

DISCLAIMER

1. This RFQ-cum-RFP document is neither an agreement nor an offer by the NITI Aayog (the “Authority/Client”) to the prospective Applicants or any other person. The purpose of this RFQ-cum-RFP is to provide information to the interested parties that may be useful to them in the formulation of their proposal pursuant to this RFQ-cum-RFP.
2. The Authority does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFQ-cum-RFP document and it is not possible for Authority to consider particular needs of each party who reads or uses this RFQ-cum-RFP document. This RFQ-cum-RFP includes statements which reflect various assumptions and assessments arrived at by Authority in relation to the consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. Each prospective Applicant should conduct its own investigations and analyses and check the accuracy, reliability and completeness of the information provided in this RFQ-cum-RFP document and obtains independent advice from appropriate sources.
3. The Authority will not have any liability to any prospective Consultancy Company/ Firm or any other person under any laws (including without limitation the law of contract, tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFQ-cum-RFP document, any matter deemed to form part of this RFQ-cum-RFP document, the award of the Assignment, the information and any other information supplied by or on behalf of Authority or their employees, any consultants or otherwise arising in any way from the selection process for the Assignment. Authority will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon any statements contained in this RFP.
4. Authority will not be responsible for any delay in receiving the proposals. The issue of this RFQ -cum- RFP does not imply that Authority is bound to select an Applicant or to appoint the Successful Applicant, as the case may be, for the consultancy and the Authority reserves the right to accept/reject any or all of proposals submitted in response to this RFQ-cum-RFP document at any stage without assigning any reasons whatsoever. Authority also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFQ-cum-RFP Application.
5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
6. Authority reserves the right to change/modify/amend any or all provisions of this RFQ-cum-RFP document. The amended RFQ-cum-RFP will be made available on the website of Authority.

Section 1: Letter of Invitation

New Delhi

Date:5th June, 2018

1 Background

President of India, acting through Director (Health), NITI Aayog.

NITI Aayog (the “Authority” or the “Client”) is the premier policy think tank of the Government of India. One of the stated functions of the organization is "To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation".

In this context, NITI Aayog is designing and is in the process of establishing a framework for ranking District Hospitals (DH). Indicators on Structure, Process and Output & Outcome domains for monitoring the performance of District Hospitals are being designed. The primary objective of this framework is to determine performance of various District Hospitals across States and Union Territories (UTs) with respect to “Key Performance Indicators” or “KPI’s” in each of these domains. Performance of the DH would thus be periodically reviewed and monitored thereby enabling timely identification of policy interventions and reforms required to meet output targets. Further, as this initiative is implemented across states/UTs, it expected to facilitate sharing of best practices leading to superior centre-state and state-state engagement directed towards transforming the DH in the country.

As mentioned above, NITI Aayog has developed a draft list of pre-defined KPI’s for each of the domains. An indicative list of such indicators is presented below for the purposes of illustration:

Domain	Indicative KPIs* (for illustration)	Number of Indicators
Structure	Functional Hospital beds, Doctor in position Vs. IPHS norms Ratio, etc.	5
Process	Quality score, etc.	2
Output & Outcome	OPD per doctor, Bed occupancy rate, etc.	9

*the Authority may change the indicators and other details thereof at a subsequent stage during the selection process.

Each DH would be required to submit and update on a dynamic basis their respective performance data sets on some of the existing web enabled platform like HMIS, etc. All the required data sets from these web services will be populated in a web portal that is being developed in parallel. As far as possible, there will be no manual entries by the States in this portal. The system, to be designed, is expected to calculate all the indices. The ranking will also be published on this online portal annually.

To make the above framework robust and meaningful, the Authority envisages getting the submissions, as and when submitted by the DH, independently reviewed and validated. To facilitate this exercise, the Authority intends to appoint a professional consulting agency having in-house capabilities and capacity to provide a range of advisory services as per the terms of this document (the “Assignment” or the “Project”). Interested professional consulting agencies (the “Applicant” or the “Consultant”) may submit their bids/proposals as per details given in this document.

An indicative list of District Hospitals is attached.

2 Introduction

NITI AAYOG invites proposals for “Selection of Consultant for Independent *Review and Validation* of KPI input data/information provided by DH (the “Assignment”/the “Project”). More details on the services are provided in the “Section 5: Terms of reference.”

3 Objective

The key objective of this Project is to undertake an independent *Review and Validation* of input data provided by the DH on the KPI’s for tracking the performance of District Hospitals as per the scope listed under the “Section 5: Terms of Reference.”

4. A firm will be selected under Combined Quality cum Cost-Based Selection (CQCCBS) and procedures described in this RFQ-cum-RFP.

The RFQ-cum-RFP includes the following documents:

Section 1	–	Letter of Invitation
Section 2	–	Instructions to Applicants(including Data sheet)
Section 3	–	Prequalification and Technical Proposal - Standard Forms
Section 4	–	Financial Proposal - Standard Forms
Section 5	–	Terms of Reference
Section 6	–	I – Standard Form of Contract
		II – General Conditions of contract
		III –Special conditions of contract
Appendices		Other relevant information, forms and formats

All clarifications/corrigenda will be published only on the Authority website. The official

website for accessing the information related to this RFQ-cum-RFP is: www.niti.gov.in.

Yours sincerely,

Director (Health)
Room No.276, NITI Aayog
New Delhi
E-mail: rajesh.skumar@gov.in

Section 2: Instructions to Applicant

1.0 Introduction

- 1.1 The Client named in the data sheet will select a Consulting Firm/Organization (the "Consultant") in accordance with the method of selection specified in the data sheet. Applicants are advised that the selection of the Consultant shall be on the basis of an evaluation by Client through the selection process specified in this RFQ-cum-RFP (the "Selection Process"). Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that Client's decisions are without any right of appeal whatsoever.
- 1.2 The Applicants are invited to submit Pre-Qualification, Technical and Financial Proposals (collectively called as the "Proposal"), as specified in the Data Sheet, for the services required for the Assignment. The term "Applicant/Consultant" refers to a single entity submitting the Proposal. The Proposal will form the basis for contract signing with the selected Applicant/Consultant. The Consultant shall provide services in accordance with the Section 5: Terms of Reference of this RFQ-cum-RFP (the "TOR").
- 1.3 The Applicant shall submit the Proposal in the form and manner specified in this RFQ - cum- RFP. The Proposal shall be submitted as per the forms given in relevant sections herewith. Upon selection, the Applicant shall be required to enter into a contract with the Client in the form specified in this RFQ -cum-RFP (the "Contract").
- 1.4 The Consultants should familiarize themselves with local conditions and take them into account in preparing their Proposals.
- 1.5 Applicants shall bear all costs associated with the preparation and submission of their proposals, presentation and contract negotiation including but not limited to postage, delivery fees, expenses associated with any demonstrations or presentations be required by Client or any other costs incurred in connection with or relating to its Proposal. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Applicants.
- 1.6 Client requires that the selected Applicant/Consultant provides professional, objective, and impartial advice and at all times hold Client's and the concerned State Government's interests' paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The selected Applicant/Consultant shall not accept or engage in any assignment that may place it in a position of not being able to carry out the assignment in the best interests of Client and the Project.
- 1.7 It is the Client's policy to require that the Consultants observe the highest standard of ethics during the Selection Process and execution of such contracts. In pursuance of this policy, the Client:

- (i) defines, for the purposes of this provision, the terms set forth below as follows:
 - a) "Corrupt practice" means the offering, giving, receiving, or soliciting anything of value to influence the action of officials in the Selection Process or in contract execution; and
 - b) "Fraudulent practice" means a misrepresentation of facts in order to influence the selection process or the execution of a contract in a way which is detrimental to the Client and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Client of the benefits of free and open competition.
 - (ii) will reject the Proposal for award if it determines that the Applicant has engaged in corrupt or fraudulent activities in competing for the contract in question;
 - (iii) Will declare an Applicant ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the Applicant has engaged in corrupt or fraudulent practices in competing for and in executing the contract.
- 1.8 The consultant is required to follow the highest level of work ethics, if any member of the Consultant has a Conflict of Interest or indulge in "Prohibited Practices"; the Consultant is liable to be disqualified. Further, in the event any entity has been barred by the Central Government, any State Government, a statutory Authority or a public sector undertaking, as the case may be, from participating in any project or bid, and the bar subsists as on the date of the Proposal Due Date, it would not be eligible to submit a Proposal.
- 1.9 Termination of Contract: Client will have the right to terminate the contract by giving 30 (thirty) days written notice. In the event of termination, the client will not be liable to pay any compensation whatsoever to the consultants. If the contract is terminated due to the fault of the Consultant or in case of termination of the contract by the Consultant for reasons not attributable to the Client, the Client will forfeit the performance security of the Consultant.
- 1.10 Details related to timelines and submission of deliverables at each stage/phase is given in the TOR.
- 1.11 The Proposal shall be valid for a period of not less than 180 (one hundred and eighty) days from the Proposal Due Date (the "PDD").
- 1.12 Brief description of the selection process: The Client has adopted a three stage process (collectively referred to as the "Selection Process") for the evaluation of the Proposals. The Bids shall comprise three parts namely the **Pre-Qualification, Technical and Financial Proposals** to be submitted in three separate sealed envelopes. The Pre-Qualification Proposal shall be placed separately in a sealed envelope titled "Request for Qualification (RFQ)" along with the processing fee and bid security as prescribed in this RFQ -cum-RFP document. The Technical Proposal, Financial Proposal shall be placed in a sealed

envelope titled "Request for Proposal" as prescribed in this RFQ - cum-RFP document. The submissions for Pre-Qualification shall be evaluated first as specified in this RFQ-cum-RFP. Subsequently the technical evaluation as specified in this RFQ-cum-RFP will be carried out only for those Applicants who meet the Pre-Qualification criteria. Based on this technical evaluation, a list of technically qualified Applicants shall be prepared. Financial Proposals of only the technically qualified Applicants will be opened. Proposals will finally be ranked according to their combined technical and financial scores as specified in this RFQ-cum-RFP. The Applicant ranked first (the "Successful Applicant") shall be invited for Negotiations while the Applicant ranked second will be kept in reserve.

1.13 Number of Proposals: No Applicant or its Associate shall submit more than one Application for the Consultancy.

1.14 Visit to the Client and Verification of Information: Applicants are encouraged to submit their respective Proposals after visiting the office of the Client or its delegates as the case may be, and ascertaining for themselves the availability of documents and other data with the Client, Applicable Laws and regulations or any other matter considered relevant by them.

1.15 Right to reject any or all Proposals:

- (i) Notwithstanding anything contained in this RFQ-cum-RFP, the Client reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- (ii) Without prejudice to the generality of above, the Client reserves the right to reject any Proposal if:
 - a) at any time, a material misrepresentation is made or discovered, or
 - b) the Applicant does not provide, within the by the Client, the supplemental information sought by the Client for evaluation of the Proposal.
- (iii) Such misrepresentation/improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification/ rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified/ rejected, then the Client reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Client, including annulment of the Selection Process.

1.16 Acknowledgement by Applicant

- (i) It shall be deemed that by submitting the Proposal, the Applicant has:
 - a) made a complete and careful examination of the RFQ-cum-RFP;
 - b) received all relevant information requested from the Client;
 - c) accepted the risk of inadequacy, error or mistake in the information provided in

the RFQ -cum - RFP or furnished by or on behalf of the Client;

d) Satisfied itself about all matters ,things and information, including matters herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;

e) acknowledged that it does not have a Conflict of Interest; and

f) agreed to be bound by the undertaking provided by it under and in term hereof.

(ii) The Client and/ or its advisors/ consultants shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFQ - cum-RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Client and/ or its consultant.

1.17 RFQ-cum-RFP Processing Fee: The RFQ-cum-RFP submissions shall be accompanied by a Bank Draft of INR 5,000 (Indian Rupees Five thousand only) in favour of " Pay and Accounts Officer, NITI Aayog", payable at New Delhi, India, as a non-refundable RFQ-cum-RFP processing fee {the " RFQ-cum-RFP Processing Fee"}. Proposals not accompanied with the aforesaid RFQ-cum-RFP Processing Fee shall be liable to be rejected by the Client.

2.0 Clarification and Amendment of RFQ-Cum-RFP Document

2.1 Applicants may seek clarification on this RFQ- cum RFP document, within two weeks of the date of issue of this RFQ-cum-RFP document. Any request for clarification must be sent by standard electronic means (PDF and word file):

Director (Health)
Room No.276, NITI Aayog
Email: rajesh.skumar@gov.in

2.2 At any time before the submission of Proposals, the Client may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Applicant, modify the RFQ-cum-RFP documents by an amendment. All amendments/ corrigenda will be posted only on the Client's Official Website. In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Client may at its discretion extend the Proposal Due Date.

2.3 The date and time of the Pre-Bid Meeting and venue is mentioned in Data Sheet. Applicants willing to attend the pre-bid meeting should inform client beforehand in writing and email. The maximum number of participants from an applicant, who choose to attend the pre-bid meeting, shall not be more than two per applicant. The representatives attending the pre-bid meeting shall carry an Authority letter duly signed by the authorised signatory of his/her organisation.

2.4 Clarification and or Interpretation of Reports

After submission of the deliverables by the Consultant, to the satisfaction of the Client, if clarifications are required or doubt arises as to the interpretation of anything included in the reports, the Consultant shall, on receipt of written request from the Client, furnish such clarification to the satisfaction of client within five (5) working days without any extra charge.

3.0 Payment Schedule and Deliverables

Time schedule for important Deliverables to be submitted to the Authority and the payment schedule linked to the specified deliverables for various Phases is given below:

Sl. No.	Deliverables/Key Milestones	Timelines (Indicative)	Payment Terms
1	Prelim Report on independent review and validation of KPI Data (covering inputs received from DH through web service(s))	Consultant is expected to undertake review and validation as and when it receives inputs from web service. To undertake this task, at least 1 visit to each district hospital is mandatory. At this stage, it is expected that the entire review and validation exercise must be completed within 1 (one) month after the final input has been received from web service(s)	40% of the total cost indicated in the Financial Proposal. To be paid after submission and acceptance of prelim review and validation reports
2	Fortnightly progress with latent period of 30 days and update reports highlighting the activities undertaken, any challenges etc.	Every 15 days	10% of the total cost indicated in the Financial Proposal. To be paid after submission of final review and validation reports
3	Final Report of <i>review and validation, including</i> that of revised	Within 2 months after submission of	30% of the amount to be paid after

	KPI input data, if any.	the prelim review and validation report	<p>submission and acceptance of the final report with the conditions that:</p> <p>(i) If there is any shortcoming in the final report, then the 3rd instalment would be withheld till such time the observations are addressed properly by the consultant.</p> <p>(ii) The applicant is requested to send the final report incorporating all the suggestions given by the Authority before final printing of the report.</p> <p>(iii) Receiving of 10 copies of Final Report of the study [Printed on both sides and hard bound (not spiral) in an A4 size bond paper and soft copy of the report in a pen drive.</p>
4	Deputation of personnel as detailed in Team composition (Annexure 2.1) of the RFQ-cum-RFP	Immediately after acceptance of the project by the applicant for the entire duration or as desired by the authority.	<p>Balance amount (20%) to be paid after acceptance of the final report with the condition that:</p> <p>Deputation of the personnel as detailed in Team composition (Annexure 2.1) is immediately after the acceptance of the project by the applicant and for the</p>

			entire duration of the project.
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Note : (1) If reports are delayed, up to 5% of the payment linked to respective milestone (Sr. No. 1, 2 &/or 3 of para 3 above) may be deducted.

(2) If minimum number of workshops as detailed in Terms of Reference (Section 5 c.) is not conducted, actual projected cost of the workshop(s) as indicated in the financial proposal will be deducted for each workshop not done, except in case where the client agrees/decides to cancel the respective workshop.

4.0 Ownership of Document and Copyright

All the deliverables and study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Client in hard copies and editable soft copies in addition to the requirements for the reports and deliverables indicated in the Section 5: Terms of Reference.

The study outputs shall remain the property of the Client and shall not be used for any purpose other than that intended under Section 5: Terms of Reference without the prior written permission of the Client.

5.0 Bid Security

5.1 A Bid Security in the form of a Bank Guarantee or Demand Draft, from a Scheduled Indian Bank in favour of "Pay and Accounts Officer, NITI Aayog", valid for 180 (one hundred and eighty) days from the POD as given in the Data Sheet, payable at New Delhi, for the sum of Rupees One Lakhs only (Rs 1,00,000) shall be required to be submitted by each Applicant. For the purpose of clarity, Scheduled Indian Bank shall mean State Bank of India and its Associates, Nationalised Banks, Other Public Sector Banks and Private Sector Banks as prescribed in the Second Schedule of the RBI Act, 1934.

5.2 The Bank Guarantee or Demand Draft in original shall be placed in an envelope and attached with the envelope containing the Technical proposal marked as "RFQ-cum-RFP: Consultant for Independent *review and validation* of KPI input data/information for District Hospital" and "Not to be opened before [22nd July 2018 and in presence of Evaluation Committee only". Bids received without the specified Bid Security shall be summarily rejected.

5.3 The Client shall not be liable to pay any interest on bid security deposits. Bid security of unsuccessful applicants will be returned, without any interest, as promptly as possible on acceptance of the proposal of the successful applicant or when the selection process is cancelled by Client.

The Successful Applicant's Bid Security shall be returned, without any interest upon, to the Applicant signing the contract and furnishing the Performance Security in accordance with provision of the RFQ-cum-RFP and the Contract.

- 5.4 The Client will be entitled to forfeit and appropriate the bid security as mutually agreed loss and damage payable to Client in regard to the RFQ-cum-RFP without prejudice to Client's any other right or remedy under the following conditions:
- (i) If an Applicant engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as envisaged under this RFQ-cum-RFP (including the Standard Form of Contract);
 - (ii) Subject to the provisions of Clause 7.18, if any Applicant withdraws its Proposal during the period of its validity as specified in this RFQ-cum-RFP and as extended by the Applicant from time to time,
 - (iii) In the case of the Successful Applicant, if the Successful Applicant fails to sign the contract or provide the Performance Security within the specified time limit, or
 - (iv) If the Applicant commits any breach of terms of this RFQ-cum-RFP or is found to have made a false representation to Client.
- 5.5 Performance Security equivalent to the amount indicated in this RFQ-cum-RFP shall be furnished before signing of the contract in form of a Bank Guarantee substantially in the form specified in Annex. A.
- 5.6 For the successful Applicant the Performance Security shall be retained by Client until the completion of the assignment by the Consultant and be released 180 (One Hundred Eighty) days after the completion of the assignment.

6.0 Eligibility of Applicants

- 6.1 An Applicant may be a sole proprietorship firm/a partnership firm/a limited liability partnership/ a company incorporated under the Companies Act 2013 or a body corporate incorporated under the applicable laws of its origin.
- 6.2 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Client will forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, inter alia, the time, cost and effort of the Client including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Client hereunder or otherwise.
- 6.3 An Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (i) The Applicant, or Associate (or any constituent thereof) and any other Applicant, have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, or

Associate is less than 5 percent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Companies Act, 2013 . For the purposes of this clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26 percent of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (v) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's' information about, or to influence the Application of either or each of the other Applicant; or
- (vi) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and sub-consultants) and any Affiliates. While providing consultancy services to the Client for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (vii) A firm which has been engaged by the Client to provide goods or works or services for a project, and its Affiliates/Associates, will be disqualified from providing consulting services for the same project save and except as per provisions of this RFQ-cum-RFP, conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor (s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5 percent of the paid up and

subscribed share capital of such concessionaire or its contractors or sub-contractor(s); provide further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in the Companies Act, 2013 . For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

(viii) For purposes of this RFQ- cum-RFP, "Associate" means in relation to the Applicant a person who controls, is controlled by, or is under the common control with such Applicant. As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50 percent of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

6.4 An Applicant eventually appointed to provide consultancy for this Assignment/ Project, and its Affiliates/Associates, shall be disqualified from subsequently bidding for any tender, directly or indirectly, providing goods or works or services related to this project. Any breach of this obligation shall be construed as Conflict of Interest for this Project as well as the other assignment/project. provided that the restriction herein shall not apply after a period of 2 (two) years from the completion of this Assignment or to consulting assignments performed for the Client in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Client in accordance with the rules of the Client. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5 percent of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

6.5 Any entity which has been barred by the Central Government, any State Government, a statutory Authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal Due Date, would not be eligible to submit a Proposal either by itself or through its Associate.

6.6 An Applicant or its Associate should have, during the last 3 (three) years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.

6.7 Submission of Progress Reports: The Consultant shall submit a fortnightly progress report and detailed time sheets in prescribed formats to the Client.

7.0 Preparation of Proposal

7.1 Applicants are requested to submit their proposal in English Language and strictly in the formats provided in this RFQ- cum- RFP. The Client will evaluate only those Proposals that are received in the specified forms and complete in all respects. Any supporting documents submitted by the Applicant with its proposal or subsequently, in response to

any query/ clarification from Client shall be in English and in case any of these documents is in another language, then it must be accompanied by an accurate translation of all the relevant passages in English, in which case, for all purposes of interpretation of the proposal, the translation in English shall prevail.

7.2 While preparing their Proposal, Consultants are expected to thoroughly examine the RFQ-cum-RFP Document. Material deficiencies in providing the information requested may result in rejection of a Proposal.

7.3 Technical Proposal: While preparing the Technical Proposal, Applicants must give particular attention to the following:

- (i) The Key Personnel must be permanent and full time employee(s) of the firm.
- (ii) The Applicant is to ensure that the time allocated for the proposed Key Personnel does not conflict with the time allocated or proposed for any other assignment. The Client reserves the right to request a workload projection (including time spent on other projects/clients) for the Key Personnel.
- (iii) The composition of the proposed Team and Task Assignment to individual personnel shall be clearly stated.
- (iv) No such Key Personnel shall be proposed for any position if the CV of the personnel does not meet the requirements of the TOR.
- (v) The Key Personnel shall remain available for the period as indicated in the RFQ-cum- RFP Document.
- (vi) No alternative proposal for any Key Personnel shall be made and only one CV for each position shall be furnished.
- (vii) Each CV needs to have been recently signed by the Key Personnel and countersigned by the authorized official of the Firm. At the time of submission of bid proposal, the scanned copies of the signature of Key Personnel will be allowed but at the time of signing of contract, the original signature will be required. However, in both the cases, counter signature of Authorised Signatory shall be required in original.
- (viii) A CV shall be summarily rejected if the education qualification of the Key Personnel proposed does not match with the requirement of the RFQ-cum-RFP document.
- (ix) Client certifications/Work Order/Certificate from the Statutory Auditor or Chartered Accountant for the projects listed under the experience section.
- (x) The personnel proposed should possess good working knowledge of English Language.
- (xi) No Key Personnel involved should have attained the age of 70 (seventy) years at the time of submitting the proposal. The client reserves the right to ask for proof of age,

qualification and experience at any stage of the project.

(xii) The technical proposal must not include any financial information.

7.4 Failure to comply with the requirements spell out above shall lead to deduction of marks during the evaluation. Further, in such a case, Client will be entitled to reject the Proposal.

7.5 Proposals shall be typed or written in indelible ink and signed by the Authorised Representative of the Applicant who shall initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the Authorised Representative (the "Authorised Representative" or the "Authorised Signatory") as detailed below:

(i) by the partner holding the Power of Attorney in case of a partnership firm/limited liability partnership (A certified copy of the Power of Attorney shall accompany the Proposal)

(ii) by the proprietor in case of a proprietary firm;

(iii) by a duly authorized person holding the Power of Attorney or by a Board Resolution in case of a Limited Company or a corporation (A certified copy of the Power of Attorney/Board Resolution shall accompany the proposal);

7.6 Applicants should note the Proposal Due Date, as specified in Data Sheet, for submission of Proposals. Except as specifically provided in this RFQ-cum-RFP, no supplementary material will be entertained by the Client, and that evaluation will be carried out only on the basis of documents received by the closing time of Proposal Due Date as specified in Data Sheet. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Client reserves the right to seek clarifications in case the proposal is non-responsive on any aspects.

7.7 The Pre-Qualification Proposal should provide the following documents and information using the attached Standard Forms.

(i) Details of eligible projects as per the Standard Forms so as to meet the Minimum Qualification Criteria prescribed in this RFQ- cum- RFP document.

7.8 The Technical Proposal should provide the following information using the attached Standard Forms:

(i) Applicant's experience for recent assignments of similar nature, the outline should indicate, inter alia, the profiles and names of the staff provided, duration of the assignment, contract amount, and firm's involvement (form 3F).

(ii) The comments and suggestions provided by the Applicant on the RFQ-cum-RFP/Contract /TOR are not binding and shall not affect the financial proposal

(form3G).

- (iii) Detailed Approach and Methodology for undertaking the current Assignment (form3H).
- (iv) Against the list of proposed staff, details of tasks assigned to each staff as per his/her experience shall influence the evaluation (form 3I).
- (v) The CV of each key personnel including each assessor/ expert shall be provided as per the prescribed format and shall be maximum of 4 single sided pages (2 sheets double sided) for each Key Professional. In addition, a one page executive summary shall be provided. In the event any averment made in the CV of a proposed staff is incorrect, such person shall be liable to be debarred for any future assignment of Client for a period of three (3) years. The award of the consultancy to the Applicant may also be liable to cancellation in such an event. Each page of the CV must be signed in original by the Authorised Representative together with original or electronic signature of the key team member at the proposal stage. However, at the time of contract signing, original signatures of both Authorised Representative and the Key Personnel shall be required;(Form 3J)
- (vi) Ongoing consulting assignments can be submitted with detail of progress supported by suitable documents.
- (vii) Failure to comply with or provide the above listed items in the Technical Proposal may result in disqualification.

7.9 Financial Proposal: While preparing the financial proposal (the "Financial Proposal"), Applicants are expected to take into account the various requirements and conditions stipulated in this RFQ-cum-RFP document. The Financial Proposal shall be inclusive of all the costs including all taxes (as applicable) associated with the assignment. It is clarified that, for the purposes of evaluation, the Financial Proposal should be prepared in INR. In submitting the Financial Proposal, the Consultant shall adhere to the following requirements:

- (i) All the costs associated with the Assignment shall be included in the Financial Proposal. These shall normally cover remuneration for the Consultant's personnel proposed for this assignment and their administrative or other out-of-the pocket expenses etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall take into account all the expenses and tax liabilities and cost of insurance specified in the draft contract, levies and other impositions applicable under the prevailing law on the Consultants and their staff. Further, all payments shall be subjected to deduction of taxes at source as per Applicable Laws.
- (iii) The Financial Proposal shall be submitted in accordance with the forms and

templates provided under Section 4 of this RFQ -cum-RFP document.

- (iv) All payments to the Consultant shall be subjected to deduction of taxes at source as per applicable laws.
 - (v) In case of any discrepancy between the amount quoted in figures and words, the amount quoted in words will be considered for evaluation purposes.
- 7.10 The proposal should be submitted as per the standard Financial Proposal submission forms prescribed in this RFQ-cum-RFP.
- 7.11 The Financial Proposal shall include total costs for various activities as specified in the Payment terms as well as in the forms prescribed in Section 4 of this RFQ-cum-RFP.
- 7.12 Consultants shall express the price of their services (including break down of their costs) in Indian Rupees.
- 7.13 The Consultants may be subjected to local and other taxes (such as: social charges or income taxes on non-resident foreign personnel, duties, fees, levies etc) on amounts payable by the Client under the Contract. Consultants must do their due diligence about the tax implications and Client will not be liable for any incident.
- 7.14 The Proposals must remain valid for a period as specified in the Data Sheet. During this period, the Applicant is expected to keep available the Key Professional proposed for the assignment. The Client will make its best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the Proposals, it may ask the Consultants to extend the validity of their Proposals for a stated period. The Consultant must identify in the Proposal, the names of the Key Professional members who may be at risk of losing if the validity period is extended by up to 3 months. Consultants, who do not agree with the extension of the validity period, have the right not to extend the validity of their Proposals. The Client will return the bid security deposits of the Applicants who do not extend the period of validity of their Proposals and wish to withdraw.

The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by Client prior to PDD as given in the Data Sheet. **No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD.** The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of this RFQ-cum-RFP, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

- 7.15 Any alteration/modification in the Proposal or additional information or material supplied subsequent to the POD, unless the same has been expressly sought for by Client, shall be disregarded.
- 7.16 The rates and amounts indicated in the Financial Proposal shall be without any condition attached or subject to any assumption and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

8.0 Submission, Receipt and Opening of Proposals

- 8.1 The Proposal shall be prepared in indelible ink. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the Applicant itself. Any such corrections must be initiated by the person or persons who sign(s) the Proposal.
- 8.2 The Authorised Representative of the Applicant should initial all pages of Pre-Qualification, Technical and Financial proposal. The Authorised Representative's authorisation should be confirmed by a written power of attorney by the competent authority accompanying the Proposal.
- 8.3 The Applicant shall submit two (2) copies of Pre-Qualification Proposal (one original and one copy), two (2) copies of Technical Proposal (one original and one copy) and one copy of Financial Proposal. Soft copies in PDF format of both Pre-Qualification and Technical Proposals shall also be submitted by the Applicant in a pen drive. The Pre-Qualification, Technical and Financial Proposals must necessarily be 'Hard Bound' separately and all pages serially numbered. 'Hard Bound' implies such binding between two covers through stitching, whereby it will not be possible to replace any paper without disturbing the document. In case of any discrepancy between the original and the copy (including soft copy) of the technical proposal, the contents as per original will only be considered.
- 8.4 The Pre-Qualification Proposal with Processing Fee, Bid security shall be placed in a sealed envelope clearly marked "RFQ-cum-RFP: Consultant for Independent *review/validation* of KPI input data/information for District Hospitals" The Technical Proposal placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL- Consultant for Independent *review and validation* of KPI input data/information" and the Financial Proposal in a sealed envelope clearly marked "FINANCIAL PROPOSAL - Consultant for Independent *review/validation* of KPI input data/information for District Hospital" shall be placed in a sealed envelope clearly marked "RFQ-cum-RFP: Consultant for Independent *review and validation* of KPI input data/information". These two (2) sealed envelopes i.e. RFQ and RFP shall be placed into an outer sealed envelope bearing the submission address, Name of Assignment and marked "DO NOT OPEN EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE."

8.5 Proposal Submissions:

Envelope	Content	Forms
Outer Envelope	Request for Qualification (RFQ) and Request for Proposal (RFP)	NA
RFQ Envelope	Processing Fee (Separately sealed envelope) and Pre-Qualification Proposal (Separately sealed envelope) Bid Security (Separately sealed envelope)	Form: 3A, 3B, 3C, 3D
RFP Envelope	Technical Proposal (Separately sealed envelope) and Financial proposal (Separately sealed envelope)	Form: 3E, 3F, 3G, 3H, 3I, 3J Form: 4A, 4B, 4C

8.6 Submission Address:

Director (Health)
Room No.276, NITI Aayog
E-mail: rajesh.skumar@gov.in

The information on the outer envelope should also include name of the Assignment.

- 8.7 The completed Proposal must be delivered at the submission address on or before Proposal Due Date (PDD) given in the Data Sheet before 3:00 PM (IST). No Proposal shall be accepted after the closing time of Proposals.
- 8.8 After the deadline for submission of proposals the Pre-Qualification Proposal shall be opened by the Evaluation Committee to evaluate whether the Applicants meet the prescribed Minimum Qualification Criteria. The RFP Envelope containing the Technical and Financial Proposals shall remain sealed.
- 8.9 After the Proposal submission until the contract is awarded, if any Consultant wishes to contact the Client on any matter related to its proposal, it should do so in writing at the Proposal submission address. Any effort by the firm to influence the Client during the Proposal evaluation, Proposal comparison or contract award decisions may result in the rejection of the consultant's proposal.

9.0 Proposal Evaluation

- 9.1 As part of the evaluation, the Pre-Qualification Proposal submission shall be checked to evaluate whether the Applicant meets the prescribed Minimum Qualification Criteria. Subsequently the Technical Proposal submission, for Applicants who meet the Minimum Qualification Criteria ("Shortlisted Applicant (s)"), shall be checked for responsiveness in accordance with the requirements of the RFQ-cum-RFP and only those Technical

Proposals which are found to be responsive would be further evaluated in accordance with the criteria set out in this RFQ-cum-RFP document.

- 9.2 Prior to evaluation of Proposals, the Client will determine whether each Proposal is responsive to the requirements of the RFQ-cum-RFP at each evaluation stage as indicated below. The Client may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal will be considered responsive at each stage only if:

RFQ Stage

- (i) The Pre-Qualification Proposal is received in the form specified in this RFQ - cum-RFP;
- (ii) it is received by the Proposal Due Date including any extension thereof in terms hereof;
- (iii) it is accompanied by the Processing Fee as specified in this RFQ -cum-RFP;
- (iv) it is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ- cum-RFP.
- (v) it is accompanied by the Bid Security as specified in this RFQ -cum- RFP.
- (vi) it does not contain any condition or qualification; and
- (vii) it is not non-responsive in terms hereof.

RFP Stage

Technical Proposal

- (i) the Technical Proposal is received in the form specified in this RFQ-cum-RFP;
- (ii) it is received by the Proposal Due Date including any extension thereof in terms hereof;
- (iii) it is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ- cum-RFP;
- (iv) it does not contain any condition or qualification; and
- (v) it is not non-responsive in terms hereof.

Financial Proposal

- (i) The Financial Proposal is received in the form specified in this RFQ-cum-RFP

- (ii) it is signed, sealed, bound together in hard cover and marked as stipulated in this RFQ- cum-RFP;
- (iii) it does not contain any condition or qualification; and
- (iv) it is not non-responsive in terms hereof.
- (v) The Client reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal will be entertained by the Client in respect of such Proposals. However, Client reserves the right to seek clarifications or additional information from the applicant during the evaluation process. The Client will subsequently examine and evaluate Proposals in accordance with the Selection Process detailed out below.

9.3 As part of the evaluation, the Pre-Qualification Proposals submitted should fulfil the Minimum Qualification Criteria. In case an Applicant does not fulfil the Minimum Qualification Criteria, the Technical Proposal of such an Applicant will not be opened and evaluated further. In such cases, the Bid Security will be returned after completion of evaluation of Pre-Qualification.

9.4 Minimum Qualification Criteria

SN	Minimum Qualification Criteria	Minimum number of projects
a	For more than 7 (seven) years*, the lead company should have directly provided healthcare accreditation, validation or analysis of data or reports/studies related to Key Performance Indicators (KPI's)/ output indicators/performance parameters.	15
b	Average annual revenue from core services for last 3 financial years i.e. 2014-15, 2015-16 and 2016-17; however, this may be waived off for government agency.	INR 7 Crore

**The Start date of the assignment should be within last 7 years from the Proposal Due Date (PDD)*

9.5 Technical Evaluation

9.5.1 To facilitate evaluation of Proposals, Client may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by Client for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. If an Applicant does not provide clarifications sought by Client within the specified time, its Proposal may be liable to be rejected. In case the Proposal is not rejected, Client may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation by Client.

- 9.5.2 Client reserves the right to verify all statements, information and documents, submitted by the Applicant in response to this RFQ-cum-RFP. Any such verification or absence of verification by Client shall not in any manner whatsoever relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of Client.
- 9.5.3 In case it is found during the evaluation or at any time before signing of the Contract or after its execution and during the period of subsistence thereof, that any eligibility conditions have not been met by the Applicant or if the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet selected as the Consultant (either by issuance of the LOA or entering into of the Contract), and if the Successful Applicant has already been issued the LOA or has entered into the Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ-cum-RFP, be liable to be terminated, by a communication in writing by Client without Client being liable in any manner whatsoever to the Successful Applicant or Consultant, as the case may be. In such an event, Client shall, without prejudice to any other right or remedy that may be available to Client, forfeit and appropriate the Performance Security as mutually agreed pre-estimated compensation and damages payable to Client for, inter alia, time, cost and effort of Client; provided that in the event the Performance Security has not been provided, Client have the right to forfeit the Bid Security and the Applicant or Consultant, as the case may be, shall be liable for the difference.
- 9.5.4 Technical Evaluation Criteria: The evaluation committee ("Evaluation Committee") appointed by the Client will carry out the technical evaluation of Proposals on the basis of the following evaluation criteria and points system. Evaluators of Technical Proposals shall have no access to the Financial Proposals until technical evaluation, is concluded Each evaluated Proposal will be given a technical score (St) as detailed below. The maximum points/ marks to be given under each of the evaluation criteria are:

SN	Criteria	Marks
A	<p><u>Experience in large-scale government transformation projects</u> Over the last 7 (seven) years, the Applicant should have provided healthcare accreditation or assistance on similar scope of work involving accreditation, validation or analysis of data or reports/studies related to KPI's/ output indicators / performance parameters for State/ central government, government agency or multilateral agencies. Such studies should have been undertaken within healthcare. Marking scheme would be as below: a) 25 projects and above- 20 marks b) =/>15and <25 projects – 10 marks c) <15 projects- Nil marks</p>	20
A	Sub-Total	20
B	<p><u>Adequacy of the proposed work plan and methodology in response to the TOR</u></p>	

	The consultant should demonstrate its understanding of the assignment through a brief approach and methodology as per the format provided under Form 3H with respect to the tasks as given in the TOR.	15
	Prepare and submit report templates (prelim, final and fortnightly)	5
	Presentation to the evaluation committee on Consultant's proposed Approach and Methodology and previous experience of undertaking similar assignment.	10
B	Sub-Total	30
C1	Qualification and competence of the core team for the Assignment.	50
C	Sub-Total	50
	Total Marks (A+B+C)	100

*For the purpose of evaluation, eligible assignments shall mean experience of undertaking assignments similar to the scope of services as provided under the TOR for this Assignment and under SI No.A above.

The minimum technical score required to qualify technical evaluation is 60 Points out of 100. A proposal will be considered unsuitable and will be rejected at this stage if it does not respond to important aspects of RFQ – cum - RFP Document and the Terms of Reference or if it fails to achieve the minimum technical score. The Client will notify Applicants who fail to score the minimum technical score about the same and return their Financial Proposals unopened after completing the selection process.

9.5.5 The Client will notify the Applicants who secure the minimum qualifying technical score, indicating the date and time set for opening the Financial Proposals. The notification may be sent by registered letter, facsimile, or electronic mail.

9.5.6 The Financial Proposals will be opened publicly in the presence of representatives of such Applicants as notified above who choose to attend. The name of the Applicants, their technical scores and the proposed prices will be read aloud and recorded when the Financial Proposals are opened.

9.5.7 Prior to evaluation of the Financial Proposals, the Evaluation Committee will determine whether the Financial Proposals are complete in all respects, unqualified and unconditional, and submitted in accordance with the terms hereof.

The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services and should be stated in INR only. Omissions, if any, in costing of any item shall not entitle the Applicant to be compensated and the liability to fulfil its obligations as per the Section 5: Terms of Reference within the total quoted price shall be that of the Applicant. The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be determined using the following formula:

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

In which Sf is the financial score, Fm is the lowest Financial Proposal, and F is the Financial Proposal (in INR) under consideration.

Proposals will be finally be ranked in accordance with their combined technical (St) and financial (Sf) scores:

$$S = St \times Tw + Sf \times Fw;$$

Where S is the combined score, and Tw and Fw are weights assigned to Technical Proposal and Financial Proposal that will be 0.70:0.30.

The Applicant achieving the highest combined technical and financial score will be considered to be the successful Applicant and will be invited for contract signing (the—Successful Applicant).

10.0 Negotiations

10.1 The Selected Applicant may, if necessary be invited for negotiations. The negotiations shall normally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFQ- cum – RFP. Issues such a deployment of Key Personnel, understanding of the Scope of Work, methodology and quality of the work plan shall be discussed during the negotiations. In case, the Selected Applicant fails to reconfirm its commitment, the Client reserve the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

10.2 The financial negotiations may include a clarification of the Firm's tax liability in the Client's country (if any), and how it should be reflected in the Contract. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff (no breakdown of fees) nor other proposed unit rates. During the term of contract some staff turnover in the core team is normal. The Consultant will fill a vacancy with equally qualified and experienced staff immediately. In cases when a critical vacancy cannot be filled immediately, due to conditions beyond the consultants control, the consultant will be allowed to fill the critical vacancy for temporary periods up to 3 months but only with Authority approval and assessment that the replacement personnel is of equivalent qualifications. The remuneration payable for such replacements shall not be an acceptable ground for any deviation to the terms of this contract for the remaining period. For example, the Client will not consider any staff turnover as the basis for any project delays – the Consultant is expected to meet every deliverable due dates, and the project completion milestones as approved by the Client.

11.0 Award of Contract

11.1 After selection, a Letter of Award (the —LOA) will be issued, in duplicate, by the Client to the Successful Applicant and the Successful Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Applicant is not received by the stipulated date, the Client may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Client on account of failure of the Successful Applicant to acknowledge the LOA,

and the next highest ranking Applicant may be considered.

- 11.2 Performance Security: Performance Security equivalent to 5 (five) percent of the total cost of Financial Proposal shall be furnished from a Nationalized/Scheduled Bank, before signing of the contract, in form of a Bank Guarantee substantially in the form specified at Annexure A of the contract. For the successful bidder the Performance Security will be retained by Client until the completion of the assignment by the Consultant and be released 180 (One Hundred Eighty) Days after the completion of the assignment.
- 11.3 Execution of contract: After acknowledgement of the LOA and furnishing of Performance Security as aforesaid by the Successful Applicant, it shall execute the Agreement within 2 weeks from the date of issue of LOA. The Successful Applicant shall not be entitled to seek any deviation in the Agreement.
- 11.4 Commencement of Assignment: The Successful Applicant/ Consultant is expected to commence the Assignment on the date of Commencement of Services as prescribed in the General Conditions of Contract. If the Successful Applicant fails to either sign the Agreement or commence the assignment as specified herein, the Client may invite the second ranked Applicant for contract signing. In such an event, the Bid Security/ Performance Security, as the case may be, of the first ranked Applicant shall be liable to be forfeited by the Client.

12.0 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards of contract shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.

13.0 Fraud and Corrupt Practices

- 13.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFQ – cum - RFP, the Client will reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the —Prohibited Practices) in the Selection Process. In such an event, the Client will, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security, as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, inter alia, time, cost and effort of the Client, in regard to the RFQ–cum-RFP, including consideration and evaluation of such Applicant’s Proposal.
- 13.2 Without prejudice to the rights of the Client under this Clause, hereinabove and the rights and remedies which the Client may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the

Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFQ – cum - RFP issued by the Client during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

13.3 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:

- (i) corrupt practice means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process; or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the Client in relation to any matter concerning the Project;
- (ii) —fraudulent practice means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (iii) —coercive practice means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
- (iv) —undesirable practice means (i) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (v) —restrictive practice means (i) forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or (ii) manipulating a full and fair competition in the Selection Process.

14.0 Pre-Bid Meeting

Pre-Bid Meeting of the Applicants will be convened on the date and time mentioned in the data sheet. A maximum of two representatives of each Applicant will be allowed to participate on production of an authorization letter from the Applicant.

During the course of Pre-Bid Meeting, the Applicants will be free to seek clarifications and make suggestions for consideration of the Client. The Client will endeavour to provide clarifications

and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive selection process.

15.0 Miscellaneous

The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.

The Client, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (i) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
- (ii) consult with any Applicant in order to receive clarification or further information;
- (iii) retain any information and/or evidence submitted to the Client by, on behalf of and/or in relation to any Applicant; and/or
- (iv) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.

It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Client, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

All documents and other information provided by Client or submitted by an Applicant to Client shall remain or become the property of Client. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. Client will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to Client in relation to the consultancy shall be the property of Client.

The Client reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

Data Sheet
Information to Consultants

1. Client would mean: "NITI Aayog (Authority)"

The method of selection is Combined Quality cum Cost Based Selection (CQCCBS)
The weights given to technical and financial proposals are:

Technical = 0.7
Financial = 0.3

2. Objective and description of the assignment:

The key objective of this Project is to undertake an independent review and validation of input data provided by the States/Union Territories (UTs) through HMIS/ web services on the KPI's for District Hospital.

The detailed descriptions of services are mentioned in the Section 5: Terms of Reference.

3. Clarification must be requested on or before 11 AM on 2nd July 2018. The address for requesting clarification is:

Director (Health)
Room No. 276, NITI Aayog

The proposal of the consultant should be valid for 180 days from the last date of submission.

Duration of assignment: Shall be 6 months as specified in the Section 5: Terms of Reference.

4. The last date of submission of proposal is: 22th July before **03.00 PM (IST)**

The address for submission of proposal is:

Director (Health)
Room No. 276, NITI Aayog

5. The consultant to state the costs in Indian Rupees (INR) only. Consultants must submit:

- a. Prequalification document: Two copies (one original + one copy) and one soft copy (PDF Format).
- b. Technical proposal: Two copies (one original + one copy) and one soft copy (PDF Format).
- c. Financial proposal: One original in hard copy.

Schedule for selection process

The Client will endeavour to follow the following schedule:

S. No.	Schedule	Dates and Time
1	Date of issue of RFQ cum RFP	5 th June 2018
2	Last date for receiving queries/requests for clarifications	15 th June 2018
3	Pre Bid Meeting (at 11.00.00 AM) at NITI Aayog	25 th June 2018
4	Client's response to queries/requests for clarifications	02 th July 2018
5	The closing date and time for receipt of Bid Proposal (Proposal Due Date, PDD)	22 th July 2018 3:00PM
6	The Date and Time for opening of Pre-Qualification Envelope - Proposal Opening Date (POD)	22 th July 2018 3:30PM
7	The Date and Time for opening of Technical Proposal	22 nd July 2018 4:00 PM
8	The Date for opening of Financial Proposal	25 th July 2018

Annexure 2.1

Team Composition

The expectations on the resources that would be proposed for the project are as follows:

- The Key Personnel/Core Team should have staff as detailed in this annex. For the purposes of evaluation, Key Personnel/Core Team members who are not employed with the Applicant (i.e. who are representatives of the other firm/individuals) will not be considered.
- The consultant should have a team of **at least 200 healthcare quality assessors** to qualify.
- The consultant shall ensure that the appropriate team shall be deployed on an exclusive basis in order to ensure the required coordination with Authority and to complete the activities or tasks assigned.
- Without the consent of client, no changes shall be made in the resources deployed on the project.
- If, for any reason beyond the reasonable control of the Consultant, such as necessary to replace any of the Key Personnel, the Consultant shall be allowed to provide as a replacement a person with equivalent or better qualifications, after approval from the client.
- In case of replacement of resource(s) or deployment of additional manpower, if any, the decision of Authority shall be final and binding.
- Consultant shall have no claim for additional costs arising out of or incidental to any removal and / or replacement of Personnel.
- The Central team will support the State team in the validation task, and if required, make visits to the States at the cost borne by the consultant.

Consultant shall ensure that services of the Core Team (except the Project Director/Team Leader) are provided full time for the contractual period. The Authority will not bear any other costs, incidental or otherwise, apart from the costs mentioned in the Financial Proposal submitted under Form 4B. The Consultant shall deploy professionals in the Core Team as per details given below:

Minimum Required Experience and Expertise of proposed Core Team

Key Personnel/Core Team **(Central Team)**

S. No.	Proposed Team Member(s)	Desired Profile & Experience	Estimated Man-months
1	Project Director/	<ul style="list-style-type: none">• Medical Degree, preferably post-graduate in any clinical subjects	4 man-months (spread over

	Team Leader	<ul style="list-style-type: none"> • Minimum 20 years of professional experience in Healthcare • Minimum 10 years of professional experience in accreditation/quality management • Demonstrated Experience of leading advisory assignments involving independent review, healthcare accreditation, validation or analysis of data or reports/studies related to KPI's/ output indicators / performance parameters/ Ease of Doing Business / Sectoral Diagnostics etc. 	the project duration)
2	Project Manager (2 in number)	<ul style="list-style-type: none"> • Medical Degree, Or • Master Degree or postgraduate diploma in Healthcare management/Business Administration from a reputed and recognized University or Institution • Minimum 5 years of professional experience in accreditation/quality management • Demonstrated Experience of leading healthcare accreditation, validation or analysis of data or reports 	6 man-months (full time involvement)
3	Experts/Assessors	<p>Clinician: Minimum MBBS with 10 years of experience of which 5 years should be in a hospital. Higher qualification will be preferable.</p> <p>Administrator: PG in Management or Hospital Administration with minimum of 10 years of experience of which 5 years being in the hospital administration. Higher qualification will be preferable.</p> <p>Nursing: Minimum B. Sc. / M. Sc. Nursing with 10 years of experience or diploma in General Nursing & Midwifery with 15 years of experience. In both the cases, minimum of 5 years' experience should be in supervisory capacity</p>	As required

		in a hospital. Higher qualification will be preferable.	
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- The client reserves the right to ask for the details regarding the proof of age, qualification and association of the key personnel with the firm. Age limit for key professionals mentioned above to be deployed on project should not be more than 70 years on the date of bid submission.
- Consultants, who are executing ongoing mandates from Client, must propose a separate team of key staff while bidding for this project.

Qualification and Competence of Core Team

The total number of marks allocated for qualification and competence of the proposed core team is 50 marks, distributed as detailed below:

S.No.	Key Personnel	Number of Marks
1	Project Director/ Team Leader	15
2	Project Manager	10
3	Experts/Assessors	25
	TOTAL	50

Evaluation Criteria for the Key Personnel

A. Overall Impression (Education qualification, number of years of consulting experience etc.)	30%
B. Adequacy for the Assignment	70%
B1. Experience related to advisory assignments involving independent review and validation and analysis of data or reports or studies related to healthcare KPI's/ output indicators / performance parameters/ Ease of Doing Business / Sectoral Diagnostics etc. using a combination of primary and secondary research and other research methodologies.	35%
B2. Experience of consultancy assignments that involve primary and secondary research, surveys, data collection, healthcare accreditation , validation and analysis for State/ Central Government agency or a Multi-lateral institution in India	35%

Note: Detailed evaluation criteria will be prepared by the Evaluation Committee for evaluation of the Qualification and Competence of the key personnel for the Assignment.

Section 3: Prequalification and Technical Proposal –Standard Forms

The Technical Proposal shall comprise an Executive Summary plus the relevant forms as instructed under the terms of this RFQ-cum-RFP document.

Executive Summary: This section shall be limited to 4single sided pages (2 sheets double sided printing, excluding cover and back page if stand-alone document), minimum 11 font size, A4 paper size, inclusive of graphics. This section should present an overall summary of the key elements of the Technical Proposal including specific experience of the Applicant, technical approach & methodology, work plan and organization/staffing and qualification, experience of the consulting team.

- Form 3A: Pre-Qualification Proposal Submission Form
- Form 3B Format for Pre-Qualification Proposal (Eligible Projects)
- Form 3C Format for Pre-Qualification Proposal (Average Annual Turnover of Applicant)
- Form 3D: Format of Bank Guarantee for Bid Security
- Form 3E: Technical Proposal Submission Form
- Form 3F: Applicants Experience
- Form 3G: Comments and Suggestions on the Terms of Reference and on Counterpart
Staff and Facilities to be provided by the Client
- Form 3H: Description of Approach, Methodology and Work Plan for Performing the
Assignment
- Form 3I: Team Composition and Task Assignments
- Form 3J: Curriculum Vitae (CV) for Proposed Professional Staff (with one page summary of
experience)

Form 3A:

Pre-Qualification Proposal Submission Form

[Location, Date]

To
Director (Health)
Room No. 276, NITI Aayog
New Delhi

RFQ-cum-RFP dated [insert date and month], 2017, for selection of Consultant for Consultant for Independent *review and validation* of KPI input data/information for District Hospital.

Dear Sir,

With reference to your RFQ-cum-RFP document dated, we, having examined all relevant documents and understood their contents, hereby submit our Pre-Qualification Proposal for selection and appointment of Consultant for Consultant for Independent *review and validation* of KPI input data/information. The Proposal is unconditional and unqualified. We are submitting our Proposal as [sole applicant/]

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

If negotiations are held during the period of validity of the Proposal, i.e., before [date], we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us, subject only to the modifications resulting from negotiations in accordance with the RFQ - cum - RFP.

Further:

1. We acknowledge that Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals. This statement is made for the express purpose of selection and appointment as the Consultant for the aforesaid Project.
2. We shall make available to Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
3. We acknowledge the right of Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
4. We certify that in the last 3 years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial

pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public Authority nor have had any contract terminated by any public Authority for breach on our part.

5. We declare that:

- a) We have examined and have no reservations to the RFQ-cum-RFP, including any Addendum issued by the Client;
- b) We do not have any conflict of interest in accordance with the terms of RFQ- cum-RFP
- c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFQ-cum-RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
- d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

6. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.

7. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory Authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.

9. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that none of our members have been barred by the Central government, any State government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar does not subsist as on the date of this RFQ- cum-RFP.

10. We further certify that no investigation by a regulatory Authority is pending either against us or against our affiliates or against our CEO or any of our Directors/Managers/employees.

11. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Client in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned Project.

12. We agree and understand that the proposal is subject to the provisions of the RFQ-cum-RFP document. In no case, shall we have any claim or right of whatsoever nature if the consultancy for the Project is not awarded to us or our proposal is not opened or rejected.
13. We agree to keep this offer valid for one hundred eighty (180) days from the POD specified in the RFQ-cum-RFP.
14. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith.
15. In the event of our being selected as the Consultant, we agree to enter into a Contract in accordance with the contract prescribed in the RFQ - cum - RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
16. We have studied the RFQ- cum- RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by Client or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
17. The Technical and Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the application which shall be binding on us.
18. We agree and undertake to abide by all the terms and conditions of the RFQ- cum-RFP Document.
19. We acknowledge that Authority in the capacity of the employer invites proposals from prospective Bidders to participate in bidding.

We remain

Yours sincerely,

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

(Name and seal of the Applicant/Lead Member/Member in Charge)

Form 3B:

Format for Pre-Qualification Proposal (Please refer Clause 9.4)

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity for carrying out consulting services similar to the ones requested under this assignment.]

- Use projects with copy of proof of experience as required for meeting the minimum qualification criteria prescribed.
- Exhibit only those projects undertaken in the last five (5) years preceding the PDD.
- Projects without the proof of experience from respective client will not be considered

Assignment Name and Consultants for Committee:	Contract (in INR in Crore)
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore)
Start Date (Month/Year): Completion Date (Month/Year): Name of Lead Partner: Name of Associated Consultants, If any:	No: of professional staff-months provided by associated Consultants: Name of senior professional staff of your firm Involved and functions performed(indicate Most significant profiles such as Project Director/Coordinator, Team Leader):
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the assignment:	

Firm's Name:

Authorized Signature: Note:

For the purpose of evaluation of applicants, the conversion rate of INR to USD shall be considered at prevailing market rate on date of submission of proposal. In case of any other currency the same shall first be converted to USD as on the date 60 (Sixty) days prior to the proposal due date and the amount so derived in USD shall be converted in to INR at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date.

Please limit the description of the project in two A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

Form 3C:

Format for Pre-Qualification Proposal (Average Annual Turnover of Applicant) please refer Clause 9.4

S. No.	Financial Year	Annual Turnover of Applicant (INR)
1.	2014-2015	
2.	2015-2016	
3.	2016-2017	
Average Annual Turnover		(indicate sum of the above figure divided by 3)

Certificate from the Statutory Auditor

This is to certify that[Name of the firm] [Registered Address] has received the payments shown above against the respective years.

Name of the Authorised signatory, Designation

Name of the Firm

Signature of the Statutory Auditor

Seal of the Firm

Note:

1. In case the Consultant does not have a statutory auditor, it may provide the certificate from a practicing chartered accountant, the amount so derived in USD shall be converted in to INR at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date.

Please limit any description, if needed, in two A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

Form 3D

Format of Bank Guarantee for Bid Security

B.G.No.

Date:

1. In consideration of you, Authority, (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) having agreed to receive the proposal of [Name of company], a company registered under the Companies Act, 2013 and having its registered office at [registered address of company],(hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns), for appointment as Consultant. The Project (hereinafter referred to as the "Consultancy") pursuant to the RFQ-cum-RFP document dated _____ issued in respect of the Consultancy and other related documents including without limitation the draft contract for consultancy services (hereinafter collectively referred to as "RFQ-cum-RFP documents"), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of the relevant clause of the RFQ-cum-RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFQ-cum-RFP document by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. [e] (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said RFQ-cum- RFP document.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the RFQ-cum-RFP document shall be final, conclusive and binding on the Bank. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFP Document including, Document including without limitation, failure of the said Bidder to keep its Proposal valid during the validity period of the Proposal as set forth in the said RFP Document, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other Authority.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFQ cum RFP Document including without limitation, failure of the said Bidder to keep its Proposal valid during the validity period of the Proposal as set forth in the said RFQ cum RFP Document for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.

However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [in figures] [in words].

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Proposal Due Date and a further claim period of (30) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said RFQ-cum-RFP document or to extend time for submission of the Proposals or the Proposal validity period or the period for conveying of Letter of Acceptance to the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said RFQ-cum-RFP document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said RFP Document or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to [Name of bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
9. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the

obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. [in figures] ([in words]). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 8 hereof, on or before [date].

Signed and Delivered by _____ Bank, by the hand of _____,
its _____ and authorized official.

(Signature of the Authorised Signatory)

(Official Seal)

Notes:

1. The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
2. The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.
3. If the company is registered under any other act of the Native Country of the bidder, the word Companies Act 2013 may be replaced by that Act.
4. The Bid Proposal, however, should be accompanied by a certified copy of certificate of incorporation under the concerned act.

Technical Proposal Submission Form

[Location, Date]

To
Director (Health)
Room No.276, NITI Aayog
New Delhi

RFQ - cum - RFP dated [insert date and month] 2017 for selection as Consultant for Independent Review/ Validation of KPI input data/information for District Hospital ranking

Dear Sir/Madam,

With reference to your RFQ - cum - RFP Document dated 5th June, we, having examined all relevant documents and understood their contents, hereby submit our Technical Proposal for selection as Consultant for Independent review and validation of KPI input data/information ("Consultant"). The Proposal is unconditional and unqualified.

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate in accordance with the RFQ cum RFP. Our Proposal is binding upon us, subject only to the modifications resulting from technical discussions in accordance with the RFQ-cum- RFP.

We understand you are not bound to accept any Proposal you receive. Further:

1. We acknowledge that Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. We shall make available to Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. We acknowledge the right of Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public Authority nor have had any contract terminated by any public Authority for breach on our part.

6. We declare that:
 - a. We have examined and have no reservations to the RFQ-cum-RFP, including any Addendum issued by the Client;
 - b. We do not have any conflict of interest in accordance with the terms of the RFQ-cum-RFP;
 - c. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFQ-cum-RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
 - d. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.
8. We declare that we are not a member of any other Consultancy applying for selection as a Consultant.
9. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory Authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that none of our members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFQ- cum- RFP.
12. We further certify that no investigation by a regulatory Authority is pending either against us or against our affiliates or against our CEO or any of our Directors/Managers/employees.
11. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Authority in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned Project.
12. We agree and understand that the proposal is subject to the provisions of the RFQ - cum-RFP document. In no case, shall we have any claim or right of whatsoever nature if the

consultancy for the Project is not awarded to us or our proposal is not opened or rejected.

13. In the event of our being selected as the Consultant, we agree to enter into an Contract
14. In accordance with the contract prescribed in the RFQ-cum-RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
15. We have studied RFQ-cum-RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by Client or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
16. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall be binding on us
17. We agree and undertake to abide by all the terms and conditions of the RFQ-cum RFP document.

We acknowledge that Authority in the capacity of The Employer invites proposals from prospective Bidders to participate in bidding.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

(Name and seal of the Applicant/Member in Charge/Lead Member)

Form 3F:

Applicant's Experience

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity for carrying out consulting services similar to the ones requested under this assignment.]

- Provide details of project experience in support of evaluation criteria as per clause 9.5.4 of this document
- Limit each project to 2 single sided pages (1 sheet double sided)
- Client certificates/Work Order/Certificate from the Statutory Auditor should be enclosed as supporting documents for each project
- Use projects with copy of proof of experience as required for meeting the minimum qualification criteria prescribed.
- Exhibit only those projects undertaken in the last five (5) years.
- Projects without the proof of experience from respective client/Statutory Auditor will not be considered

Assignment Name and project cost:	Approx. value of the contract (in INR in Crores)
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address	Approx. value of the services provided by your firm under the contract (in INR in Crores)
Start Date (Month/Year)	No. of professional staff- months provided by associated Consultants:
Completion Date (Month/Year):	
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):

Narrative Description of the Project:
(Highlight project capital cost in the narration)

Description of actual services provided by your staff within the assignment:

Firm's Name:

Authorized Signature:

Note: For the purpose of evaluation of applicants, the conversion rate of INR to USD shall be considered at prevailing market rate on date of submission of the proposal. In case of any other currency the same shall first be converted to USD as on the date 60 (Sixty) days prior

to the proposal due date and the amount so derived in USD shall be converted in to INR at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date.

Please limit the description of the project in two A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

Form 3G:

Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client

A: On the Terms of Reference

- 1.
- 2.
- 3.
- 4.
- 5.

B: On the data, services and facilities to be provided by the client

- 1.
- 2.
- 3.
- 4.
- 5.

C: On Technical Proposal

- 1.
- 2.
- 3.

D: General Comments

- 1.
- 2.

Form 3H:

Description of Approach, Methodology and Work Plan for Performing the Assignment

Technical approach, methodology and work plan are key components of the Technical Proposal. The consultant will present its Technical Proposal (items a, b and c below) in no more than 10 single-sided or 5 double-sided printed sheets (A-4 size, minimum 11 font size). The page count does not include the Forms.

a) Technical Approach and Methodology,

b) Work Plan, and

c) Organization and Staffing,

a) Technical Approach and Methodology. In this section the consultant should explain the understanding of the assignment, approach to the services and methodology for carrying out the activities to accomplish the TOR requirements. The consultant should highlight any challenges anticipated in delivering a programme of this nature and discuss proposed approaches to overcome the challenges and meet the requirements of the assignment.

b) Work Plan. In this section the consultant should describe the overall work plan for the activities of the assignment and a detailed work plan for various phases of assignment. The work plan must demonstrate understanding of the scope of work and ability to translate the scope into a feasible working plan. The work plan must show

(i) Mobilization details for the Key Professional (ii) key tasks and deliverables and (iii) key risks and consultant's proposal to mitigate those risks to ensure effective implementation of shortlisted modules.

c) Organization and Staffing In this section the consultant should briefly discuss the structure, composition, roles and responsibility of the Consultant team and how the team will drive the project.

Form 3I:

Team Composition and Task Assignments

Core Team				
Name of Staff	Firm	Area of expertise	Position	Task Assigned

Form 3J:

Curriculum Vitae (CV) for Proposed Staff (Key Professional) with one page summary of experience

Limit each CV to 6 pages single-sided (3 sheets double-sided) plus a one page executive summary

1.	Proposed position			
2.	Name of firm			
3.	Name of staff		[First] [Middle] [Surname]	
4.	Date of birth		[dd/mm/yyyy]	
5.	Nationality			
6.	Education		[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and year of obtainment starting from the latest degree]	
7.	Membership of Professional Organizations			
8.	Training & Publications		[Indicate significant training since education degrees (under 5) were obtained]	
9.	Countries of Work Experience		[List countries where staff has worked in the last ten years]	
10.	Languages	Language	Proficiency (good/ fair/ poor)	
			Speaking Reading Writing	
		English		
11.	Employment record [Starting with present position, list in reverse order every employment Held by staff member since graduation]	Name Organization	Position held	Duration
				YYYY to present
12.	Details of tasks assigned			
13.	Work Undertaken that Best Illustrates Capability to Assigned Handle the Tasks Assigned	[Among the assignments in which the Staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks assigned] Name of assignment or project: Year: Location:		

		Client: Project Cost: Main project features: Positions held: Activities performed:
14.	Certification	I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience .I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[Signature of staff member]

Day/Month/Year

Full name of staff:

Date:

[Signature of authorized representative of the firm]

Day/Month/Year

Full name of authorized representative:

For Key Professionals who are not employees of the firm:

I, <name>, certify that I am available to start work on this project when the notice to start work is issued by Authority.

Signature of the proposed staff: _____

Section 4: Financial Proposal - Standard Forms

Form 4A	Financial Proposal Submission Form
Form 4B	Summary of Costs
Form 4C	Breakdown of Costs

Form 4A:

Financial Proposal Submission Form

[Location] [Date]

To:
Director (Health)
Room No. 276, NITI Aayog
New Delhi

Dear Sir/Madam,

Subject: Appointment as a Consultant for Independent *Review and Validation* of KPI input data/information for District Hospital Ranking.

We, the undersigned, offer to provide the services for [name of assignment] in accordance with your Request for Qualification – cum - Request for Proposal dated [date] and our Proposal. Our attached Financial Proposal is for the sum of [amount(s) in words and figures] for undertaking the assignment as per the Terms of Reference enclosed.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from arithmetic correction, if any, up to expiration of the validity period of the Proposal, i.e. [date].

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely —Prevention of Corruption Act 1988.

We understand you are not bound to accept any Proposal you receive. We remain,

Yours sincerely,

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

Name of Firm and Address:

Form 4B

Summary of Costs

Sl. No.	Team Member (Name and Position)	Effort estimates of team (in man-months)	Unit rates (in Indian Rupees/man-month)	Total Amount (in Indian Rupees)
1	Name (Project Director/ Team Leader)			
2	Names (Project Managers)			
3	Names (Average cost of each Expert/Assessor in man days)			
4	Other Expenses (Administrative, Travel, logistics, Out of pocket expenses etc.)	NA	NA	
5	Conducting Workshops			
6	Total Cost of Financial Proposal (Sum of all the costs above)			
7	Applicable Taxes (nature of tax and rates as applicable)			
8	Total Cost including taxes (Sl. No. 6 + Sl. No. 7)			

Authorized Signature

Name & Designation of Signatory

Section 5: Terms of Reference

The Authority envisages appointing a consulting agency to undertake an independent review and validation of input data provided by the States/UTs on the KPI's for tracking the performance of District Hospitals. Data from HMIS will be reviewed and validated. HMIS data will be pulled into a web-portal being created simultaneously separately. This data will be reviewed and validated by the consulting agency.

For this purpose, the Scope of Work of the agency will include, but not limited to, the following activities:

Independent **review and validation** of input data provided by the DHs on KPI's:

Following the receipt of the data from the web portal/ web services, the Consultant is expected to perform the following task:

a) Validate the data periodically received for KPIs across all domains through the following sources/methodologies (different sources may be applicable for different KPI's):

- Prepare a uniform checklist to validate the data submitted by the DHs in the web-services for the purpose of DH ranking. The checklist to be used by the Consultant should be uniform across all DHs. Further, the Consultant must get this Checklist, to be used for the purpose of DH ranking, vetted & agreed by the Authority before implementation.
- Information available through secondary sources, published information, databases, websites etc.;
- Review of supporting documents/ hospital checklists/ registers/ hospital MIS /certifications submitted by DH to substantiate their data inputs;
- Review of data collection methodology by interviewing concerned Staff of DH.
- Staff interview to verify the understanding of the concepts, definitions, indicators, etc. for the purpose of DH ranking.
- Observation through Facility (DH)/ Departmental visit/ round
- At least one visit will be undertaken to each district hospital for data review and validation of the data obtained from HMIS. Such visits may be undertaken based on the assignment need or as advised by the Authority during the course of the assignment. The Consultant Organization may plan for the logistics (such as accommodation, travel tickets etc.) of such visit sat their own cost;

b) Preparation of report on independent review and validation findings and submission to the Authority as soon as data is obtained from DH. A fortnightly progress report needs to be submitted regularly with 60 days latent period. All the reports shall be submitted by the assessors/experts of the consultant to the Team leader/ Project Manager, who will submit the same to the Authority/Client.

c) Workshops:

The Consultant would conduct a minimum of 2 National level and 10 regional level workshops (includes pre validation sensitization and post validation workshops) for key officials of various State Governments/UTs/ District Hospitals, as deemed necessary by

the Authority. The objective of such workshops will be to sensitize and bring-on-board the concerned government officials about the following:

- i) Key objectives of this initiative;
- ii) Brief discussion and explanation of each KPI's;
- iii) Discussion on how to provide input data, acceptable sources of information, format in which inputs need to be provided etc. to ensure that all DH provide data in the web services like HMIS, etc. which is reliable, verifiable and follows a general standard format;
- iv) Inputs and support required from various State/UT departments/ DH in collection and validation of the KPI data;
- v) Agreement on co-ordination mechanism with the State government/UT.

The entire cost of the workshops shall be borne by the consultant only. Cancellation/deferment of the workshop, if any, shall be decided by client.

Further, post validation workshop(s) will aim to provide necessary inputs on mid-course correction of the District Hospital Performance Ranking exercise, if any.

The Authority would provide the required background information (such as objectives of this initiative, list of KPI's etc.) and would also facilitate the Consultants Organization and experts to co-ordinate with State Governments/UTs/DH.

The duration of the Project/Assignment is envisaged to be 6 months from the date of award of the Project.

Section 6: Standard Form of Contract

CONTRACT FOR CONSULTANCY SERVICES

between

[Name of Client]

and

[Name of Consultants]

Dated _____

I. Form of Contract

Contract to undertake [name of assignment]

This CONTRACT (hereinafter called the "Contract") is made on the *Date in words+ day of the month of *month+ *year in 'yyyy' format+, by and between

President of India acting through Director (Health) NITI Aayog.

NITI Aayog, hereinafter referred to as the "Client" which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the First Part.

And

*Name of Consultants and registered address+ (hereinafter called the "Consultants") WHEREAS

a) The Client has requested the Consultants to provide certain consulting services as defined in the General

Conditions attached to this Contract (hereinafter called the "Services");

b) The Consultants, having represented to the Client that they have the required professional skills, personnel and technical resources, have 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 General Conditions of Contract (hereinafter called "GC");

b) The Special Conditions of contract (hereinafter called "SC");

c) The following Appendices:

Appendix A: Terms of reference containing, inter-alia, the Description of the Services and reporting requirements,

Appendix B: Key Personnel (Core Team), Task assignment, work programme, manning schedule, qualification requirements of key personnel,

Appendix C: Approach and methodology

Appendix D: Duties of the Client

Appendix E: Cost Estimate

Appendix F: "Conformed Document" which incorporates RFP documents, all the changes, modifications and results of the contract discussion

Appendix G: Copy of Letter of Award.

Appendix H: Copy of letter of Award/ acceptance by Consultant

Appendix I: Copy of Bank Guarantee for Performance Security

Appendix J: Clarifications

Appendix K: Correspondences

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:

a) The Consultants shall carry out the Services in accordance with the provisions of the Contract;

and

b) Client will make payments to the Consultants in accordance with the provisions of the Contract.

3. Priority of documents: The Parties expressly agree that in the event of any conflict, inconsistency or contradiction between any clauses forming part of the documents constituting the Contract, and more particularly mentioned in Clause 1 (of this contract) hereinabove, the documents shall be interpreted in the following order of precedence:

a) The provisions of this Contract shall override all provisions of other documents the Contract.

b) the provisions of the SC shall be subject to the Contract, but shall override all provisions of other documents comprising the Contract;

c) the provisions of the GC shall be subject to the Contract SC, but shall take precedence over all other documents comprising the Contract; and

d) the Appendices shall subject to each of the Contract, SC and the GC

e) Any decision of the Client in relation to the priority of documents shall be final and binding upon the Consultant

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 Client

[Signature] [Name] [Designation]

FOR AND ON BEHALF OF CONSULTANT

[Signature] [Name] [Designation]

Witness:

1. [Signature, name and address]

2. [Signature, name and address]

General Conditions of Contract

4.1 General provisions

4.1.1 Definitions

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

- a) "Applicable Law" means the all laws, bye-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees and any other instruments having the force of law in India as they may be issued and in force from time to time;
- b) "Affiliate" means, with respect to any Party, any other entity that, directly or indirectly:
 - (a) Controls such Party; (b) is Controlled by such Party; (c) is Controlled by the same person who, directly or indirectly, Controls such Party; and "Control" with respect to any person, shall mean:
 - (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting share capital, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar Authority with respect to such person; (b) the possession, directly or indirectly, of a voting interest of more than 50%; and the terms "Controlling" and "Controlled by" shall be construed accordingly;
- c) "Client" means the Party named in the Contract, who employs the Consultant;
- d) "Consultant" or "Consultants" means the party named in the Contract, who is employed as an independent professional firm by the Client to perform the Services;
- e) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract(GC) constitute a part, together with all other documents listed in this signed Contract;
- f) "Contract Price" means the price to be paid for the performance of the Services;
- g) "GC" means the General Conditions of Contract;
- h) "Government" means the Government of Client's country;
- i) "Local Currency" means the currency of the Government;
- k) "Material Adverse Effect" means material adverse effect on (a) the ability of the Consultant to be serve and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
- l) Master Services Agreement (MSA) shall mean the same as "contract";

- m) "Party" means the Client or the Consultants, as the case may be, and Parties means both of them;
 - n) "Performance Security" shall mean the irrevocable and unconditional bank guarantee provided by the Consultant from a scheduled Indian bank as guarantee for the performance of its obligations in respect of the Contract;
 - o) "Personnel" means persons hired by the Consultants or as employees and assigned to the performance of the Services or any part thereof;
 - p) "Project" means "*name of assignment+";
 - q) "SC" means the Special Conditions of Contract by which these General Conditions of the Contract maybe amended or supplemented;
 - r) "Services" meansthe work to be performed by the Consultants pursuant to this Contract as described in TOR;
 - s) "Work Order" means a specific directive or order to perform a defined scope for a defined duration and fee
 - t) "Corrupt Practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. v) "Fraudulent Practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.
- 4.1.2 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India and shall be subject to the jurisdiction of the Courts at New Delhi.
- 4.1.3 Language: This Contract has been executed in the language specified in the SC, which shall be binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 4.1.4 Notices: Any notice, request or consent made pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 4.1.5 Location: The Services shall be performed at such locations in Country, as the Client may approve.
- 4.1.6 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultants may be taken or executed by the officials in the SC.
- 4.1.7 Taxes and Duties: Unless otherwise specified in the SC, the Consultants, Sub-consultants and their Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.
- 4.1.7.1 The Client shall be entitled to deduct any Taxes required to be deducted at source under Applicable Law from any payments to be made by it to the Consultant.

Further, in the event that the Client receives notification or assessment of any Taxes (whether as an agent, or in substitution of the Consultant, or its Personnel, servants, agents or otherwise) in respect of or arising out of the performance of the Consultant's obligations under this Agreement which remain outstanding, the Client shall notify the Consultant of the same and the Consultant shall promptly take all necessary action for settlement and/or any other lawful disposal of such notification or assessment. Furthermore, the Consultant shall pay forthwith on demand to the Client all costs including fines and penalties, which the Client may incur as a result of:

- 4.1.7.2 the Client having been required by any governmental Authority to pay any Taxes which the Consultant is liable to bear hereunder; or
- 4.1.7.3 any cost actually sustained by the Client for failure by the Consultant to pay any Taxes for which it is responsible under this Contract

4.1.8 Interpretation: In the Contract, unless the context otherwise requires:

- 4.1.8.1 The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.
- 4.1.8.2 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), includes a reference to any document, agreement, deed or other instrument as may be varied, amended, supplemented, restated or replaced, from time to time.
- 4.1.8.3 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), means a reference to such document, agreement, deed or other instrument and to all appendices, annexes, schedules and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be.
- 4.1.8.4 A reference to any Applicable Law includes any amendment, modification, re-enactment or change in interpretation or applicability of such Law and a reference to any statutory body or Authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or Authority was referred to
- 4.1.8.5 Where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning.
- 4.1.8.6 The words 'include' and 'including' are to be construed without limitation. The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to the Contract as a whole. Where a wider construction is possible, the words 'other' and 'otherwise' shall not be construed generis with any foregoing words.
- 4.1.8.7 In the Contract, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of the Contract.
- 4.1.8.8 Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.
- 4.1.8.9 The rule of interpretation which requires that a Contract be interpreted against the person or Party drafting it shall have no application in the case of this Contract.
- 4.1.8.10 References to a person (or to a word importing a person) shall be construed so as to include:

- a) Individual, firm, partnership, trust, joint venture, company, corporation, body

corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal Authority or other Governmental Authority (whether or not in each case having separate legal personality);

- b) That person's successors in title and assigns or transferees permitted in accordance with the terms of the Contract; and
- c) References to a person's representatives shall be to its officers, Personnel, legal or other professional advisors, subcontractors, agents, attorneys and other duly authorized representatives.

4.2 Joint and Several Liability: Collective action by Members

4.3 Commencement, completion, modification and termination of contract

4.3.1 Effectiveness of Contract: This Contract shall come into effect on the date the Contract is signed by both the Parties and letter of award is provided to the Consultancy.

4.3.2 Commencement of Services: The Consultants shall commence the Services from 2nd (Second) day of effectiveness of the Contract or any date prior to that, notified by the Client.

4.3.3 Expiration of Contract: Unless terminated earlier pursuant to relevant clauses in this contract hereof, this Contract shall expire when Services have been completed and all payments have been made that accrue to the consultants under this contract for services actually performed at the end of such time period after the Effective Date, as shall be specified in the SC. No claim for the payment from contractor shall be entertained after the lapse of three years of arising of the claim.

4.3.4 Modification: Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

4.3.5 Force Majeure

4.3.5.1 Definition: For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under the Contract impossible or so impractical to be considered impossible under the circumstances, and includes, but not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions.

4.3.5.2 No Breach of Contract: The failure of a party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:

- a) has taken all precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and
- b) has informed the other party as soon as possible about the occurrence of such an event.
- c) the dates of commencement and estimated cessation of such event of Force Majeure; and
- d) the manner in which the Force Majeure event(s) affects the Party's obligation(s) under the Contract.

4.3.5.3 The Parties agree that neither Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice

specified above.

- 4.3.6 Extension of Time: 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.
- 4.3.7 Payments: During the period of their inability to perform the Services as a result of an event of Force majeure, the Consultants shall be entitled to continue to be paid under the terms of this Contract

4.4 Termination

4.4.1 By the client: The Client may terminate this Contract, by not less than thirty (30) days' or sixty (60) written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in this clause:

- a) if the Consultants do not remedy a failure in the performance of their obligations under the Contract, within a period of thirty (30) days, after being notified or within such further period as the Client may have subsequently approved in writing;
- b) within thirty (30) days, if the Consultants become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than thirty (30) days;
- d) within thirty (30) days, if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to relevant clauses hereof;
- e) within thirty (30) days, if the Consultant submits to the Client a false statement which has a material effect on the rights, obligations or interests of the Client. If the Consultant places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Client;
- f) within thirty (30) days, if the Consultant, in the judgment of the Client has engaged in Corrupt or Fraudulent Practices in competing for or in executing the Contract;
- g) if the Client, in its sole discretion and for any reason whatsoever, within a period of sixty (60) days' decides to terminate this Contract.

4.4.2 By the Consultants: The Consultants may terminate this Contract, by not less than thirty (30) day's' written notice to the Client, such notice to be given after the occurrence of the events specified in this clause:

- a) if the Client fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to relevant clauses hereof within sixty (60) days after receiving written notice from the Consultants that such payment is overdue

; or

- b) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services within a period of sixty (60) days.

4.4.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to actual Termination, or upon expiration of this Contract pursuant to relevant clause 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 relevant clause hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records, (iv) the rights of indemnity of the Client specified in clause 11.2 and (v) any right which a Party may have under the Applicable Law.

4.4.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to relevant clauses 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 handover all project documents under procedure described in this contract.

4.4.5 Payment upon termination: Upon termination of this Contract, the Client will make the following payments to the Consultants:

a) Remuneration pursuant to relevant clauses for Services satisfactorily performed prior to the effective date of termination;

b) If the Contract is terminated pursuant to Clause 6.4.1 a), b), d), e) or f), the Consultant shall not be entitled to receive any agreed payments upon termination of the Contract. However, the Client may consider to make payment for the part satisfactorily performed on the basis of the quantum meruit as assessed by it, in its sole discretion, if such part is of economic utility to the Client. Under such circumstances, upon termination, the Client may also impose liquidated damages as per the provisions of relevant clauses of this Contract. The consultant will be required to pay any such liquidated damages to Client within 30 days of termination date.

4.4.6 Disputes about Events of Termination: If either Party disputes Termination of the contract under relevant clauses hereof, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration under relevant clauses hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

4.5 Obligations of the Consultants

4.5.1 General: The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultants shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers 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.

4.5.2 Conflict of interest

4.5.2.1 Any breach of an obligation under Clause 6.5 shall constitute a conflict of interest("Conflict of Interest"). The Consultant shall comply and shall ensure the Affiliates of the foregoing comply with the provisions of Clause 6.5 and any breach of such an obligation shall constitute an event of default by the Consultant for the purposes of this Contract. The Consultant shall promptly disclose any Conflict of Interest to the Client. For the avoidance

of doubt, the Consultant agrees that a disclosure of any Conflict of Interest shall not in any manner whatsoever be deemed to cure such Conflict of Interest.

- 4.5.2.2 Consultants Not to Benefit from Commissions, Discounts, etc.: The remuneration of the Consultants pursuant to relevant clauses hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services, and the Consultants shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultants shall use their best efforts to ensure that the Personnel, any Sub-consultants and agents of either of them, similarly shall not receive any such additional remuneration.
- 4.5.2.3 Consultants and Affiliates Not to Engage in Certain Activities: The Consultants agree that, during the term of this Contract and at any time within a period of Two (2) years after its expiry or termination, the Consultants and their affiliates, , shall be disqualified from providing (directly or indirectly) goods, works or services (other than the Services and any continuation thereof) for the project or any project resulting from or closely related to the Services.
- 4.5.2.4 Prohibition of Conflicting Activities: Neither the Consultants nor their Affiliates/ nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
- a) During the term of this Contract and after its expiry or termination of Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract or any other contract entered into by the Client.
- 4.5.3 Confidentiality: The Consultants and the Personnel shall not, either during the term or within five (5) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 4.5.4 Consultant's Actions Requiring Client's Prior Approval: The Consultants shall obtain the Client's prior approval in writing before taking any of the following actions:
- a) appointing such members of the Personnel, as are not mentioned in the Technical Proposal,
and
 - b) any other action that may be specified in the SC.
- 4.5.5 Reporting Obligations: The Consultants shall submit to the Client the reports and documents specified in TOR, in the numbers, and within the periods set forth in this contract.
- 4.5.6 Documents Prepared by the Consultants to be the Property of the Client: All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultants pursuant to this contract shall become and remain the property of the Client, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver and the concerned state government all such documents and software to the Client, together with a detailed inventory thereof. The Consultants may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the SC.
- 4.5.7 Liability of the Consultants: Subject to additional provisions, if any, set forth in the SC, the Consultants' liability under this Contract shall be as provided by the Applicable Law.
- 4.5.8 Insurance to be taken out by the Consultants: The Consultants (i) shall take out and maintain, at their own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage, as shall be specified in the Special Conditions

(SC), and (ii) within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Client, copies of such policy certificates, copies of the insurance certificates and evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the terms of this Contract. (iii) if the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Client will apart from having other recourse available under this Contract have the option without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultants, and the Consultants shall be liable to pay such amounts on demand by the Client. (iv) the insurance policies so procured shall mention the Client as the beneficiary of the Consultants and the Consultants shall procure an undertaking from the insurance company in this regard.

4.6 Consultants' personnel

4.6.1 Description of Personnel

4.6.1.1 The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultants' core team are described in this contract. If additional work is required beyond the scope of the Services specified in TOR, the level of effort and/or staff assigned may be increased by agreement in writing between the Client and the Consultants, provided that any such increase shall not, except as otherwise agreed.

4.6.1.2 If required to comply with the provisions of this Contract, adjustments with respect to level of effort, staff assignments, time may be made by the Consultants by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement, scope, qualifications of team or deliverables and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in this Contract. Any other such adjustments shall only be made with the Client's prior written approval.

4.6.2 Removal and/or Replacement of Key Personnel

a) In case of staff turnover in the core team, the Consultant will fill a vacancy with equally qualified and experienced staff immediately. In cases when a critical vacancy cannot be filled immediately, due to conditions beyond the consultants control, the consultant will be allowed to fill the critical vacancy for temporary periods up to 3 months but only with Authority approval and assessment that the replacement personnel is of equivalent qualifications. The remuneration payable for such temporary personnel shall not exceed 90% of the remuneration which would have been payable for the personnel replaced, for the remaining period. For avoidance of doubt, the Client will not consider any staff turnover as the basis for any project delays.

(b) If the Client finds that any of the Personnel have (i) committed serious misconduct or has been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditure shall remain same as that of the personnel replaced. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the personnel replaced.

4.7 Obligations of the client

4.7.1 Assistance and Exemptions: Unless otherwise specified in the SC, the Client will use its reasonable efforts to ensure that the Government will provide the Consultants, and Personnel with work permits and such other documents as necessary to enable the Consultants, or its Personnel to perform the Services:

- a) assist for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all supporting papers for necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India;
- b) facilitate prompt clearance through customs of any property required for the Services;
- c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

4.7.2 Access to land: The Client warrants that the Consultants shall have access to all land in the Government's country in respect of which access is required for the performance of the Services.

4.8 Payments to the consultants

4.8.1 The Consultant shall be paid as per the attainment of deliverable as specified in the Section 2, Clause 3.0.

4.8.2 Currency: The price is payable in local currency i.e. Indian Rupees.

4.8.3 Payment for Additional Services: For the purpose of determining the remuneration due for additional services as may be agreed under relevant clauses for modification in this contract.

4.8.4 Price Revision: The Consultant will not be entitled for any price revision on account of any reason whatsoever.

4.9 Settlement of disputes/ Arbitration:

4.9.1 In event of any dispute or difference between the parties hereto, such disputes or differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then the unresolved dispute or difference shall be referred to arbitration of the sole arbitrator to be appointed by the Secretary, Ministry of Health on the recommendation of the Secretary, Department of Legal Affairs ("Law Secretary"), Government of India. The provisions of Arbitration and Conciliation Act, 1996 (No.26 of 1996) shall be applicable to the arbitration. The venue of such arbitration shall be at Delhi or any other place, as may be decided by the arbitrator. The language of arbitration proceedings shall be English. The arbitrator shall make a reasoned award (the "Award"), which shall be final and binding on the parties. The cost of the arbitration shall be shared

equally by the parties to the agreement. However, expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself.

- 4.9.2 Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

4.10 Responsibility for accuracy of project documents

4.10.1 General

4.10.1.1 The Consultant shall be responsible for accuracy of the Designs, drawings, estimate and all other details prepared by him as part of these services. He shall indemnify the client against any inaccuracy in the work, which might surface during implementation of the project. The Consultant will also be responsible for correcting, at his own cost and risk, the drawings including any re-survey/ investigations and correcting layout etc. if required during the execution of the Services.

4.10.1.2 The Consultant shall be fully responsible for the accuracy of plans and drawings. The Consultant shall indemnify the Client against any inaccuracy / deficiency in the designs and drawings noticed and the Client will bear no responsibility for the accuracy of the designs and drawings submitted by the Consultants.

4.11 Liquidated damages

If the selected Consultant fails to complete the Assignment, within the period specified under the contract, the consultant shall pay to the Client, fixed and agreed liquidated damages, and not as penalty, @ 1% of the contract fees for each week of delay or part thereof. The aggregate maximum of liquidated damages payable to the Client under this clause shall be subject to a maximum of 10% of the total contract fees.

4.12 Representation, warranties and disclaimer

4.12.1 The Consultant represents and warrants to the Client that:

- a) it is duly organized, validly existing and in good standing under the applicable laws of its Country;
- b) it has full power and Authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Contract;
- d) it has the financial standing and capacity to undertake the Project;
- e) this Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) it is subject to laws of India with respect to this Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

g) there are no actions, suits, proceedings, or investigations pending or, to the Consultant's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other Authority, the outcome of which may result in the breach of or constitute a default of the Consultant under this Contract or materially affect the discharge by the Consultant of its obligations under the Contract.

h) no representation or warranty by the Consultant contained herein or in any other document furnished by it to the Client contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

i) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Consultant, to any person by way of fees, commission or otherwise for securing the Contract or for influencing or attempting to influence any officer or employee of the Client in connection therewith.

4.13 Miscellaneous

4.13.1 Assignment and Charges

a) The Contract shall not be assigned by the Consultant save and except with prior consent in writing of the Client, which the Client will be entitled to decline without assigning any reason whatsoever.

b) The Client is entitled to assign any rights, interests and obligations under this Contract to third parties.

4.13.2 Indemnity: The Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys' fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client;(c) Any Services related to or rendered pursuant to the Contract (collectively "Indemnified matter"). As soon as reasonably practicable after the receipt by the Client of a notice of the commencement of any action by a third party, the Client will notify the Consultant of the commencement thereof; provided, however, that the omission so to notify shall not relieve the Consultant from any liability which it may have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and/or contribution asserted shall survive and until their final resolution thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.

4.13.3 Governing Law and Jurisdiction: The Contract shall be construed and interpreted in accordance with and governed by the Applicable Law of India and subject to relevant clauses hereof and the SC, the Courts at New Delhi, India shall have jurisdiction over all matters arising out of or relating to the Contract.

4.13.4 Waiver

4.13.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under the Contract:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under the Contract;
- b) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- c) shall not affect the validity or enforceability of the Contract in any manner.

4.13.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Contract or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance or any variation or the relinquishment of any such right hereunder.

4.13.5 Survival: Termination of the Contract (a) shall not relieve the Consultant or the Client of any obligations hereunder which expressly or by implication survive Termination hereof, and (b) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

4.13.6 Notices: Unless otherwise stated, notices to be given under the Contract including but not limited to a notice of waiver of any term, breach of any term of the Contract and termination of the Contract, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses specified in the SC. The notices shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

4.13.7 Severability: If for any reason whatever any provision of the Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under the Contract or otherwise.

4.13.8 No Partnership: Nothing contained in the Contract shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any Authority to bind the other in any manner whatsoever.

4.13.9 Language: All notices required to be given under the Contract and all communications, documentation and proceedings which are in any way relevant to the Contract shall be in the language specified the SC.

4.13.10 Exclusion of Implied Warranties etc.: The Contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in

the Contract.

4.13.11 Agreement to Override Other Agreements: The Contract supersedes all previous agreements or arrangements between the Parties, including any memorandum of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.

4.13.12 Counterparts: The Contract may be executed in two counterparts, each of which when executed and delivered shall constitute an original of the Contract

III. Special Conditions of Contract

The Special Conditions (SC) of contract contains number of amendments and supplements to clauses in the General Conditions of the Contract.

- 5.1 The contract price payable in Indian Rupees is _____ (inclusive of service tax)
- 5.2 The Member in-charge/Lead Member is [name of consultant].
- 5.3 The language is English.
- 5.4 The client address is [name, designation, telephone, facsimile, address].
- 5.5 The consultant address is [name, designation, telephone, facsimile, address].
- 5.6 The Authorized Representative for the client is [name, designation].
- 5.7 The Authorized Representative for the consultant is [name, designation].
- 5.8 For domestic consultants/personnel and foreign consultants/personnel who are permanent residents in India The Consultants and the personnel shall pay the taxes, duties, fees, levies/expenses and other impositions levied under the existing, amended or enacted laws during life of this contract and the Client will perform such duties in regard to the deduction of such tax as may be lawfully imposed. The Consultant will be paid by Authority the cost of Financial Proposal. All other applicable taxes, levies, duties, etc., if any, shall be borne by Consultant.
- 5.9 The date on which this Contract will come into effect is [date].
- 5.10 Limitation of the Consultants' Liability towards the Client
 - a) Except in case of negligence on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's or concerned state governments property, shall not be liable to the Client:
 - i) for any indirect or consequential loss or damage; and
 - b) This limitation of liability shall not reduce the Consultants' liability in any way whatsoever, for damage to any Third Party or Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services, including for the avoidance of doubt, any indemnity obligations of the Consultant under the provisions of Clause 4.13.2 of this Contract.
- 5.11 Risks and coverage
 - a) Third Party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Consultants or their Personnel for the period of consultancy.
 - b) Third Party liability insurance with a minimum coverage, for Rs.10, 00,000/- (Rupees Ten Lakhs only) for the period of consultancy.
 - c) Professional Liability Insurance: Consultants will maintain at its expense, Professional Liability Insurance including coverage for errors and omissions caused by Consultant's negligence, breach in the performance of its duties under this Contract from an Insurance Company permitted to offer such policies in India, for a period of five years beyond completion of Consultancy Services commencing from the Effective Date, (i) For an amount not exceeding

total payments for Professional Fees and Reimbursable Expenditures made or expected to be made to the Consultants hereunder or (ii) the proceeds, the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (i) or (ii) is higher with a minimum coverage of [insert amount and currency]. The indemnity limit in terms of

“Any One Accident” (AOA) and “Aggregate limit on the policy period” (AOP) should not be less than the amount stated in the contract.

d) Employer’s liability and workers’ compensation insurance shall be in respect of the Personnel of the Consultants in accordance with the relevant revisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and all insurances and policies should start from the date of commencement of services and remain effective as per relevant requirements of contract agreement.

e) Any other insurance that may be necessary to protect the Client its employees and its assets (against loss, damage or destruction, at replacement value) including rioting and all Force Majeure Events that are insurable.

5.12 Client will try to release the payment within 30days of receipt of the invoice and within 60days in the case of the final payment on attainment of the deliverable as listed in Section 2, Clause 3.0 of RFP.

5.13 Performance security

The Consultant shall prior to the Effective Date and as a condition precedent to its entitlement to payment under this Contract, provide to the Client a legal, valid and enforceable Performance Security in the form of an unconditional and irrevocable bank guarantee as security for the performance by the Consultant of its obligations under this Contract (At annexure-‘A’), in the form set out in this contract, in an amount equal 5 (five) percent of the total cost of Financial Proposal under this Assignment. Further, in the event the term of this Contract is extended, the Consultant shall at least fifteen (15) days prior to the commencement of every Subsequent Year or at least thirty (30) days prior to the date of expiry of the then existing bank guarantee, whichever is earlier, provide an unconditional and irrevocable bank guarantee as Performance Security for an amount equivalent to 5 (five) percent of the total cost of Financial Proposal under this Assignment.

The Performance Security shall be obtained from a scheduled commercial Indian bank, in compliance with Applicable Laws (including, in case the Consultant is a non-resident, in compliance with applicable foreign exchange laws and regulations).

The Performance Security shall be extended accordingly such that the Performance Security remains valid until the expiry of a period of 180 (One Hundred Eighty) Days from the date of submission of the last deliverable under this Contract. If the Client shall not have received an extended/ replacement Performance Security in accordance with this clause at least thirty (30) days prior to the date of expiry of the then existing Performance Security, the Client shall be entitled to draw the full amount of the bank guarantee then available for drawing and retain the same by way of security for the performance by the Consultant of its obligations under this Contract until such time as the Client shall receive such an extended/ replacement Performance Security whereupon, subject to the terms of this Contract, the Client will refund to the Consultant the full amount of the bank guarantee, unless the Client has drawn upon the Performance Security in accordance with the provisions of this Contract, in which case only the balance

amount remaining will be returned to the Consultant; provided that the Client will not be liable to pay any interest on such balance. The Client will return the bank guarantee provided as Performance Security to the issuer thereof for cancellation promptly upon receipt of any extension/ replacement thereof. Subject to satisfactory completion of all deliverables under this Contract, the Performance Security will, subject to any drawdowns by the Client in accordance with the provisions hereof, be released by the Client within a period of 180 (One Hundred Eighty) Days from the date of submission of the last deliverable under this Contract.

The Client shall have the right to claim under the Performance Security and appropriate the proceeds if any of the following occur:

- a) the Consultant becomes liable to pay liquidated damages;
- b) occurrence of any of the events listed in sub-clauses (a) through (f) of Clause 6.4.1 of the GCC;
- c) any material breach of the terms hereof; and/or
- d) without prejudice to paragraph above, the Consultant fails to extend the validity of the Performance Security or provide a replacement Performance Security in accordance with the provisions of this Contract.

5.14 Dispute settlement: If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of or relating to or under this Contract, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above- mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. at theseat of arbitration shall be New Delhi and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties.

Form of Bank Guarantee for Performance Security

(To be stamped in accordance with Stamp Act if any, of the country for issuing bank) Ref.: Bank Guarantee:

Date:

Dear Sir,

In consideration of NITI Aayog(hereinafter referred as the 'Client', which expression shall, unless repugnant to the context of meaning thereof include its successors, administrators and assigns) having awarded to M/s [name of consultant] a [type of company], established under laws of [country] and having its registered office at *address+ (hereinafter referred to as the 'Consultant' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and permitted assigns), an Assignment for preparation of *name of assignment+ Contract by issue of Client's Contract Letter of Award No. [reference] dated [date] and the same having been unequivocally accepted by the Consultant, resulting in a Contract valued at Rs. [amount in figures and words] for (Scope of Work)(hereinafter called the 'Contract') and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. [amount in figures and words] to the Client for performance of the said Agreement. We [Name of Bank] incorporated under [law and country] having its Head Office at [address](hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators executors and assigns) do hereby guarantee and undertake to pay the Client immediately on demand an or, all monies payable by the Consultant to the extent of Rs. [amount in figure and words] as aforesaid at any time up to [date] without any demur, reservation, contest, recourse or protest and/ or without any reference to the Consultant. Any such demand made by the Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable until the Client discharges this guarantee.

The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the Consultant nor shall the responsibility of the bank be affected by any variations in the terms and conditions of the contract or other documents. The Client shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Client and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Client and the Consultant any other course or remedy or security available to the client. The Bank shall not be relieved of its obligations under these presents by any exercise by the Client of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the client may have in relation to the

Consultant's liabilities.

This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Bank of all its obligations hereunder.

This Guarantee shall not be affected by any change in the constitution or winding up of the Consultant /the Bank or any absorption, merger or amalgamation of the Consultant /the bank with any other Person.

Notwithstanding anything contained herein above our liability under this guarantee is limited to Rs. [amount in figure and words] and it shall remain in force up to and including [date] and shall extend from time to time for such period(s) (not exceeding one year), as may be desired by M/s [name of consultant] on whose behalf this guarantee has been given. Date this [date in words] day [month] of

*year in 'yyyy' format+ at *place+.

WITNESS

1. [signature, name and address]

2. [signature, name and address]

[Official Address]

Designation

[With Bank Stamp]

Attorney as Per Power of Attorney No.

Dated

Strike out, whichever is not applicable.

The date will be fixed as indicated in S.C.C.

The stamp papers of appropriate value shall be purchased in the name of bank which issues the 'Bank Guarantee'. The bank guarantee shall be issued either by a bank (Nationalized/Scheduled) located in India or a foreign bank through a correspondent bank (scheduled) located in India or directly by a foreign bank which has been determined in advance to be acceptable to the Client.
