

PART II

Section 8. CONDITIONS OF CONTRACT AND CONTRACT FORMS

Foreword

1. Part II includes two types of standard Contract forms for Consulting Services (a Time-Based Contract and a Lump-Sum Contract) included in the Master Document for Selection of Consultants prepared by participating Multilateral Development Banks (MDBs) which are to be used for larger assignments. It also includes formats for a Time-Based Contract and a Lump-Sum Contract for small assignments, not exceeding USD150,000, which have been prepared by the Caribbean Development Bank.
2. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. The Preface indicates the circumstances under which their use is appropriate.

Section 8. Standard Forms of Contract

Preface

1. **Time-Based Contract.** This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise Consultant and to be involved in the daily execution of the assignment.

2. **Lump-Sum Contract.** This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as reports, drawings, bills of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's outputs by the Client is paramount.

3. Recipients shall use the appropriate Standard Form of Contract issued by CDB with minimum changes, acceptable to CDB, as necessary to address specific country and project issues. Any such changes shall be introduced only through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in CDB's Standard Form. These forms of contract cover the majority of consulting services. When these forms are not appropriate (for example, for pre-shipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning) Recipients shall use other contract forms acceptable to CDB.

**HARMONIZED STANDARD FORM OF
CONTRACT**

Consultant's Services
Time-Based

Contents

Preface.....	4
I. Form of Contract	7
II. General Conditions of Contract.....	10
1. General Provisions	10
2. Commencement, Completion, Modification and Termination of Contract	13
3. Obligations of the Consultant	21
4. Consultant’s Experts and Sub-Consultants	26
5. Obligations of the Client.....	29
6. Payments to the Consultant.....	33
7. Fairness and Good Faith	36
8. Settlement of Disputes	36
Attachment 1: Bank’s Policy – Corrupt and Fraudulent Practices	37
III. Special Conditions of Contract	39
IV. Appendices	50
Appendix A – Description of Services.....	50
Appendix B - Reporting Requirements.....	50
Appendix C - Key Experts and Sub-Consultants - Hours of Work for Key Experts	50
Model Form I	52
Appendix E – Reimbursable Expenses Cost Estimates	53
Appendix F - Duties of the Client.....	54
Appendix G - Form of Advance Payments Guarantee.....	55

Preface

1. The standard contract form consists of four parts: the Form of Contract to be signed by the Client and the Consultant, the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices.
2. The General Conditions of Contract shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement, but not over-write or otherwise contradict, the General Conditions.

CONTRACT FOR CONSULTANT’S SERVICES
Time-Based

Project Name: _____
Financing Agreement No.: _____

Contract No.: _____

between

[name of the Client]

and

[name of the Consultant]

Dated: _____

I. Form of Contract

TIME-BASED

(Note to Clients: Text in brackets [] is optional; all notes should be deleted in final text)

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client]* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

[Note to Clients: If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, [name of member] and [name of member] (hereinafter called the “Consultant”).]

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the Client has received *[or has applied for]* financing from the Caribbean Development Bank (“Bank”) toward the cost of the Services and intends to apply a portion of the proceeds of this financing to eligible payments under this Contract, it being understood that (i) payments by the Bank will be made only at the request of the Client and upon approval by the Bank; (ii) such payments will be subject, in all respects, to the terms and conditions of the Financing Agreement, including prohibitions of withdrawal from the *[loan/credit/grant]* account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by the decision of the United Nations Security council taken under Chapter VII of the Charter of the United Nations; and (iii) no party other than the Client shall derive any rights from the Financing Agreement or have any claim to the proceeds of the financing;

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 (including Attachment 1 “Bank Policy – Corrupt and Fraudulent Practices);
 - (b) The Special Conditions of Contract;
 - (c) Appendices:
 - Appendix A: Description of Services
 - Appendix B: Reporting Requirements
 - Appendix C: Experts and Sub-Consultants – Hours of Work for Key Experts
 - Appendix D: Remuneration Cost Estimates
 - Appendix E: Reimbursable Cost Estimates
 - Appendix F: Duties of the Client
 - Appendix G: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendices B and F; Appendix D and Appendix E; Appendix C. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

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

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[name of Consultant or name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[Note to Consultant: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the Consultant *[insert the name of the Joint Venture]*

[name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) “Applicable Guidelines” means the Guidelines for the Selection and Engagement of Consultants by Recipients of CDB Financing dated October 2011 or the CDB’s Guidelines for Procurement dated January 2006 or as either may be revised from time to time by the Bank.
- (b) “Applicable Law” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Special Conditions of Contract (SCC)**, as they may be issued and in force from time to time.
- (c) “Bank” means the Caribbean Development Bank.
- (d) “Client” means *[the implementing agency/ executing agency]* that signs the Contract for the Services with the Selected Consultant.
- (e) “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- (f) “Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influence improperly the actions of another party.
- (g) “Consultant” means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
- (h) “Contract” means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its Clause 1 (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- (i) “Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

- 1.2 Relationship Between the Parties** Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 1.3 Law Governing Contract** This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
- 1.4 Language** This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.5 Headings** The headings shall not limit, alter or affect the meaning of this Contract.
- 1.6 Communications**
- 1.6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 1.6.2 A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the SCC.
- 1.7 Location** The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
- 1.8 Authority of Member in Charge** In case the Consultant is a Joint Venture the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 1.9 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 Consultant may be taken or executed by the officials specified in the SCC.

- 1.10 Corrupt and Fraudulent Practices** The Bank requires compliance with its policy in regard to corrupt, fraudulent or prohibited practices as set forth in **Attachment 1** to the GCC.
- 1.10.1 Commissions and Fees** The Client requires the Consultant to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, commission agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. Failure to disclose such commissions and gratuities may result in termination of the Contract.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 2.1 Effectiveness of Contract** This Contract shall come into force and effect on the date (the “Effective Date”) of the Client’s notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.
- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 2.3 Commencement of Services** The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.
- 2.4 Expiration of Contract** Unless terminated earlier pursuant to Clause GCC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.
- 2.5 Entire Agreement** This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 2.6 Modifications or Variations**
- (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. Pursuant to Clause GCC 2.7.2 hereof, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
 - (b) In cases of substantial modifications or variations and those that have cost implications, the prior written consent of the Bank is required.
- 2.7 Force Majeure**

- 2.7.1 Definition**
- (a) For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible. The circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action, confiscation or any other action by Government agencies.
 - (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
 - (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
- 2.7.2 No Breach of Contract**
- The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:
 - (i) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
 - (ii) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GCC 8.

2.8 Suspension

The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant 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 request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

2.9 Termination

This Contract may be terminated by either Party as per provisions set up below:

2.9.1 By the Client

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 2.8;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8 hereof;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 2.3.

Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, or coercive practices, in competing for or in executing the Contract, then the Client may, after giving 14 calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

2.9.2 By the Consultant

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

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC8 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8 hereof.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses GCC 2.2 or GCC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GCC 2.4, 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 GCC 3.3, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 3.6, and (iv) any right which a Party may have under the Applicable Law.

- 2.9.4 Cessation of Services** Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 3.8 and GCC 3.9.
- 2.9.5 Payment upon Termination** Upon termination of this Contract pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, the Client shall make the following payments to the Consultant:
- (a) remuneration pursuant to Clause GCC 6 hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GCC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
 - (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 2.9.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance (a) The Consultant shall perform the Services and carry out the Services 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 Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the Third Parties.

(b) The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

(c) The Consultant may subcontract part of the Services to an extent and with such Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

3.1.2 Law Applicable to Services The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any Sub-consultants, as well as the Experts of the Consultant and any Sub-consultants, comply with the Applicable Law.

Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when:

(a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country; or

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Recipient's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

- 3.2 Conflict of Interests** The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 3.2.1 Consultant Not to Benefit from Commissions, Discounts, etc.**
- (a) The payment of the Consultant pursuant to Clause GCC 6 shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 3.2.2, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Bank's Applicable Guidelines, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.
- 3.2.2 Consultant and Affiliates Not to Engage in Certain Activities** The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.
- 3.2.3 Prohibition of Conflicting Activities** The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants 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.

- 3.2.4 Strict Duty to Disclose Conflicting Activities** The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.4 Liability of the Consultant** Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be provided by the Applicable Law.
- 3.5 Insurance to be Taken out by the Consultant** The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefor have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as specified in GCC 2.3.

**3.6 Accounting,
Inspection and
Auditing**

3.6.1 The Consultant shall keep, and cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify relevant time changes and costs.

3.6.2. The Consultant shall permit and shall cause its Sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Consultant is advised that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Sub-Clause 3.6 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Bank's prevailing sanctions procedures.)

**3.7 Reporting
Obligations**

The Consultant shall submit to the Client the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.

3.8 Proprietary Rights of the Client in Reports and Records

(a) Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

(b) If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

3.9 Equipment, Vehicles and Materials

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

(b) Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

4. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

4.1 Description of Key Experts

- (a) The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Experts are described in Appendix C.
- (b) If required to comply with the provisions of Clause GCC 3.1.1, adjustments with respect to the estimated periods of engagement of Key Experts set forth in **Appendix C** may be made by the Consultant by a written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 6.1(b).
- (c) If additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated periods of engagement of Key Experts set forth in **Appendix C** may be increased by agreement in writing between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GCC 6.1(b), the Parties shall sign a Contract amendment.

4.2 Replacement of Key Experts

- (a) Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.
- (b) Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

- 4.3 Approval of Additional Key Experts** If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such additional Key Experts shall be deemed to have been approved by the Client. The rate of remuneration payable to new Key Experts shall be based on the rates for other Key Expert positions which require similar qualifications and experience.
- 4.4 Removal of Experts or Sub-consultants**
- (a) If the Client finds that any of the Experts or Sub-consultants has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert or Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.
 - (b) In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.
 - (c) Any replacement of the removed experts or Sub-consultants shall possess equivalent or better qualifications and experience and shall be acceptable to the Client.
- 4.5 Replacement/ Removal of Experts – Impact on Payments**
- (a) Except as the Client may otherwise agree, (i) the Consultant 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 Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

- 4.6 Working Hours, Overtime, Leave, etc.**
- (a) Working hours and holidays for Experts are set forth in **Appendix C**. To account for travel time to/from the Client's country, experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Client's country as is specified in **Appendix C**.
 - (b) The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix C**, and the Consultant's remuneration shall be deemed to cover these items.
 - (c) Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance and Exemptions

Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (c) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (d) Assist the Consultant and the experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the applicable law in the Client's country.
- (e) Assist the Consultant, any Sub-consultants and the experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the experts and of withdrawing any such amounts as may be earned therein by the experts in the execution of the Services.
- (f) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

- 5.2 Access to Project Site** The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.
- 5.3 Change in the Applicable Law Related to Taxes and Duties** If, after the date of this Contract, there is any change in the applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 6.1(b).
- 5.4 Services, Facilities and Property of the Client**
- (a) The Client shall make available to the Consultant and the experts, for the purposes of the Services and free of any charge, the services, facilities and property described in **Appendix F** at the times and in the manner specified in said **Appendix F**.
 - (b) In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix F**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 6.1(c).
- 5.5 Payment** In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as is provided by Clause GCC 6.

**5.6 Counterpart
Personnel**

- (a) The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client, with the Consultant's advice if specified in **Appendix F**.
- (b) If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix F**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 6.1(c).
- (c) Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE CONSULTANT

- 6.1 Cost Estimates; Ceiling Amount**
- (a) An estimate of the cost of the Services in foreign and local currencies is set forth in **Appendix D** (Remuneration) and **Appendix E** (Reimbursable expenses).
 - (b) Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**.
 - (c) For any payments in excess of the ceilings specified in GCC 6.1(b), an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.
- 6.2 Remuneration and Reimbursable Expenses**
- (a) The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of time actually spent by each Expert in the performance of the Services after the date of commencing of Services or such other date as the Parties shall agree in writing; and (ii) reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.
 - (b) All payments shall be at the rates set forth in **Appendix D** and **Appendix E**.
 - (c) Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.
 - (d) The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix C**, (iii) the Consultant's profit, and (iv) any other items as specified in the **SCC**.
 - (e) Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Client, once the applicable remuneration rates and allowances are known.

- 6.3 Taxes and Duties** (a) The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.
- (b) As an exception to the above, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) reimbursed to the Consultant or paid by the Client on behalf of the Consultant are stated in the **SCC**.
- 6.4 Currency of Payment** Any payment under this Contract shall be made in the currency(ies) specified in the **SCC**.

6.5 Mode of Billing and Payment

Billings and payments in respect of the Services shall be made as follows:

- (a) *Advance payment.* Within the number of days after the Effective Date specified in the SCC, the Client shall pay to the Consultant an advance payment as specified in the SCC. Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix G**, or in such other form as the Client shall have approved in writing. The advance payment will be set off by the Client in equal installments against the statements for the number of months of the Services specified in the SCC until said advance payment have been fully set off.
- (b) *The Itemized Invoices.* As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the SCC, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 6.4 and GCC 6.5 for such interval, or any other period indicated in the SCC. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses separately.
- (c) The Client shall pay the Consultant's invoices within sixty (60) days after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments. Interest at the annual rate specified in the SCC shall become payable as from the above due date on any amount due by, but not paid on, such due date.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith

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

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

(a) The Parties shall seek to resolve any dispute amicably by mutual consultation.

(b) If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GCC 8.2 shall apply.

8.2 Dispute Resolution

Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred by either Party to adjudication/arbitration in accordance with the provisions specified in the SCC.

II. General Conditions

Attachment 1: Bank's Policy – Corrupt and Fraudulent Practices

[“Notes to the Client”: the text in this Attachment 1 shall not be modified]

1. It is CDB's policy to require that Recipients (including beneficiaries of the Financing), as well as bidders, suppliers (including suppliers of consulting services), and contractors under CDB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, CDB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) “collusive practices” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Recipient, designed to establish bid prices at artificial, non-competitive levels; and
 - (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.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;
- (c) will normally cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Recipient or of a beneficiary of the Financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Recipient having taken timely and appropriate action satisfactory to CDB to remedy the situation;
- (d) will sanction a body corporate or individual, including declaring the body corporate or individual ineligible, either indefinitely or for a stated period of time, to be awarded a CDB-financed contract if it at any time determines that the body corporate or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a CDB-financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by the Financing, requiring bidders, suppliers and contractors to permit CDB to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by CDB.

2. With the specific agreement of CDB, a Recipient may introduce, into the RFP for contracts financed by CDB, a requirement that the consultant include in the proposal an undertaking by the consultant to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFP¹. CDB will accept the introduction of such a requirement at the request of the Recipient's country, provided the arrangements governing such undertaking are satisfactory to CDB.

¹As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Client, as such laws have been listed by the Client in the RFP for this contract."

III. Special Conditions of Contract

[Notes to Client: Notes in brackets are for guidance purposes only and should be deleted in final text]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(b)	<i>[Note: insert the country if it is other than the Client's country]</i>
1.3	<p><i>[Note: Bank-financed contracts normally designate the law of the Government's country as the law governing the contract. However, the Parties may designate the law of another country. In the former case, this Clause SCC 1.1(b) should be deleted; in the latter case, the name of the respective country should be inserted in the blank, and the square brackets should be removed.]</i></p> <p>The Contract shall be construed in accordance with the law of <i>[insert name of country]</i>.</p>
1.4	The language is: <i>[insert the language]</i> .
1.6	<p>The addresses are:</p> <p>Client : _____ _____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted): _____</p> <p>Consultant : _____ _____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted) : _____</p>

1.8	<p><i>[Note: If the Consultant consists only of one entity, state “n/a”</i></p> <p><i>[Note: If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC 1.6 should be inserted here.</i></p> <p>The Member in Charge on behalf of the JV is <i>[insert name of member]</i></p>
1.9	<p>The Authorized Representatives are:</p> <p>For the Client: <i>[name, title]</i> _____</p> <p>For the Consultant: <i>[name, title]</i> _____</p>
2.1	<p><i>[Note: If there are no effectiveness conditions, state “n/a”]</i></p> <p><i>[Note: List here any conditions of effectiveness of the Contract, e.g., approval of the Contract by the Bank, Client’s approval of Consultant’s proposals for appointment of specified Key Experts members, effectiveness of Bank Loan, receipt by Consultant of advance payment and by Client of advance payment guarantee (see Clause SCC 6.5(a)), etc.</i></p> <p>The effectiveness conditions are the following: <i>[insert conditions]</i></p>
2.2	<p>The time period shall be <i>[insert time period, e.g.: four months]</i>.</p>
2.3	<p>The number of days shall be <i>[e.g.: ten]</i>.</p> <p>Confirmation of Key Experts availability to start the assignment shall be submitted to the Client in writing as a written statement signed by each Key Expert.</p>
2.4	<p>The time period shall be <i>[insert time period, e.g.: twelve months]</i>.</p>
2.9.1(a)	<p>The time period shall be <i>[insert time period, e.g.: ten days]</i>.</p>
3.2.2	<p>The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3</p> <p>Yes _____ No _____</p>

3.4

[Note to Client: Proposals to introduce exclusions/limitations of the Consultant's liability under the Contract should be carefully scrutinized by Clients. In this regard the Parties should be aware of the Bank's policy on this matter which is as follows:

- 1. If the Parties agree that the Consultant's liability should simply be governed by the Applicable Law, this Clause SCC 3.4 should be deleted from the SCC.*
- 2. If the Parties wish to limit or to partially exclude the Consultant's liability to the Client, they should note that, to be acceptable to the Bank, any limitation of the Consultant's liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Client, and (b) the Consultant's ability to pay compensation using their own assets and reasonably obtainable insurance coverage. The Consultant's liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Bank. Also, the Consultant's liability should never be limited for loss or damage caused by the Consultant's gross negligence or willful misconduct. Consequently, the Bank would accept the following provisions with respect to the Consultant's liability, which the Parties could introduce here in the SCC as Clause SCC 3.4 as follows:*

“3.4 Limitation of the Consultant's Liability towards the Client

- (a) Except in case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client's property, shall not be liable to the Client:**
 - (i) for any indirect or consequential loss or damage; and**
 - (ii) for any direct loss or damage that exceeds two times the total value of the Contract;**
- (b) This limitation of liability shall not**
 - (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm**

3.5	<p>The risks and the coverage shall be as follows:</p> <ul style="list-style-type: none"> (a) Professional liability insurance, with a minimum coverage of <i>[insert amount and currency which should be not less than the total ceiling amount of the Contract]</i>; (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client’s country by the Consultant or its Experts or Sub-consultants, with a minimum coverage of <i>[insert amount and currency or state “in accordance with Applicable Law in the Client’s country”]</i>; (c) Third Party liability insurance, with a minimum coverage of <i>[insert amount and currency or state “in accordance with Applicable Law in the Client’s country”]</i>; (d) employer’s liability and workers’ compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant’s property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services. <p><i>[Note to Client: Delete what is not applicable except (a)].</i></p>
3.8	<p><i>[Note: If applicable, insert any exceptions to proprietary rights provision _____]</i></p>

<p>3.9</p>	<p><i>[Note: If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 3.9 should be deleted. If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:</i></p> <p>[The Consultant shall not use these <i>[documents and software]</i> for purposes unrelated to this Contract without the prior written approval of the Client.]</p> <p>[The Client shall not use these <i>[documents and software]</i> for purposes unrelated to this Contract without the prior written approval of the Consultant.]</p> <p>[Neither Party shall use these <i>[documents and software]</i> for purposes unrelated to this Contract without the prior written approval of the other Party.]</p>
<p>5.1</p>	<p><i>Note: List here any changes or additions to Clause GCC 5.1. If there are no such changes or additions, delete this Clause SCC 5.1.</i></p>
<p>5.1(g)</p>	<p><i>Note: List here any other assistance to be provided by the Client. If there is no such other assistance, delete this Clause SCC 5.1(g).</i></p>
<p>6.1(b)</p>	<p>The ceiling in foreign currency or currencies is: <i>[insert amount and currency for each currency] [indicate: inclusive or exclusive]</i> of local indirect taxes.</p> <p>The ceiling in local currency is: <i>[insert amount and currency] [indicate: inclusive or exclusive]</i> of local indirect taxes.</p> <p>Any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall <i>[insert as appropriate: “be paid” or “reimbursed”]</i> by the Client [<i>“for” or “to”</i>] the Consultant.</p>

6.2(c)

Price adjustment on the remuneration [*insert* “applies” or “ does not apply”]

[Note: If the Contract is less than 18 months, price adjustment does not apply.

If the Contract has duration of more than 18 months, a price adjustment provision on the remuneration for foreign and/or local inflation shall be included here. The adjustment should be made every 12 months after the date of the contract for remuneration in foreign currency and – except if there is very high inflation in the Client’s country, in which case more frequent adjustments should be provided for – at the same intervals for remuneration in local currency. Remuneration in foreign currency should be adjusted by using the relevant index for salaries in the country of the respective foreign currency (which normally is the country of the Consultant) and remuneration in local currency by using the corresponding index for the Client’s country. A sample provision is provided below for guidance:

{Payments for remuneration made in [foreign *and/or* local] currency shall be adjusted as follows:

- (1) Remuneration paid in foreign currency pursuant to the rates set forth in **Appendix D** shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract Effectiveness date) by applying the following formula:

$$R_f = R_{f_0} \times \frac{I_f}{I_{f_0}} \quad \left\{ \text{or} \quad R_f = R_{f_0} \times \left[0.1 + 0.9 \frac{I_f}{I_{f_0}} \right] \right\}$$

where R_f is the adjusted remuneration, R_{f_0} is the remuneration payable on the basis of the rates set forth in Appendix D for remuneration payable in foreign currency, I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect, and I_{f_0} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.

The Consultant shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_f and I_{f_0} in the adjustment formula for remuneration paid in foreign currency: [*Note: Insert the name*

6.3

[Note: The Bank leaves it to the Client to decide whether the Consultant (i) should be exempted from indirect local tax, or (ii) should be reimbursed by the Client for any such tax they might have to pay (or that the Client would pay such tax on behalf of the Consultant and the Experts).]

The Client warrants that

[choose one applicable option consistent with the ITC 16.3 and results of the financial negotiation (Form FIN-2, part B “Indirect Local Tax – Estimates”)]

[If ITC16.3 states tax exemption, include the following:

the Consultant, the Sub-consultants and the experts shall be exempt from]

[If ITC16.3 does not indicate the exemption and depending on whether the Client shall pay the withholding tax or the Consultant has to pay, include the following:

the Client shall pay on behalf of the Consultant, the Sub-consultants and the Experts,

[OR] the Client shall reimburse the Consultant, the Sub-consultants and the experts]

any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client’s country, on the Consultant, the Sub-consultants and the experts in respect of:

- (a) any payments whatsoever made to the Consultant, Sub-consultants and the experts (other than nationals or permanent residents of the Client’s country), in connection with the carrying out of the Services;
- (b) any equipment, materials and supplies brought into the Client’s country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;
- (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;
- (d) any property brought into the Client’s country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client’s country) or the eligible

6.4	The currency [<i>currencies</i>] of payment shall be the following: [<i>list currency(ies) which should be the same as in the Financial Proposal, Form FIN-2</i>]
6.5(a)	<p><i>[Note: The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i></p> <p>The following provisions shall apply to the advance payment and the advance payment bank guarantee:</p> <ol style="list-style-type: none"> (1) An advance payment of [<i>insert amount in foreign currency</i>] and of [<i>insert amount in local currency</i>] shall be made within [<i>insert number</i>] days after the Effective Date. The advance payment will be set off by the Client in equal installments against the statements for the first [<i>insert number</i>] months of the Services until the advance payment has been fully set off. (2) The advance payment bank guarantee shall be in the amount and in the currency of the currency(ies) of the advance payment. (3) The advance payment bank guarantee will be released when the advance payment has been fully set off.
6.5(b)	<p>{The Consultant shall submit to the Client itemized statements at time intervals of [<i>insert number of months</i>].}</p> <p><i>[Note to Client: Delete this Clause SCC 6.4(b) if the Consultant shall have to submit its itemized statements monthly.]</i></p>
6.5(c)	The interest rate is: [<i>insert rate</i>].
6.5(e)	<p>The accounts are:</p> <p>for foreign currency: [<i>insert account</i>].</p> <p>for local currency: [<i>insert account</i>].</p>

8.2

[Note: In contracts with foreign consultants, the Bank requires that the international commercial arbitration in a neutral venue is used.]

Disputes shall be settled by arbitration in accordance with the following provisions:

1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:
 - (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to *[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]* for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, *[insert the name of the same professional body as above]* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
 - (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by *[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris;*

	<p>(c) If, in a dispute subject to Clause SCC 8.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in Clause SCC 8.2 1.(b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p> <p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SCC 8.2 shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country [<i>Note: If the Consultant consists of more than one entity, add: "or of the home country of any of their members or Parties"</i>] or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the Consultant [<i>Note: If the Consultant consists of more than one entity, add: "or of any of their members or Parties"</i>]; or</p> <p>(b) the country in which the Consultant's [<i>or any of their members' or Parties'</i>] principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Consultant's [<i>or of any members' or Parties'</i>] shareholders; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none">(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither the Client's country nor the Consultant's country]</i>;(b) the <i>[type of language]</i> language shall be the official language for all purposes; and(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

IV. Appendices

APPENDIX A – DESCRIPTION OF SERVICES

Note to Client/Consultant: This Appendix will include the final Terms of Reference worked out by the Client and the Consultant during negotiations, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.

APPENDIX B - REPORTING REQUIREMENTS

Note to Client/Consultant: List format, frequency, and contents of reports; number of copies, requirements to electronic submission (or on CD ROM); persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

APPENDIX C - KEY EXPERTS AND SUB-CONSULTANTS - HOURS OF WORK FOR KEY EXPERTS

Note: List under:

C-1 Titles, names, detailed job descriptions and minimum qualifications of Key Experts and person-months for each.

C-2 List of approved Sub-consultants (if already available); same information with respect to their Key Experts as in C-1

List here the hours of work for Key Experts; travel time to/from the Client’s country; entitlement, if any, to leave pay, etc.

Appendix D – Remuneration Cost Estimates

1. Monthly rates for the Experts who are paid in the foreign currency.

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

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

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

Should these representations be found by the Client (either through inspections or audits pursuant to Clause GCC 3.6 or through other means) to be materially incomplete or inaccurate, the Client shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Client before any such modification, (i) the Client shall be entitled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Client to the Consultants, the Consultants shall reimburse to the Client any excess payment within thirty (30) days of receipt of a written claim of the Client. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with Clause GCC 6.5(d) of this Contract.”

MODEL FORM I**Breakdown of Agreed Fixed Rates in Consultant's Contract**

We hereby confirm that we have agreed to pay to the Experts listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

(Expressed in *[insert name of currency]*)

Experts		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration rate per Working Month/Day/Year	Social Charges ¹	Overhead ¹	Subtotal	Profit ²	Away from Home Office Allowance	Agreed Fixed Rate per Working Month/Day/Hour	Agreed Fixed Rate per Working Month/Day/Hour ¹
Home Office									
Work in the Client's Country									

1 Expressed as percentage of 1

2 Expressed as percentage of 4

Signature

Date

Name and Title: _____

APPENDIX E – REIMBURSABLE EXPENSES COST ESTIMATES

1. *{Insert the table with the reimbursable expenses rates. The table shall be based on Form FIN-4 of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to Form FIN-4 at the negotiations or state that none has been made.}*

2. All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.

APPENDIX F - DUTIES OF THE CLIENT

Note: List under:

F-1 Services, facilities and property to be made available to the Consultant by the Client.

F-2 Professional and support counterpart personnel to be made available to the Consultant by the Client.

APPENDIX G - FORM OF ADVANCE PAYMENTS GUARANTEE

Note: See Clause GCC 6.5(a) and Clause SCC 6.5(a).

Bank Guarantee for Advance Payment

_____ *[Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _____ *[Name and Address of Client]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ *[name of Consultant or a name of the Joint Venture, same as appears on the signed Contract]* (hereinafter called "the Consultant") has entered into Contract No. _____ *[reference number of the contract]* dated _____ with you, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[amount in figures]* (_____ *[amount in words]*) is to be made against an advance payment guarantee.

At the request of the Consultant, we _____ *[name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____ *[amount in words]*)¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number _____ at _____ *[name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full

¹ *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.*

repayment of the amount of the advance payment, or on the __ day of _____, 2____,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.

² *Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*