



Asian Development Bank

**SECTION 6.  
STANDARD FORM  
OF  
CONTRACT**

Time-Based and  
Lump-Sum Contract  
(>US\$200,000)  
For ADB-financed TAs  
[All selection methods]  
(August 2009)

**Asian Development Bank  
CONSULTANT SERVICES CONTRACT**

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**CONTRACT**

**[(OPTION A)<sup>1</sup>**

This CONTRACT (hereinafter, together with the General Conditions, Appendices A-D, and Notice to Proceed<sup>2</sup> attached hereto and forming an integral part hereof, called the Contract) is made on the [day] day of [month] [year], between Asian Development Bank (hereinafter called ADB) on the one part, and [name of consulting firm, country] [CMS No.] on the other part, (hereinafter, called the Consultant). The Consultant has associated with [names of associated firms, country] [CMS No.\*]. Notwithstanding such association, the Consultant shall retain full and undivided responsibility for the performance of obligations and for the satisfactory completion of the Services to be performed under the Contract.

**(OPTION B)<sup>3</sup>**

This CONTRACT (hereinafter, together with the General Conditions, Appendices A-D, and Notice to Proceed<sup>2</sup> attached hereto and forming an integral part hereof, called the Contract) is made on the [day] day of [month] [year], between Asian Development Bank (hereinafter called ADB) on the one part, and a joint venture consisting of the following entities, each of which will be jointly and severally liable to ADB for all of the Consultant's obligations under this Contract, namely, [name of consulting firm, country] [CMS No.],<sup>4</sup> [name of consulting firm, country] [CMS No.], [name of consulting firm, country] [CMS No.] on the other part, (hereinafter collectively called the Consultant). The Consultant shall retain full and undivided responsibility for the performance of obligations and for the satisfactory completion of the Services to be performed under the Contract.]

WHEREAS ADB has agreed to assist the Government of [country] (hereinafter called the Government) by providing technical assistance (hereinafter called the Technical Assistance) to the Government for the [TA no.-country: project title] and to this end, an agreement (hereinafter called the Technical Assistance Agreement) was executed between the Government and ADB on the [day] day of [month] [year]; and

WHEREAS ADB has requested the Consultant to carry out such work [on a lump sum basis and]<sup>\*\*</sup> on the terms and conditions hereinafter set forth, and in accordance with the General Conditions and the Appendices attached hereto, which the Consultant has agreed to do;

<sup>1</sup> Use Option A if the Consultant is a lead firm which is associated with other firms as sub-consultants.

<sup>2</sup> A sample form of Notice to Proceed is attached.

<sup>3</sup> Use Option B if the Consultant is a Joint Venture, i.e. a Consultant consists of more than one entity, all of which are liable under the Contract.

<sup>4</sup> Name each of the firms which form part of the Joint Venture

Note:

\* Optional

\*\* The bracketed language should be included only in the case of lump sum contracts.

NOW THEREFORE the parties hereto agree as follows:

Clause 1. Description of Services. The work to be performed by the Consultant under the Contract (such work being hereinafter called the Services) is more particularly described in the Terms of Reference set forth in Appendix A.

Clause 2. Reports. The Consultant shall submit to ADB in the English language the reports specified below and in Section 6.05 of the General Conditions:

- (i) An Inception Report: ( \_\_ copies to ADB and \_\_ copies to the Government) to be submitted within \_\_\_\_\_ ( ) weeks after the commencement of the Services.
- (ii) An Interim Report: ( \_\_ copies to ADB and \_\_ copies to the Government) to be submitted within \_\_\_\_\_ ( ) weeks after the commencement of the Services.
- (iii) A Draft Final Report: ( \_\_ copies to ADB and \_\_ copies to the Government) to be submitted within \_\_\_\_\_ ( ) weeks after the commencement of the Services.
- (iv) A Final Report: ( \_\_ copies to ADB and \_\_ copies to the Government) and for ADB and the Government, **a CD containing the Final Report.** These will be submitted within \_\_\_\_\_ ( ) weeks after the receipt of the comments from ADB and the Government on the Draft Final Report. The Final Report shall take into consideration the comments of ADB and the Government. A 500-word (maximum) knowledge summary will be included in the front section of the final report to be delivered on a CD.

Clause 3. Personnel. (a) Subject to Sections 1.01, 1.02 and 2.01 of the General Conditions, the Services shall be carried out by the personnel specified in Appendix B (hereinafter called the personnel) for the respective periods of time indicated therein. The personnel shall include any persons hired by the Consultant or by any subconsultant and assigned to the performance of the Services or any part thereof.

(b) There shall, at all times, be a Team Leader acceptable to ADB to supervise and coordinate the operations of the personnel [in the field] and to be responsible for liaison between the Consultant, the Government and ADB.

Clause 4. Commencement Date. The Consultant shall commence the Services within fifteen (15) calendar days after ADB has given to the Consultant Notice to Proceed with the Services. It is presently anticipated that Services will commence not later than [start date] and be completed by [completion date]

Clause 5. Date of Arrival. The Consultant shall promptly inform ADB of the date of arrival of the personnel in [country or city].

Clause 6. Facilities and Services Provided by the Government. The Government shall provide the Consultant free of charge the services, facilities, equipment, documents and information listed in Article XII of the General Conditions and in Appendix D.

Clause 7. Payment to the Consultant.<sup>5</sup> (a) ADB shall pay the Consultant for the Services on the basis of claims submitted by the Consultant to ADB pursuant to Articles VI of the General Conditions and in accordance with the Payment Schedule specified in Appendix C. The mobilization payment will be paid directly upon issuance of the Notice to Proceed. [In such cases:

- (i) Remuneration specified in Appendix C pursuant to Sections 6.02 to 6.04 of the General Conditions shall be made in [*currency*];
- (ii) The estimated cost for the Services as submitted by the Consultant and approved by ADB is set forth in Appendix C;
- (iii) For the purpose of calculating hourly rates for the time spent in the home office pursuant to Section 6.02 of the General Conditions, the total number of 176 hours per month shall apply.

(b) The cost estimates and schedule of payments set forth in Appendix C are based on representations made by the Consultant in its Financial Proposal and at contract negotiations and documentation, accounts and records relevant to such representations are subject to inspection and audit at the option of ADB pursuant to Section 7.02 of the General Conditions.]<sup>6</sup>

{(b) The rates set forth in Appendix C are based on representations of the Consultant made in connection with the Contract negotiations, and are subject to audit at the option of ADB pursuant to Section 7.02 of the General Conditions.

(c) Remuneration and reimbursable costs specified in Appendix C pursuant to Section 6.04 of the General Conditions shall be made in [*currency*].

(d) An estimated budget for the Services is set forth in Appendix C.

(e) For the purpose of calculating hourly rates for time spent in the home office pursuant to Section 6.02 of the General Conditions, the total number of 176 hours per month shall apply.}<sup>7</sup>

[(c)]<sup>8</sup> [(f)]<sup>9</sup> All payments by ADB shall be made to the account(s) of the Consultant with the following details:

Bank Name:

Bank Address:

Account Name:

<sup>5</sup> For lump sum contracts, substitute bracketed formulation with the following language:

“ADB shall pay the Consultant the maximum sum specified in Clause 8 on the basis of claims submitted by the Consultant to ADB subject to Section 21.04 of the General Conditions and in accordance with the Payment Schedule specified in Appendix C. The mobilization payment will be paid directly upon issuance of the Notice to Proceed by ADB. Payments under this Contract shall be in United States dollars.”

<sup>6</sup> Use this formulation of Clause 7(a) and (b) for FBS, LCS or QCBS methods.

<sup>7</sup> Use this formulation of Clause 7(b), (c), (d) and (e) for CQS, QBS or SSS methods.

<sup>8</sup> Use this for FBS, LCS or QCBS.

<sup>9</sup> Use this for CQS, QBS or SSS.

Account No.:  
 Swiftcode:  
 ABA No.:

Clause 8. Maximum Payment. (a) Except as otherwise agreed by ADB in accordance with Section 17.01 of the General Conditions, total payments under this Contract shall not exceed a sum equivalent to [*amount in words*] United States dollars (US\$\_\_\_\_\_).

Clause 9. Recipient Country. For the purposes of the Contract, the term "recipient country" refers to [*country*].

Clause 10. Authorized Representative of Consultant. Any action required or permitted to be taken, and any documents required or permitted to be executed under this Contract may be taken or executed on behalf of the Consultant by the Team Leader or a designated representative.

Clause 11. Authorized Representative of ADB. (a) Except for contract variations pursuant to Section 17.01 of the General Conditions, or as provided in Clause 11(b) below, all notices, orders, directions and instructions pertaining to commencement of Services and the technical aspects of the Services shall be given on behalf of ADB to the Consultant by the Director, [*user department, division*] of ADB or a designated representative.

(b) All notices, orders, directions, instructions and other documents relating to the employment, termination, discharge, compensation or expenses of the Consultant, shall be given on behalf of ADB to the Consultant by the Principal Director of Central Operations Services Office of ADB or a designated representative.

Clause 12. Notices and Requests. Any notice or request required or permitted to be given or made under the Contract shall be in writing and in the English language. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, email or facsimile to the party to which it is required to be given or made at such party's address specified in writing to the party giving such notice or making such request.

For ADB : Attention: [*Name of User division director*]  
 Director, [*user division*]

Address : ASIAN DEVELOPMENT BANK  
 P.O. Box 789  
 0980 Manila, Philippines

Telephone Nos. : (632) 632-4444  
 (Connecting all Departments and Offices)

Facsimile Nos. : (632) [*user division fax no.*]

E-mail address : [*user division project officer*]

For the Consultant : Attention: [name of contact person]  
[title]

Address :

Telephone Nos. :

Facsimile Nos. :

E-mail address :

Clause 13. Effective Date. (a) The Contract shall become effective upon the date notice is given to the Consultant to proceed with the Services pursuant to Clause 4 above.

(b) Should the Contract not have become effective within sixty (60) calendar days of the date hereof, either party may, by not less than ten (10) calendar days written notice to the other party, declare the 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.

IN WITNESS WHEREOF, the parties hereof have caused the Contract to be signed in their respective names and delivered at the principal office of ADB, as of the day and year first above written.

#### ASIAN DEVELOPMENT BANK

By **[name of Principal Director or Director]**  
[Central Operations Services Office or  
Central Operations Services 1 or 2]

**[Name of Consulting Firm]**

By **[name of authorized representative]**  
[title]

**[Note: if the Consultant is a Joint Venture, all the entities should appear as signatories in the following manner]**

***[Name of Joint Venture Partner]***

By ***[name of authorized representative]***  
***[title]***

***[Name of Joint Venture Partner]***

By ***[name of authorized representative]***  
***[title],***

etc.

List of Appendices

- A Terms of Reference
  - B Personnel Schedule
  - C Cost Estimates and Payment Schedule
  - D Specific Assurances of the Government
- General Conditions

**APPENDIX A**  
**(TERMS OF REFERENCE)**



**APPENDIX C\***

**FOREIGN CURRENCY COST ESTIMATES**  
 (Expressed in \_\_\_\_\_)

**REMUNERATION**<sup>10</sup>

Services in Field  
(Including Travel Time)

<u>Name</u>	<u>Number of Person-Months</u>	<u>Agreed Fixed Monthly Rate</u>	<u>Estimated Amount</u>
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Services in Home-Office

<u>Name</u>	<u>Number of Person-Months</u>	<u>Agreed Fixed Monthly Rate</u>	<u>Estimated Amount</u>
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Total Remuneration

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\* For harmonized TA RFP time-based contracts.

<sup>10</sup> The rates set forth are based on representations of the Consultant made during contract negotiations and are subject to audit at the option of ADB under Section 7.02 of the General Conditions. Where an audit identifies that a Consultant has during negotiations or implementation of the Project misrepresented information or misled ADB or contravened the principles stated in the Guidelines, ADB may, inter alia, sanction that consulting firm from participating in any future consulting services assignments financed by ADB for such period as ADB deems fit.

*Time Based&LS contract-All Selection Methods (14Aug2009)*

**OUT-OF-POCKET EXPENSES**

International Travel

Miscellaneous Travel Expenses

Per Diem Allowances<sup>11</sup>

Communications

Reproduction & Shipment of  
Documents, Reports, etc.

Equipment & Other Items

Total Out-of-Pocket Expenses

\_\_\_\_\_  
=====

**CONTINGENCY**

\_\_\_\_\_

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<sup>11</sup> Per diem payments are intended for the designated international or national experts to use to cover their out-of-pocket expenses in the field, so that they are positioned to satisfactorily perform the assigned tasks. Accordingly, the Consultant should ensure that each designated expert receives the specified per diem amount in a timely manner and in full.



**Summary of Cost Estimates**  
**(US\$ Equivalent)**

	<u>Foreign Currency</u>	<u>Local Currency</u>	Total
Remuneration	_____	_____	_____
Out-of-Pocket Expenses	_____	_____	_____
Contingency	_____	_____	_____
<b>Total</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>

**PAYMENT SCHEDULE** (This is just an illustration. The actual items will be determined during contract negotiations)

<u>Payment No.</u>		<u>Total US\$ (or equivalent)</u>
1.	Mobilization Payment	
2.	Submission of Inception Report	
3.	Submission of Mid-Term Report	
4.	Submission of Draft Final report	
5.	Submission and Approval of Final Report	
6.	Approval of Statement of Eligible Costs	_____
<b><u>Other Payments</u></b>		
	International Travel	
	Local Air Travel	
	Equipment	
	Other (specify, if any)	
		_____
	<b><u>Total Contingency</u></b>	_____
	<b>MAXIMUM CONTRACT PAYMENT</b>	<b>=====</b>

[ APPENDIX C<sup>1</sup>

SCHEDULE OF PAYMENTS

	AMOUNT
Mobilization Payment	
Submission of Inception Report	
Submission of Mid-Term Report	
Submission of Draft Final Report	
Submission of Final Report	
<b>TOTAL</b>	<b>US\$</b>
<b>TOTAL MAXIMUM CONTRACT AMOUNT</b>	<b><u>US\$</u> _____<sup>2</sup></b>

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<sup>1</sup> Use this for lump sum contracts.

<sup>2</sup> [The Contract Amount is based on representations of the Consultant made during contract negotiations. Such representations are subject to audit at the option of ADB under Section 7.02 of the Contract Conditions. Where an audit identifies that a Consultant has during negotiations or implementation of the Project misrepresented information or misled ADB or contravened the principles stated in ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (Guidelines), ADB may, *inter alia*, sanction that consulting firm from participating in any future consulting services assignments financed by ADB for such period as ADB deems fit.]

## **APPENDIX D**

### **Specific Assurances**

(Model only)

1. The Government shall provide and make available to the Consultants, free of charge, the following facilities, services, equipment, materials, documents and information as they are required by the Consultants for carrying out the Technical Assistance:

- (i) office accommodation (suitably furnished and equipped), office supplies, secretarial assistance, translation and interpretation services, and communication facilities;
- (ii) vehicles (including the cost of maintenance and operation) and drivers and other internal transportation facilities in the Recipient Country;
- (iii) equipment, materials and supplies at the disposal of the Government;
- (iv) suitably furnished living accommodation including the cost and maintenance of utilities (electricity, gas and water services); and
- (v) documents, data, statistics, information and maps at the disposal of the Government.

2. The Government shall also undertake the following:

#### **PLEASE NOTE:**

1. The facilities, services, equipment, materials, documents and information described in 1(i) to (v) above are only theoretical examples of what may be provided by the Government for a specific TA project. This should be adjusted in accordance with the specific Government assurances contained in T.A. Agreement or T.A. Framework Agreement Letter.

2. The second paragraph should be deleted if there are no additional undertakings to be obtained.

3. The contents of these specific assurances should be confirmed with the Government representative during Contract Negotiations.

## GENERAL CONDITIONS

### ARTICLE I

#### Personnel

Section 1.01. Should it become necessary for the Consultant to replace any of the personnel specified by name in the Personnel Schedule, the Consultant shall forthwith provide a replacement acceptable to ADB with comparable or better qualifications. In the event that the person replaced is, at the time of replacement, in the field, the Consultant shall bear the travel and other related costs arising out of or incidental to the replacement. Under QCBS, FBS and LCS methods, the remuneration rate for any replacement shall be the same unit rate as provided for by the firm for the original candidate in its financial proposal. For QBS, CQS and SSS methods, the remuneration rate and out-of pocket expenses for any replacement shall be based on supporting documentation but in any case shall not exceed that of the original candidate. For any additional personnel proposed by the Consultant and approved by ADB, the relevant remuneration rate(s) and estimated out-of-pocket expenses will be as negotiated between ADB and the Consultant.

Section 1.02. In the event that any of the personnel is found by ADB to be incompetent, guilty of misbehavior or incapable in discharging the assigned responsibilities, ADB may request the Consultant, at the expense of the Consultant, to forthwith provide a replacement with suitable qualifications and experience acceptable to ADB.

Section 1.03. The Consultant shall ensure that the Personnel specified by name in Appendix B, and all other persons employed by or associated with the Consultant, shall not use business cards and/or stationery issued in the name of ADB, or featuring any form of ADB logo. The business cards to be used by the consultants when performing work under the Contract shall be in a format approved by ADB as indicated at [www.adb.org/Consulting/business-card.asp](http://www.adb.org/Consulting/business-card.asp). The Personnel of the Consultant and all other persons employed by or associated with the Consultant shall not take any action which may be interpreted to imply that they are staff members of ADB.

### ARTICLE II

#### Personnel Schedule

Section 2.01. Subject to the prior approval of ADB in accordance with Section 6.08, the Consultant may make adjustment in the periods of time indicated in the Personnel Schedule, as may be appropriate to ensure the efficient performance of the Services and provided that such adjustments will not cause payments made under the Contract to exceed the maximum amount payable as specified in Clause 8 of the Agreement.

### ARTICLE III

#### Performance of the Services

Section 3.01. The Consultant shall carry out the Services with due diligence and efficiency and shall furnish to the Government and ADB such information related to the Services as the Government, or ADB, may from time to time reasonably request.

#### ARTICLE IV Sub-Contracts

Section 4.01. The Consultant may subcontract work relating to the Services to an extent and with such specialists and entities as may be approved in advance by ADB, and shall submit to ADB for prior approval the text of any proposed subcontract and any amendments thereto which may subsequently be proposed. Notwithstanding such approval, the Consultant shall, as provided in the Agreement, retain full responsibility for the Services and for the content of all Reports required hereunder.

#### ARTICLE V Relationship of Parties

Section 5.01. Nothing contained herein or in the Technical Assistance Agreement shall be construed as establishing or creating between ADB and the Consultant a relationship of master and servant or principal and agent.

Section 5.02. The Consultant shall during the performance of the Services be an independent contractor retaining complete control over its personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.

#### ARTICLE VI Payments and Mode of Billings

Section 6.01. ADB shall pay to the Consultant in respect of the Services, such remuneration and out-of-pocket expenses as set forth in Appendix C; provided that total payment shall not exceed the ceiling amount specified in Clause 8 of the Agreement.

Section 6.02. Remuneration shall be determined on the basis of time spent by the personnel listed in the Personnel Schedule in performance of the Services after the Effective Date (including necessary travel time) at the rates specified in Appendix C in respect of the personnel. Unless otherwise specifically provided for in Appendix C, such rates shall be fixed for the duration of the Contract. Remuneration for periods of less than one month shall be calculated on an hourly basis for time spent in home office on the basis of the hours per month as specified in Clause 7(a)(iii) of the Agreement, and on a calendar-day basis for time spent away from home office, including travel time (one day being equivalent to 1/30th of a month).

Section 6.03. Out-of-pocket expenses shall consist of the following types of expenses reasonably incurred by the Consultant in performance of the Services and as specified in Appendix C:

- (i) a per diem allowance in respect of personnel of the Consultant for every day in which the personnel shall be absent from the home office for purposes of the Services, at the rates set forth in Appendix C;
- (ii) cost of necessary travel, including transportation of the personnel by the most appropriate means of transport and the most direct practicable route;

- (iii) cost of international communications such as the use of telephone and facsimile required for the purpose of the Services;
- (iv) cost, rental and freight of any instruments or equipment required to be provided by the Consultant as approved by ADB for the purposes of the Services;
- (v) cost as approved by ADB of other facilities and services of the type specified in Appendix D, to the extent that they are not provided to the Consultant free of charge by the Government and as and when reasonably required by the Consultant for purposes of the Services;
- (vi) cost of printing and dispatching of the Reports specified in Clause 2 of the Agreement and in Appendix A;
- (vii) other allowances where applicable and provisional or fixed sums (if any) set forth in Appendix C; and
- (viii) cost of such further items required for purposes of the Services which ADB consider eligible for reimbursement hereunder.

Section 6.04. The types of out-of-pocket expenses listed in Section 6.03 may be covered by one or more fixed sums. Reimbursable out-of-pocket expenses as well as out-of-pocket expenses which are covered by fixed sums shall be specified in Appendix C.

Section 6.05. Payments to be made by ADB hereunder shall be strictly subject to, and representative of, satisfactory progress achieved by the Consultant in accordance with Appendix C. The Consultant shall, on a monthly basis, submit to ADB, in a format acceptable to ADB, a report stating personnel movements, inputs in the previous month compared to those shown in the Personnel Schedule and expenditures on receiptable items shown in Appendix C. In the event the forecast of progress as anticipated in Personnel Schedule is substantially changed due to variations pursuant to Section 17.01, the Consultant may request ADB to revise the Payment Schedule specified in Appendix C to reflect such change.

Section 6.06. As soon as practicable after the completion of the Services or termination of the Contract, the Consultant shall submit to ADB the Final Statement of Eligible Costs incurred, with vouchers and other appropriate supporting documents for such reimbursable expenditures referred to in Appendix C. The statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable out of pocket expenses. The remuneration portion of the statements will be denominated in such currencies as specified in Clause 7(a)(i) of the Agreement. The out-of-pocket expenses portion will be denominated in the currencies of original expenditure.

Section 6.07. (a) Final payment pursuant to Appendix C shall be made by ADB only after the Final Statement of Eligible Cost and the Final Report have been submitted by the Consultant and approved by ADB. The Consultant shall submit the Final Statement to ADB within 90 calendar days of the date of approval by ADB of the Final Report. All costs, including out-of-pocket expenses, which have not been included in the Final Statement will not be paid or reimbursed. Should any discrepancy be found to exist between the actual payments made by ADB and the costs authorized to be incurred by the Consultant pursuant to this Contract, the final payment shall be adjusted by ADB to reflect such discrepancy.

(b) If no Final Statement of Eligible Cost is submitted by the Consultant to ADB within the 90-day calendar period specified in the preceding paragraph, or such extended period as ADB may agree in writing, ADB shall make the Final Payment based on the Contract's account record as certified by the User Unit, after offsetting/deducting amounts due to ADB, as applicable, such as outstanding advance payments or in connection with contract variations or for equipment. ADB will then close the Contract account after ADB makes such Final Payment as certified by the User Unit. All payment claims submitted to ADB, if any, by the Consultant after Contract account closure shall be denied and the Consultant agrees that such claims have been irrevocably waived because of its failure to submit the Final Statement of Eligible Cost within the stipulated 90-day calendar period or such extended period as ADB may have agreed to in writing.

Section 6.08. Payments in respect of remuneration or reimbursable out-of-pocket expenses, which exceed the cost of estimates for these items as set forth in Appendix C, may be charged to the contingencies provided for in Appendix C only if such expenditures were approved by ADB prior to being incurred.

Section 6.09. (a) Subject to Sections 6.01 and 6.05 above, ADB shall pay to the Consultants the amounts claimed pursuant to this Article VI within thirty (30) calendar days after receipt of satisfactory statements and supporting documents. ADB may add to or subtract from any subsequent payment any amount to cover the difference between the amount paid and the cost authorized to be incurred.

(b) All payments by ADB shall be made to the account(s) specified in Clause 7 of the Agreement. Except as may be otherwise agreed, payments with respect to remuneration shall be made in the currencies referred to in Clause 7(a)(i) of the Agreement and payments with respect to out-of-pocket expenses shall be made in US dollar equivalent.

Section 6.10. Payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

Section 6.11. Whenever it shall be necessary to evaluate one currency in terms of another for the purpose of:

- (i) determining the maximum payment as specified in Clause 8 of the Agreement, the conversion shall be made on such basis as ADB may from time to time determine; and
- (ii) making payments in respect of out-of-pocket expenses, the conversion shall be made at such rate as ADB shall reasonably determine having regard to the currencies utilized in, at the time and place of, the original expenditure or transaction.

Section 6.12. (a) If required to make any payments to any governmental agency in connection with implementation of the Services, the Consultant shall:

- (i) make such payment only by means of check, pay order or through official bank remittance addressed to the account of the relevant agency;

- (ii) where payment to such agency account cannot be made, make payment to any employee of such agency (whether permanent, part-time or contractual staff), only upon prior written endorsement of ADB, and only by means of check, pay order or through official bank remittance addressed to the relevant account of the employee.

(b) In the event that a non-cash payment cannot be effected in a timely manner, cash payment up to \$300, or such amount as may be allowed under the relevant laws applicable to the government agency or employee as the case may be, whichever is less, may be made by the Consultant to the government agency or employee against receipt for such payment; provided that such payment is reported to ADB within 3 working days after such payment is made and a written explanation of the circumstances that necessitated such payment is submitted by the Consultant to ADB.

## ARTICLE VII Accounts and Records

Section 7.01. The Consultant shall keep accurate and systematic accounts and records in respect of the Services in such form and detail as are customary in its profession and are sufficient to establish accurately that the remuneration and reimbursable out-of-pocket expenses referred to in Article VI have been duly incurred. The Consultant shall maintain accounts and records for the period of the Services and for a period no less than 5 years after the expiration or termination of this Contract.

[Section 7.02. The Consultant shall permit duly authorized representatives of ADB, including auditors selected by ADB, to inspect and make an audit of all such documents, accounts and records in connection with payments made in accordance with this Contract, and make copies of such documents, accounts and records if so requested by ADB up to 5 years from the expiration or termination of this Contract. The basic purpose of this audit is to verify payments under this Contract and, in this process, to also verify representations made by the Consultant in relation to the Contract. The Consultant shall cooperate with and assist ADB and its authorized representatives in making such audit. Out of pocket expenditures covered by fixed sums as provided in Section 6.04 above shall, however, not be subject to audit pursuant to this Article. In the event the audit discloses that the Consultant has overcharged ADB, the Consultant shall immediately reimburse ADB an amount equivalent to the amount overpaid, together with interest on such amount calculated at the then current interest rate for lending by ADB from its ordinary capital resources, payable from the date of such overpayment until the date of reimbursement. If overpayment is a result of the Consultant having been engaged in what ADB determines to constitute corrupt, fraudulent, collusive or coercive practices, as defined in ADB's *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers* (Guidelines), ADB shall, unless ADB decides otherwise, terminate the contract. Such action shall be in addition to any action ADB may take in accordance with the Guidelines to declare the Consultant ineligible for award of further ADB-financed contracts.]<sup>1</sup>

[Section 7.02. The Consultant shall permit duly authorized representatives of ADB, including auditors selected by ADB, to inspect and make an audit of all such accounts and records in connection with payments made in accordance with this Contract, including a breakdown of remuneration rates and reimbursable out-of-pocket expenses, and make copies of such accounts and records if so requested by ADB up to 5 years from the expiration or

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<sup>1</sup> For FBS, LCS and QCBS.

termination of this Contract. The basic purpose of this audit is to verify payments under this Contract and, in this process, to also verify certain information on rates and other representations made by the Consultant in relation to the Contract, hereunder during Contract negotiations. The Consultant shall cooperate with and assist ADB and its authorized representatives in making such audit. Out of pocket expenditures covered by fixed sums as provided in Section 6.04 above shall, however, not be subject to audit pursuant to this Article. In the event the audit discloses that the Consultant has overcharged ADB, the Consultant shall immediately reimburse ADB an amount equivalent to the amount overpaid, together with interest on such amount calculated at the then current interest rate for lending by ADB from its ordinary capital resources, payable from the date of such overpayment until the date of reimbursement. If ADB determines that the overpayment is a result of the Consultant having been engaged in corrupt, fraudulent, collusive or coercive practices, as defined in ADB's *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers* (Guidelines), provided that the reference to the "borrower" in Section 1.23(a)(iii) of the Guidelines shall be deemed to be a reference to ADB, ADB shall, unless ADB determines otherwise, terminate the contract. Such action shall be in addition to any action ADB may take in accordance with the Guidelines to declare the Consultant ineligible for award of further ADB-financed contracts.]<sup>2</sup>

## ARTICLE VIII Indemnity and Insurance

Section 8.01. (a) Notwithstanding Section 12.02, the Consultant shall be responsible for, and shall indemnify ADB and the Government, in respect of loss of or damage to equipment and materials furnished by the Government or ADB, or purchased by the Consultant in whole or in part with funds provided by the Government or ADB.

(b) The Consultant shall take out and maintain adequate insurance against loss of or damage to such equipment and materials. The proceeds of such insurance shall be payable in a currency freely usable to replace or repair such equipment and materials.

Section 8.02. Subject to Section 12.02(e) below, the Consultant shall take out and maintain adequate professional indemnity insurance and insurance against claims by third parties resulting from acts performed in carrying out the Services which shall be in coverage no less than a multiple of one times the value of the Services..

Section 8.03. ADB undertakes no responsibility in respect of life, accident, travel or any other insurance coverage for the personnel or for the dependents of any such personnel.

Section 8.04. The Consultant shall indemnify ADB and the Government from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, demands, costs, expenses and disbursements of whatsoever nature that may be imposed on, incurred by or asserted against, ADB and the Government during or in connection with the Services by reason of: (i) infringement or alleged infringement by the Consultant of any patent or other protected right, or (ii) plagiarism or alleged plagiarism by the Consultant.

Section 8.05. The Consultant shall ensure that all goods and services (including without limitation all computer hardware, software and systems) procured by the

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<sup>2</sup> For CQS, QBS and SSS.

Consultant from ADB funds or used by the Consultant in the carrying out of the Services do not violate or infringe any industrial property or intellectual property right or claim of any third party.

## ARTICLE IX

### Ownership of Work Product, Computer Programs and Equipment

Section 9.01. All reports,<sup>3</sup> documents, correspondence, draft publications, maps, drawings, notes, specifications, statistics, work product in any form and technical data compiled or prepared by the Consultant and communicated to ADB in performing the Services (in electronic form or otherwise and including computer-disks comprising data) shall be the sole and exclusive property of ADB, and may be made available to the general public at its sole discretion. The Consultant may take copies of such documents and data for purpose of use related to the Services under terms and conditions acceptable to ADB, but shall not use the same for any purpose unrelated to the Services without the prior written approval of ADB.

Section 9.02. All computer programs developed by the Consultant under this Contract shall be the sole and exclusive property of ADB; provided, however, that the Consultant may use such programs for their own use with prior written approval of ADB. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain ADB's prior written approval to such agreements. In such cases, ADB shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

Section 9.03. Equipment, vehicles and materials furnished to the Consultant by ADB, or purchased by the Consultant wholly or partly with funds supplied or reimbursed by ADB hereunder, shall be the property of ADB; provided, however, where the continued use of certain equipment, vehicles and materials is required for the Project, ADB may transfer to the Government the ownership of such equipment, vehicles and materials. Equipment, vehicles and materials furnished to the Consultant by the Government or purchased by the Consultant wholly or partly with funds supplied or reimbursed by the Government (other than equipment, vehicles and materials herein before specified as being the property of ADB) shall be the property of the Government.

## ARTICLE X

### Disposal of Data and Equipment

Section 10.01. Upon completion or termination of the Services, the Consultant shall:

- (i) sort and index the documents and data (including the related software) referred to in Sections 9.01 and 9.02 hereof and transmit the same to ADB; and
- (ii) furnish to the Government and ADB, as the case may be, inventories of the equipment and materials referred to in Section 9.03 hereof as it then remains, and dispose of the same as directed by the Government and ADB, respectively.

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<sup>3</sup> A 500-word (maximum) knowledge summary will be included in the front section of the final report to be delivered on a CD.

## ARTICLE XI Coordination

Section 11.01. [The Consultant shall at all times cooperate and coordinate with the Government and ADB, with respect to the Technical Assistance.]<sup>4</sup>

[Section 11.01. The Consultant shall at all times cooperate and coordinate with the Government and ADB, with respect to the Technical Assistance.

Section 11.02. (a) The Consultant shall at all times ensure that its staff, agents, and representatives employed by the Consultant for this consultancy comply with ADB's Minimum Operating Security Standards (hereinafter "ADB MOSS") in effect in all the countries the consultant will be required to work in under the contract for this consultancy. ADB shall assist the Consultant in obtaining information on the ADB MOSS. However, the Consultant shall be responsible for the provision of all security related equipment reasonable or necessary in the circumstances and/or to comply with the provisions of the ADB MOSS.

(b) The Consultant shall at all times ensure that Consultant's staff, agents, and representatives affected by this Contract, are informed and provided regular updates of the relevant ADB MOSS to be adhered to by them when working in all the countries the consultant will be required to work in under the contract for this consultancy.]<sup>5</sup>

## ARTICLE XII Exemptions and Facilities

Section 12.01. The maximum amount payable under the agreement has been fixed on the understanding that the Government will provide the Consultant the exemptions, assistance, services, facilities, documents and information listed in Section 12.02 below and in Appendix D. In the event that the Government is unable or fails to meet its obligations, the parties shall consult regarding what additional allowance (if any) should be made to the Consultant.

Section 12.02. ADB has obtained the confirmation of the Government that:

(a) The Consultant and the personnel shall have the status of experts performing missions for ADB and that they shall be entitled to the privileges, exemptions and immunities conferred upon such experts by the provisions of the Agreement Establishing the Asian Development Bank; and that without limiting the generality of those provisions, the Government confirms that:

- (i) except where ADB shall otherwise agree, the Consultant and the personnel shall be immune from legal process with respect to all acts performed by them in their capacity as Consultants in connection with the Technical Assistance;
- (ii) the personnel and their families (if they are not citizens or nationals of the recipient country) shall be exempt from immigration restrictions, alien registration requirements and national service obligations of the recipient country;

<sup>4</sup> For all TAs except in AFG and INO (Aceh only).

<sup>5</sup> For use in AFG and INO (Aceh only).

- (iii) the Consultant and the personnel (if they are not citizens or nationals of the recipient country) may bring into the recipient country reasonable amounts of foreign currency for the purpose of the Technical Assistance and may withdraw from the recipient country similar amounts of foreign currency together with any amounts earned therein by the Consultant and the personnel in connection with the Technical Assistance; and
  - (iv) the personnel and their families (if they are not citizens or nationals of the recipient country) may bring into the recipient country reasonable amounts of foreign currency for their personal use and may withdraw similar amounts of foreign currency from the recipient country;
- (b) The Government shall:
- (i) promptly provide the personnel and their families with any entry and exit visas, residence permits, foreign exchange permits and travel documents required for their stay in the recipient country;
  - (ii) promptly provide the Consultant and the personnel with work permits and other documents necessary to enable them to perform their work on the Technical Assistance; and
  - (iii) promptly clear through customs any equipment, materials or supplies required for the Technical Assistance, any personal effects and household goods of the personnel and their families.
- (c) The Government shall exempt the Consultant and the personnel from, or bear the cost of, any taxes, duties, fees or other impositions levied under the laws and regulations in effect in the territories of the recipient country or of any political subdivision or agency thereof in respect of:
- (i) any payments made in connection with the carrying out of the Technical Assistance to the Consultant or the personnel (except where the recipient country has reserved the right to tax its nationals pursuant to Article 56.2 of the Agreement Establishing the Asian Development Bank);
  - (ii) any equipment, materials and supplies which have been brought into the territories of the recipient country which are to become the property of the Government;
  - (iii) any equipment, materials and supplies which have been brought into the territories of the recipient country (except by Consultants or personnel who are citizens or nationals of the recipient country) for the purpose of carrying out the Technical Assistance and which will be consumed therein or subsequently withdrawn therefrom; and

(iv) any personal effects of the personnel and their families (if they are not citizens or nationals of the recipient country) which, having been brought into the territories of the recipient country will be consumed therein or subsequently withdrawn therefrom.

(d) The Government shall allow any of the items referred to in sub-paragraphs (iii) and (iv) of paragraph (c) of this Section, which are not withdrawn from the recipient country upon completion of the Technical Assistance, to be disposed of locally in accordance with any applicable Government regulations, or subject to such terms as are agreed upon between the Government and the Consultant; provided that any such items financed by ADB under this Agreement may be transferred to the Government on terms and conditions satisfactory to the Government and ADB.

(e) The Government shall be responsible for dealing with any claims arising out of, or resulting from, the Technical Assistance, which may be brought by third parties against ADB or the Consultant or the personnel. The Government shall indemnify ADB, the Consultant and the personnel against any costs, claims damages, or liabilities arising out of, or resulting from, any acts or omissions in connection with the Technical Assistance which may be brought by third parties against ADB or the Consultant or the personnel. The Government shall indemnify ADB, the Consultant and the personnel against any costs, claims, damages, or liabilities arising out of, or resulting from, any acts or omissions in connection with the Technical Assistance, except where it is agreed by the Government and ADB that such acts or omissions amount to gross negligence or willful misconduct of the Consultant or the personnel.

(f) The Government shall provide an adequate number of suitable local counterparts on a full-time basis to cooperate with and assist the personnel in the carrying out of the Services.

(g) The Government shall provide the Consultant and the personnel free of charge the services, facilities, equipment, documents and information described in Appendix D.

### ARTICLE XIII Impossibility of Performance

Section 13.01. The Consultant shall promptly notify ADB in writing of any situation or of the occurrence of any event beyond the control of the Consultant, including that of force majeure, which makes it impossible or impracticable for the Consultant to carry out its obligations hereunder. Upon confirmation in writing by ADB of the existence of any such situation or event or upon failure of ADB to respond to such notice within thirty (30) calendar days, the Consultant shall be relieved from all liability for failure to carry out its obligations. In case of disagreement between the parties as to the existence of such situation or event, the matter shall be submitted to arbitration in accordance with Section 16.01 hereof.

Section 13.02. The term "force majeure" shall mean events beyond the control of either party, which prevent the affected party from performing and fulfilling its obligations under the Contract, and could not have been reasonably anticipated or foreseen, or although foreseen were inevitable, such as acts of war, whether or not war be declared, public disorders, insurrection, riots, sabotage, explosions, violent demonstrations, blockades and other civil disturbances, epidemics, nuclear contamination, landslides, earthquakes, typhoons, volcanic eruption floods, washouts and other natural calamities and acts of God, strikes, lock-outs or other

industrial action or equivalent disruption or disturbances, boycotts and embargo or the effects thereof, and any other similar events.

#### ARTICLE XIV Suspension

Section 14.01. (a) ADB may, by notice to the Consultant, suspend, in whole or in part, the Services or the disbursement of funds hereunder if ADB determines that (i) the Consultant shall have failed to carry out any of its obligations under this Contract; (ii) any other condition has arisen which, in the reasonable opinion of ADB interferes, or threatens to interfere, with the successful carrying out of the Services or the accomplishment of the purposes of the Contract; or (iii) a force majeure event has occurred.

(b) In the event of a major delay in the implementation of the Services, ADB may suspend the payments as scheduled in Appendix C. In such event, the Consultant shall prepare a modified budget and payment schedule which shall take effect after approval by ADB, and payment shall be resumed in accordance with the modified schedule.

#### ARTICLE XV Termination

Section 15.01. ADB may terminate this Contract by notice to the Consultant:

- (i) if either of the conditions referred to in Section 14.01(a) have continued for a period of fourteen (14) calendar days after ADB has given notice to the Consultant of suspension of payments under the Contract; or
- (ii) if the Consultant shall have failed to comply with a request from ADB under Section 1.02; or
- (iii) if the Consultant otherwise is in default of any term of the Contract, or failed to provide correct information with respect to its representations in relation to the Contract; or
- (iv) if the Technical Assistance Agreement shall have been terminated; or
- (v) if ADB determines that the Consultant has engaged in corrupt, fraudulent, collusive or coercive practices, as defined in the Guidelines or there is a conflict of interest; or
- (vi) at any time at the option of ADB, upon not less than thirty (30) calendar days' notice of its intention to terminate.

Section 15.02. The Consultant may, by notice to ADB, terminate this Contract:

- (i) if payments pursuant to Clause 7 of the Agreement are not received within thirty (30) calendar days after the due dates, and such default has not been remedied within fifteen (15) calendar days after notice has been given by the Consultant to ADB; or

- (ii) if any situation or event referred to in Section 13.01 shall have continued for a period of thirty (30) calendar days after the Consultant shall have been relieved of its obligations in accordance with the provisions of that Section.

Section 15.03. (a) Upon receipt of any notice referred to in Section 15.01, or upon giving of any notice under Section 15.02, the Consultant shall take immediate steps to bring the Services to a close in a prompt and orderly manner and to reduce expenditures to a minimum.

(b) Unless such termination shall have been occasioned by the default of the Consultant, the Consultant shall be entitled to reimbursement in full for the costs specified in Section 6.05 as shall have been incurred up to the date of such termination and for costs incident to the orderly liquidation of the Services (including return travel of the personnel).

(c) all claims made by the Consultant under Section 15.03 (b) shall be supported by documentation submitted to ADB, satisfactory in form and content to ADB.

#### ARTICLE XVI Settlement of Disputes

Section 16.01. Any dispute or difference arising out of this Contract or in connection therewith which cannot be amicably settled between the parties shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Manila, Philippines. The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy. Each party shall bear its own costs.

Section 16.02. At completion or termination of the Services, the Consultant shall notify ADB in writing of its intention to proceed to arbitration under Section 16.01 within the time period specified by ADB in its letter advising closure of the Contract accounts. In the absence of such written notification from the Consultant within the specified time period, ADB shall be entitled to close the relevant Contract account.

#### ARTICLE XVII Variations

Section 17.01. The Contract may be varied by agreement between the parties. All such variations shall be in writing signed by the authorized representative of the Consultant and the Principal Director of Central Operations Services Office on behalf of ADB.

#### ARTICLE XVIII Conflict of Interest

Section 18.01. Except as ADB shall otherwise specifically agree in writing:

(a) Neither the Consultant, the personnel nor any subsidiary or affiliate of the Consultant shall engage in any activities, other than as consultant, on any future project which may emerge from the Services;

(b) The Consultant shall notify ADB of all assignments or commitments, if any, that the Consultant has or proposes to undertake for another party concurrently with the carrying out of this Contract and shall have obtained or shall obtain the prior written approval of ADB to undertake or complete the same in the absence of which the Consultant shall terminate any such assignment(s) or commitment(s) for such other party.

(c) No personnel of the Consultant listed in the Personnel Schedule shall engage, directly or indirectly, in any business or professional activities which would conflict with the Services.

#### ARTICLE XIX Confidential Information

Section 19.01. Except with the prior written consent of ADB, the Consultant and the personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the personnel make public the recommendations formulated in the course of, or as a result of, the Services. For purposes of this section, "confidential information" means any information or knowledge acquired by the Consultant and/or its personnel arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.

#### ARTICLE XX Contractual Ethics

Section 20.01. No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the proposal, have been given, received, or promised in connection with the consultant selection process or in contract execution. At all times the Consultant and its Personnel shall be in compliance with the Guidelines, ADB's *Anticorruption Policy*, and ADB's policy on sexual harassment. Neither ADB staff members nor members of their immediate family shall accept benefits, favors or gifts from sources external to ADB with respect to any ADB transaction, whether by way of compensation, commission, favorable buying or selling arrangements, gift, employment or otherwise. ADB staff members or their immediate family who find themselves in circumstances which make it difficult to refuse any such benefit, favor or gift shall follow the procedures set out in the relevant ADB Administrative Order or Circular.

#### ARTICLE XXI Lump Sum Contracts

Section 21.01. For Lump Sum contracts, notwithstanding the terms of Sections 1.01, 6.01 to 6.09, 15.03 (b) and 17.01, the provisions contained hereunder shall apply.

Section 21.02. Personnel. Any replacement approved by ADB shall be provided by the Consultant at no additional cost.

Section 21.03. Personnel Schedule. Should the rate of progress of the Services, or any part hereof, at any time in the opinion of ADB be too slow to ensure that the Services are completed in accordance with the Personnel Schedule, ADB shall so notify the Consultant in writing and the Consultant shall, at its sole cost and expense, thereupon take such steps as necessary (subject to ADB's approval) or as reasonably required by ADB, to expedite

progress so as to ensure that the Services are completed in accordance with the Personnel Schedule.

Section 21.04. **Payments.** (a) Payments to be made by ADB shall be strictly subject to, and representative of, satisfactory progress achieved by the Consultant in accordance with the Personnel Schedule. The Consultant shall, on a monthly basis, submit to ADB, in a format acceptable to ADB, a report stating personnel movements and inputs in previous month(s) compared to those shown in the Personnel Schedule. In the event the forecast of progress as anticipated in the Personnel Schedule is substantially changed due to variations pursuant to Article XVII, the Consultant may request ADB to revise the Payment Schedule specified in Appendix C to reflect such change.

(b) Final Payment pursuant to the Payment Schedule in Appendix C shall be made by ADB after the Final Deliverables have been submitted by the Consultant and approved by ADB.

(c) ADB will close the Contract account after ADB makes Final Payment to the Consultant. Any payment claims submitted to ADB by the Consultant after Contract account closure shall be denied and the Consultant agrees that such claims shall have been irrevocably waived.

Section 21.05. **Termination.** Upon the receipt or giving of any notice referred to in Section 15.03 (a), if the Consultant is not in default under the Contract and has partly or substantially performed its obligation under the Contract up to the date of termination and has taken immediate steps to bring the Services to a close in prompt and orderly manner, to reflect the reduction in the Services, provided that in no event shall the Consultant receive less than his actual costs up to the effective date of the termination, plus a reasonable allowance for overhead and profit.

Section 21.06. **Variations.** ADB may notify the Consultant to alter, amend, omit, add to, or otherwise vary the Services. In such event, the Consultant shall submit to ADB an estimate for the proposed change in the Services within 14 calendar days of receipt of a notice of variation, and the said estimate shall comprise the following:

- (i) an estimate of the impact (if any) of the variation on the current Personnel Schedule;
- (ii) a detailed schedule for execution of the variation showing the resources to be employed and any significant milestones;
- (iii) a detailed costing covering the total amount of the variations; and
- (iv) a proposed revision of the schedule of payments pursuant to Appendix C.

## ARTICLE XXII

### Visa Requirements and Related Issues

Section 22.01. The Consultant shall obtain the necessary visa and such other approvals from governmental authorities concerned prescribed under applicable laws and regulations of the Recipient Country to permit the Consultant and its personnel to carry out the

Services and, if applicable, shall obtain visa and other required approvals from the relevant governmental authorities for any dependents of such Consultant personnel physically present in the Recipient Country during the term of engagement.

## ARTICLE XXIII

### Severability and Surviving Termination

Section 23.01. In the event that, any term, condition, or provision of this Contract shall be held invalid, void, or unenforceable, the remainder of the Contract shall not be affected, impaired, or invalidated.

SAMPLE OF THE NOTICE TO PROCEED

[date]

[Name of Consulting Firm  
Address  
Fax No.:]

Attention: [Contact Person  
Designation]

Dear Sir/Madam:

This is a Notice to Proceed with the Services, mentioned in Clause 4 of the Contract dated [date of contract]. Please advise us when you expect your personnel to arrive in (project site).

Sincerely,

[Director  
name of the project division]

cc: Director, COS1 or COS2  
Project Officer  
Control Officer