidelines/Standard Operating Procedures of CNAs are violated.
- iv) Verification and reporting of end use of the fund provided for undertaking PSF Operation.
- v) Verification and reconciliation of Inter Office/Branch Transactions.
- vi) Checking whether expenditure incurred/claimed by CNAs are at Arm Length Price.
- vii) Verification that no PSF funds are shifted from one operation to another operations without the approval of the Department of Consumer Affairs.
- viii) Age wise analysis of debtors/advances and creditors and reporting on the accuracy and authenticity of debtors/advances and creditors. The periodical confirmation & reconciliation of debtors/advances and creditors with the party.
- ix) Preparation of season wise & location wise stock register as per the format prescribed by Department of Consumer Affairs. Proper reconciliation of stock register with purchase and sale accounted for by the CNA.
- x) Verification and reporting of stock on sample basis as per book maintained by CNAs.
- xi) The auditor should cover all the transactions of the branch relating to the Price Stabilization Fund (PSF).
- xii) Review of accounting and internal control systems of CNAs. Providing suggestions for improvements in accounting and internal control system, if observed any.
- xiii) Preparation and submission of any other information/data as sought from the Department of Consumer Affairs in the prescribed formats.

c) Deliverables/ Outcomes and Timelines (frequency) thereof:

Based on the audit by the Auditor, a consolidated and branch wise monthly audit report including the data/information as per para 3(b) above is to be prepared and submitted by 10th of the month following the reporting month to Department of Consumer Affairs (e.g. for the reporting month of July, 2024, the report is to be submitted by 10th September, 2024).

- 4) Counterpart Contract Manager (or Contract Management Team) of the Procuring Entity: Adviser (Cost), Department of Consumer Affairs or any other Officer as authorised by the Department of Consumer Affairs.
- 5) Statutory, Sustainability, and contractual obligations to be complied with by the Consultant: as prescribed in this RFP.

Section VII: Evaluation/ Scoring Criteria

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor (Ref ITC-clause 1.4)

Auditors must fill up the following Forms regarding this Section:

- a) *Form T-2: Consultant's Organisation and Experience*
- b) *Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference*

Technical Proposal

Evaluation of following criteria will be on a pass/ fail basis.

Criteria	Documents for verification
1. The firm should have been established as partnership firm/LLP and registered under ICAI and is in continuous practice for providing audit/ consultancy services for a period of 15 years or more.	PAN card or any other supporting document.
2. It should have at least ten FCA partners, of which at least two partners should have been in practice in the firm for a minimum period of ten years.	Partnership deed, relevant MCA forms (if a LLP) or any other supporting document.
3. It should have at least ten fully qualified CA employees in the firm.	Any supporting document.
4. It should have been empaneled with the Central Registrar of Cooperative Societies in Panel for FY 2023-24 for multi-State cooperative societies having an annual turnover/ deposit (as the case may be) of more than five hundred crore rupees for carrying out Statutory and Concurrent Audit.	No document is required.
5. It is not debarred/disqualified for any misconduct by the ICAI and also is not facing any disciplinary proceedings by the CA Institute.	Self-certification from the consultant or any other supporting document.
6. It should have minimum average annual turnover of atleast Rs.2.00 crore in last three years, at least 50% of which should be from audit/consultancy services.	Turnover for the FY 2021-22, 2022-23 and 2023-24 and audited/certified profit and loss account.
7. The firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners, should not be an auditor of NAFED/NCCF under Section 70 of MSCS Act, 2002 read with MSCS (Amendment) Act, 2023.	Self-certification from the consultant or any other supporting document.
8. It should have experience in auditing/consultancy of a Co-operative Societies registered under Multi-	Cooperative society registration certificate/other supporting document may be

State Co-operative Societies Act (MSCS Act) with minimum turnover of Rs.1000.00 Crore and involved in the activities for which funds has been released from Government of India in any 2 years out of last 5 years.	provided for the entities whose experience is claimed under Consultant's proposal to REOI No. REOI/Y-17/2/2023-Costing Cell.
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BIDDING FORMS

Technical Proposal

Form T-1: Proposal Form (Covering Letter)

(Ref ITC-clause 9.2)

(To be submitted as part of Technical Proposal, along with supporting documents, if any)

(on Consultant's Letter-head)

(Strike out alternative phrases not relevant to you)

Consultant's Name _____

[Address and Contact Details]

Consultant's Reference No. _____ Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Ref: Your RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor.

Sir/ Madam

1. We, the undersigned, offer to provide consulting services in accordance with your above-referenced Request for Proposals (RFP) and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a separately uploaded Financial Proposal. Commercial information about our organisation is enclosed in Form T-1A.

We are submitting our Proposal without any Sub-Auditors or JV.

Or

We are submitting our Proposal with the following firms as Sub-Auditors:
{Insert a list with each Sub-consultant's full name and address.}

Or

We are submitting our proposal as a joint venture with *{Insert a list with each member's full name and legal address and indicate the lead member}*. We have attached a copy of the following document signed by every participating member, which details the (likely) legal structure and the confirmation of joint and severable liability of the members of the said joint venture.

our letter of intent to form a joint venture

the JV agreement

2) Our Eligibility and Qualifications to participate

a) We confirm that we continue to comply with all the eligibility (including the absence of conflict of interest and debarment) and qualification criteria stipulated in the preceding shortlisting process (EOI Document mentioned in TIS), based on which we were shortlisted for participation in this RFP process. We shall be dutybound to proactively inform you of any change in our compliance with these criteria as soon as it occurs.

- b) We confirm that we don't have any Conflict of Interest as stipulated in this RFP. We shall be dutybound to proactively inform you of any change in our compliance with Conflict-of-Interest stipulations as soon as it occurs.

3) Our Proposal to deliver Services:

We offer to deliver the subject Services of requisite Performance Standards and within Delivery Schedules in conformity with the RFP Document. The relevant details are submitted in 'Form T-4: Description of Approach, Methodology and Work Plan in responding to Terms of Reference'.

4) Prices:

We hereby offer to perform the Services at our lowest prices and rates mentioned in the separately uploaded Financial Proposal. It is hereby confirmed that the prices quoted therein by us are:

- (a) Based on the terms of delivery and delivery schedule confirmed by us; and
- (b) Cost break-up of the quoted cost, showing inter-alia costs (including taxes and duties thereon) of all the included incidental Goods/ Works considered necessary to make the proposal self-contained and complete, has been indicated therein, and
- (c) based on the terms and mode of payment as stipulated in the RFP Document. We have understood that if we quote any deviation from the terms and mode of payment, our Proposal is liable to be rejected as nonresponsive, and
- (d) have been arrived at independently, without restricting competition, any consultation, communication, or agreement with any other Consultant or competitor relating to:
 - i) those prices; or
 - ii) the intention to submit an offer; or
 - iii) the methods or factors used to calculate the prices offered.
- (e) Have neither been nor shall be knowingly disclosed by us, directly or indirectly, to any other Consultant or competitor before the Proposal opening unless otherwise required by law.

5) We declare regarding commissions or fees paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of this Contract, that:

- No such commissions or gratuities or fees have been paid are to be paid by us to any third party

Or

- We have paid/ are due to pay the following commissions/ gratuities/ fees:

(indicate the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.)

6) Affirmation of terms and conditions of the RFP Document:

We have understood the complete terms and conditions of the RFP Document. We accept and comply with these terms and conditions without reservations, although we are not

signing and submitting some of the RFP document's sections. Deviations, if any, are submitted by us in Form T-7: 'Terms and Conditions - Compliance'. We also explicitly confirm acceptance of the Arbitration Agreement as given in the RFP Document.

- 7) Bid Security: We have submitted the Bid Security as Earnest Money Deposit (EMD) for the amount of Rs..... (Rupees.....) valid upto in favour of in the form of Insurance Surety Bonds/ Account Payee Demand Draft/ Fixed Deposit Receipt/ Banker's cheque/ Payment online/ Bank Guarantee in Form T-9A, with reference number dated....., issued by.....as per the RFP Documents.

8) Abiding by the Proposal's Validity

We agree to keep our Proposal valid for acceptance for a period upto -----, as required in the RFP Document, or for a subsequently extended period, if any, agreed to by us, and are aware of penalties in this regard stipulated in the RFP Document in case we fail to do so.

9) Non-tempering of Downloaded RFP Documents and Uploaded Scanned Copies

We confirm that we have not changed/ edited the contents of the downloaded RFP Document. We realise that any change noticed at any stage, including after the contract award, shall be liable to punitive action in this regard stipulated in the RFP Document. We also confirm that scanned copies of documents/ affidavits/undertakings uploaded during the shortlisting process and this RFP are valid, true, and correct to the best of our knowledge and belief. We shall be responsible if any dispute arises regarding the validity and truthfulness of such documents/ affidavits/ undertakings. We undertake to submit for scrutiny, on-demand by the Procuring Entity, originals and self-certified copies of all such certificates, documents, affidavits/ undertakings.

10) A Binding Contract:

We further confirm that if our proposal is accepted, all such terms and conditions shall continue to be acceptable and applicable to the resultant contract, even though some of these documents may not be included in the contract Documents submitted by us. We do hereby undertake that until a formal contract is signed or issued, this Proposal and your written Letter of Award shall constitute a binding contract between us.

11) Performance Guarantee and Signing the contract

We further confirm that if our proposal is accepted, we shall provide you with performance security of the required amount stipulated in the RFP Document for the due performance of the contract. We are fully aware that in the event of our failure to deposit the required security amount and/ or execute the agreement, the Procuring Entity has the right to avail of any or all punitive actions stipulated in the RFP Document.

12) Penalties for misinterpretation or misrepresentation:

We hereby confirm that the particulars given above are factually correct and nothing is concealed and undertake to advise any future changes to the above details. We understand that any misinterpretation or misrepresentation would violate the Code of Integrity and attract penalties, as this RFP Document mentions.

13) We hereby confirm that the documents for verification of criteria as specified in Section VII:

Evaluation/ Scoring Criteria are attached herewith.

14) Consultant's Authorized Signatory:

- a) Full Name: _____
- b) Designation: _____
- c) Signing as: A partnership firm. The person signing the Proposal is duly authorised being a partner to do so under the partnership agreement or the general power of attorney,

We confirm that we are duly authorized to submit this Proposal and make commitments on behalf of the Consultant. We acknowledge that our digital/digitized signature is valid and legally binding. Supporting documents are submitted herewith.

Documents to be submitted: Registration Certificate/ Memorandum of Association/ Partnership Agreement/ Power of Attorney/ Board Resolution

15) Rights of the Procuring Entity to Reject Proposal(s):

We further understand that you are not bound to accept the lowest or any Proposal you may receive against your above-referred RFP Document.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Proposal for and on behalf of [name, address, and seal of Consultant]

Form T-1A: Consultant's Commercial Information

Note: Consultant shall fill in the following information and enclose certified copies of the documentary proof/ evidence to substantiate the corresponding statement wherever necessary and applicable.

(Please tick appropriate boxes or strike out sentences/ phrases not applicable to you)

1) Consultant particulars:

- a) Name of the Consultant:.....
- b) Firm Identity No.:.....
- c) Registration, if any, with The Procuring Entity:
- d) Place of Registration/Principal place of business”.....
- e) Complete Postal Address:
- f) Pin code/ ZIP code:
- g) Telephone nos. (with country/ area codes):
- h) Mobile Nos.: (with country/ area codes):
- i) Contact persons/ Designation:
- j) Email IDs:

Submit a self-certified copy of the registration certificate – in case of a partnership firm – Deed of Partnership; in case of a Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate of the firm. All these documents should be Notarized.

2) Taxation:

- a) PAN number:
- b) Type of GST Registration as per the Act (Normal Taxpayer, Composition, Casual Taxable Person, SEZ, etc.):
- c) GSTIN number:in Consultant and Service Site States
- d) Registered/ Certified Offices from where the Services would be supported and Place of Service Site for GST Purpose:
- e) Contact Names, Nos. & email IDs for GST matters (Please mention primary and secondary contacts):
- f) Comments on Tax liability and the breakup of CGST, SGST, IGST and Cess in this assignment:

Documents to be submitted: Self-attested Copies of PAN card and GSTIN Registration.

3) Trade Registrations and Licences

We have the following registrations/ licences required for the performance of this Service (tick as applicable). Authenticated copies of these are enclosed herewith:

- EPF
- ESI
- Labour Licence

Any other required -----.

4) Consultant's Authorized Representative Information

Name:

Address:

Telephone/ Mobile numbers:

Email Address:

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Proposal for and on behalf of [name,
address and seal of Consultant]

DA: As above

Form T-2: Consultant's Organisation and Experience

(Ref ITC-clause 9.2)

(To be submitted as part of Technical Proposal)

(on Consultant's Letter-head)

(Along with supporting documents, if any)

Consultant's Name _____

[Address and Contact Details]

Consultant's Reference No. _____ Date.....

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor

A - Consultant's Organization

1. Provide a brief description of your organization including list of branch offices.
2. Include an organisational chart and beneficial ownership.

B - Consultant's Experience

3. List only previous similar assignments completed in the last 5 years. List only those assignments for which the Consultant was legally contracted by the client directly or was one of the joint venture members. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant or that of the Consultant's partners or Sub-Auditors - but can be claimed in their CVs. The Consultant should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references, as requested by the Procuring Entity.
4. You can devise your own format, but the suggested information is as follows

Assignment name; Client Name; Sector(s) Involved; Level: National/ State/ Local Government Institutions; Place (Village/ City/ State/ Country); Start date (month/year); Completion date (month/year); Designations/ roles of professional staff provided by you; Approx. Value of the contract (in Rs Crore); Approx. Value of the services provided by your firm under the Contract (in Rs crore); Total no. of staff-months of the assignment; No. Staff-months of professionals provided by you; Narrative description of the project:

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Proposal for and on behalf of

[name, address, and seal of Consultant]

DA: As above

Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms Of Reference

(Ref ITC-clause 9.2)

(To be submitted as part of Technical Proposal)

(on Consultant's Letter-head)

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor.

Consultant's Name _____

[Address and Contact Details]

Consultant's Reference No. _____ Date.....

Form T-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology.

{Suggested structure of your Response:

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing}

A) Technical Approach and Methodology

{Please explain your understanding of the objectives of the assignment as outlined in the 'Terms of Reference' (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs here.}

B) Work Plan.

{Please outline the plan for implementing the of the assignment and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. The work plan should be consistent with TOR}

C) Organization and Staffing.

{Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts, and relevant technical and administrative support staff.}

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Proposal for and on behalf of

.....

[name, address, and seal of Consultant]

Form T-7: Terms and Conditions - Compliance

(Ref ITC-clause 9.2)

(To be submitted as part of Technical Proposal)

(on Consultant's Letter-head)

Consultant's Name _____

[Address and Contact Details]

Consultant's Reference No. _____ Date.....

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor.

Note to Auditors: Fill up this Form regarding Terms and Conditions in the RFP Document, maintaining the same numbering and structure. Add additional details not covered elsewhere in your Proposal in this regard.

Sl. No.	Ref of RFP Document Section, Clause		Subject	Confirmation/ Deviation/ Exception/ reservation	Justification/ Reason
	Section	Clause/ sub-clause			

We shall comply with, abide by, and accept without variation, deviation, or reservation all terms and conditions of the RFP Document, except those mentioned above. If mentioned elsewhere in our Proposal, contrary terms and conditions shall not be recognised and shall be null and void.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Proposal for and on behalf of

.....

.....

[name, address, and seal of Consultant] DA:

If any, at the option of the Consultant.

Form T-8: Checklist for Auditors

(Ref ITC-clause 9.2)

(To be submitted as part of Technical Proposal)

(on Consultant's Letter-head)

Consultant's Name _____

[Address and Contact Details]

Consultant's Reference No. _____ Date.....

RFP Document No. RFP/Y-17/2/2023-Costing Cell; Tender Title: RFP for Engagement of Concurrent Auditor.

Note to Auditors: This checklist is merely to help the Auditors prepare their Proposals; it does not override or modify the tender requirement. Auditors must do their own due diligence also.

S. No.	Documents submitted, duly filled, signed	Yes/ No/ NA
1.	Form T-1.- Proposal Form (to serve as covering letter and declarations applicable for both the Techno-commercial and Financial Proposal)	
2.	Form T-1A: Consultant's Commercial Information, Power of attorney, Registration Certificates, etc.	
3.	Form T-2: Consultant's Organisation and Experience	
4.	Form T-4: Description of Approach, Methodology and Work Plan.	
5.	Form T-7: Terms and Conditions - Compliance	
6.	Form T-8: This Checklist – was ticked appropriately	
7.	Form T-9A: Bank Guarantee Format for Earnest Money Deposit	
8.	Financial Proposal was separately uploaded	
9.	Any other requirements, if stipulated in TIS/ AITC; or if considered relevant by the Consultant	

Form T-9A: Bank Guarantee Format for Earnest Money Deposit

(The Bank Guarantee shall be on a Stamp Paper of appropriate value in accordance with Stamp Act and shall be purchased in the name of the guarantee issuing Bank or the Party on whose behalf the BG is being issued.)

(Ref ITC-clause 13.1.2 and GCC-clause 5.8)

Ref

Bank Guarantee No.....

Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

Department of Consumer Affairs, Krishi Bhawan, New Delhi - 110001

Whereas M/s.....with its Registered/ Head Office at..... (name and address of the Consultant, hereinafter called “the Consultant”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) has undertaken to submit a proposal, in pursuance of Tender no date..... (hereinafter called “the Tender”).

And Whereas you (unless repugnant to the context or meaning thereof, including your successors, administrators, executors, and assigns) have stipulated in the said Tender that the Consultant shall furnish you with a bank guarantee by a Commercial bank for the sum specified therein as Earnest Money Deposit for compliance with its obligations as per the Tender;

And Whereas we with our Head Office at..... (name and address of the Bank, hereinafter referred to as the ‘Bank’, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) have agreed to give the Consultant such a bank guarantee.

Now, Therefore, we hereby affirm that we are guarantors and responsible to you, on behalf of the Consultant, up to a total of(amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the Consultant to be in default under the Tender and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein, notwithstanding any difference between you and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

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

The Bank undertakes not to revoke this guarantee during its currency without your previous consent and further agrees that the guarantee herein contained shall continue to be enforceable till you discharge this guarantee. This guarantee will not be discharged due to a change in the

constitution of the Bank or the Consultant's.

We further agree that no change or addition to or other modification of the terms of the Tender made by you 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 theday of20.....

Our.....branch at.....*(Name & Address of the*(branch) is liable to pay the guaranteed amount depending on the filing of a 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, the bank shall be discharged of all liabilities under this guarantee after that.

(Signature of the authorized officer of the Bank)

.....
.....

Name and designation of the officer

.....

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

*Preferably at the authority's headquarters competent to sanction the expenditure for procurement of goods/services or at the concerned district headquarters or the state headquarters.