

GENERAL TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

- In the Contract, the following terms shall be interpreted as indicated:
 - (a) The “Contract” means the agreement entered into between BIRAC and the Contractor, as recorded in the Contract Form signed by the parties, includes all attachments, appendices thereto as also all documents incorporated by reference therein.
 - (b) The “Work” means each and every activity required to be carried out for the successful performance of the service described in the Scope of work at Annexure III.
 - (c) “BIRAC” means the Biotechnology Industry Research Assistance Council and its executors, successors, administrators and assignees.
 - (d) “Contractor” means the individual or firm or company or consortium or joint venture of companies performing the work under this contract.
 - (e) “Contractor’s Liaison” mean the personnel to be provided by the contractor to provide services in terms of this contract.

2. EFFECTIVE DATE AND DURATION OF CONTRACT

- a. The effective date of the contract will be **date of signing of the governing agreement with BIRAC.**
- b. The total duration of the **Contract is 2 Years from date of signing of the governing agreement with BIRAC.** The terms and conditions shall continue until the completion of the work. The contract period is extendable by another year on mutually agreed terms & conditions.

3. SCOPE OF WORK

- a. The scope of work for hiring of Cabs for BIRAC is detailed at **Annexure III attached herein.**

4. LIABILITY

- a. Except as otherwise expressly provided, neither the BIRAC nor its servants, agents, nominees, contractors or sub-contractors, shall have any liability or responsibility whatsoever to whomsoever (including the owner) for any loss or damage caused to the equipment and / or loss or damage to the property of contractor and / or its contractors or sub-contractors, irrespective of how such loss is caused. The contractor shall protect, defend indemnify and hold harmless BIRAC from and against such loss or damage and any suit, claim or expense resulting there from.

- b. Neither the BIRAC nor its servants, agents, nominees, assignees, contractors and sub-contractors, shall have any liability or responsibility what-so-ever for injury, illness, or death of any employee of contractor and/or of its contractors or sub-contractors irrespective of how such injury, illness or death is caused. Contractor shall protect, defend and hold harmless the BIRAC from and against such loss or damage and any suit claim or expense resulting there-from.

5. CONFIDENTIALITY

The successful bidder shall not, without the prior written consent of the BIRAC, disclose any specification, data, maps, or other information furnished by or on behalf of BIRAC in connection therewith to any person or third party other than a person employed by the Bidder. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary.

This obligation of Contractor shall prevail even after termination of contract.

6. PERFORMANCE BANK GUARANTEE

- a. Within 21 days of the date of issue of LOA, the contractor shall furnish a Performance Bond to BIRAC in the form of a bank guarantee drawn on bank/branch in India for 7.5% of Annualized Contract value as per the format provided in **Annexure-VI**. The proceeds of the Performance Bank Bond shall be payable to BIRAC as compensation for Contractor's failure to perform and complete its obligations under the contract.
- b. In the event the contractor fails to honor any of the commitments entered into under the contract and / or in respect of any amount due from the contractor to the BIRAC, BIRAC shall have the right to invoke the Performance Bank Guarantee and claim the amount from the Bank.
- c. BIRAC has the right to invoke the Performance Bank Guarantee in case the contractor fails to complete any/all obligations under the contract to the satisfaction of BIRAC.
- d. The Performance Bank Guarantee (PBG) shall be valid till the completion of 60 days after the initial duration of the contract with the provision for extension by an additional month in order to enable the BIRAC to make claims if any.
- e. The PBG will be duly discharged by BIRAC after successful completion of Contractor's obligations under the contract, including completion of any/ all obligations under the contract to the satisfaction of the BIRAC and/or person/agency appointed by it for the said purpose.

7. FORCE MAJEURE

7.1 In the event of either of the parties being rendered unable, wholly or in part by force majeure to carry out its obligations under the agreement when entered into, it is agreed that on such party giving notice and particulars of such force majeure in writing or by fax to the other party as soon as possible, after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause as far as possible be remedied with all reasonable effort.

7.2 The term "force majeure" as used herein shall mean 'Acts of God' including Landslides, lightning, Earthquake, Fires, Storms, Flood & Washout, Strikes, Lockouts or other Industrial Disturbances in the Seller's undertaking, Wars whether declared or not, Blockades, insurrection, riots and Government regulations whether of the kinds herein enumerated or otherwise, which are not within the control of the party claiming suspension, and which renders performance of the contract by the said party impossible.

8. TERMINATION

a. Termination on expiry of the terms (Duration):

The contract shall be deemed to have been automatically terminated on expiry of duration of contract or extension, if any, thereof.

b. Termination on account of *Force Majeure* conditions prevailing:

Either party shall have the right to terminate the contract on account of Force Majeure under clause 7 hereinabove.

c. Termination on account of Insolvency:

In the event that the CONTRACTOR at any time during the term of the contract becomes insolvent or makes a voluntary assignment of its assets for the benefits of creditors or is adjudged bankrupt, then the BIRAC shall by a notice in writing have the right to terminate the contract and all the contractor's right and privileges hereunder, shall stand terminated forthwith.

d. Termination for Unsatisfactory Performance:

If BIRAC considers that the performance of the contractor is unsatisfactory, or not up to the expected standards, BIRAC shall notify the contractor in writing and specify in details the cause of the dissatisfaction. BIRAC shall have the option to terminate the contract by giving 45 days' notice in writing to the contractor if the contractor fails to comply with the requisitions contained in the said written notice issued by BIRAC.

e. Termination due to change of Ownership & Assignment:

In case the contractor's rights and/or obligations under the contract and / or the contractor's rights title and interest to the equipment / material, are transferred or assigned without the BIRAC's consent, BIRAC may at its absolute discretion, terminate the contract.

f. Consequences of Termination:

In all cases of termination herein set forth, the obligation of BIRAC to pay the rates or any other charges shall be limited to the period up to the date of termination. Notwithstanding the termination of the contract, the parties shall continue to be bound by the provisions of the contract that reasonably require some action or forbearance after such termination including confidentiality.

- g.** The contract may be terminated by either party notwithstanding any provisions herein to the contrary by giving 45 days written notice to the other party due to any other reason not covered under the above clauses from 8(a) to 8(e) and in the event of such termination the BIRAC shall not be liable to pay any cost or damages to the contractor except for payment for all services provided till such date when termination becomes effective.
- h.** When the contractor has made himself liable for action, under any of the aforesaid events, the BIRAC shall issue and serve a notice to the contractor to the effect of termination of the contract, which shall be final and conclusive evidence of the termination of the contract.
- i.** Upon such termination of the contract, the BIRAC reserves the exclusive right to entrust the balance work for the remaining period of the contract to any other agency, which is found suitable for the satisfactory extension of the work. In such event, the contractor shall be liable to compensate the BIRAC for all the losses / damages, if any incurred.

9. INDEMNIFICATION

- a.** The Contractor hereby agrees to indemnify and hold BIRAC harmless from any loss or liability, (including all/any attorney's fees and related legal expenses), arising out of any claim for damage to Contractor's property and injuries to or death of Contractor's employees and agents, consultants caused by, or incidental to Contractor's performance under this Contract, regardless of whether any such loss, liability, injury or death may be caused by negligence of BIRAC, its third party agents or its employees.
- b.** BIRAC and Contractor agree to indemnify and hold one another harmless from any loss, expense or liability, including all/any attorney's fees and related expenses arising out of any claim presented by third parties for personnel injuries or death, or property or equipment damage which is attributable to the negligence of BIRAC and/or Contractor caused by, or incidental to the performance of each party under this Contract.

10. DISPUTE RESOLUTION AND ARBITRATION

In the event of any dispute or difference between the Parties hereto upon or in relation to or in connection with this Agreement, such dispute or difference, shall be resolved amicably and in good faith by mutual consultation.

If such resolution is not possible, then the unresolved dispute or difference whatsoever arising between the Parties out of or relation to the construction, meaning, scope, operation or effect of this agreement or the validity the breach thereof or in respect of any defined legal relationship associated therewith or derived therefrom dispute shall be submitted for arbitration to International Center for Alternate Dispute Resolution (ICADR), an autonomous organization working under the aegis of the Ministry of Law & Justice, Department of Legal Affairs, Government of India. The Authority to appoint the arbitrator(s) shall be the ICADR. The Arbitration under this Clause and provision of administrative services by ICADR shall be in accordance with the ICADR Arbitration Rules, 1996. The award made in pursuance thereof shall be binding on the Parties. The venue of arbitration shall be New Delhi and the arbitration proceedings shall be conducted in English Language. The provision of this Clause shall not become inoperative notwithstanding the Agreement expiring or ceasing to exist or being terminated or foreclosed.

11. APPLICABLE LAWS

The contract shall be deemed to be a contract made under, governed by and construed in accordance with the laws of India subject to exclusive jurisdiction of courts of Delhi. Contractor shall ensure full compliance of all applicable Indian Laws and statutory regulations at its own cost.

12. TAXES AND LEVIES

- a.** Corporate and personnel taxes payable by Contractor in respect of the contract, if any shall be the liability of Contractor and BIRAC shall not be held responsible on this account.
- b.** The quoted price shall include all the taxes (excluding Service Tax which will be paid extra as applicable), and Income Tax, levies, duties etc. shall be borne by the Contractor.
- c.** Tax on payments made shall be deducted at source by BIRAC as per the Indian Income Tax Act and Rules framed there under including subsequent changes, if any. A proper Tax Deduction Certificate will be issued by BIRAC within the time prescribed under the Indian Laws.

13. NOTICES

Any notice given by one party to other pursuant to the contract shall be sent by speed post, registered post, fax, e-mail or courier and confirmed in writing to the applicable address of the other party. For the purpose of this contract the address of BIRAC is provided below:

**Biotechnology Industry Research Assistance Council (BIRAC),
1st Floor, MTNL Building, 9, CGO Complex, Lodhi Road,
New Delhi 110003.**

