



**Infrastructure Corporation of Andhra Pradesh Limited (INCAP)**

**NOTICE INVITING  
REQUEST FOR PROPOSAL (RFP)**

**FOR**

**SELECTION OF LEGAL FIRM FOR PROVIDING LEGAL ASSISTANCE TO  
GOVERNMENT DEPARTMENTS OF AP IN THE STATE OF ANDHRA  
PRADESH**

**(QUALITY CUM COST BASED SELECTION)**

**(January 2022)**

**(PROPOSAL DUE DATE: 05.02.2022)**

**(This document is meant for exclusive purposes of submitting the Proposal against this RFP document and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued)**

**Vice Chairman and Managing Director,**

**Infrastructure Corporation of Andhra Pradesh Limited (INCAP)**

**# RC. No 254/2, 4 th Floor, AVSR Bhavan, Near My Mart, Chalasani Nagar,  
Penamaluru Mandal, Kanuru, Vijayawada - 520007 A.P. India**

**Email: [incapap@incap.co.in](mailto:incapap@incap.co.in), [md@incap.co.in](mailto:md@incap.co.in) Web: [www.incap.co.in](http://www.incap.co.in)**

## REQUEST FOR PROPOSAL

### **Competitive Bidding for Recruitment of Legal Firm**

1. The Govt. of Andhra Pradesh is carrying out various welfare & development programs across all sectors in the State. To assist the state government in legal matters across various departments, GoAP desires to appoint Legal Firm through INCAP which shall provide suitable personnel on retainership basis for provision of legal assistance. Recruitment of the eligible firm will be carried out through a Quality-cum-Cost Based Selection (QCBS) method.
2. Vice Chairman & Managing Director INCAP, hereby invites sealed bids from interested Legal Firms in a single envelope two covers in accordance with the Request for Proposal document. The recruited Legal Firm would assist various Government departments / Secretaries through Law Department of GoAP in providing various legal services such as framing policies, drafting of model concession documents - agreements, RFQs (Requests for Qualification), RFPs (Requests for Proposal); review of concession documents received from Ministries / Government Departments and providing comments thereon, handling arbitration issues and any other related legal services as may be required by various departments of GoAP.
3. RFP document will be available for download on INCAP website <http://incap.co.in> from 22<sup>nd</sup> January 2022.
4. The bids on prescribed format should be submitted as described in the RFP documents on or before 1500 hours on 5<sup>th</sup> February 2022.
5. All communications regarding Proposal should be addressed to VC/MD, INCAP, e-mail ID: [md@incap.co.in](mailto:md@incap.co.in)

VC/MD (INCAP), GoAP

## **Disclaimer**

The information contained in this Request for Proposals document (the “**RFP**”) or subsequently provided to Legal Firms, whether verbally or in documentary or any other form by or on behalf of INCAP or any of its employees or advisers (hereinafter collectively “**INCAP**”), is provided to Legal Firms on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement or an offer by INCAP to the prospective Legal Firms or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by INCAP in relation to the selection of legal firm. Such assumptions, assessments and statements do not purport to contain all the information that each Legal Firm may require. This RFP may not be appropriate for all persons, and it is not possible for INCAP to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct.

Information provided in this RFP to the Legal Firms may be on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. INCAP accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

INCAP makes no representation or warranty and shall have no liability to any person including any Legal Firm under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this selection process.

INCAP also accepts no liability of any nature whether resulting from negligence or otherwise, howsoever caused, arising from reliance of any Legal Firm upon the statements contained in this RFP.

INCAP may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that INCAP is bound to select a legal firm or to appoint the selected legal assistant(s), as the case may be, for recruitment and INCAP reserves the right to reject all or any of the proposals without assigning any reasons whatsoever.

The legal firm shall bear all its costs associated with or relating to the preparation and submission of its proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by INCAP, or any other costs incurred in connection with or relating to its proposal. All such costs and expenses will remain with the Legal Firm and INCAP shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Legal Firm in preparation or submission of the proposal, regardless of the conduct or outcome of the selection process.

## **REQUEST FOR PROPOSAL**

**Subject: - Selection Of Legal Firm for Providing Legal Assistance to Government Departments Of AP in the state of Andhra Pradesh**

### **Background**

1. The Govt. of Andhra Pradesh is carrying out various welfare programs and development works across all sectors in the State. To assist the state government in various legal matters across departments, Law department of GoAP desires to appoint Legal Firm which shall provide suitable legal assistant(s) on retainership basis for provision of legal services detailed hereafter. Recruitment of the eligible firm will be carried out through a selection process followed by financial bid using Quality-cum-Cost Based Selection (QCBS) method.

### **Request for Proposal**

2. VC/MD INCAP hereby invites proposals from Legal Firms which have the experience in the Scope of Work cited in the RFP. The selection for recruitment would be through open competitive bidding process in accordance with the procedure set out in this RFP.

### **Validity of the Proposal**

3. The proposal shall be valid for a period not less than 120 (one hundred twenty) days from the Proposal Due Date (PDD).

### **Scope of Work**

4. As per detailed Terms of Reference at Schedule – I.

### **Legal Firm**

5. The Legal Firm shall apply individually as a single entity/sole firm (the “**Legal Firm**”). No consortiums shall be allowed to apply under this RFP.

## Conditions of Eligibility

6. To be considered for recruitment, the Legal Firm must fulfil the following conditions of eligibility:

(A) **Professional Qualification:** The Applicant shall be a company / a corporate body incorporated under the Companies Act, 1956 or the Companies Act, 2013 or a limited liability partnership (LLP) incorporated under the Limited Liability Partnership Act, 2008. Certificate of Incorporation/ Registration shall be furnished for the same.

The legal firm should have at least 3 legal advisors, who are alumni of the **eligible law institutes**, as a part of their board or as partners of the firm.

List of eligible Law Institutes:

1. National Law University, Delhi
2. National Academy of Legal Study & Research (NALSAR) University of Law, Hyderabad
3. The West Bengal National University of Juridical Sciences, Kolkata
4. National Law School of India University, Bangalore
5. National Law University, Jodhpur

(B) **Financial Capacity:** The Legal Firm should have minimum annual average turnover of Rs. 1 (One) Crores during the last three financial years preceding the Proposal Due Date. For the avoidance of doubt, professional fees hereunder refer to fees received by the Legal Firm for providing legal advisory or legal consultancy services to its clients and shall not include any amounts received by way of reimbursement or fee for payment to external counsels, senior advocates or external professional retained by the Legal Firm for its clients.

(C) **Availability of Legal Assistants:** The Legal Firm shall offer and make available all Legal Assistants meeting the requirements specified in Sub-clause (D) below (the “**Legal Assistants**”). The said Legal Assistants will continue to be available during the period of retainership. In the event of any such Legal Assistants leaving the Legal Firm selected under this RFP during the retainership period, he/she shall be replaced by a person with equivalent qualification and experience within 15 days’ time period with selection by the committee appointed by GoAP.

(D) **Conditions of Eligibility for Legal Assistants:** Each of the Legal Assistants must fulfil the Conditions of Eligibility specified below:

<b>Legal Assistants</b>	<b>Educational Qualification</b>
8 Legal Assistants	Must possess Bachelor degree in integrated 5 year law course or Master's Degree in Law in any specialisation from specified National School of Law mentioned above (Clause 6, sub-cause A)

**Duration**

7. Legal Firm(s) selected under this RFP (the “**Selected Legal Firm**”) will be recruited on retainership basis for a period of 2 years.

**Brief Description of the selection process**

8. Legal Firms may seek clarifications on the RFP document by sending queries addressed to VC/MD INCAP, e-mail ID: md@incap.co.in. Last date for receipt of queries/clarifications by INCAP will be 26<sup>th</sup> January 2022. Last date for the responses, if any, by INCAP shall be 28<sup>th</sup> January 2022. The dates captured in this RFP have been tabulated under the schedule of selection process provided.

**Criteria for Evaluation of Conditions of Eligibility**

9. The Proposal will be *inter alia* evaluated based on the annual turnover of the firm and the experience of the legal assistants provided by the Legal Firm by committee appointed by GoAP. The scoring criteria to be used for the evaluation shall be as follows:

<b>Criteria</b>	<b>Max. Marks</b>	<b>Details</b>
<b>Technical</b>	<b>100</b>	
Legal Assistants Interview Evaluation	88	<ul style="list-style-type: none"> <li>• 11 marks maximum for each Legal Assistants evaluated by the committee appointed by Govt.</li> </ul>
Turnover of Firm	12	<ul style="list-style-type: none"> <li>• Turnover in the range of Rs. 1-2 Cr: 8 marks</li> <li>• Turnover greater than Rs. 2 Cr: 12 marks</li> </ul>

10. The legal firm can provide CV for a maximum of 10 legal assistants.

11. Each Legal Assistants must receive a minimum score of 8 out of 11. In case any of the legal assistants provided by the firm have a score of less than 8, the Legal Firm must provide suitable replacements within 7 days of award of bid.

12. Only the Legal Firms whose Proposals score 80 marks or more out of 100 shall qualify for opening of financial proposal and for recruitment subject to them meeting the other required terms and conditions.

### **13. Evaluation of Proposals**

The overall selection of the Applicants will be a Quality-cum-Cost-Based Selection (QCBS) and the following formula will be used for the evaluation of the bids. The Evaluation of Applicants with technical scores equal to or more than 80% will be calculated as:  $S = (0.8)*Q + (0.2)*(Fm/F * 100)$  Where,

S = Combined score (Quality Score + Financial Score) of Applicant agency under consideration (calculated up to two decimal points)

Q = Quality score for the Applicant agency under consideration

F = Financial Bid Value for the Applicant agency under consideration

Fm = Lowest Financial Bid Value among the financial proposals under consideration

### **Submission of Proposals**

14. The Proposal shall be signed by the Authorized Signatory of the Legal Firm. There shall be no alterations, omissions, additions, or any other amendments made to the Proposal once submitted, except to the extent provided in Clauses 43 and 44.

15. While submitting the Proposal, the Legal Firm shall ensure that it meets all the Conditions of Eligibility.

16. If a Legal Firm makes an averment regarding his qualification, experience or other particulars and it turns out to be false, or his commitment regarding availability for the Assignment is not fulfilled at any stage after submission of the Proposal, he shall be debarred for any future assignment of GoAP for a period of 5 (five) years.

17. In case it is found during the evaluation or at any time before issue of the letter of recruitment pursuant to this RFP (the “**Letter of Engagement**” or the “**LOE**”) that one or more of the eligibility conditions have not been met by the Legal Firm or the Legal Firm has made material misrepresentation or has given any materially incorrect or false information,



the Legal Firm shall be disqualified forthwith if not yet appointed. If the Legal Firm has already been issued the LOE, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by INCAP without INCAP being liable in any manner whatsoever to the Legal Firm.

18. The INCAP reserves the right to verify all statements, information and documents, submitted by the Legal Firm in response to the RFP. Failure of INCAP to undertake such verification shall not relieve the Legal Firm of its obligations or liabilities hereunder nor will it affect any rights of INCAP thereunder.

19. In case the Proposal is submitted on the document downloaded from INCAP's official website, the Legal Firm shall be responsible for its accuracy and correctness as per the version uploaded by INCAP on its website and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded version of the RFP and the original RFP issued by INCAP, the latter shall prevail.

20. The completed Proposal must be submitted in a sealed envelope addressed to INCAP on or before the specified time on the Proposal Due Date. Proposals submitted by any other means including by post, fax, telex, telegram or e-mail shall not be entertained.

21. Legal Firms shall submit the Proposal along with all the required annexures in the formats at Appendix - I. All annexures to the Proposal must be provided on separate sheets of paper and only information that is directly relevant should be provided.

22. The Approved Fee provided herein shall not be revised throughout the period of recruitment.

### **Proposal Due Date & Submission of Proposal**

23. Legal Firms may submit their proposals in the enclosed formats provided under Appendix - I herein in a sealed envelope addressed to INCAP on or before 15:00 hours on 5<sup>th</sup> February 2022, and submission against the RFP titled, "RFP for Recruitment of Legal Firm, INCAP"

### **Late Proposals**

24. Proposals received by INCAP after the specified time on the Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

25. Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by INCAP, shall be disregarded.

### **Evaluation Process**

26. The INCAP shall open the Proposals received at 1600 hours on 5<sup>th</sup> February 2022, at the place specified hereunder, in the presence of the Legal Firms who choose to attend:

#254/2 4<sup>th</sup> floor, AVSR bhavan, Kanuru, Vijayawada, 520007, Andhra Pradesh

27. Prior to evaluation of Proposals, INCAP will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:

- (a) it is received in the specified format;
- (b) it is received by the Proposal Due Date including any extension thereof;
- (c) it contains all the information (complete in all respects) as requested in the RFP;
- (d) it does not contain any condition or qualification; and (e) it is not non-responsive in terms hereof.

28. The INCAP reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by INCAP in respect of such Proposals.

29. The INCAP would subsequently examine and evaluate the Proposals in accordance with the terms of this RFP.

30. The INCAP will not entertain any query or clarification from Legal Firms who fail to qualify at any stage of selection process.

### **Clarifications**

31. To facilitate evaluation of Proposals, INCAP may, at its sole discretion, seek clarifications from any Legal Firm regarding its Proposal. Such clarification(s) shall be provided within the time specified by INCAP for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. If an Legal Firm does not provide clarifications sought above within the specified time, its Proposal shall be

liable to be rejected. In case the Proposal is not rejected, INCAP may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding.

### **Right to reject any or all Proposals**

32. Notwithstanding anything contained in this RFP, INCAP reserves the right to accept or reject any Proposal or to annul the selection process and/or reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

33. The INCAP reserves the right to reject any Proposal if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Legal Firm does not provide, within the time specified by INCAP, the supplemental information sought for by INCAP for evaluation of the Proposal.

### **Recruitment**

34. After selection, a Letter of Award shall be issued, in duplicate, by INCAP to the Selected Legal Firm(s) along with 2 (two) sets of Agreement for Recruitment (format as provided under Appendix – II). The Selected Legal Firm(s) shall, within 7 (seven) days of the receipt of the LOE, sign and return the duplicate copy of the LOE along with both sets of Agreements for Recruitment to INCAP in acknowledgement and acceptance thereof. One set of the executed Agreement for Recruitment will be sent to the Selected Legal Firm(s) for its records. The LOE together with the Agreement for Recruitment shall constitute the agreement between INCAP and the Selected Legal Firm for the purpose of recruitment. The Selected Legal Firm(s) shall not be entitled to seek any deviation in the Agreement for Recruitment.

### **Payments**

35. The INCAP shall cause the payment due to the Legal Firm recruited hereunder (the “**Legal Firm**”) to be made within 30 (Thirty) days after the receipt by INCAP of duly completed invoice from Law department with necessary/required particulars.

36. All payments under this Agreement shall be made to the bank account of the Legal Firm as may be notified to INCAP by the respective Legal Firm.

37. No advance payment shall be admissible.

38. Legal Assistant has to obtain Certification from head of the department after submission of consolidated monthly report duly certified by LAW department for processing of payment.

39. Monthly payments related to legal assistants has to be taken care of by the legal firm as per their internal arrangements.

### **Proprietary data**

40. All documents and other information provided by INCAP or submitted by an Legal Firm to INCAP shall remain or become the property of INCAP. Legal Firms are to treat all information as strictly confidential. All information collected, analysed, processed or in whatever manner provided by the Legal Firm to INCAP in relation to the assignment shall be the property of INCAP.

### **Liquidated damages for error/variation**

41. In case any error or variation is detected in the work submitted by the Legal Firm and such error/variation is the result of negligence or lack of due diligence on the part of the Legal Firm, the consequential damages thereof shall be quantified by INCAP in a reasonable manner and recovered from the Legal Firm by way of deemed liquidated damages, subject to a maximum of the fees amount for the concerned assignment.

### **Liquidated damages for delay**

42. In case of legal assistant not reporting for duty for more than 2 consecutive days, liquidated damages not exceeding an amount equal to 5% (five per cent) of the fees for the concerned legal assistant per day for each day of absence shall be recovered from the payment due to the Legal Firm for that assignment, and the firm has to replace the legal assistant within 15 days failing which will lead to termination of contract. In case of such event, Law Department of GoAP may, in its sole discretion, decide to cancel the work order of the Legal Firm. However, in case of delay due to reasons beyond the control of the Legal Firm, suitable extension of time may be granted.

## **Amendment of RFP**

43. At any time prior to the deadline for submission of Proposal, INCAP may, for any reason, whether at its own initiative or in response to clarifications requested by an Legal Firm, modify the RFP document by the issuance of addendum/amendment and posting it on INCAP's official website along with the revised RFP containing the amendments and will be binding on all Legal Firms.

44. In order to afford the Legal Firms a reasonable time for taking an amendment into account, or for any other reason, INCAP may, in its sole discretion, extend the Proposal Due date.

## **Fraud and Corrupt Practices**

45. The Legal Firms and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the selection process. Notwithstanding anything to the contrary contained in this RFP, INCAP shall reject a Proposal without being liable in any manner whatsoever to the Legal Firm, if it determines that the Legal Firm has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**") in the selection process. In such an event, INCAP shall, without prejudice to its any other rights or remedies, disqualify the Legal Firm from this selection process.

46. Without prejudice to the rights of INCAP under clause 46 hereinabove, if an Legal Firm is found to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices during the selection process, or after the issue of the LOE, such Legal Firm shall not be eligible to participate in any tender or RFP issued by INCAP during a period of 2 (two) years from the date such Legal Firm is found to have directly or through an agent, engaged or indulged in any Prohibited Practices.

47. For the purpose of clarity, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of INCAP who is or has been associated in any manner, directly or

indirectly with the selection process or has dealt with matters concerning the LOE or arising therefrom, before or after the issue of LOE, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of INCAP, shall be deemed to constitute influencing the actions of a person connected with the selection process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the selection process or after the issue of the LOE, any person in respect of any matter relating to the recruitment hereunder or the LOE, who at any time has been or is a legal, financial or technical consultant/ adviser of INCAP in relation to any matter concerning the recruitment;

- (b) **“Fraudulent practice”** means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the selection process;
- (c) **“Coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the selection process;
- (d) **“Undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by INCAP with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or (ii) having a conflict of interest; and
- (e) **“Restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Legal Firms with the objective of restricting or manipulating a full and fair competition in the selection process.

### **Confidentiality**

48. The information relating to the submissions of legal firms, clarification, evaluation, and recommendations shall not be disclosed to any person, not officially concerned with the process. INCAP will treat all such information submitted as part of a Proposal in confidence and will insist that all, who have access to such material, treat it in confidence. The INCAP will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure or due to statutory compliances

## **Conflict of Interest**

49. shall hold all Confidential information in utmost secrecy and the breach of it would be treated as the violation of fiduciary obligations entailing liability of the defaulting party towards the other. No legal firm engaged in any activity involving rendering of advice, prosecution of cases, or involving any kind of legal or incidental work against the interests of GoAP either on policy or otherwise shall be eligible and accordingly it will be barred. The legal assistant appointed through the legal firm shall keep all documents, working papers and records in Trust for the government and in all cases keep and maintain absolute secrecy. In case of conflict of interest in between the legal firm recommended by him and the GoAP then he should invariably uphold and safeguard the interests of the government.

## **Miscellaneous**

50. The selection process shall be governed by, and construed in accordance with, the laws of India and the High Court of Andhra Pradesh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this RFP.

51. The each page of the RFP needs to be signed by the Authorized Signatory of the respective legal firm.

52. All clauses mentioned in the RFP is to be understood to be a part of the Draft Agreement which is provided along with this RFP document

53. The detailed roles of INCAP & Law Department shall be chalked out at a later stage.

## **Schedule of Selection Process**

54. INCAP would endeavour to adhere to the following schedule:

	<b>Event Description</b>	<b>Date</b>
1.	Last date for receiving queries/clarifications	26 <sup>th</sup> January 2022
3.	INCAP response to queries	28 <sup>th</sup> January 2022
4.	Proposal Due Date or PDD	1500 Hrs on 5 <sup>th</sup> February 2022
5.	Opening of Proposals	1600 Hrs on 5 <sup>th</sup> February 2022
6.	Letter of Award (LOA)	Shall be informed at later date

.7	Signing of Agreement	Shall be informed at later date
8.	Validity of Applications	120 days of PDD



### **Termination of Agreement**

55. Both Parties (INCAP & appointed Legal firm) can terminate the agreement upon mutual acceptance by not less than 60 (sixty) days“ written notice. The other conditions by which both parties can terminate is provided in the Draft Agreement which is provided along with the RFP document.

**Schedule - I**  
**Terms of Reference**

1. The appointed Legal firm shall provide suitable Key Personnel to undertake the tasks (but not limited to) such as framing / review of policy documents for development & welfare programmes, drafting of concession agreements (existing model concession agreement / new model as suited) for various sectors in accordance with applicable laws of land and guidelines, documentation for arbitration, framing / review of contract documents, contempt cases against the Government, and other legal matters as desired by the Government.
2. The appointed Legal firm would suggest amendments which shall safeguard the interests of the Government/ statutory entity and the users and conforming to the applicable laws and guidelines.
3. The appointed Legal firm should ensure that the concession agreements/ other agreements allocate legal, financial, and other risks in such a fashion that the Government or statutory entity granting the concession or awarding the project does not get affected at a future date or become liable to pay compensation or damages for any unintended/unidentified risk. In the unlikely event that such a liability arises, the Legal firm shall suggest provisions that safeguard public interest including the interests of users of the infrastructure under the concession agreement.
4. The appointed Legal firm will be required to submit the Monthly Progress Reports to Law Department which shall describe the tasks undertaken during that course of month.
5. The appointed Legal firm shall make suitable arrangements for the safe custody of documents & materials provided for the work assigned and shall hand them over to Department Heads (Special Chief Secretary / Principal Secretary / Secretary) after completion of the work.
6. The appointed Legal firm shall maintain confidentiality of the data and the work which shall be carried out during their tenure and other details which shall be furnished at the time of engagement.

**APPENDIX I**

**Form-1 Covering Letter**

(On Legal Firm's letter head)

(Date and Reference)

To

Vice Chairman & Managing Director  
Infrastructure Corporation of Andhra Pradesh (INCAP)  
#254/2, 4<sup>th</sup> floor, AVSR Bhavan,  
Kanuru, Vijayawada – 520007  
Andhra Pradesh

Dear Sir,

**Sub: Appointment of Legal Firm by INCAP – Reg.**

I, \_\_\_\_\_ (Legal Firm's name) herewith enclose the Proposal for above.

I agree that this offer shall remain valid for a period of 120 (one hundred twenty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Legal Firm)

**Note:** The Proposal is to be submitted strictly as per forms given in the RFP.

**Form-2**

**Financial Capacity of the Legal Firm**

<b>S. No.</b>	<b>Financial Year</b>	<b>Annual Revenue (Rs./INR)</b>
1.	2018-2019	
2.	2019-2020	
3.	2020-2021	

**Certificate from the Statutory Auditor**

This is to certify that ..... (name of the Legal Firm) has received the payments shown above against the respective years on account of professional fees.

(Signature, name and designation of the authorised signatory)

Date: Name and seal of the audit firm

- In case the Legal Firm does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Legal Firm.

**Note:**

1. Please do not attach any Annual Financial Statement.



<b>Name of assignment or project: Year:</b> <b>Location:</b> <b>Client:</b> <b>Main Project</b> <b>Features: Positions held:</b> <b>Activities performed:</b>	
<b>Name of assignment or project:</b> <b>Year:</b> <b>Location</b> <b>:</b> <b>Client:</b> <b>Main Project</b> <b>Features: Positions held:</b> <b>Activities performed:</b>	

### 8. List of Academic Achievements

### 9. List of Key Publications:

#### CITATION FORMAT:

Author, A. A., Author, B. B., & Author, C. C. (Year of publication). Title of journal article. *Title of journal: Subtitle of journal, volume number (issue number), first page-last page.*

**Form – 4**

**Financial Proposal**

(On Applicant's letter head)

(Date and Reference)

To

The Vice Chairman and Managing Director,  
Infrastructure Corporation of Andhra Pradesh Ltd.,  
# RC. No 254/2, 4 th Floor, AVSR Bhavan, Near My Mart, Chalasani Nagar,  
Penamaluru Mandal, Kanuru, Vijayawada - 520007 A.P. India

Sub: Selection of Legal firm by INCAP for providing legal assistance to various departments of Government of Andhra Pradesh – Reg.

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We offer to provide the services as cited in the above subject as provided below:

Personnel	No. of Personnel	Total Services cost per month (INR) for 8 no. s (excluding applicable taxes*)
Legal Assistant	8	

\* Tax will be applicable as per prevailing law

I/We agree that this offer will be subject to the Terms & Conditions mentioned in the RFP

Yours faithfully,

(Signature, name and designation of the authorised signatory)

(Name and seal of the Applicant)

**DRAFT AGREEMENT FOR RECRUITMENT**



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## **ANNEXURES**

Annexure 1: Terms of Reference

Annexure 2: Deployment of Personnel

Annexure 3: Professional Fees

## **DRAFT AGREEMENT FOR SELECTION OF LEGAL FIRM**

This AGREEMENT (hereinafter called the “**Agreement**”) is entered on the ..... day of the month of ..... 2022, between on the one hand, INCAP and, on the other hand, ..... (Hereinafter called the “**Legal Firm**” which expression shall include their respective successors and permitted assigns).

### *WHEREAS*

- (A) INCAP had invited proposals from Legal Firms for recruitment with INCAP, vide its Request for Proposal dated 22.01.2022, for drafting of model concession documents - agreements, RFQs (Requests for Qualification), RFPs (Requests for Proposal); review of concession documents received from Ministries / Government Departments and providing comments thereon, and other related legal services as may be required by INCAP (hereinafter called the “**Services**”, as defined in detail hereinafter”);
- (B) the Legal Firm submitted its proposal for recruitment, whereby it represented to INCAP that it meets the eligibility criteria, had the required professional skills, and is in agreement to be recruited. In the said proposal, the Legal Firm also agreed to provide the Services to INCAP on the terms and conditions as set forth in the RFP and this Agreement;
- (C) INCAP, on acceptance of the aforesaid proposal of the Legal Firm, recruited the Legal Firm vide its Letter of Recruitment dated..... (the “**LOE**”); and
- (D) in pursuance of the LOE, the parties have agreed to enter into this Agreement.

**NOW, THEREFORE, the parties hereto hereby agree as follows:**

### **1. GENERAL**

#### **1.1 Definitions and Interpretation**

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “Agreement” means this Agreement, together with all the Annexures.

- (b) “Applicable Laws” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
  - (c) “Confidential Information” shall have the meaning set forth in clause 3.3;
  - (d) “Conflict of Interest” shall have the meaning set forth in clause 3.2 read with the provisions of the RFP;
  - (e) “Dispute” shall have the meaning set forth in clause 9.2.1;
  - (f) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to clause 2.1;
  - (g) “INR, Re. or Rs.” means Indian Rupees;
  - (h) “Party” means INCAP or the Legal Firm, as the case may be, and Parties means both of them;
  - (i) “Personnel” means persons hired by the Legal Firm as employees or retainers and assigned to the performance of the Services or any part thereof;
  - (j) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
  - (k) “RFP” means the Request for Proposal document in response to which the Legal Firm’s proposal for providing Services was accepted;
  - (l) “Services” means the work to be performed by the Legal Firm pursuant to this Agreement, as described in the Terms of Reference hereto; and
  - (m) “Terms of Reference” shall have the meaning set forth in clause 3.1.2.
  - (n) “Third Party” means any person or entity other than INCAP or the Legal Firm.
- All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Recruitment

## **1.2 Relation between the Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between INCAP and the Legal Firm. The Legal Firm shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## **1.3 Rights and obligations**

The mutual rights and obligations of INCAP and the Legal Firm shall be as set forth in the Agreement, in particular:

- (a) the Legal Firm shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) INCAP shall make payments to the Legal Firm in accordance with the provisions of the Agreement.

## **1.4 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the High Court in Amravati shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

## **1.5 Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

## **1.6 Table of contents and headings**

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

## **1.7 Notices**

Any notice or other communication to be given by one Party to the other under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Legal Firm, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Legal Firm's Representative set out below in clause 1.9.3 or to such other person as the Legal Firm may from time to time designate by notice to INCAP; provided that if the Legal Firm does not have an office in Vijayawada, such notice may be sent by e-mail and by registered acknowledgement due, air mail or by courier to the address as the Legal Firm may from time to time specify by notice to INCAP;
- (b) in the case of INCAP, be given by e-mail and by letter delivered by hand and be addressed to INCAP with a copy delivered to INCAP Representative set out below in clause 1.9.2 or to such other person as INCAP may from time to time designate by notice to the Legal Firm; provided that if the Legal Firm does not have an office in Vijayawada, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by one Party to the other, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of email, it shall be deemed to have been delivered on the working days following the date of its delivery.

## **1.8 Location**

- 1.8.1 The Services shall be performed at the offices of the respective department's office locations in the state or at such locations as are incidental thereto.
- 1.8.2 The Legal Firm shall, as and when requested by Law Department, make available its Legal Assistants, at no additional fees, for conferences and meetings in connection with the Services at the respective offices of the various departments or elsewhere.

## **1.9 Authorised Representatives**

- 1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement, as the case may be, may be taken or executed by the officials specified in this clause 1.9.
- 1.9.2 The office of INCAP, Law Department from time to time, designate one of its officials as their representatives. Unless otherwise notified, the details are furnished below.

.....

.....

Tel: .....

Mobile: .....

Email: .....

1.9.3 The Legal Firm may designate one of its employees as Legal Firm's Representative.

Unless otherwise notified, the Legal Firm's Representative shall be:

.....

.....

Tel: .....

Mobile: .....

Email: .....

#### **1.10. Taxes and duties**

Unless otherwise specified in the Agreement, the Legal Firm shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and Law Department shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

### **2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

#### **2.1 Effectiveness of Agreement**

This Agreement shall come into force and effect on the date of this Agreement (the "Effective Date").

#### **2.2 Provision of Services**

The Legal Firm shall provide Services under this Agreement as and when it receives a work order from INCAP, or as is otherwise required by Law Department.

#### **2.3 Expiry of Agreement**

Unless terminated earlier pursuant to clause 2.8 hereof, this Agreement shall, or unless extended by the Parties by mutual consent, expire upon the expiry of 3 (three) years from the Effective Date.



## **2.4 Entire Agreement**

2.4.1 This Agreement and the Annexes 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 such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Legal Firm arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.4.2 Without prejudice to the generality of the provisions of clause 2.4.1 above, on matters not covered by this Agreement, the provisions of RFP shall apply.

## **2.5 Modification of Agreement**

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

## **2.6 Force Majeure**

### ***2.6.1 Definition***

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

#### ***2.6.2 No breach of Agreement***

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

#### ***2.6.3 Measures to be taken***

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

#### ***2.6.4 Extension of time***

Any period within which a Party shall, pursuant to this Agreement, 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.

#### ***2.6.5 Payments***

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Legal Firm shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

### **2.6.6 Consultation**

Not later than 30 (thirty) days after the Legal Firm has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### **2.7 Suspension of Agreement**

INCAP may, by written notice of suspension to the Legal Firm, suspend all payments to the Legal Firm hereunder if the Legal Firm shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Legal Firm to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Legal Firm of such notice of suspension.

### **2.8 Termination of Agreement**

#### **2.8.1 By INCAP**

INCAP may, by not less than 60 (sixty) days' written notice of termination to the Legal Firm, such notice to be given after the occurrence of any of the events specified in this clause 2.8.1, terminate this Agreement if:

- (a) the Legal Firm fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as INCAP may have subsequently granted in writing;
- (b) the Legal Firm becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Legal Firm fails to comply with any final decision reached as a result of arbitration proceedings pursuant to clause 9 hereof;
- (d) the Legal Firm submits to INCAP a statement which has a material effect on the rights, obligations or interests of INCAP and which the Legal Firm knows to be false;

- (e) any document, information, data or statement submitted by the Legal Firm in its Proposals, based on which the Legal Firm was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Legal Firm is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) In case of legal assistant not reporting for duty for more than 2 consecutive days, liquidated damages not exceeding an amount equal to 5% (five per cent) of the fees for the concerned legal assistant per day for each day of absence shall be recovered from the payment due to the Legal Firm for that assignment, and the firm has to replace the legal assistant within 15 days failing which will lead to termination of contract. In case of such event, Law Department of GoAP may, in its sole discretion, decide to cancel the work order of the Legal Firm. However, in case of delay due to reasons beyond the control of the Legal Firm, suitable extension of time may be granted.
- (h) INCAP, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

### **2.8.2 By the Legal Firm**

The Legal Firm may, by not less than 60 (sixty) days" written notice to INCAP, such notice to be given after the occurrence of any of the events specified in this clause 2.8.2, terminate this Agreement if:

- (a) INCAP fails to pay any money due to the Legal Firm pursuant to this Agreement and not subject to dispute pursuant to clause 9 hereof within 45 (forty-five) days after receiving written notice from the Legal Firm that such payment is overdue;
- (b) INCAP is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 15 (fifteen) days (or such longer period as the Legal Firm may have subsequently granted in writing) following the receipt by INCAP of the Law Firm's notice specifying such breach;
- (c) as the result of Force Majeure, the Legal Firm is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) INCAP fails to comply with any final decision reached as a result of arbitration pursuant to clause 9 hereof.

### ***2.8.3 Cessation of rights and obligations***

Upon termination of this Agreement pursuant to Clause 2.8 hereof, or upon expiration of this Agreement pursuant to clause 2.3 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such expiration or termination; (ii) the obligation of confidentiality set forth in clause 3.3 hereof; (iii) the Law Firm's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in clause 3.5, as relate to the Legal Firm's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

### ***2.8.4 Cessation of Services***

Upon termination of this Agreement by notice of either Party to the other pursuant to clauses 2.8.1 or 2.8.2 hereof, the Legal Firm shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Legal Firm and materials furnished by INCAP, the Legal Firm shall proceed as provided respectively by clauses 3.6 or 3.7 hereof.

### ***2.8.5 Payment upon Termination***

Upon expiry or termination of this Agreement, INCAP shall, after offsetting any amount that may be due from the Legal Firm to INCAP, pay to the Legal Firm its fees pursuant to clause 6 hereof for Services satisfactorily performed prior to the date of termination.

### ***2.8.6 Disputes about Events of Termination***

If either Party disputes whether an event specified in clause 2.8.1 or in clause 2.8.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. OBLIGATIONS OF THE LEGAL FIRM**

#### **3.1 General**

##### ***3.1.1 Standards of Performance***

The Legal Firm shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate methods. The Legal Firm shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to Law Department, and shall at all times support and safeguard GoAP's legitimate interests in any dealings with Third Parties.

##### ***3.1.2 Terms of Reference***

The scope of Services to be performed by the Legal Firm is specified in the Terms of Reference (the "TOR") at **Annex-1** of this Agreement. The Legal Firm shall provide the deliverables specified therein in conformity with the time schedule stated therein.

##### ***3.1.3 Applicable Laws***

The Legal Firm shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that the Personnel of the Legal Firm, comply with the Applicable Laws.

#### **3.2 Conflict of Interest**

3.2.1 The Legal Firm shall not have a Conflict of Interest, and any breach hereof shall constitute a breach of the Agreement.

3.2.2 The Legal firm which are already extending their services to some other firms, which are acting against to the Government of Andhra Pradesh are not eligible to participate. This may affect the selection process or the recruitment and the services to be provided during the recruitment period (the "Conflict of Interest"). In such case, the firms shall be disqualified and shall not be eligible to participate in any tender or RFP issued during a period of 5 (five) years from the date the Applicant is found by INCAP to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

### ***3.2.3 Prohibition of conflicting activities***

Neither the Legal Firm nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

### ***3.2.4 Legal Firm not to benefit from commissions, discounts, etc.***

The fee payable to the Legal Firm pursuant to clause 6 hereof shall constitute the Legal Firm's sole remuneration in connection with this Agreement or the Services and the Legal Firm shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder.

3.2.5 The Legal Firm and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (Collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, INCAP & Law Department shall be entitled to terminate this Agreement forthwith by a communication in writing to the Legal Firm, without being liable in any manner whatsoever to the Legal Firm, if it determines that the Legal Firm has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the selection process or before or after entering into of this Agreement. In such an event, INCAP shall terminate this Agreement in accordance with the clause 2.8.1.

3.2.6 Without prejudice to the rights of INCAP under clause 3.2.5 above and the other rights and remedies which INCAP & Law Department may have under this Agreement, if the Legal Firm is found by INCAP or Law Department to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the selection process or before or after the execution of this Agreement, the Legal Firm shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Legal Firm is found by

INCAP to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “**corrupt practice**” means (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the selection process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of INCAP who is or has been associated in any manner, directly or indirectly with selection process or LOE or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of INCAP, shall be deemed to constitute influencing the actions of a person connected with the selection process); or (ii) engaging in any manner whatsoever, whether during the selection process or after the issue of LOE or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Scope of Work or the LOE or the Agreement, who at any time has been or is a legal, financial or technical adviser INCAP in relation to any matter concerning the Scope of Work;
- (b) “**Fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the selection process;
- (c) “**Coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the selection process or the exercise of its rights or performance of its obligations by INCAP under this Agreement;
- (d) “**Undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by INCAP with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or (ii) having a Conflict of Interest; and
- (e) “**Restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the selection process.



### 3.3 Confidentiality

3.3.1. The Legal Firm and the Personnel or any other person working with the Legal Firm in any capacity shall not, either during the term or within 5 (five) years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by respective Government Departments to the Legal Firm and the Personnel; any information provided by or relating to respective Government Departments, its technology, technical processes, business affairs or finances or any information relating to their employees, officers or other professionals or suppliers, customers, or contractors of respective Government Departments; and any other information which the Legal Firm is under an obligation to keep confidential in relation to the , the Services or this Agreement (“**Confidential Information**”), without the prior written consent of Law Department.

3.3.2. Notwithstanding the aforesaid, the Legal Firm and all its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (a) was in the public domain prior to its delivery to the Legal Firm and the Personnel or becomes a part of the public knowledge from a source other than the Legal Firm and the Personnel or either of them;
- (b) was obtained from a third party with no known duty to maintain its confidentiality;
- (c) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Legal Firm and the Personnel shall give INCAP, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (d) is provided to the professional advisers, agents, auditors or representatives of the Legal Firm or Personnel, as is reasonable under the circumstances; provided, however, that the Legal Firm or Personnel, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.3.3. Without prejudice to the generality of the above clauses 3.3.1 and 3.3.2, the Legal Firm shall not, except with the prior sanction of Law Department, or in the bonafide discharge of their duties, participate in a radio/T.V. broadcast/telecast or contribute an article or write a letter to a newspaper pseudonymously or in the name of any other person, if such book, article, broadcast/telecast or letter relates directly to the work pursuant to this Agreement, not only during the period of recruitment, but also thereafter.

3.3.4. Data contained in the assigned documents shall not be used by the Legal Firm, Personnel or any other person working with the Legal Firm in any capacity for any published materials including doctoral thesis or for any degree/diploma, *etc.*

### **3.4 Liability of the Legal Firm**

3.4.1 The Legal Firm's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Legal Firm shall, subject to the limitation specified in clause 3.4.3, be liable to INCAP for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Legal Firm or on the part of any person or firm acting on behalf of the Legal Firm in carrying out the Services, the Legal Firm, with respect to damage caused to respective Government Departments 's property, shall not be liable to Law Department:

- (a) for any indirect or consequential loss or damage; and
- (b) for any direct loss or damage that exceeds the proceeds the Legal Firm may be entitled to receive from any insurance maintained by the Legal Firm to cover such a liability.

3.4.4 The limitation of liability specified in clause 3.4.3 shall not affect the Legal Firm's liability, if any, for damage to Third Parties caused by the Legal Firm or any person or firm acting on behalf of the Legal Firm in carrying out the Services.

### **3.5 Accounting, inspection and auditing**

The Legal Firm shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted

accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Legal Firm's costs and charges); and

- (b) permit Law Department or INCAP or its designated representative periodically, and upto one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by Law Department and INCAP.

### **3.6 Documents prepared by the Legal Firm to be property of respective Government Departments**

3.6.1 All plans, specifications, agreements, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Legal Firm performing the Services shall become and remain the property of respective Government Departments, and all intellectual property rights in such Consultancy Documents shall vest with respective Government Departments. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with respective Government Departments under law, shall automatically stand assigned to respective Government Departments as and when such Consultancy Document is created, and the Legal Firm agrees to execute all papers and to perform such other acts as respective Government Departments may deem necessary to secure its rights herein assigned by the Legal Firm.

3.6.2 The Legal Firm shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to respective Government Departments, together with a detailed inventory thereof. The Legal Firm may retain a copy of such Consultancy Documents. The Legal Firm shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of Law Department.

3.6.3 The Legal Firm shall hold Law Department harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as „claims“) which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Legal Firm to perform any of its duties or obligations in relation to securing the aforementioned rights of Law Department.

### **3.7 Materials furnished by respective Government Departments**

Materials made available to the Legal Firm by respective Government Departments shall be the property of respective Government Departments and shall be marked accordingly. Upon termination or expiration of this Agreement, the Legal Firm shall furnish forthwith to respective Government Departments, an inventory of such materials and shall dispose of such materials in accordance with the instructions of respective Government Departments.

### **3.8 Providing access to Office and Personnel**

The Legal Firm shall ensure that INCAP & Law Department, and officials of INCAP and Law Department have authorisation from INCAP & Law Department, are provided unrestricted access to the office of the Legal Firm and to all Personnel during office hours. The official, who has been authorised by INCAP in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Legal Firm and verify the records relating to the Services for his satisfaction.

### **3.9 Accuracy of Documents**

The Legal Firm shall be responsible for accuracy of the documents drafted and/ or vetted by it. Subject to the provisions of clause 3.4, it shall indemnify INCAP & Law Department against any inaccuracy in its work if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Legal Firm or arises out of its failure to conform to good industry practice. The Legal Firm shall also be responsible for promptly correcting, at its own cost and risk, the documents.

## **4. LEGAL FIRM'S PERSONNEL**

### **4.1 General**

The Legal Firm shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

### **4.2 Deployment of Personnel**

The designations, names and other particulars of the Legal Firm's Personnel are described in **Annex-2** of this Agreement.

### **4.3 Approval for Personnel**

4.3.1 The Personnel listed in Annex-2 of the Agreement are hereby approved by INCAP & Law Department. No other professional personnel shall be engaged without prior written approval of INCAP & Law Department.

4.3.2 If a Personnel is to be replaced or if the Legal Firm hereafter proposes to engage any person as Personnel, it shall submit to INCAP & Law Department. Its proposal along with a CV of such person in accordance with Appendix-I (Form-5) of the RFP. INCAP & Law Department may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Legal Firm will propose an alternative person for INCAP's consideration. In the event INCAP does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this clause 4.3, it shall be deemed to have been approved by INCAP & Law Department.

### **4.4 Substitution of Key Personnel**

4.4.1. INCAP expects all the Key Personnel specified in the Proposal to be available during the currency of the Agreement. INCAP will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Legal Firm.

4.4.2. The Key Personnel must commit the time required for and be available for performing the obligations of recruitment in accordance with the terms specified herein.

### **4.5 Personnel's Remuneration**

The Legal Firm shall be solely responsible for remuneration/fee of the Personnel without any liability whatsoever to INCAP.

## **5. OBLIGATIONS OF LAW DEPARTMENT**

### **5.1 Payment**

In consideration of the Services performed by the Legal Firm under this Agreement, Law Department shall make to the Legal Firm such payments and in such manner as is provided in clause 6 of this Agreement.

## **6. PAYMENT TO THE LEGAL FIRM**

### **6.1 Fees**

The fees payable to the Legal Firm for provision of Services hereunder is specified in **Annex-3** hereto (also included in the RFP at Schedule – II).

### **6.2 Currency of payment**

All payments shall be made in Indian Rupees. The Legal Firm shall be free to convert Rupees into any foreign currency as per Applicable Laws.

### **6.3 Mode of billing and payment**

6.3.1. The INCAP shall cause the payment due to the Legal Firm to be made within 30 (thirty) days after the receipt by INCAP of duly completed invoice with necessary/required particulars.

6.3.2. All payments under this Agreement shall be made to the account of the Legal Firm as may be notified to INCAP by the respective Legal Firm.

6.3.3. No advance payment shall be admissible. INCAP shall pay to the Legal Firm, only the undisputed amount.

6.3.4. Any amount which INCAP has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Legal Firm to INCAP within 30 (thirty) days after receipt by the Legal Firm of notice thereof. Any such claim by INCAP for reimbursement must be made within 1 (one) year after receipt by INCAP of the final deliverable of the Legal Firm. Any delay by the Legal Firm in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.

## **7. LIQUIDATED DAMAGES AND PENALTIES**

### **7.1 Liquidated Damages**

#### ***7.1.1 Liquidated Damages for error***

In case any error or variation is detected in the work submitted by the Legal Firm and such error/variation is the result of negligence or lack of due diligence on the part of the Legal Firm, the consequential damages thereof shall be quantified by INCAP in a reasonable manner and recovered from the Legal Firm by way of deemed liquidated damages, subject to a maximum of the fees amount for the concerned assignment.

### ***7.1.2 Liquidated Damages for delay***

In case of legal assistant not reporting for duty for more than 2 consecutive days, liquidated damages not exceeding an amount equal to 5% (five per cent) of the fees for the concerned legal assistant per day for each day of absence shall be recovered from the payment due to the Legal Firm for that assignment, and the firm has to replace the legal assistant within 15 days failing which will lead to termination of contract. In case of such event, Law Department of GoAP may, in its sole discretion, decide to cancel the work order of the Legal Firm. However, in case of delay due to reasons beyond the control of the Legal Firm, suitable extension of time may be granted.

### **7.2 Penalty for deficiency in Services**

In addition to the liquidated damages not amounting to penalty, as specified in clause 7.1, warning may be issued to the Legal Firm for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the assignments or on the reputation of INCAP & Law Department, other penal action including debarring for a specified period may also be initiated as per policy of INCAP.

## **8. FAIRNESS AND GOOD FAITH**

### **8.1 Good Faith**

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

### **8.2 Operation of the Agreement**

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with clause 9 hereof.

## **9. SETTLEMENT OF DISPUTES**

### **9.1 Amicable settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

### **9.2 Dispute resolution**

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in clause 9.3.

9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **9.3 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the VC/MD INCAP and the Managing Partner of the Legal Firm or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of clause 9.4.

### **9.4 Arbitration**

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be



mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996. The venue of such arbitration shall be Amaravati and the language of arbitration proceedings shall be English.

9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this clause 9 shall be final and binding on the Parties as from the date it is made, and the Legal Firm and INCAP agree and undertake to carry out such Award without delay.

9.4.4 The Legal Firm, INCAP & Law Department agree that an Award may be enforced against the Legal Firm and/or INCAP, as the case may be, and their respective assets wherever situated.

9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED  
DELIVERED

SIGNED, SEALED AND

For and on behalf of

Legal Firm

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

For and on behalf of

INCAP

(Signature)

(Name)

(Designation)

(Address)

2.