

Ref No. INV/IND/IIG/RFE-18-19-01

Date: October 24, 2018

Addendum

With reference to the tender notice no. INV/IND/IIG/RFE-18-19-01 dated 11/10/2018 for “Empanelment of Service Provider for Vetting Projects on India Investment Grid (IIG)”, this is to inform the following additions in the RFE Section, to be read in addition to the original section:

Section 11 – Technical Bid – Standard Forms

Form Tech 1A: Cover Letter

[Location, Date]

To

Invest India,

1st Floor, Vigyan Bhawan Annexe,

Maulana Azad Road,

New Delhi-110001

Dear Sir,

We, the undersigned, offer to provide the complete solutions for Empanelment of a Service Provider for vetting projects on Investment Grid, in accordance with your Request for Empanelment dated [Insert Date]. We are hereby submitting our proposal, which includes this Technical Bid, and the Commercial Bid as indicated in Section 10 sealed under a separate envelope.

We undertake the total responsibility for performance of the contract, if awarded to us. We hereby declare that all the information and statements made in this proposal are true and accept that any misrepresentation contained in it may lead to our disqualification.

We understand that **Invest India** is not bound to accept any proposal it receives.

Yours faithfully,

*Authorized Signatory [*In full and Designation*]:

Name and Title of Signatory:

Name of Bidder:

Address:

* NB: Authorization in form of power of Attorney is required on a non-judicial Stamp Paper.

Section 11 – Technical Bid – Standard Forms

Form Tech 1B: Authority Letter

To,
Invest India,
1st Floor,
Vigyan Bhawan Annexe,
Maulana Azad Road, New Delhi-110001

<Bidder's Name> _____, <Designation> _____ is hereby authorized to sign relevant documents on behalf of the Service Provider in dealing with proposal of reference <Reference No. & Date> _____. He is also authorized to attend meetings and submit technical & financial information as may be required by you in the course of processing above said proposal.

Thanking you,

Authorized Signatory.

<Service Provider Name>

Seal

Section 11 – Technical Bid – Standard Forms

Form Tech 2: Bidder's Organization and Experience

(A) - Bidder's Organization

Provide here a brief description of the background and organization of your Service Provider/entity and each associate for this assignment. The brief description should include ownership details, date and place of incorporation/ registration of the Service Provider, objectives of the Service Provider etc.

<i>Years</i>	<i>FY 2016</i>	<i>FY 2017</i>	<i>FY 2018</i>
<i>Turnover (INR)</i>			

Attach Incorporation/ Registration Certificate, Audited Account Sheets/ P&L Sheets.

(B) – Bidder's Experience

Using the format below, provide information on each assignment/job for which your Service Provider, had legally contracted either individually as a corporate entity or as one of the major partners within an association, for carrying out assignment/job similar to the ones requested under this assignment/job (exact assignment / job details may be submitted).

Service Provider's name: <hr/>		Country:	
Assignment Name:			
Location within Country:		Key professional staff Provided by Your Firm / entity(profiles):	
Name of Client:		No. of Staff:	
Address:		No. of Staff-Months; duration of assignment:	
Start Date (Month/Year):	Completion Date (Month/Year):		Approx. Value of Services (in INR):
Name of Associated Consultants, if any:		No. of Months of Key professional staff, provided by Associated Consultants:	
Name of Senior Staff (Project Director/Coordinator, Team Leader) involved and functions performed:			

Narrative Description of Project:
Description of Actual Services Provided by Your Staff:

Note: Please provide documentary evidence i.e. copy of work order, Contract for each of above mentioned assignment. The experience shall not be considered for evaluation, if such requisite support documents are not provided with the Proposal

Section 11 – Technical Bid – Standard Forms

Form Tech 3: Format of Curriculum Vitae (CV) For Proposed Key professional staff

1. **Proposed Position** [i.e., team leader, team members, etc.]: _____

2. **Name of Firm** [*Insert name of firm proposing the staff*]: _____

3. **Name of Staff** [*Insert full name*]: _____

4. **Date of Birth:** _____ **Nationality:** _____

5. **Education** [*Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment*]: _____

6. **Membership of Professional Associations:** _____

7. **Other Training** [*Indicate significant training since degrees under 5 - Education were obtained*]: _____

8. **Employment Record** [*Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

From [Year]: _____ To [Year]: _____

Employer: _____

Positions held: _____

<p>9. Detailed Tasks Assigned</p> <p><i>[List all tasks to be performed under this assignment]</i></p>	<p>11. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned</p> <p><i>[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 listed under point 11.]</i></p> <p>Name of assignment or project: _____</p> <p>Year: _____</p> <p>Location: _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed: _____</p>
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12. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, 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 or authorized representative of the staff]

Day/Month/Year

Full name of staff member: _____

Full name of authorized representative: _____

Section 10 – Bidding Process – Standard Forms

Form Fin 1: Bank Guarantee Format

MODEL BANK GUARANTEE FORMAT FOR PERFORMANCE SECURITY

To
The President of India

WHEREAS
(name and address of the supplier) (hereinafter called “the supplier”) has undertaken, in pursuance of contract no..... dated to supply (description of goods and services) (herein after called “the contract”).

AND WHEREAS it has been stipulated by you in the said contract that the supplier shall furnish you with a bank guarantee by a scheduled commercial recognized by you for the sum specified therein as security for compliance with its obligations in accordance with the contract;

AND WHEREAS we have agreed to give the supplier such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of (amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

We further agree that no change or addition to or other modification of the terms of the contract to be performed thereunder or of any of the contract documents which may be made between you and the supplier shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the day of, 20.....

.....
(Signature of the authorized officer of the Bank)

.....
Name and designation of the officer

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

Standard Form of Contract

Draft

CONTRACT FOR SERVICES

Between

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And

[Name of the Service Provider]

Dated: _____

For

Selection of Service Provider for Vetting Projects on India Investment Grid

(On Non-judicial Stamp Paper)

1.1 Form of Contract

This Contract is made at _____ (place) on the _____ day of the month and year) between **Invest India**, New Delhi - (hereinafter called **Invest India** of the First Party AND _____, having its office _____ (hereinafter called "Service Provider") of the Second Party

WHEREAS

(a) The Service Provider, having represented to **Invest India** that it has the required professional skills, personnel and technical resources, has offered to carry out the services in response to the Tender Notice called 'Request for Empanelment' dated _____ issued by **Invest India**;

(b) **Invest India** has accepted the Proposal dated _____ submitted by the Service Provider to provide the services on the terms and conditions set forth in this Contract.

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL CONVENANTS HEREIN CONTAINED, IT IS HEREBY AGREED between the Parties as follows:

1. The following Contract documents shall be deemed to form an integral part of this Contract:
 - a. **Invest India** General Conditions of Contract;
 - b. The Special Conditions of Contract;
 - c. The following Appendices:
 - i. Description of Services/ Scope of Work
 - ii. Reporting Requirements
 - iii. Total cost of Services
 - iv. Duties of **Invest India**
 - v. Format for Performance Bank Guarantee
 - d. Service Provider Proposal dated _____ read with agreed Minutes dated _____
 - e. Letter of Award dated _____ issued by **Invest India**
2. The mutual rights and obligations of **Invest India** and the Service Provider shall be as set forth in the Contract, in particular:
 - a. The SCOPE OF WORK will be as per Section 5 of the RFE document.
 - b. The activities and the deliverables against each activity would be as per Section 5 of the RFE document
 - c. The Service Provider shall carry out and complete the Services within the time frame indicated in RFE in accordance with the provisions of the Contract;
 - d. The consideration or Contract Price shall be INR _____ inclusive of all taxes.
 - e. **Invest India** shall make payments to the Service Provider in accordance with the provisions of the Contract.
 - f. Detailed terms and conditions of the Contract are contained in the Contract Documents mentioned in Para 1 above. The same are to be read harmoniously

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.

Signed by _____

In presence of

1. For and on behalf of [**Invest India**]

(i)

[Authorized Representative]

(ii)

2. for and on behalf of [name of Service
Provider]

In presence of (Witnesses)

(i)

(ii)

[Authorized Representative]

1.2 General Conditions of Contract

1.2.1 General Provisions

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

- i. **Error! Reference source not found.** is **Error! Reference source not found.**, New Delhi
- ii. “Applicable Law” means the laws and any other instruments having the force of law in India.
- iii. “Client” means **Invest India** with which the selected Service Provider signs the contract for the services.
- iv. “Monitoring Committee” (MC) means a Committee constituted to monitor the progress of the assignment which may make judgment giving reasons thereafter as to which shall be recorded in writing.
- v. “Service Provider” means any entity that may provide or provides the Services to **Invest India** under the Contract.
- vi. “Contract” means the Contract signed by the Parties and all the Contract documents listed in its Clause 1 of the Contract.
- vii. “Data Sheet” means such part of the Instructions to bidders used to reflect assignment conditions.
- viii. “Day” means calendar day.
- ix. “Effective Date” means the date on which this Contract comes into force.
- x. “GCC” means these General Conditions of Contract.
- xi. “Government” means the Government of India
- xii. “Indian Currency” means Indian Rupees (INR).
- xiii. “Instructions to Companies” (Section 10, 11 and 12 of the RFE) means the document which provides Companies with all information needed to prepare their Proposals.
- xiv. “In writing” means communicated in written form with proof of receipt.
- xv. “Liquidated Damages” herein- may be specified as “LD”.
- xvi. “Local Currency” means Indian Rupees (INR).
- xvii. “LOA” means the Letter of Award issued by **Invest India** conveying its acceptance of the proposal of the successful Service Provider.
- xviii. “Party” means **Invest India** or the Service Provider, as the case may be, and “Parties” means both of them.
- xix. “Personnel” means professionals and support staff provided by the Companies and assigned to perform the services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the country; “Local Personnel” means such professionals and support staff who at the time of being so provided have their domicile inside the country;

- xx. "Proposal" includes both the Technical Bid and the Commercial Bid.
- xxi. "RFE" means the Request for Empanelment prepared by **Invest India** for the selection of Companies.
- xxii. "Services" means the work to be performed by the Service Provider pursuant to the Contract.
- xxiii. "Third Party" means any person or entity other than **Invest India**, or the Service Provider.

1.2.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Contract:

- i. Contract;
- ii. RFE and Letter of Award
- iii. Project Plan (including Standard Operating Procedures)

1.2.1.3 Relationship between the Parties: Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between **Invest India** and the Service Provider. The Service Provider, subject to this Contract, has complete charge of Personnel, performing the Services and shall be fully responsible for the Services performed by them on his behalf including salary to its employees.

1.2.1.4 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the applicable laws of India.

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

1.2.1.6 Notices:

1.2.1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered against acknowledgement to an authorized representative of the Party to whom the communication is addressed, or when sent by registered post/courier to the addresses specified below.

Service Provider:

Attention: _____

Address with Communication details: _____

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

Service Provider:

Attention: _____

Address with Communication details: _____

1.2.1.7 Location: The Services shall be performed at such locations as indicated in the TOR/LOA and, where the location of a particular task is not so specified, at such locations, as **Invest India** may notify in writing.

1.2.1.8 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract or any amendment thereof by **Invest India** or the Service Provider may be taken or executed by the officials specified below.

Service Provider: _____

Attention: _____

Address with Communication details: _____

The Service Provider shall issue Power of Attorney in favour of its Authorized Representative.

1.2.1.9 Taxes and Duties: The Service Provider shall be liable to pay all direct and indirect taxes, duties, fees and other impositions levied under the laws of India, applicable at the time of submission of the Proposal.

1.2.1.10 Fraud and Corruption

1.2.1.10.1 Definitions: It is **Invest India**'s policy to require that **Invest India** as well as Companies observe the highest standard of ethics during the execution of the Contract. In pursuance of this policy, **Invest India** defines, for the purpose of this provision, the terms set forth as follows:

- i. "corrupt practice" means the offering, receiving, or soliciting, directly or indirectly, of anything of value (whether in cash or kind) to influence the action of a public official in the selection process or in Contract execution;
- ii. "fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a Contract;
- iii. "collusive practices" means a scheme or arrangement between two or more Companies, with or without the knowledge of **Invest India**, designed to establish prices at artificial, noncompetitive levels;
- iv. "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a Contract.

1.2.1.10.2 Measures to be taken by Invest India

- i. **Invest India** may terminate the Contract if it comes to know at any point of time that representatives of the Service Provider were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of the Contract, without the Service Provider having taken timely and appropriate action satisfactory to **Invest India** to remedy the situation after receipt of Notice.
- ii. **Invest India** after issue of Show Cause Notice to Service Provider may also sanction against the Service Provider, declaring the Service Provider ineligible, either indefinitely or for a stipulated period of time, to be awarded a Contract, if it at any point of time comes to know that the Service Provider has, directly or through an agent, engaged in corrupt, fraudulent,

collusive or coercive practices in competing for, or in executing, any **Invest India** -financed Contract.

1.2.2 Commencement, Completion, Modification and Termination of Contract

1.2.2.1 Effectiveness of Contract: This Contract shall come into force and effect on the date of acceptance of LOA or signing of the Contract or any future date as specifically stated in the Contract.

1.2.2.2 Unless otherwise terminated under the provisions of any other relevant clauses, this contract shall be deemed to have been completed on completion of the scope of work, deliverables and submission of all the reports and release of final payments.

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

1.2.2.4 Modifications or Variations:

(a) Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party and cost implication thereof.

(b) In cases of substantial modifications or variations, a supplementary Agreement between **Invest India** and Service Provider is required.

1.2.2.5 Force Majeure

1.2.2.5.1 Definition:

(a) For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable and not brought about by or at the instance of the Party claiming to be affected by such events and which has caused the non-performance or delay in performance, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other extreme adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government Companies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or by or of such Party’s agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the signing of the Contract, and avoid or overcome with utmost persistent effort in the carrying out of its obligations hereunder.

(c) Force Majeure shall not include insufficiency of funds or manpower or inability to make any payment required for execution of services under this Contract.

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

1.2.2.5.3 Measures to be taken:

(a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

(b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing sufficient and satisfactory evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

(c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

(d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider, upon instructions by **Invest India**, shall either: (i) Demobilize or (ii) continue with the Services to the extent possible, in which case **Invest India** on being satisfied shall continue to pay proportionately to the Service Provider and on pro-rata basis, under the terms of this Contract.

(e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 1.2.9 hereunder.

1.2.2.6 Suspension: **Invest India** may, by written notice of suspension to the Service Provider, suspend all payments to the Service Provider hereunder if the Service Provider fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall allow the Service Provider to remedy such failure, if capable of being remedied, within a period not exceeding thirty (30) days after receipt by the Service Provider of such notice of suspension.

1.2.2.7 Termination:

1.2.2.7.1 By Invest India: **Invest India** may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause.

(a) If the Service Provider fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of issued by **Invest India**, within thirty (30) days of receipt of such notice or within such further period as **Invest India** may have subsequently approved in writing.

(b) If the Service Provider becomes insolvent or goes into compulsory liquidation.

(c) If the Service Provider, in the judgment of **Invest India**, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

(d) If the Service Provider submits to **Invest India** a false statement which has a material effect on the rights, obligations or interests of **Invest India**.

(e) If the Service Provider places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to **Invest India**.

(f) If the Service Provider fails to provide the quality services as envisaged under this Contract. The Monitoring Committee (MC) formulated to monitor the progress of the assignment may make judgment regarding the poor quality of services, the reasons for which shall be recorded in writing. The CMC may decide to give one chance to the Service Provider to improve the quality of the services.

(g) If, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(h) If **Invest India**, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

In such an occurrence **Invest India** shall give not less than thirty (30) days' written advance notice before terminating the Contract of Companies, and sixty (60) days' in case of the event referred to in (h) and 100 (hundred) days in case it does not pay the Award amount as per Award against it passed by arbitration.

1.2.2.7.2 By the Service Provider: The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to **Invest India**, in case of the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause 1.2.2.7.2.

(a) If **Invest India** fails to pay any money due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 1.2.9 hereof within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue.

(b) If, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(c) If **Invest India** fails to comply with any final decision reached as a result of Arbitration pursuant to Clause 8 hereof.

(d) If **Invest India** is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Service Provider may have subsequently approved in writing) following the receipt by **Invest India** of the Service Provider's notice specifying such breach.

1.2.2.7.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to Clauses 1.2.2.7 hereof, or upon expiration of this Contract, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 1.2.3.3 hereof, (iii) the Service Provider's obligation to pay Damages or Liquidated Damages permit inspection, copying and auditing of their accounts and records as set forth in Clause 1.2.3.5 hereof, and (iv) any right which a Party may have under the Law.

1.2.2.7.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 1.2.2.7.1 or 1.2.2.7.2 hereof, the Service Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close and vacate the premises of **Invest India** in a prompt and orderly manner. With respect to documents prepared

by the Service Provider and equipment and materials furnished by **Invest India**, the Service Provider shall proceed as provided, respectively.

1.2.2.7.5 Payment upon Termination: Upon termination of this Contract pursuant to Clauses 1.2.2.7.1 or 1.2.2.7.2 hereof, **Invest India** shall make the following payments to the Service Provider:

(a) If the agreement is terminated pursuant of Clause 1.2.2.7.1 (a) to (f), the Service Provider shall not be entitled to receive any agreed payments upon termination of the Contract. However, **Invest India** may consider making payment for the part satisfactorily performed on the basis of Quantum Merit as assessed by it, if such part is of economic utility to **Invest India**. Under such circumstances, upon termination, **Invest India** may also impose liquidated damages as per the provisions of Clause 9 hereof. The Service Provider will be required to pay any such liquidated damages and compensation as permissible under Contract Act to **Invest India** within Thirty (30) days of termination date.

(b) In the event of termination under 1.2.2.7.1 (g & h), the payment schedule as specified in this contract shall not apply and the costs of work delivered by Service Provider and the cost of demobilization of Service Provider teams will be mutually decided and paid by **Invest India** to Service Provider.

1.2.2.7.6 Disputes about Events of Termination: If either Party disputes whether an event specified in paragraphs (a) through (h) of Clause 1.2.2.7.1 or in Clause 1.2.2.7.2 hereof has occurred, such Party may, if it chosen within forty-five (45) days after receipt of notice of termination from the other Party, may seek settlement under Clause 1.2.9 hereof.

1.2.3 Obligations of the Service Provider

1.2.3.1 Standard of Performance: The Service Provider shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to **Invest India**, and shall at all times support and safeguard **Invest India's** legitimate interests in its dealings.

1.2.3.2 Conflict of Interests: The Service Provider shall hold **Invest India's** interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. If during the period of this Contract, a conflict of interest arises for any reasons, the Service Provider shall promptly disclose the same to **Invest India** and seek its instructions for compliance.

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

1.2.3.3 Confidentiality: Except with the prior written consent of **Invest India**, the Service Provider and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Service Provider and its Personnel make public the recommendations formulated in the course of, award of Contract and its execution.

1.2.3.4 Statutory requirements by the Service Provider: The Service Provider is liable to extend the benefits as provided under the various statutory and labour laws and other relevant applicable laws.

1.2.3.5 Service Provider's actions requiring Invest India's prior approval: The Service Provider shall obtain **Invest India's** prior approval in writing before making any change or addition to the Personnel.

1.2.3.6 Reporting Obligations: The Service Provider shall submit to **Invest India** the reports and documents (agreed to be submitted between **Invest India** and Service Provider) hereto, in the form, in the numbers and within the time periods mutually agreed.

1.2.3.7 Publications, Reports and Documents Prepared by the Service Provider to be the Property of Invest India: All publications and reports, database and other documents prepared by the Service Provider for **Invest India** under this Contract shall become and remain the property of **Invest India**, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such reports and documents to **Invest India**, together with a detailed inventory thereof. The Service Provider may retain a copy of such reports and documents, but shall not use anywhere, without taking permission, in writing, from **Invest India** and **Invest India** reserves right to grant or deny any such request. If license agreements are necessary or appropriate between the Service Provider and third Parties for purposes of development of any such reports, the Service Provider shall obtain **Invest India's** prior written approval to such agreements, and **Invest India** shall be entitled at its discretion to require recovering the expenses related to the development of the report(s) concerned.

1.2.4 Companies' Personnel

The Service Provider shall employ and provide at its own cost such qualified and experienced Personnel as are required to carry out the Services. Their salaries, claims, insurance, damages, compensation, travel etc. will be the liability of the Service Provider and **Invest India** will in no way be responsible for any such claims/ damages.

1.2.5 Obligations of Invest India

1.2.5.1 Assistance and Exemptions: Unless otherwise specified, **Invest India** shall use its best efforts to ensure that it shall:

(a) Provide to the Service Provider and Personnel any such other assistance to facilitate performance of the Contract.

1.2.5.2 Change in the Applicable Law Related to Taxes and Duties: If, after the date of this Contract, there is any change of rate of levy under the existing applicable Laws of India with respect to taxes and duties, which are directly payable by the Service Provider for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Service Provider in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause 1.2.6.1. However, in case of any new or fresh tax or levy imposed after submission of the Proposal the

Service Provider shall be entitled to reimbursement on submission of proof of payment of such Tax or Levy.

1.2.5.3 Payment: In consideration of the Services performed by the Service Provider under this Contract, **Invest India** shall make to the Service Provider such payments and in such manner as is provided by Clause 6 of this Contract.

1.2.5.4 The other duties of **Invest India**, if any, shall be as mutually agreed between **Invest India** and the Service Provider

1.2.6 Payments to the Service Provider

1.2.6.1 Total Cost of the Services:

(a) The total cost of the Services payable as per the Service Provider's proposal to **Invest India** shall be (INR) _____.

(b) The prices stated in the Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights.

(c) Except as may be otherwise agreed under Clause 1.2.2.4 and subject to Clause 1.2.6.1(c), payments under this Contract shall not exceed the amount specified in the contract.

(d) Notwithstanding Clause 1.2.6.1(b) hereof, if pursuant to Clause 1.2.5.2 hereof, the Parties shall agree that additional payments shall be made to the Service Provider in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause 1.2.6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause 1.2.6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

1.2.6.2 Currency of Payment: All payments shall be made in Indian Rupees.

1.2.6.3 Terms of Payment: The payments in respect of the Services shall be made as follows (Please refer to the detailed Terms of Payment at the end of this Section):

(a) The Service Provider shall submit the invoice for payment when the payment is due as per the agreed terms. The payment shall be released as per the work related milestones achieved.

(b) Once a milestone is completed, the Service Provider shall submit the requisite deliverables as specified in this Contract and such invoice (in triplicate) which falls due as per schedule of payment. **Invest India** shall release the requisite payment upon acceptance of the deliverables. However, if **Invest India** fails to intimate acceptance of the deliverables or its objections thereto, within Thirty (30) days of receipt of it, **Invest India** shall release the payment to the Service Provider without further delay.

(c) **Final Payment:** The final payment shall be made only after the final deliverable and a final statement, identified as deliverable, shall have been submitted by the Service Provider and approved as satisfactory by **Invest India**. The Services shall be deemed completed and finally accepted by **Invest India** and the final deliverable and final statement shall be deemed approved by **Invest India** as satisfactory after ninety (90) calendar days after receipt of the final deliverable and final statement by **Invest India**, if within such ninety (90) day period, **Invest India** does not give written notice to the Service Provider specifying in detail deficiencies in the Services specified, the

final deliverable or final statement. The Service Provider shall thereupon promptly make all necessary corrections, and thereafter the foregoing process shall be repeated. Any extra amount, which **Invest India** has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the Service Provider to **Invest India** within thirty (30) days after receipt by the Service Provider of notice thereof. Any such claim by **Invest India** for reimbursement must be made within two (2) calendar months after receipt by Service Provider of a final deliverable and a final statement approved by **Invest India** in accordance with the above.

(d) For the purpose of payment under Clause 1.2.6.3 (b) above, acceptance means; acceptance of the deliverables by **Invest India** after submission by the Service Provider and the Service Provider has made presentation to **Invest India** (Mention this if presentation is required) with / without modifications to be communicated in writing by **Invest India** to the Service Provider.

(e) If the deliverables submitted by the Service Provider are not acceptable to **Invest India**, reasons for such non-acceptance should be recorded in writing; **Invest India** shall not release the payment due to the Service Provider. This is without prejudice **Invest India's** right to levy any liquidated damages under clause 1.2.10. In such case, the payment will be released to the Service Provider only after it re-submits the deliverable and which is accepted by **Invest India**.

(f) All payments under this Contract shall be made to the bank account of the Service Provider. Payment may be made using RTGS/ECS. Hence, Service Provider should provide all details in this regard.

(g) With the exception of the final payment under (c) above, payments made to Service Provider do not constitute acceptance of the Services nor relieve the Service Provider of any obligations hereunder, unless the acceptance has been communicated by **Invest India** to the Service Provider in writing and the Service Provider has made necessary changes as per the comments / suggestions of **Invest India** communicated to the Service Provider.

(h) In case of earlier termination of the Contract, the payment shall be made to the Service Provider as mentioned here with: (i) Assessment should be made about work done from the previous milestone, for which the payment is made or to be made till the date of the termination. The Service Provider shall provide the details of persons reasonably worked during this period with supporting documents. **Invest India** shall be entitled to adjust/ recover Damages/ Compensation and Liquidated Damages due under the Contract.

1.2.7 Deductions

All payments to the Service Provider shall be subject to the deductions of tax at source under the relevant provisions of the Income Tax Act, and other taxes and deductions as provided for under any law, rule or regulation. All costs, damages or expenses which **Invest India** may have paid or incurred, for which under the provisions of the Contract, the bidder is liable, the same shall be deducted by **Invest India** from any dues to the Service Provider.

1.2.8 Fairness and Good Faith

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

1.2.8.2 Operation of the Contract: The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will make their best efforts to agree on such action as may be necessary to remove the cause or causes of such non-fairness, but no failure to agree on any action pursuant to this Clause may give rise to a dispute subject to Arbitration in accordance with Clause 1.2.9 hereof.

1.2.9 Settlement of Disputes

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

1.2.9.2 Arbitration: In the case of dispute arising upon or in relation to or in connection with the Contract between Invest India and the Service Provider, which has not been settled amicably under the provisions of the above clause 1.2.9.1, any Party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by Invest India and the Service Provider (Nominee Arbitrator), the third arbitrator shall be chosen by the two arbitrators so appointed by the Parties which shall act as the Presiding Arbitrator. In case of failure of any Party(s) in appointing Nominee Arbitrator within a period of Thirty (30) days from receipt of notice of invocation of arbitration/receipt of request of nomination of arbitration, the said appointment shall be made by either Department of Industrial Policy and Promotion, Ministry of Commerce and Industries, Government of India or Federation of Indian Chamber of Commerce and Industry (FICCI) or Indian Council of Arbitration (ICA). The third arbitrator shall be appointed by the two arbitrators so appointed by the Parties which shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the Parties to reach a consensus regarding the appointment of the third arbitrator within a period of Thirty (30) days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by either Department of Industrial Policy and Promotion, Ministry of Commerce and Industries, Government of India or Federation of Indian Chamber of Commerce and Industry (FICCI) or Indian Council of Arbitration (ICA). The Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these Arbitration proceedings.

1.2.9.3 Arbitration proceedings shall be held in India at New Delhi and the language of the Arbitration proceedings and that of all documents and communications between the Parties shall be English.

1.2.9.4 The decision of the majority of arbitrators shall be final and binding upon both Parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by **Invest India** and the Service Provider. However, the expenses incurred by each Party in connection with the preparation, presentation shall be borne by the Party itself. All Arbitration awards shall be in writing and shall state the reasons for the award.

1.2.9.5 Notwithstanding any references to arbitration, the parties shall continue to perform their respective work/ obligation under the Contract.

1.2.10 Liquidated Damages

1.2.10.1 The Parties hereby agree that due to negligence of act of any Party, if the other Party suffers losses, damages the quantification of which may be difficult, and hence the amount specified hereunder shall be construed as reasonable estimate of the damages and the Parties agree to pay such liquidated damages, as defined hereunder as per the provisions of this Contract.

1.2.10.2 The amount of liquidated damages for delay by Service Provider under this Contract shall not exceed 10 % (Ten Percent) of the total value of the Contract.

1.2.10.3 The liquidated damages for delay by Service Provider shall be applicable under following circumstances:

(a). If the deliverables are not submitted as per schedule, the Service Provider shall be liable to pay 1% (One Percent) of the proportional cost of the services related to that deliverable for delay of each week or part thereof.

(b). If the deliverables are not acceptable to **Invest India** as mentioned in Clause 1.2.6.3 (e), and defects are not rectified to the satisfaction of **Invest India** within 30 (Thirty) days of the receipt of the notice, the Service Provider shall be liable for Liquidated Damages for an amount equal to 1% (One Percent) of proportional cost of the services related to that deliverable for every week or part thereof for the delay.

(c). Notwithstanding anything mentioned above, the Service Provider shall not be made liable for any delay due to non-availability of timely approval, timely review and timely escalation by **Invest India** or its state level counterparts or any stake holders not directly attributable to the Service Provider.

1.2.10.4 Notwithstanding anything to the contrary contained in this agreement but subject to the indemnifications specifically agreed to by the Service Provider herein, in no event shall the aggregate liability of the Service Provider under this agreement exceed the total cost of services paid to the Service Provider.

1.2.11 Performance security

1.2.11.1 For the due performance of the program/ project in accordance with the terms and conditions specified in the Letter of Award (LOA) the Service Provider shall on the day or before signing the Contract which shall not be later than 30 (thirty) days of the issue of the Letter of Award,

furnish to **Invest India** a performance security in the form of an irrevocable and unconditional Bank Guarantee for an amount equal to 10% (Ten Percent) of cost for application design, development and implementation of the project which (Part A of the financial bid). This performance guarantee will be released upon fulfillment of all responsibilities for completion of application design, development and implementation and on submission of a fresh bank guarantee for an amount equal to 10% (Ten Percent) of the cost of Maintenance of the system (Part B of the financial bid). This fresh bank guarantee may be discharged after successful completion of the whole Project.

1.2.11.2 The Bank Guarantee shall be in favour of **Invest India**, issued by the State Bank of India or any Nationalized or scheduled Indian Bank, approved by the Reserve Bank of India and acceptable to **Invest India**. The Bank Guarantee shall be in the Proforma acceptable to **Invest India**.

1.2.11.3 It is expressly understood and agreed that the performance security is intended to secure the performance of entire Contract. It is also expressly understood and agreed that the performance security is not to be construed to cover all the damages detailed / stipulated in various clauses in the Contract document.

1.2.11.4 The performance Bank Guarantee shall be initially valid for six months after the scheduled completion date. It will be discharged by **Invest India** and returned to the Companies not later than 3 (three) months following the date of completion of the Service Provider's obligations, under the Contract.

1.2.11.5 Should the program/ project period, for whatever reason be extended, the Service Provider, shall at his own cost, get the validity period of Bank Guarantee in respect of performance security furnished by him extended and shall furnish the extended / revised Bank Guarantee to **Invest India** before the expiry date of the Bank Guarantee originally furnished.

1.2.12 Confidentiality

1.2.12.1 Both Parties shall not, either during the term or after the expiration or termination of this Contract, disclose any proprietary information, including information relating to reports, data, investor contact details, investor leads, whether written or oral (which is confirmed in writing within fifteen days of such oral disclosure) , in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the receiving Party to the disclosing Party, and the Personnel's; any information provided by or relating to the receiving Party, its technology, technical processes, business affairs or finances or any information relating to its employees, officers or other professionals, investors, or clients of the receiving Party; and any other information which the disclosing Party is under an obligation to keep confidential in relation to the Project, the Services or this Contract ("Confidential Information"), without the prior written consent of the other.

1.2.12.2. Information relating to evaluation process of Proposals and recommendations concerning awards shall not be disclosed to the Companies who submitted the Proposals or to other persons not officially concerned with the process. The undue use by any Service Provider of confidential information related to the process may result in the rejection of its Proposal and may be subject to the provisions of the **Invest India's** antifraud and corruption policy.

1.2.12.3. This confidentiality restrictions shall be for the term of the contract and for a period of two years thereafter. This restriction does not limit the right to use information contained in the data if it:

- a. Is obtained from another source without restriction.
- b. Is in the possession of, or was known to, the receiving party prior to its receipt, without an obligation to maintain confidentiality;
- c. becomes generally known to the public without violation of this Proposal;
- d. is independently developed by the receiving party without the use of confidential Information and without the participation of individuals who have had access to confidential information;
- e. is required to be provided under any law, or process of law duly executed.

1.2.13 Taxes

1.2.13.1 The Service Provider shall include all local taxes and duties on amounts payable by the Service Provider under the Contract. All taxes including Service Tax, duties and other impositions as applicable in India shall be included in the Financial Proposals.

1.2.13.2 The Financial Proposal should include all commercial prices inclusive of all the taxes, duties and levies, etc. applicable at the time of submission of Proposals.

1.2.14 Contract Price

1.2.14.1 The Contract Price is the total commercial bid value.

1.2.14.2 Contract price shall remain fixed for the entire Contract period, except changes in the Tax Law, as covered by Clause 1.2.5.2 above

1.2.15 Extension of the Contract:

The contract duration **might be extended by Invest India to avail the services of Service Provider for continuation of services without the need to go for separate RFE process.** The duration of extension will be decided by Invest India and will be up to a **maximum of one year at a time.** The decision will be taken keeping in consideration

- a) Satisfactory performance of the Service Provider
- b) Time constraints or other serious impediments in initiation / completion of full-fledged empanelment process
- c) Technological reasons
- d) Where circumstances inescapably require taking recourse to this option.

1.2.16 Transfer of Contract

1.2.16.1 Service Provider shall not assign or transfer the contract or any part thereof without prior written consent of **Invest India.**

1.2.16.2 Service Provider shall act as an independent entity fully performing responsible for all services under the contract. It shall maintain complete control over its employees, who shall in no case, represent **Invest India** or act in its name, without its prior written approval.

1.2.17 Miscellaneous provisions

- i. “Nothing contained in this Contract shall be construed as establishing or creating between the Parties, a relationship of master and servant or principal and agent.
- ii. Any failure or delay on the part of any Party to exercise right or power under this Contract shall not operate as waiver thereof.
- iii. The Service Provider shall notify **Invest India** of any material change in its status as legal entity, in particular, where such change or winding up proceeding which would impact on performance of obligations under this Contract.
- iv. The Service Provider shall at all times indemnify and keep indemnified **Invest India** against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under the Contract.
- v. The Service Provider shall at all times indemnify and keep indemnified **Invest India** against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Service Provider’s) employees or agents or caused by any action, omission or operation conducted by or on behalf of the Service Provider.
- vi. The Service Provider shall at all times indemnify and keep indemnified **Invest India** against any and all claims by Employees, Workman, Companies, suppliers, agent(s), employed engaged or otherwise working for the Service Provider, in respect of their wages, salaries, remuneration, compensation or the like.
- vii. All claims regarding indemnity shall survive the termination or expiry of the Contract.
- viii. It is acknowledged and agreed by all Parties that there is no representation of any type, implied or otherwise, of any absorption, regularization, continued engagement or concession or preference for employment of persons engaged by the Service Provider for any subsequent engagement, service or employment in any capacity in any office or establishment of the Government of India or **Invest India**.

1.2.18 Payment Terms

The terms of payments are as below:

- a) Signing of Contract: 10% on signing of contract against Bank Guarantee for an amount equal to 10% of Commercial Bid amount.
- b) Equal Monthly Installments for the remaining period of validity of contract

Note: The Monitoring Committee will conduct a monthly review of the project activities and deliverables to gauge output and to approve activities for the forthcoming period. The initial Bank Guarantee may be discharged at the final payment stage.