

# **APPENDIX-A**



**LOCAL GOVERNMENT & HTP DEPARTMENT  
GOVERNMENT OF SINDH**

**DRAFT CONSULTANCY SERVICES CONTRACT  
URBAN ROAD INITIATIVES**

**Consultancy Services Contract**  
**Urban Road Initiatives in Karachi**

**THIS CONTRACT** (hereinafter referred to as the “**Contract / Agreement**”) is made at Karachi on this \_\_\_\_\_ 2020 (the “**Signing Date**”).

**BY AND BETWEEN**

**The Governor of Sindh, acting through Secretary, Local Government & HTP Department, Government of Sindh**, having its principal office at \_\_\_\_\_, Karachi, (hereinafter referred to as the “**Client**”);

**AND**

The Advisory Consortium, comprising the following members:

1. \_\_\_\_\_ having its registered office and principal place of business at \_\_\_\_\_ (hereinafter referred to as the “**Lead Advisor**” or “**Financial Consultants**”);
2. \_\_\_\_\_ having its registered office and principal place of business at \_\_\_\_\_ (hereinafter referred to as the “**Technical Consultant**”); and
3. \_\_\_\_\_ having its registered office and principal place of business at \_\_\_\_\_ (hereinafter referred to as the “**Legal Consultant**”)
4. ....

(Financial Consultants, Technical Consultants and Legal Consultants are collectively referred to as the “**Advisory Consortium**”)

(The Client and the Advisory Consortium are hereinafter referred to individually as a “**Party**” and collectively as “**Parties**”).

**WHEREAS:**

- A. The Client is desirous of establishing Urban Road Initiatives that comprises three different projects (“**Project**”), details of which are given in the Request for Proposal dated \_\_\_\_\_ (“**RFP**”) and reproduced in Schedule A (Terms of Reference) to this Agreement;
- B. The Client wishes to engage a qualified consortium of consultants, comprising financial consultants, technical consultants and legal consultants, for the Project to provide advisory and support services (as listed in **Schedule A (Terms of Reference)** to this Agreement) (“**Assignment**” or “**Services**”) to the Client in terms of this Agreement;
- C. The Expression of Interest for the Assignment was sought through advertisement in accordance with the Sindh SPP Rules, followed by the issuance of a Request for Proposal (“**RFP**”) by the

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Client dated \_\_\_\_\_;

- D. Following technical and financial evaluation of the bids by the consultant selection committee, the Advisory Consortium led by [\_\_\_\_\_ as Lead Advisor] was selected as the preferred bidder by the Consultant Selection Committee to undertake the Assignment; and
- E. The Advisory Consortium led by the Lead Advisor is hereby appointed to provide the Services on the terms and conditions as set out herein. The Advisory Consortium agrees to provide the Services and undertake the Assignment as per the terms and conditions set out in this Agreement.

**NOW THEREFORE, the Parties hereto agree as follows:**

**1. Definitions**

- 1.1 In this Agreement, unless the context indicates otherwise, the following words and expressions shall have the following meanings unless inconsistent with the context:

“**Applicable Laws**” means all applicable laws (federal and provincial), ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency, authority in any relevant jurisdiction within the Islamic Republic of Pakistan, and such other laws as may be applicable;

“**Advisory Consortium**” shall have the meaning as described thereto in Recitals above;

“**Agreement**” means this contract executed between the Client and the Advisory Consortium and includes all the schedules attached thereto;

“**Assignment**” shall have the meaning ascribed thereto in the Recitals;

“**Assignment Team**” means the persons described under Clause 13 of the Agreement, subject to changes arising from the negotiations;

“**Business Day**” means any day other than Saturday and Sunday or public holiday in the Islamic Republic of Pakistan or the province of Sindh, on which banks in Pakistan are generally open for business;

“**Client**” shall have the meaning ascribed thereto in Preamble above;;

“**Confidential Information**” means any information:

- (a) determined by the Client to be privileged or confidential;

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- (b) discussed in closed session by the bid evaluation panel;
- (c) which if disclosed would violate a person's right to privacy;
- (d) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in the relevant Freedom of Information Ordinance, 2002 of the Islamic Republic of Pakistan; Provided that Confidential Information shall not include such information which has been exclusions in terms of Section 16.3

**“Deliverables”** means those deliverables as set out in Schedule D;

**“Effective Date”** shall have the meaning ascribed thereto in Clause 3.2;

**“Fee”** shall have the meaning ascribed thereto in Clause 6.1;

**“Financial Proposal”** shall mean the financial proposal submitted by the Advisory Consortium;

**“Lead Advisor”** means a lead member of the Advisory Consortium, i.e. [\_\_\_\_\_] authorized by the other members of the Advisory Consortium to (i) coordinate and liaise with the Client on their behalf and to undertake the project management aspect of the engagement (ii) undertake responsibility to the Client for execution of the entire Scope of Work mentioned in Schedule A;

**“Parties”** means the Client and the Advisory Consortium;

**“Performance Security”** means an amount of PKR [\_\_\_\_\_] equivalent to [\_\_\_\_\_] percent (\_\_\_\_%) of the Fee, submitted by the Advisory Consortium to the Client in the form specified in the RFP.

**“Proposal”** means the Advisory Consortium's response to the Client's Request for Proposal in respect of the carrying out of the Services comprising Technical Proposal and Financial Proposal;

**“RFP”** shall have the meaning ascribed thereto in Recitals above;

**“Services”** shall have the meaning ascribed thereto in Recitals above;

**“Scope of Work”** has been defined in Clause 4.1 of this Agreement details whereof are contained in **Schedule A**;

**“Signing Date”** shall mean the date of signing of this Agreement;

**“SPP Rules”** shall mean the Sindh Public Procurement Rules, 2010;

**“Technical Proposal”** shall mean the technical proposal submitted by the Advisory

Consortium;

“**Termination Date**” means any date of termination of the Agreement in accordance with the Clause 16.8 of the Agreement;

“**Variation**” means any variation to the Scope of Work in terms of the Agreement.

## **2. Interpretation of this Agreement**

The Agreement shall be interpreted according to the following provisions, unless the context requires otherwise. In the event of any conflict, inconsistency or ambiguity, the provisions will prevail as follows:

- 2.1 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under the Agreement;
- 2.2 References to clauses, sub-clauses, schedules and attachments are references to the clauses, sub-clauses, schedules and attachments of the Agreement;
- 2.3 The headings of clauses, sub-clauses, schedules and attachments are included for convenience only and shall not affect the interpretation of the Agreement;
- 2.4 Reference to “Agreement”, shall include the Agreement and its schedules, attachments as amended, varied, notated or substituted in writing from time to time;
- 2.5 Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter, and ‘person’ shall include both corporeal and incorporeal entities.

## **3. Entry into Force, Effectiveness and Termination of the Agreement**

- 3.1 The Agreement shall come into force upon the satisfaction of following conditions precedent:
  - 3.1.1 submission of the Performance Security by the Advisory Consortium, which shall be valid for at least ninety (90) days beyond the:
    - (a) completion of the Services as per the Scope of Work under Schedule A, or
    - (b) expiration of a period of twenty four (24) months from the Signing Date, whichever comes earlier.
- 3.2 The Advisory Consortium shall satisfy or procure the satisfaction of the above conditions precedent as soon as reasonably possible and in any event within twenty (20) Business Days of the Signing Date (the “**Effective Date**”); Provided that the Client shall have the right to

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allow more time for the satisfaction of conditions precedent upon the request of the Advisory Consortium.

- 3.3 The Advisory Consortium shall begin carrying out the Services on the Effective Date.
- 3.4 Unless terminated earlier, this Agreement shall terminate on the Termination Date or at the end of such time as agreed upon by the Parties hereto.

**4. Agreement to Provide Services**

- 4.1 With effect from the Signing Date, the Client hereby appoints the Advisory Consortium for the purpose of carrying out of the Assignment and the provision of the Services stated in the Scope of Work as detailed in **Schedule A** attached hereto (“**Scope of Work**”) and the Advisory Consortium agrees to such appointment for such consideration as set out in Clause 6 below. The Client agrees that specified portions of the Scope of Work have been distributed among the members of the Advisory Consortium.

**5. Scope of Work**

- 5.1 The Services to be provided by the Advisory Consortium under this Agreement is based on the terms of reference as set out in Schedule A to this Agreement.
- 5.2 The approach and methodology outlined in the Technical Proposal and scope of work outlined in RFP shall be used for the purposes of any interpretation of the Scope of Work.
- 5.3 Unless the Client or the Advisory Consortium’s instructions are later amended and agreed between the Parties in writing in accordance with Applicable Laws, the Services to be provided by the Advisory Consortium will be restricted to that set out in **Schedule A**.
- 5.4 Amendment(s) to the Scope of Work as set out in **Schedule A** shall be done in accordance with the Clause 6.2.
- 5.5 The Client acknowledges, understands and accepts the Scope of Work and the Services and that although the Lead Advisor shall have overall responsibility for providing Services in accordance with this Agreement, each member of the Advisory Consortium is severally responsible and liable with respect to the specific work / Deliverables assigned to them in terms of **Schedule A** and the Deliverables to be submitted in terms of **Schedule D**.

**6. Fee**

- 6.1 The Parties have agreed that the fee inclusive of all applicable taxes for this Assignment shall be **PKR [\_\_\_\_]** (Pakistan Rupees [\_\_\_\_]) (“**Fee**”) payable on completion of the milestone achievements as laid out in **Schedule E**. Other related terms with respect to payment of Fee or any part thereof and expenses are also set out in Clause 12 and **Schedule E**.
- 6.3 If the Client seeks to vary the Scope of Work, the Parties shall discuss such matters mutually

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and any changes to the Scope of Work will be agreed between the Parties in writing, subject to mutual agreement on change in fee and the respective timelines for completion, which will be subsequently recorded by way of an amendment to this Agreement. Any amendment to the Scope of Work or Services shall only become effective once the Parties have agreed to revise the Fee as a result of such amendment subject to SPP Rules and regulations and the revised time period that will be required to provide the additional services and recorded the same by way of an amendment to the terms of this Agreement. For the avoidance of doubt it is clarified that the amendment to the Agreement between the Parties in relation to the revision in the Fee and timelines as a result of any amendment in the Scope of Work shall be a condition precedent to the effectiveness of such amended Scope of Work.

- 6.4 All payments under this Agreement shall be made to the invoicing party namely, the Advisory Consortium, approved under Section 1, provided that the invoices will be raised by the individual members of the Advisory Consortium, which shall be clubbed together by the Lead Advisor into a single Invoice indicating the share of each individual member of the Advisory Consortium. The Client shall make the payment to the individual member of the Advisory Consortium separately under intimation to the Lead Advisor as per the single invoice submitted by the Lead Advisor. The account details for payment for individual members of the Advisory Consortium will be provided by the Lead Advisor to the Client.

**7. Project Administration**

- 7.1 The Advisory Consortium shall comply with all the terms, regulations, rules, and requirements of the Client during the term of the Agreement.
- 7.2 Any notice, request, or consent made by either Party pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the Agreement.
- 7.3 The Client shall provide prompt written notice to the Advisory Consortium whenever the Client observes or otherwise becomes aware of any matter, which may substantially affect the Advisory Consortium's performance of Services under this Agreement.
- 7.4 The Client shall have unrestricted access to all plans, drawings, specifications, designs, reports, presentations and other documents produced by the Advisory Consortium during the term of this Agreement and submitted to the Client for the purposes of the Assignment. The Advisory Consortium, shall not later than 15 days, deliver five copies of all such documents to the Client upon request from the Client.

**8. Warranties**

- 8.1 The Client represents and warrants to the Advisory Consortium that it has the necessary authorization, mandate and capacity to award the Assignment to the Advisory Consortium pursuant to this Agreement.
- 8.2 Each member of the Advisory Consortium represents and warrants that:

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- (a) It is duly organized and validly existing under the Applicable Laws, and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate (if it is a corporate body) and other actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement; and validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (d) it has the financial standing and capability to undertake the Assignment accordance with the applicable standards and it has not committed a breach in respect of their payment obligations in relation to a financial indebtedness;
- (e) it is subject to the Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) the execution, delivery and performance of this Agreement does not and shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any of its constitutive and corporate charters, filings with government authorities, documents, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (g) no representation or warranty made by it herein or in any other document furnished by it to the GoS contains any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading;
- (h) each member of the Advisory Consortium shall be severally liable for the performance of Services under this Agreement;
- (i) that they have the necessary professional, intellectual and material resources to undertake their respective parts of the Scope of Work or Services in connection with the Assignment; and
- (j) It shall abide by the terms of the Agreement and that they shall perform their respective parts of work professionally and according to the international best practices.

**9. Communication**



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- 9.1 All significant communication between the Parties shall be in writing delivered through some established credible medium including email but all Deliverables shall be sent to the Client in hard copy form with 3 number of copies.
- 9.2 All communication of a substantive nature between the Parties shall be sent to the respective key contact persons in addition to any other person(s) or official(s) the Parties to the Agreement may wish to notify or to whom it is necessary and obligatory to send that communication.
- 9.3 The respective key contact persons for communication shall be:

<i><b>For Client</b></i>	<i><b>For Advisory Consortium</b></i>
Name: Designation: Address: Telephone: Fax: Email:	Name: Designation: Address: Telephone: Fax: Email:

- 9.4 Either Party may change its address to any physical address, email address and Fax number for this purpose, by notice in writing to the other Party.

**10. Reporting**

The Advisory Consortium's reporting will be based on Deliverables as described in the RFP and reproduced in **Schedule D** to this Agreement. The Deliverables will be prepared solely in connection with, and for use in accordance with, the terms of this Agreement. The Lead Advisor will report exclusively and directly to the Client.

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- 10.2 If, in carrying out the agreed Scope of Work, the Advisory Consortium becomes aware of any matters outside the agreed scope that the Advisory Consortium considers to be of importance to the Assignment, the Advisory Consortium will bring these to the attention of the Client. The Parties may, after mutual consultation, change the Scope of Work, if so needed, in the manner set out in Clauses 5.3 and 6.2 of this Agreement.
- 10.3 The Advisory Consortium shall provide the Client with the Deliverables described in **Schedule D** during the course of the Assignment.
- 10.4 The outcome of the Project shall be to complete the Assignment as per the agreed Scope of Work.
- 10.5 Whilst each submission of the work products shall address different aspects of the Assignment that the Advisory Consortium shall perform, the final feasibility study report shall take into consideration all the outputs from earlier work products submitted by the Advisory Consortium.
- 10.7 In order to confirm that the Advisory Consortium's reports address all the matters within the agreed Scope of Work, the Advisory Consortium will submit a draft of its reports/ plans/ models to the Client for its comments prior to issuing it in final form and shall be reviewed by the Client within fifteen (15) Business Days from the submission date of the same. If the Client does not raise any objection(s) or provide comments within the set period of fifteen (15) Business Days, the same shall be deemed to have been accepted by the Client. However, if the Client raises any objection(s) or has any comments thereon and the same have been raised and communicated to the Advisory Consortium within the set time limit of fifteen (15) Business Days, the Advisory Consortium shall respond to such objections and/or incorporate or address such comments and re-submit the draft Deliverable to the Client within seven (7) Business Days. The Client shall be required to review the revised draft Deliverable within seven (7) Business Days from the submission date of the same. If the Client does not raise any objection(s) or provide comments within the set period of seven (7) Business Days, the same shall be deemed to have been accepted by the Client for the purposes of achievement of the Deliverables as set down in **Schedule D** and the Advisory Consortium will be entitled to (i) issue the final versions of the relevant deliverables; and (ii) raise an invoice for and receive payment for completion of such Deliverable in accordance with **Schedule E**.
- 10.8 The Advisory Consortium shall be under no obligation to update any advice, reports or any Deliverables provided to the Client, oral or written, for events occurring after the advice, report(s) or Deliverable(s) have been provided to the Client in its final form or after any advice, report or Deliverable is deemed as accepted by the Client in accordance with the terms of this Agreement.
- 10.9 On completion of the Assignment, the Client would encourage that the Advisory Consortium to carry out a debriefing where the Client shall provide feedback on the work carried out by the Assignment Team (defined below).

**11. Access**

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- 11.1 For undertaking the Assignment, the Advisory Consortium will have access to the Project site(s) and wherever applicable, the relevant and important surveys/studies which would facilitate the Advisory Consortium in connection with this Agreement. These would primarily include, but not be limited to the relevant surveys/studies mentioned in the RFP.
- 11.2 The Client agrees that it shall notify the Lead Advisor as soon as practicable of any change in any material information previously made available to the Lead Advisor or the Advisory Consortium which comes to the attention of the Client.
- 11.3 Based on its past experience and knowledge, the Advisory Consortium shall endeavor to identify studies, report or data, which have been conducted previously either at the Federal and/ or Provincial level and shall assist, wherever possible, to enable the Client in gaining access to such studies, reports or data.
- 11.4 The Client shall arrange access to and discussions with its relevant officers and officials, on, as well as off Project sites, in addition to coordinating visits to the Project sites.

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- 11.5 The Lead Advisor will provide to the Client, information in relation to the Project that it obtains during the term of this Agreement, but shall not be under any obligation, to provide such information, the disclosure of which would breach any law, any regulation of any governmental supervisory or regulatory authority, the terms of any agreement to which the Advisory Consortium or any member thereof are/is a party, or any duty of confidentiality that the Advisory Consortium or any member thereof owes to a third party.
- 11.6 Any information provided by the Client shall be validated by the Advisory Consortium who shall inform the Client of any discrepancies or deficiencies in the same before relying on such information. The Advisory Consortium shall retain responsibility for information created as part of the engagement. The Advisory Consortium may not be held responsible or liable if any information material to their task which was provided by the Client is withheld or concealed or fraudulently represented to them.
- 11.7 The Client shall provide guidance and assistance, in the establishment of the liaison and obtaining relevant information/ studies from the concerned governmental agencies, consultants and other stakeholders. In case of absence or non-availability of such information, however, the Advisory Consortium shall, with the prior intimation to the Client, rely mainly on its own sources of information, in which case, the Advisory Consortium shall not be responsible for the completeness and accuracy of information. It is however, agreed by the Advisory Consortium that only authenticated information shall be relied upon, that is, if the information is either signed by the agency concerned or if it is issued/made public with the approval of the same. The Advisory Consortium may rely on any instructions or requests made or notices given or information supplied in writing (including email), by any person that it knows to be authorized by the Client for such purposes.
- 11.8 The Client acknowledges and irrevocably confirms that any information provided by the Client in relation to the works being performed under the Scope of Work by the Advisory Consortium that has been accepted by the Client as being the relevant information to be applied in respect of the Assignment and accordingly the Advisory Consortium will not be liable for any defects, errors and/ or omissions in the provision of the services by the application of the information and the utilization of the information specifically provided by the Client.

## **12. Payment to Advisory Consortium**

- 12.1 The Advisory Consortium shall be responsible for financing its activities until such time as payment is effected by the Client as mentioned in Clause 12.3. The Advisory Consortium shall submit its invoices to the Client in a format agreed between the Parties.
- 12.2 The Client shall compensate the Advisory Consortium for services rendered under the Agreement in accordance with the Clause 7.2, Advisory Consortium's Time Plan and Reporting Schedule, attached under **Schedule C** to this Agreement.
- 12.3 Subject to the terms and conditions of this Agreement including Clause 10.7, all payments due by the Client to the Advisory Consortium shall be paid within 15 Business Days from the date of receipt of invoice by the Client.
- 12.4 The Fee or any part thereof (as per the invoice raised in accordance with this Agreement) shall be paid through a demand drafts or crossed cheques in favor of individual members of the Advisory Consortium, in PKR in accordance with **Schedule E** to this Agreement.
- 12.5 In relation to payments to be made to international firms (if any) that are part of the Advisory Consortium, the same shall be made to the Lead Advisor or the Local Representative of the international firm also in PKR amount indicated on their invoice raised in accordance with **Schedule E**; mode of such payments will be as per clause 12.4 above.

## **13. Assignment Team**

- 13.1 The Parties shall, immediately after the Signing Date, form an assignment team ("**Assignment Team**"), which will be responsible for the management of the Agreement so as to ensure the smooth and satisfactory delivery of the Services by the Advisory Consortium to the Client.
- 13.2 The Assignment Team shall be composed of the following:
- (a) Officers appointed by the Client;
  - (b) An authorized representative of the Lead Advisor representing the Advisory Consortium, who shall act on behalf of and have the authority to bind the Advisory Consortium
  - (c) Individuals mentioned in the RFP i.e. the CVs of those who were evaluated for the award of the Bid; and
  - (d) Such other members of the Advisory Consortium as appointed by the Advisory Consortium.
- 13.3 The functions of the Assignment Team shall be as follows:
- (a) To facilitate communication between the Parties;

- (b) To review the progress on the implementation of the Agreement;
- (c) To manage and resolve potential disputes; to monitor and maintain alignment with institutional policy and strategy;
- (d) To achieve the Agreement's objectives within agreed scope, time, cost and quality;
- (e) To provide advice and consent on scope variation;
- (f) To facilitate all necessary institutional and treasury approvals; and
- (g) To provide feedback to relevant stakeholders.

The Assignment Team shall determine an appropriate set of meetings to be held and the frequency thereof.

- 13.4 Except as the Client may otherwise agree, no changes shall be made in the Assignment Team or the sub-consultants. If, for any reason beyond the reasonable control of the Assignment Team, it becomes necessary to replace any of the team members, the Assignment Team shall provide as a replacement a person of equivalent or better qualifications, subject to the approval of the Client. The Client may require the Advisory Consortium to remove and replace any staff member, stating reasons for such action. List of the Assignment Team is attached in **Schedule B** to this Agreement.

#### **14. Obligation of the Parties**

##### 14.1 The Client undertakes:

- (a) to remunerate the Advisory Consortium for the Services in a timely manner in accordance with the terms and conditions set out in this Agreement;
- (b) to use its reasonable endeavors to ensure that the Advisory Consortium has timely and adequate access to all information, personnel and documentation available to the institution that will be required by the Advisory Consortium to render the services;
- (c) to inform the Advisory Consortium of any information or developments which may come to their attention during the duration of the Agreement, which might have a bearing on or be relevant to the Services to be provided by the Advisory Consortium;
- (d) to co-operate with the Advisory Consortium (to the extent reasonably requested and possible for it) at all times for the purposes of facilitating a timely and efficient delivery of the Services;

##### 14.2 The Advisory Consortium undertakes:

- (a) to perform the Services using reasonable skill and care in accordance with applicable

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professional standards;

- (b) to devote the necessary time and attention to providing the Deliverables, as set out in the Deliverables schedule, and not engage in any business or activity that will prevent the Advisory Consortium from providing the Services;
- (c) to maintain, at all times, the highest degree of good faith towards the Client and to ensure that no conflict of interest materializes, and in the event of a conflict of interest arising, to immediately advise the Client of the same. The Parties shall seek to resolve the situation as quickly as possible, however, in the event that the situation cannot be resolved within thirty (30) days the Client or the Lead Advisor may refer the matter for dispute resolution in terms of Clause 16.18 of this Agreement. A deliberate failure by the Advisory Consortium to inform the Client of any conflict of interest shall amount to a material breach of the Agreement and may entitle the Client to terminate the Agreement forthwith;
- (d) to render the services in accordance with the Scope of Work, Deliverables, timeframes and specifications, as set out in the Deliverables schedule, annexed hereto, as amended by written agreement of the Parties;
- (e) that all actions and commitments agreed upon or pursuant to the Assignment Team meetings or Agreement, will be strictly adhered to;
- (f) to provide the Client with any information and reports reasonably requested by the Client in connection with the Services to the extent that the same are covered in the Scope of Work, and which information the Advisory Consortium warrants to be accurate and complete;
- (g) to maintain the professional personnel as promised and committed to by the Advisory Consortium in its proposal throughout the life of this Agreement, and as recorded in the Deliverables schedule, and that in the event of any dedicated member of the Advisory Consortium's personnel becoming incapacitated and unable to carry out his or her duties or whose performance the Client reasonably considers to be unsatisfactory in its discretion, to replace, at the Advisory Consortium's cost, such member, subject to the written approval of the Client;
- (h) to observe neutrality and objectivity in its views and opinions; and
- (i) to respect and observe all Applicable Laws.

**15. Not used**

**16. Miscellaneous**

**16.1 Assignment and Charges:**

- (a) The Advisory Consortium shall not assign this Agreement or any part hereof except with prior consent in writing of the Client, which consent the Client shall be entitled to decline



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without assigning any reason whatsoever. Notwithstanding the generality of this clause, nothing herein shall restrict the ability of the Lead Advisor to delegate any part of the Scope of Work to members of the Advisory Consortium.

16.2 Liability and Indemnity:

- i) The Advisory Consortium shall indemnify, defend and hold the Client harmless against any losses, damages and all proceedings, actions and third party claims arising out of a breach by the Advisory Consortium of any of its obligation under this Agreement except to the extent that any such losses, damages, proceedings, actions and claims have arisen due to Client breach of this Agreement. Provided that the maximum liability on account of indemnity under this Clause shall not exceed the amount equivalent to the Fee;
- ii) The Client will indemnify, defend and hold harmless the Advisory Consortium and its members against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of a breach by the Client, its officers, servants and agents of any obligations of the Client under this Agreement except to the extent that any such claim has arisen due to the event of Advisory Consortium's default, breach of this Agreement or negligence. Provided that the maximum liability on account of indemnity under this Clause shall not exceed the amount equivalent to the Fee.

16.3 Confidentiality:

- (a) Neither Party shall during the term of this Agreement ("**Receiving Party**"), without the prior written consent of the other Party ("**Disclosing Party**"), disclose any proprietary or Confidential Information relating to the Assignment, this Agreement or the business or operations of the Disclosing Party to anyone other than those persons who are connected to the Receiving Party and who are required or authorized to have access to such information. Except to the extent otherwise required by Applicable Law or applicable professional standards, the Parties' obligations under this section do not apply to information that: (a) is or becomes generally available to the public other than as a result of disclosure by the Client; (b) was known to either the Client or the Advisory Consortium or had been previously possessed by the Client or the Advisory Consortium without restriction against disclosure at the time of receipt thereof by the Client or the Advisory Consortium; (c) was independently developed by the Client or the Advisory Consortium without violation of this Agreement; or (d) the Client and the Advisory Consortium agrees from time to time to disclose. Each Party shall be deemed to have met its nondisclosure obligations under this paragraph as long as it exercises the same level of care to protect the other's information as it exercises to protect its own Confidential Information, except to the extent that Applicable Law or professional standards impose a higher requirement. Notwithstanding anything contained in this Agreement, the Lead Advisor shall be at liberty to disclose all information as may be required to the members of the Advisory Consortium.
- (b) The Advisory Consortium may retain, subject to the terms of this paragraph, copies of the Client's Confidential Information required for compliance with professional standards (applicable on them) or internal policies. If either Party receives a a validly issued



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administrative or judicial demand requiring it to disclose the other Party's Confidential Information, such party shall provide prompt written notice to the other Party of such demand in order to permit such Party to seek a protective order. So long as the notifying Party gives notice as provided herein, the notifying Party shall thereafter be entitled to comply with such demand to the extent permitted by Applicable Law, subject to any protective order or the like that may have been entered in the matter.

- (c) Clauses 16.3(a) and (b) above shall not apply to any of the information that the Advisory Consortium are required by Applicable Laws or regulators.
- (d) The obligation to maintain the confidentiality of information shall survive the termination of this Agreement for a period of two (2) years, but will not apply to Confidential Information which was in the public domain prior to being disclosed by the Receiving Party and has come into the public domain other than as a result of being divulged by the Receiving Party.

16.4 Ownership of Material and Intellectual Property:

- (a) Any information provided by the Client to the Advisory Consortium and any studies, reports and documentation and reports produced by the Advisory Consortium in performance of the Services and Deliverables set out in this Agreement (hereinafter referred to as the "**Materials**") shall belong to and remain the property of the Client, when delivered. However, the Advisory Consortium may retain a copy of such documents and software.
- (b) Upon termination of the Agreement for any reason whatsoever, the Advisory Consortium must return to the Client all Materials in its possession which belong to the Client. The Lead Advisor may retain single copies as may be required pursuant to Clause 16.3(b).

16.5 Fraud and Corruption:

If the Client determines that any member of the Advisory Consortium and/or its Personnel, sub-contractors, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Agreement, then the Client may terminate this Agreement or the relevant member of the Advisory Consortium employment/engagement under this Agreement, and may resort to other remedies including blacklisting/disqualification as provided in SPP Rules. Any personnel of the Advisory Consortium, who engages in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Agreement, shall be removed in accordance with clause 16.27.

16.6 Governing Law and Jurisdiction:

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Islamic Republic of Pakistan and the Courts of Karachi shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

16.7 Waiver:

- (a) No waiver by a Party of any right under the Agreement shall be effective unless reduced into writing and signed by or on behalf of all the Parties.
- (b) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement shall not (i) operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement; (ii) be effective unless it is in writing and executed by a duly authorized representative of such Party; and (iii) affect the validity or enforceability of this Agreement in any manner.
- (c) Neither the failure by either Party to insist on the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

16.8 Term, Termination and Survival

16.8.1 Term:

The appointment of the Advisory Consortium in terms of this Agreement shall automatically terminate upon completion of the Services as per the Scope of Work under **Schedule A** or upon expiration of a period of twenty four (24) months from the date of signing of this Agreement, whichever comes earlier (“**Termination Date**”). During the stated period, the Advisory Consortium shall conclude the Assignment and provide the Services to the Client. In the event the Assignment is not completed within the agreed time due to delay on the part of the Advisory Consortium, the Lead Advisor shall request the Client for reasonable extensions with necessary justifications from the Advisory Consortium and the Client shall have the right to grant such extensions as it may deem appropriate; provided that any such extension in time shall not entitle the Advisory Consortium to claim additional fee.

16.8.2 Termination by Client

The Client may terminate this Agreement 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 not less than thirty (30) days’ written notice of termination to the Lead Advisor (on behalf of the Advisory Consortium), and sixty (60) days’ in the case of the event referred to in (e).

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- a) If the Advisory Consortium does not remedy the failure in the performance of their obligations under this Agreement in relation to the Assignment or Services, within thirty (30) days after being notified in writing or within any further period as the Client may have subsequently approved in writing;

Provided that if the Advisory Consortium does not remedy its failure in performance of their obligations under this Agreement in relation to any one or two of the project(s) being part of the Project, within thirty (30) days after being notified in writing or within any further period as the Client may have subsequently approved in writing, the Client shall have the right to terminate this Agreement only to the extent of part of Services in relation to such project(s) and continue to avail Services in relation to other project(s) under this Agreement.

- b) If any of the members of Advisory Consortium becomes insolvent or bankrupt.  
c) If any of the members of Advisory Consortium, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement.  
d) If, as the result of Force Majeure, the Advisory Consortium are unable to perform a material portion of the Services for a period of not less than sixty (60) days.  
e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.  
f) If the Advisory Consortium fails to comply with any final decision reached as a result of arbitration proceedings.

**16.8.3 Termination by Lead Member (on behalf of Advisory Consortium)**

The Lead Advisor (on behalf of the Advisory Consortium) may terminate this Agreement, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause:

- a) If the Client fails to pay any money due to the Advisory Consortium pursuant to this Agreement without Advisory Consortium fault or breach of this Agreement.  
b) Pursuant to Clause 16.28 (Good Faith) hereof within forty-five (45) days after receiving written notice from the Lead Advisor that such payment is overdue.  
c) If, as the result of Force Majeure, the Advisory Consortium is unable to perform a material portion of the Assignment for a period of not less than sixty (60) days.  
d) If the Client fails to comply with any final decision reached as a result of arbitration proceedings.

**16.8.4 Payment upon Termination**

- a) Upon termination of this Agreement by the Client under Clause 16.8.2(e), the Performance Security shall immediately expire and be returned separately to each member of the Advisory Consortium.  
b) Upon termination of this Agreement by the Client under any of the Clauses 16.8.2(a), (b),

(c) and (f), the Client shall be entitled to encash the Performance Security.

16.8.5 Survival

Termination of this Agreement (a) shall not relieve the Advisory Consortium or the Client of any obligations hereunder which expressly or by implication survives Termination hereof; (b) shall not relieve Client for making payment of the Fee already due and payable in terms of this Agreement; and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations that have already arisen or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

16.9 Amendments:

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

16.10 Notices:

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth in Clause 9.3 above or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time.

16.11 Severability:

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

16.12 No Partnership:

- (a) Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

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- (b) It is understood and agreed that each of the Parties hereto is an independent party and that neither Party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither Party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

16.13 Exclusion of Implied Warranties, etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

16.14 No Representations:

No Party may rely on any express, tacit or implied term, representation, promise, warranty or the like which allegedly induced that Party to enter into the Agreement, unless the term, representation, promise, warranty is recorded in the Agreement.

16.15 Costs:

- (a) Each Party shall bear its own legal costs of, and incidental to, the negotiation, drafting and preparation of the Agreement.
- (b) Notwithstanding provisions of liabilities and damages contained in Clause 16.2 any costs, including attorney and own client costs, incurred by a Party, arising out of the breach by either Party of any of the provisions of the Agreement, shall be borne by the Party in breach.

16.16 Counterparts:

This Agreement may be executed in two (2) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

16.17 Force Majeure:

- (a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party e.g. floods, fire, explosion, accidents, either lack of or failure of power, or by reason of war, revolution, civil commotion, act of public enemies, blockades or embargo or any law and order proclamation, regulation, ordinance, demand or requirement of the Government, or any or other cause, similar to those above enumerated, and which makes a Party’s performance of its obligations under the Agreement impossible or so impractical as to be considered impossible under the circumstances.
- (b) The failure of a Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability

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arises from an event of Force Majeure, provided that the Party affected by such an event:

- (i) is not negligent, has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Agreement; and
- (ii) has informed the other Party as soon as reasonably practicable about the occurrence of such an event.
- (c) Any period within which a Party, pursuant to this Agreement, is required to 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.

16.18 Dispute Resolution:

In the event of any controversy or claim arising out of or relating to this Agreement or the Scope of Work or Services, the Parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to the Parties. If the Parties fail to settle the controversy or claim at the expiration of thirty (30) days, the matter will be referred to sole arbitrator to be appointed by the Parties with mutual consent within fifteen (15) days from the date of receipt of a notice of arbitration served by any Party hereto. In case the Parties fail to agree on sole arbitrator within the prescribed period, the matter shall be referred to two (2) arbitrators, one to be appointed by each of the Parties to dispute and to an umpire to be appointed by the arbitrators before entering upon the reference. The sole arbitrator or the two (2) arbitrators and umpire shall proceed to arbitrate in accordance with and subject to the provisions of the Arbitration Act 1940 or any statutory modification or re-enactment thereof for the time being in force.

The Parties agree that:

- (a) all arbitration proceedings will take place in the jurisdiction of the Sindh province;
- (b) the language of the arbitration shall be English;
- (c) it is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within one hundred and twenty (120) days from the date the single arbitrator or two arbitrators and an umpire is appointed. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award;
- (d) the decision of such arbitration to award or awards made by such single arbitrator or two arbitrators and an umpire shall be final and binding upon the Parties;
- (e) pending the decision or award, the Parties shall continue to perform their obligations pursuant to the Agreement and Scope of Work; and
- (f) this clause shall continue in force notwithstanding the termination of this Agreement or any Statement of Work.

16.19 Integrity Pact

If the Advisory Consortium or any of member thereof or their agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Lead Advisor or the Advisory Consortium (as the case may be) as **Appendix – A** to this Agreement, then the Client shall be entitled to:

- a) recover from the Lead Advisor or the Advisory Consortium (as the case may be) an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by the it or them or any of it/their sub-consultant, agents or servants;
- b) terminate the Contract; and
- c) recover from the Lead Advisor or the Advisory Consortium (as the case may be) any loss or damage to the Client as a result of such termination or of any other corrupt business practices by it or them or any of its/their sub-consultant, agents or servants.

16.20 Advisory Consortium Not to be Engaged in Certain Activities

It is agreed that, during the term of this Contract and two years after expiry of Termination Date, each member of the Advisory Consortium it and any entity affiliated with them, shall be disqualified from providing goods, works or services (other than the Assignment or any continuation thereof) for any project resulting from or closely related to the Services specified in the agreement.

16.21 Advisory Consortium not to Benefit from Commissions, Discounts, etc.

The Fee pursuant to this Contract shall constitute the Advisory Consortium's only payment in connection with this Contract or the Services, and the Advisory Consortium shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Advisory Consortium shall use their best efforts to ensure that the personnel and/or agents of either of them similarly shall not receive any such additional payment.

16.22 Prohibition of Conflicting Activities

Each of the members of the Advisory Consortium shall not engage, and shall cause their personnel as well as their Consortium Members and their personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

16.23 No Breach of Contract



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The failure of a Party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

16.24 Extension of Time

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

16.25 Lead Advisor's Actions Requiring Client's Prior Approval

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

- a) entering into a sub-contract for the performance of any part of the Assignment;
- b) appointing such members of the personnel not listed by name in Schedule B;

16.26 Removal and / or Replacement of Personnel

- a) Except as the Client may otherwise agree, no changes shall be made in the Key Professional Staff. If, for any reason beyond the reasonable control of the Advisory Consortium, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Professional Staff, the Lead Advisor shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Client finds that any of the personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the personnel, then the Lead Advisor shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- c) The Lead Advisor shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

16.27 Good Faith



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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.

**17. General Provisions**

17.1 The terms of this Agreement and any attachments or addenda hereto form an integral part of this Agreement. Said attachments are:

Schedule A – Assignment (Terms of Reference)  
Schedule B – Assignment Team  
Schedule C – Time Plan and Reporting Schedule  
Schedule D – Deliverable Schedule  
Schedule E – Fee Schedule

17.2 The Parties agree that the Client is the beneficiary, and that all supplemental agreements, disputes and other financial, legal and technical documents pertaining to the performance of this Agreement shall be processed through the Client.

17.3 The Parties agree that credit on all reports, progress reports, interim reports, and other documents produced under this Agreement shall indicate that the work was conducted under funding provided by the Client.

17.4 The Parties shall cooperate and collaborate in the performance of their respective services in accordance with the RFP, and in accordance with the Scope of Work outlined under Clause 5. The Advisory Consortium shall perform its undertakings in full conformity with the provisions of this Agreement, and shall, at all time, to the extent possible for each Party, prevent any breach in respect thereof.

17.5 The Advisory Consortium agrees that it shall carefully, strictly, and specifically comply with each and every provision of this Agreement that relates to the confidential or proprietary information. Further, the work products, including but not limited to, findings, observations, recommendations, system designs, source and object code(s) and procedures shall be deemed important, confidential and material and in the manner as described in this Agreement.

17.6 The Advisory Consortium or any of its employees shall not, at any time, either directly or indirectly, communicate to any other person, firm, corporation, or public entity in any manner whatsoever, any such confidential or proprietary information, data, or documents gathered, prepared, seen, or generated during the Assignment, except with the explicit permission of the Client.

17.6 The Client agrees that during the provision of the Services, and for a period of six month thereafter, it will not make any offer of employment to any partner / employee involved in the provision of the Services, without the prior written consent of the respective individual member of the Advisory Consortium, through the Lead Advisor.

**18. Entire Agreement**

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This Agreement (along with its Schedules, attachments and Annexures) contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement, and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

**19. Exclusivity**

This Assignment shall not constitute any exclusivity agreement and as such the individual members of the Advisory Consortium shall have no limitation or bar to engage in any other work relating to third parties during the course of this Assignment.

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement as of the date first above written.

**For and on behalf of Client**

**For and on behalf of Advisory  
Consortium**

\_\_\_\_\_  
Signature

**Local & HTP Government Department,  
Government of Sindh**

\_\_\_\_\_  
Signature

**(As Lead/ Financial Advisor)**

\_\_\_\_\_  
Signature

**(As Technical Advisor)**

\_\_\_\_\_  
Signature

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**(As Legal Advisor)**

In the Presence of:

**Witness:**

\_\_\_\_\_  
1. Name:  
CNIC:

\_\_\_\_\_  
2. Name:  
CNIC:

DRAFT

**SCHEDULE A**

**Breif of the Project and Terms of  
Reference**

[As per RFP]

**SCHEDULE B**

**Assignment Team**

The engagement will be carried out under the overall supervision of the Lead Advisor, who will be the engagement partner for the Project.

The principal Client contact for this engagement will be the Lead Advisor, who has been given overall responsibility for the performance of the obligations under this Agreement and coordinating with individual members of the Advisory Consortium in the performance of their services.

**SCHEDULE C**

Time Plan and Reporting Schedule

**SCHEDULE D**

Deliverable Schedule

**SCHEDULE E**

Fee Schedule