

EOI No- PD/PMU/SB/03/2014-2015 dated 10/3/2015

Request for Proposal
Appointment of Financial Consultant for SUFAL BANGLA

DISCLAIMER

The information contained in this RFP Document or subsequently provided to Bidder(s) or applicants whether verbally or in documentary form by or on behalf of Sufal Bangla or any of its employees or advisors, is provided to the Bidder(s) on the terms and conditions set out in this RFP Document and all other terms and conditions subject to which such information is provided.

This RFP Document is not an agreement and is not an offer or invitation by the Tendering Authority to any party other than the Applicants who are qualified to submit the Bids ("Bidders"). The principle of this RFP Document is to provide the Bidder(s) with information to support the formulation of their Proposals. This RFP Document does not purport to contain all the information each Bidder may entail. This RFP Document may not be apposite for all persons, and it is not possible for Tendering Authority, its employees, or advisors to consider the investment objectives, financial situation, and particular needs of each Bidder who reads or uses this RFP Document. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP Document and where necessary obtain independent advice from appropriate sources. The Tendering Authority, its employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the RFP Document. The Tendering Authority may in its absolute discretion, but without being under any obligation to do so, update, improve or supplement the information in this RFP Document

KEY EVENTS

Key Events	Details
1 Assignment	<u>Financial Consultants</u>
2 Implementing Agency	Project Management Unit, Sufal Bangla, Kolkata
3 Contact Person	Shri Ranajit Sengupta Additional Project Director Project Management Unit SUFAL BANGLA Department of Agriculture 2nd Floor, Uttarapan Civic Centre. Maniktala Kolkata- 700054, E Mail. sufalbangla@gmail.com Phone: 09433395012, 07890019155 Fax: Email: sufalbangla@gmail.com
4 Last date of Bid submission	20 th March,2015, 1400 hrs To the contact person mentioned herein.
5 Opening of Technical Bids	20 th March , 2015, at 1500 hrs, at Sufal Bangla premises. All documents and forms required for a valid bid will be listed. The Financial Bids will not be opened at this time.
6 Evaluation of Technical Bids and declaration of results	Sufal Bangla will Evaluate the valid Technical Bid and Financial Bid as per the criteria mentioned in this RFP.
7 Selection process	The consultant will be selected through the two stage process in accordance with the procedure set out in the Finance Department, Govt. of West Bengal, audit Branch Memo No. 8385-F(Y) dated 22.12.2013 based on 'Quality and Cost Based Selection" (QCBS).
8 Opening of Financial Proposal	Financial Bids of qualifying bidders only will be opened at Sufal Bangal office premises. Date & time will be intimated through letter and email.
9 Validity of the proposal	The proposal should be valid up to 120 days from the last date of submission of the proposal.

Introduction

Sufal Bangla intends to avail the services from Reputed Chartered Accountant firms to provide FINANCIAL CONSULTANCY. Presently, Sufal Bangla has a central processing unit at Singur and Two outlets at Kolkata, which may undergo expansion soon. The qualified and successful firm will undertake the FINANCIAL CONSULTANCY work for all the above units.

The financial consultants, so engaged, will be paid a suitable consultancy fee plus service tax subject to terms and conditions as provided herein. The entire range of activities given in **SCOPE OF WORK (Annexure-I)** hereinafter are required to be carried out by the Financial Consultant.

GENERAL TERMS AND CONDITIONS

SECTION-I : Terms of Reference

Detailed Terms of Reference (TOR) defining the work to be performed are given in Annexure 1. These are to be strictly adhered to.

SECTION-II : Eligibility Criteria

Pre-Qualification Criteria :

- The consultancy firm must be empanelled with C&AG for the year 2014-15 and the particulars of the Firm and Partners and paid Qualified Assistants should match with the certificate issued by ICAI.

The Firm must qualify following minimum criteria:

Sl.No.	Particulars	Minimum Criteria
1	Number of Full Time Fellow Partners associated with the Firm for not less than 3 years (As per Certificate of ICAI as on 01.01.2015) i.e. such partners should continue to be a fellow member during all the three years	3
2	Turnover of the Firm (Average annual in last three financial years)	Minimum Rs.15 lakh
3	No. of years of Firm Existence as per ICAI Certificate	10 Years

Supporting Documents for Eligibility Criteria :

Following supporting documents must be submitted by the Firm along with the technical proposal :

- [i] For Sl.No.1 above, the firm must submit an attested copy of Certificate of ICAI as on 01.01.2015.

- [ii] For Sl.No.2, the firm must submit, a copy of P& L Balance Sheet for the last three years.
- [iii] The firm or any partners of the firm should not be black listed by any PSUs or Govt. Company or any other organization in respect of any assignment or behaviour.
- [iv] The selection of the Firm shall be made on ranking on the basis of above cited criteria.

Other Terms & Conditions:-

- Firm will have to deploy 1 Senior Chartered Accountant having 15 years organized retail domain experience including successful implementation of at least 3 Fruits and vegetables retail projects.
- 1 qualified legal and secretarial expert having 25-30 years experience in execution of commercial contracts.
- Semi qualified Chartered Accountant having in-depth IT, Statutory, F&A and domain expertise.
- Junior assistant for spot surprise checks of cash and inventory.
- Firm cannot outsource/sublet the said assignment or any part of the same to other firm of Chartered Accountants or any individuals.
- If any firm or the partner there of is found guilty of gross negligence, or any other fault regarding the assignment, Management will have all the remedies such as deduction or withholding of fees, removal from the existing assignment or any other action it may deemed appropriate in the circumstances.

Mode of selection:-

- Firms meeting the eligibility criteria and having the lowest bid will be awarded the contract.

Scope of Work (As per Annexure-I)

- (1) Implementation of a comprehensive “internal control” on all commercial activities of Sufal Bangla.
- (2) Legal and statutory compliances, comprising drafting and vetting of all agreements, payments and returns and up to date advice of changes on all applicable statutes of the business.
- (3) Finance and accounts compliances – Cash management system, audit and taxation.
- (4) Inventory Control, damage reduction and Warehouse management.
- (5) Sourcing, Procurement, demand estimation and logistic control.

- (6) Information technology and system customization cum control.
- (7) POS (point of sales) management and Sales & Distribution.
- (8) Quality Assurance and Quality Control.
- (9) Business intelligence, MIS and analytics.
- (10) Future expansion – Additional outlets, additional product lines & online (E-Commerce, smart phone sales etc.).
- (11) Advice concerning any of the points as above.
- (12) Any other related works assigned by the management

SECTION-III: Guidelines for submitting the Proposals

General Guidelines:

Chartered Accountant Firms are required to submit the proposal as per the guidelines and formats detailed out in the following paras :

- The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL” with Tender Ref.No. Similarly, the original Financial Proposal shall be placed in a separate sealed envelope clearly marked “FINANCIAL PROPOSAL” with Tender Ref.No. followed by the name of the assignment, and with a warning “DO NOT OPEN WITH THE TECHNICAL PROPOSAL”. The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address, reference number and title of the Assignment, and be clearly marked “DO NOT OPEN, EXCEPT IN PRESENCE OF THE OFFICIAL APPOINTED”. Sufal Bangla shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be case for proposal rejection. If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, this will constitute grounds for declaring the proposal non-responsive.
- Team Composition for the assignment should be as specified in Form T-2 and T-3.
- All agencies must comply with the Technical Specification, General Conditions and Format/Requirements for Technical and Financial proposal.
- Financial proposals submitted by the firm should be valid for 90 days from the date of submission of the proposal by the firm.
- Financial bids of only those firms who qualify in the Technical Proposal would be opened for evaluation.
- The bid amount shall constitute the sole criteria for evaluation of financial bids.
- Each page, Form, Annexure and Appendices of the Technical and Financial Proposal must be signed by the Partner of the Firm.
- All blank spaces in the financial proposal must be filled in completely where indicated,

either typed or written in ink.

- Sufal Bangla reserves the right to accept or reject any application without giving any explanation and Sufal Bangla also reserves the right to segregate the assignments between two or more Firms.
- The accounting services team should adhere to the office timing of Sufal Bangla strictly.

Award of Contract :

On completion of selection process, the firm selected shall be awarded the contract of financial consultant by issuing the Letter of Appointment (LOA).

Payment Terms :

- It is required to quote the professional fees as per the Annexure of Financial Bid given herewith. The rates invited will be inclusive of Travelling Expenses (Local & Singur) Stationery Expenses, Communication Expenses and all other out of pocket expenditure relating to the said assignment. However, the Service Tax at the applicable rate may be added separately.
- Fees will be paid on a monthly basis subject to satisfactory completion of the work duly certified by competent authority of sufal bangla

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Contract Termination :

In the event of gross negligence, irregularity, laxity or misconduct undue delay in conducting the work on the part of the Firms personnel, the contract may be terminated. The violation of any of the terms of reference will invoke penalty. It will be the responsibility of the Firm to complete the assignment with full knowledge and experience of the work with proper care and time. Failure to do so leading to either undue delay or laxity or failure or incorrect report will make the Firm liable for being removed from the contract after issuing the notice of 30 days

Technical Proposal :

- [i] Letter of Transmittal (Form T-1)
- [ii] Details of the Firm along with Details of Partners (Form T-2)
- [iii] Details of CA, Legal expert, semi qualified CA & Junior Assistant (Form T-3).

Financial Proposal :

- [i] The financial bid shall be submitted only for the professional fee to be charged by the Firm. This Professional fee shall be exclusive of taxes. The financial bid shall be submitted as per Form F-1.

FORM T-1

Letter of Transmittal

To

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Dear Sir,

We, the undersigned, offer to provide the Accounting services for Suful Bangla in accordance with your request for proposal dated (insert date). We are hereby submitting our proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

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

The prices quoted by us in the Financial Proposal (Form F-1) are valid till 90 days from the date of submission of the quotation. We confirm that this proposal will remain binding upon us and may be accepted by you at any time before the expiry date.

We agree to bear all costs incurred by us in connection with the preparation and submission of the proposal and to bear any further pre- contract costs.

I confirm that I have authority of (insert Name of the Firm) to submit the proposal and to negotiate on its behalf.

I confirm that the bid is valid for one hundred and twenty days from the date of submission of the bid.

Yours faithfully,

FORM T-2**Particulars/Details of the Firm**

Sl.No.	Particulars	Supporting Documents required to be submitted Along with this Form
1	Name of the Firm	
2	Addresses of the Firm : Head Office	Phone No. Fax No. Mobile of Head Office In-charge
3	Branch Office 1, 2, 3.....(particulars of each branch to be given)	Phone No. Fax No. Mobile of Branch Office In-charge
4	Firm Income Tax PAN No.	Copy of PAN Card to be attached
5	Firm Service Tax Registration No.	Copy of Registration to be attached
6	Registration No. with ICAI	Copy of Registration to be attached
7	Empanelment No. with C&AG	C&AG empanelment status for 2014-15 to be enclosed
8	No. of years of Firm Existence and Date of establishment of Firm	Copy of Partnership Deed enclosed (In case of Partnership Firm)
9	Turnover of the Firm in last three years	Balance sheet of the last three years to be Attached.
10	Accounting Experience/assignments of the Firm :	Appointment letter to be enclosed

Details of Partners :

Provide following details.

[i] Number of Full Time Fellow

Partners associated with the Firm. Attested copy of Certificate of ICAI as on 01.01.2015

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[ii] Name of each Partner.

[iii] Date of becoming Associate/
Fellow Member

[iv] Date of joining the Firm

[v] Membership No.

[vi] Qualification

[vii] Experience

[viii] Whether the partners is engaged
full time or part time with the firm.

FORM T-3

Details of Qualified Accountants (please provide attested copy of Certificate of ICAI as on 01.01.2015 for each qualified staff)						
Details of CA & Legal Expert						
Sl.No.	Name of Staff	Length of Association with the firm	Educational Qualification	Area of Key Expertise	Membership No/Bar Council membership no	Relevant Experience
Details of Semi-qualified Staff & Junior Assistant						
Sl.No.	Name of Staff	Length of Association with the firm	Educational Qualification	Area of Key Expertise	Relevant Experience	

PROFORMA FOR FINANCIAL BID

F-1

To,
General Manager (Finance),
Sufal Bangla

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Description	Amount (Per Month) (Rs)
Fixed Amount (inclusive of TA/DA, all expenses but excluding service tax)	
Total Amount payable	
Amount in words	

Note:

1. In case of discrepancy between the prices quoted in words and figures, lowest of the two will be considered.

Signature of the Partner of the
firm/ Proprietor etc. with seal & Stamp.

Place: _____

Name: _____

Dated:

Designation: _____

MembershipNo _____

Contract for Consultants' Services

Financial Consultants

(Against Notice No:.....)

[EOI No/ Sufal Bangla]

Between

Project Director

Sufal Bangla , Kolkata -.....

West Bengal

Phone

Fax

Email:

and

[name of the Consultant]

Dated:

FORM OF CONTRACT

Appointment of Financial Consultants in Sufal Bangla, Kolkata

This CONTRACT (hereinafter called the "Contract") is made the [day] day of the month of [month], [year], between, on the one hand, **The Project Director, Sufal Bangla** (hereinafter called the "Client") and, on the other hand, [name of Consultant] (hereinafter called the "Consultant").

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The Conditions of Contract;
 - (b) The following Appendices:
 - Appendix A: Description of Services
 - Appendix B: Reporting Requirements
 - Appendix C: Personnel Schedule
 - Appendix D: Payment Schedule
 - Appendix E: Services, Facilities and Equipment to be provided by the Client
2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract;

- (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract;
- (c) notwithstanding any other provisions of this Contract, payments under this Contract shall not exceed Rupees [*amount*] [*in words*].

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

For and on behalf of [*name of Client*]

[*Authorized Representative*]

For and on behalf of [*name of Consultant*]

[*Authorized Representative*]

CONDITIONS OF CONTRACT

1. General Provisions

1.1 Definitions

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

- (a) "Client" means the Project Director, Sufal Bangla, with which the selected Consultant signs the Contract for the Services.
- (b) "Consultant" means any entity including a Joint Venture that will provide the Services to the Client under the Contract.
- (c) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1.
- (d) "Day" means calendar day.
- (e) "Government" means the Government of West Bengal.
- (f) "GoI" means the Government of India.
- (g) "Instructions to Consultants" (Section B of the RFP) means the document which provides shortlisted Consultants with all information needed to prepare their Proposals.
- (h) "Joint Venture" means a Consultant which comprises two or more Partners each of whom will be jointly and severally liable to the Client for all the Consultant's obligations under the Contract.
- (i) "Partner" means any of the entities which make up the Joint Venture, provided that each of them substantially performs the Services and/or has experience contributing to the enhancement of the expertise of the Joint Venture; and "Partners" means all those entities.
- (j) "Personnel" means qualified persons provided by the Consultant and assigned to perform the Services or any part thereof.
- (k) "Proposal" means a technical proposal or a financial proposal, or both.
- (l) "QCBS" means Quality- and Cost-Based Selection.
- (m) "RFP" means this Request for Proposal.
- (n) "Services" means the work to be performed pursuant to the Contract.

- (o) "Standard Electronic Means" includes facsimile and email transmissions.
- (p) "Sub-Consultant" means any person or entity with whom the Consultant associates for performance of any part of the Services and for whom the Consultant is fully responsible.
- (q) "Terms of Reference" (TOR) means the document included in the RFP as Section I which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

1.2 Relationship between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. Furthermore, all reports and correspondence required during implementation of the Services shall be in the same language.

1.5 Headings

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

1.6 Notices

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified below. A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address

specified below.

The addressees are:

Client: **Project Director, Sufal Bangla ,**

Project Management Unit

SUFAL BANGLA

Department of Agriculture

2nd Floor, Uttarapan Civic Centre. Maniktala

Kolkata- 700054, Attention: Shri Ranajit Sengupta , Dy. Project Director

Phone: 9433395012,7890019155

Fax:

Email: sufalbangla@gmail.in

Consultant:

1.7 Location

The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations as the Client may approve.

1.8 Authority of Lead Partner

In case the Consultant consists of a Joint Venture of more than one entity, the Partners hereby authorize the Lead Partner to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

1.9 Taxes and Duties

Unless otherwise specified in the Contract, the Consultant, Sub-Consultants and Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law.

2. Commencement, Completion, Modification and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services.

- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within three months after the date of the Contract signed by the Parties, the Consultant or the Client 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.
- 2.3 Commencement of Services** The Consultant shall begin carrying out the Services not later than thirty days after the Effective Date.
- 2.4 Expiration of Contract** Subject to **sub-Clause 2.7.3(c)** and unless terminated earlier pursuant to **Clause GC 2.9** hereof, this Contract shall expire at the end of twelve months after the Effective Date.
- 2.5 Entire Agreement** This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 2.6 Modifications or Variations** Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. **Pursuant to Clause 7.2** hereof, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2 Force Majeure

2.7.1 Definition

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

2.7.2 No Breach of Contract

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract,

complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:
 - (i) demobilize, in which case the Consultant shall be reimbursed for costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
 - (ii) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8.

2.8 Suspension

The Client may, by written notice to the Consultant, suspend in whole or part, the Services if an event shall have happened and be continuing, in which the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services.

2.9 Termination

2.9.1 By the Client

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause 2.9.1. In such an occurrence the Client shall (except in the case of paragraph (h) below) give not less than thirty (30) days' written notice of termination to the Consultant.

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing.
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its Partners becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof.
- (d) If the Consultant submits to the Client a false statement which has a material effect on the rights, obligations or interests of the Client.
- (e) If the Consultant is held by the Client to have a conflict of interest in performance of the Contract, or any portion thereof.
- (f) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (g) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (h) If the Consultant, in the judgment of the Client has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing this Contract in such a case the Contract shall be terminated on the date Consultant is notified of such breach.

2.9.2 By the Consultant

The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this **Clause 2.9.2**.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty-five (45) days after receiving written notice

from the Consultant that such payment is overdue.

- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8 hereof.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

2.9.3 Cessation of Rights and Obligations

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

2.9.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to **Clauses 2.9.1 or 2.9.2** hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by **Clauses 3.9 or 3.10** hereof.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to **Clauses 2.9.1 or 2.9.2** hereof, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to **Clause 6** hereof for Services satisfactorily performed prior to the effective date of termination; and
- (b) except in the case of termination pursuant to paragraphs (a) through (e) and (h) of **Clause 2.9.1** hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (f) of **Clause 2.9.1 or in Clause 2.9.2** hereof has occurred, such Party may, within Seven (45) days after receipt of notice of termination from the other Party, refer the matter for dispute settlement in accordance with the procedures stated in Clause 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. Obligations of the Consultant

3.1 General

3.1.1 *Standard of Performance*

The Consultant shall perform the Services and carry out their obligations hereunder in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or third parties.

3.1.2 *Law Governing Services*

The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Consultants, as well as the Personnel of the Consultant and any Sub-Consultants, comply with the Applicable Law. The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

3.2 **Conflict of Interest**

3.2.1 Consultant Not to Benefit from Discounts

The payment to the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's payment in connection with this Contract and, subject to Clause 3.2.2 hereof, the Consultant shall not accept for its own benefit any discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment. Any discounts obtained by the Consultant in the exercise of such procurement responsibility shall be for the benefit of the Client and shall be credited to the account of the Client.

3.2.2 Consultant, and Sub-Consultants Not to Engage in Certain Activities

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant as well as any Sub-Consultant, shall be disqualified from providing goods, works or services (other than consulting services) for any project resulting from the Services.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any, personal, business or professional activities that would represent a conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the Client, neither the Consultant, the Sub-Consultant nor their Personnel shall at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant, the Sub-Consultant or their Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Liability of the Consultant

- (a) The Consultant shall be responsible for, and shall indemnify the Client, in respect of loss of or damage to equipment and materials furnished by the Client, or purchased by the Consultant in whole or in part with funds provided by the Client.
- (b) The Consultant undertakes full responsibility in respect of life, health, and accidents for the Personnel and for the dependents of any such Personnel.
- (c) The Consultant shall indemnify the Client from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgment, suits, proceedings, demands, costs, expenses and

disbursements of whatsoever nature that may be imposed on, incurred by or asserted against the Client during or in connection in the Services by reason of: (i) infringement or alleged infringement by the Consultant of any patent or other protected right; or (ii) plagiarism or alleged plagiarism by the Consultant.

- (d) The Consultant shall ensure that all goods and services (including without limitation all computer hardware, software and systems) procured by the Consultant out of funds provided or reimbursed by the Client or used by the Consultant in the carrying out of the Services do not violate or infringe any industrial property or intellectual property right or claim of any Third Party.

3.5 Insurance to be Taken Out by the Consultant

The Consultant shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their (or the Sub-Consultants', as the case may be) own cost, insurance against the risks for performing the tasks of this assignment.

3.6 Accounting, Inspection and Auditing

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

3.7 Consultant's Actions Requiring Client's Prior Approval

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

- (a) Any change or addition to the Personnel listed in Appendix C.
- (b) Subcontracts: the Consultant may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. In the event that any Sub-Consultants are found by the Client to be incompetent or incapable in discharging assigned duties, the Client may request the Consultant to provide a replacement, with qualifications and experience acceptable to the Client, or to resume the performance of the Services itself.

3.8 Reporting

3.8.1 Reporting Obligations

- (a) The Consultant shall submit to the Client the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in Hard Copies and Word and PDF documents in CD ROM in addition to the hard copies as specified by the Client.
- (b) The Consultant shall on a monthly basis, submit to the Client, in a format acceptable to the Client, a report stating personnel movements and inputs in the previous month compared to those specified in Appendix C. In the event the forecast of progress as anticipated in Appendix C is substantially changed due to variations pursuant to Clause 2.6, the Consultant may request the Client to revise the Payment Schedule specified in Appendix D, to reflect such change.

3.8.2 Serious Hindrances

The Consultant shall report to the Client promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the project in accordance with the schedules and to indicate what steps shall be taken to meet the situation.

3.9 Documents Prepared by the Consultant to be the Property of the Client

- (a) All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Client under this Contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Client in its sole discretion may make such documents available to the public.
- (b) The Consultant may retain a copy of such documents and software, and use such software for their own use with prior written approval of the Client. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

3.10 Equipment, Vehicles Equipment, vehicles and materials made available to the Consultant by the

and Materials Furnished by the Client

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

4. Consultants' Personnel and Sub-Consultants

4.1 General

The Services shall be carried out by the Personnel specified in Appendix C for the respective periods of time indicated therein.

4.2 Replacement of Personnel

- (a) In the event that any of the Personnel is found by the Client to be incompetent, guilty of misbehavior or incapable in discharging the assigned responsibilities, the Client may request the Consultant, at the expense of the Consultant, to forthwith provide a replacement with suitable qualifications and experience acceptable to the Client and the Consultant shall provide such replacement.
- (b) Should it become necessary for the Consultant to replace any of the Personnel specified by name in Appendix C, the Consultant shall forthwith provide a replacement acceptable to the Client with comparable or better qualifications. For any additional Personnel proposed by the Consultant and approved by the Client, the relevant remuneration rate(s) and estimated reimbursable expenses will be as negotiated between the Client and the Consultant.

4.3 Working Hours, Overtime, Leave

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave, the Consultants' remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix C. Any taking of leave by Personnel shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.4 Adjustments to Appendix C – Personnel Schedule

Subject to the prior approval of the Client in accordance with Clause 3.7 (a), the Consultant may make adjustment in the periods of time indicated in Appendix C, as may be appropriate to ensure the efficient performance of the Services and provided that such adjustments will not cause payments made under the Contract to exceed the maximum amount payable as specified in Clause 6.1.

4.5 Resident Team Leader

The Consultant shall, at all times, ensure that there is a Team Leader acceptable to the Client to supervise and coordinate the operations of the Personnel in the field and to be responsible for liaison between the Consultant and the Client.

5. Obligations of the Client

5.1 Change in the Applicable Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 6.1.

5.2 Services, Facilities and Equipment of the Client

- (a) Client shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and equipment described in Appendix E at the times and in the manner specified in said Appendix E.
- (b) In case that such services, facilities and equipment shall not be made available to the Consultant as and when specified in Appendix G, 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) the manner in which the Consultant shall procure any such services, facilities and equipment from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1 hereinafter.

5.3 Payment

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

5.4 Difference of Opinion In the case of a difference of opinion between the Client and the Consultant on any important matters involving professional judgement that might affect the proper evaluation or execution of the project, the Client shall allow the Consultant to submit promptly to the Client a written report.

6. Payments to the Consultant

6.1 Cost Estimates; Ceiling Amount An estimate of the cost of the Services is set forth in Appendix D.

6.2 Currency of Payment All payments will be made in INR.

6.3 Mode of Billing and Payment Billings and payments in respect of the Services shall be made as follows:

- (a) Within the number of days after the Effective Date, the Client shall cause to be paid to the Consultant advance payments as specified.
- (b) As soon as practicable and not later than fifteen (15) days after the end of each “deliverable” during the period of the Services, or after the end of each time intervals otherwise indicated herein, the Consultant shall submit to the Client, in duplicate, itemized statements, accompanied by copies of invoices, vouchers and other appropriate supporting materials, of the amounts payable.
- (c) The Client shall pay the Consultant’s statements within sixty (60) days after the receipt by the Client of such statements with supporting documents. Only such portion of a statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.
- (d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final statement shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Client unless the Client, within such ninety (90) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The

Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount, which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with the above.

- (e) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

7. Fairness and Good Faith

7.1 Good Faith

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

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

8. Settlement of Disputes

8.1 Amicable Settlement

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party,

Clause 9.2 shall apply.

8.2 Dispute Resolution

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause 9.1 may be submitted by either Party for settlement by arbitration in accordance with the following provisions:-

- (1) In case of dispute arising upon or in relation to or in connection with the contract between the client and the consultant, which has not been settled amicably, any party can refer the dispute for arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 arbitrators, one each to be appointed by the client and the consultants, the third arbitrator shall be chosen by the 2 arbitrators so appointed by the parties and shall Act as Presiding Arbitrator. In case of failure of the 2 arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of the appointment of the arbitrators, the presiding arbitrator will be appointed by the Chief Secretary to Government of West Bengal. The Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings.
- (2) Arbitration proceeding shall be held at a place mutually agreed between members of Arbitral Tribunal in India and the language of the arbitration proceeding and that of all documents and communications between the parties shall be English.

The decision of maturity of arbitrators shall be final and binding upon both parties. The expenses of arbitrators as determined by the arbitrators shall be shared equally by the client and the consultant. However the expense incurred by the each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the awards.

APPENDICES TO THE CONTRACT

Appendix A – Description of Services

Appendix B – Reporting Requirements

Appendix C – Personnel Schedule

Appendix D – Payment Schedule

Appendix E – Services, Facilities and Equipment to be Provided by the Client